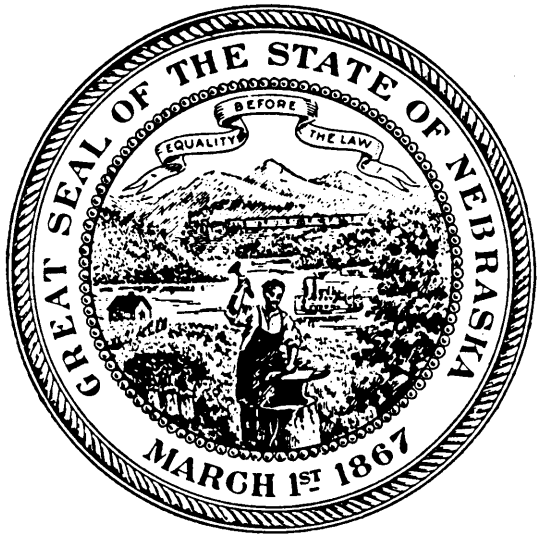
REVISED STATUTES
OF
NEBRASKA

REISSUE OF VOLUME 1
2007

COMPRISING ALL THE STATUTORY LAWS OF A
GENERAL NATURE IN FORCE AT DATE OF
PUBLICATION ON THE SUBJECTS ASSIGNED
TO CHAPTERS 1 TO 15, INCLUSIVE



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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the Reissue of Volume 1 of the Revised Statutes of Nebraska, 2007, contains all of the laws set forth in Chapters 1 to 15, appearing in Volume 1, 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 1
ACCOUNTANTS

Section

Section

Cross References

License Suspension Act, see section 43-3301.

1-101 Repealed. Laws 1957, c. 1, § 65.

1-102 Repealed. Laws 1957, c. 1, § 65.

1-103 Repealed. Laws 1957, c. 1, § 65.

1-104 Repealed. Laws 1957, c. 1, § 65.

1-105 Act, how cited.

Sections 1-105 to 1-171 shall be known and may be cited as the Public Accountancy Act.

Source: Laws 1957, c. 1, § 64, p. 78; Laws 1991, LB 75, § 14; Laws 1994, LB 957, § 7; R.S.Supp.,1996, § 1-169; Laws 1997, LB 114, § 1.

1-105.01 Nebraska State Board of Public Accountancy; purpose.

It is the purpose of the Nebraska State Board of Public Accountancy to protect the welfare of the citizens of the state by assuring the competency of persons regulated under the Public Accountancy Act through (1) administration of certified public accountant examinations, (2) issuance of certificates and permits to qualified persons and firms, (3) monitoring the requirements for continued issuance of certificates and permits, and (4) disciplining certificate and permitholders who fail to comply with the technical or ethical standards of the public accountancy profession.

Source: Laws 1984, LB 473, § 1; Laws 1997, LB 114, § 2.

The Nebraska State Board of Public Accountancy may use its rulemaking authority under section 1-112 to promulgate standards and procedures whereby the character and fitness of an applicant for initial certification may be considered by the board in determining whether the applicant is a qualified person under this section. Troshynski v. Nebraska State Bd. of Pub. Accountancy, 270 Neb. 347, 701 N.W.2d 379 (2005).

1-106 Terms, defined.

For purposes of the Public Accountancy Act, unless the context otherwise requires:

(1) Board means the Nebraska State Board of Public Accountancy;

(2) Certificate means a certificate issued under sections 1-114 to 1-124;

(3) Firm means a partnership, corporation, or limited liability company engaged in the practice of public accountancy in this state entitled to register with the board;

(4) Partnership includes, but is not limited to, a limited liability partnership;

(5) Permit means a permit to engage in the practice of public accountancy in this state issued under section 1-136; and

(6) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

Source: Laws 1957, c. 1, § 1, p. 55; Laws 1991, LB 75, § 1; Laws 1997, LB 114, § 3.

1-107 Nebraska State Board of Public Accountancy; creation; membership; appointment; qualifications; terms; vacancies; removal; reappointment.

There is hereby created the Nebraska State Board of Public Accountancy. The board shall consist of eight members appointed by the Governor.

Six members of the board shall be holders of permits issued under subdivision (1)(a) of section 1-136, and two members of the board shall be laypersons.

All members of the board shall be citizens of the United States and residents of Nebraska. Two of the members of the board, who are holders of permits, shall reside in each congressional district. Two members shall be appointed to the board each year for terms of four years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his or her term of office a member shall continue to serve until his or her

successor has been appointed and qualified. The Governor shall remove from the board any member whose permit has become void or has been revoked or suspended and may, after hearing, remove any member of the board for neglect of duty or other just cause. No person who has served two complete terms of four years shall be eligible for reappointment. Appointment to fill an unexpired term shall not be considered a complete term.

Source: Laws 1957, c. 1, § 2, p. 55; Laws 1961, c. 1, § 1, p. 59; Laws 1971, LB 858, § 1; Laws 1979, LB 414, § 1; Laws 1981, LB 92, § 1; Laws 1984, LB 473, § 2; Laws 1997, LB 114, § 4.

1-108 Board; chairperson; rules and regulations; quorum; seal; records.

The board shall elect annually a chairperson from its members. The board shall receive and account for all fees and other money received by it under the Public Accountancy Act. The board may adopt and promulgate rules and regulations for the orderly conduct of its affairs and the administration of the act. A majority of the members of the board shall constitute a quorum for the transaction of business. The board shall adopt a seal. The board shall keep records of its proceedings, and in any proceedings in court, civil or criminal, arising out of or founded upon any provision of the act, copies of such records certified as correct under the seal of the board shall be admissible in evidence as tending to prove the content of the records.

Source: Laws 1957, c. 1, § 3, p. 56; Laws 1997, LB 114, § 5.

1-108.01 Board; conflicts of interest; rules and regulations.

The board shall adopt and promulgate rules and regulations which establish definitions of conflicts of interest for its members and which establish procedures to be followed in case such conflicts arise.

Source: Laws 1984, LB 473, § 3; Laws 1997, LB 114, § 6.

1-109 Board; annual register; contents; personnel; executive director; duties.

(1) In December of each year, the board shall have printed and published for public distribution an annual register containing the names, arranged alphabetically by classifications, of all persons holding permits, the names of the members of the board, and such other matters as may be deemed proper by the board. Copies of the register shall be mailed to each permitholder.

(2) The board shall employ an executive director, additional personnel, and any other assistance as it may require for the performance of its duties. Unless otherwise directed by the board, the executive director shall keep a record of all proceedings, transactions, and official acts of the board, be custodian of all the records of the board, and perform such other duties as the board may require.

Source: Laws 1957, c. 1, § 4, p. 57; Laws 1981, LB 92, § 2; Laws 1994, LB 1005, § 1; Laws 1997, LB 114, § 7.

1-110 Board member; salary; expenses.

Each member of the board shall be paid one hundred dollars for each day or portion thereof spent in the discharge of his or her official duties and shall be reimbursed for his or her actual and necessary expenses incurred in the discharge of his or her official duties as provided in sections 81-1174 to

81-1177. Such compensation and expenses shall be paid from the Public Accountants Fund.

Source: Laws 1957, c. 1, § 5, p. 57; Laws 1961, c. 2, § 1, p. 61; Laws 1981, LB 204, § 1; Laws 1981, LB 92, § 3; Laws 1997, LB 114, § 8.

1-111 Fees, costs, and penalties; collection; Public Accountants Fund; created; use; investment.

(1) All fees collected under the Public Accountancy Act and all costs collected under subdivision (8) of section 1-148 shall be remitted by the board to the State Treasurer for credit to the Public Accountants Fund which is hereby created. Such fund shall, if and when specifically appropriated by the Legislature during any biennium for that purpose, be paid out from time to time by the State Treasurer upon warrants drawn by the Director of Administrative Services on vouchers approved by the board, and such board and expense thereof shall not be supported or paid from any other fund of the state. Any money in the Public Accountants Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) All civil penalties collected under subdivision (5) of section 1-148 shall be remitted by the board to the State Treasurer for credit to the permanent school fund.

Source: Laws 1957, c. 1, § 6, p. 57; Laws 1969, c. 1, § 1, p. 61; Laws 1969, c. 584, § 24, p. 2356; Laws 1994, LB 957, § 2; Laws 1995, LB 7, § 1; Laws 1997, LB 114, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

1-112 Board; professional conduct; rules and regulations.

The board may adopt and promulgate rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accountancy and to govern the administration and enforcement of the Public Accountancy Act. The rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedure Act.

Source: Laws 1957, c. 1, § 7, p. 58; Laws 1993, LB 41, § 1; Laws 1997, LB 114, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

The Nebraska State Board of Public Accountancy may use its rulemaking authority under this section to promulgate standards and procedures whereby the character and fitness of an applicant for initial certification may be considered by the board in determining whether the applicant is a qualified person under section 1-105.01. Troshynski v. Nebraska State Bd. of Pub. Accountancy, 270 Neb. 347, 701 N.W.2d 379 (2005).

1-113 Advisory committee; membership.

(1) The board shall appoint an advisory committee consisting of at least seven members. A majority of the members shall be appointed as representatives of the postsecondary educational institutions of Nebraska engaged in the instruction of accounting and auditing, including the University of Nebraska, the

Nebraska state colleges, and private universities and colleges. One member of the advisory committee shall be a certified public accountant who is a member of the board.

(2) The advisory committee shall meet at least annually and shall advise the board upon the rules and regulations for section 1-116 relating to educational requirements. The board may also consult the advisory committee on any other issues which it deems appropriate.

Source: Laws 1991, LB 75, § 2; Laws 1997, LB 114, § 11.

1-114 Certificate of certified public accountant; granted; qualifications.

(1) Prior to January 1, 1998, the board shall issue a certificate of certified public accountant to any person (a) who is a resident of this state or has a place of business therein or, as an employee, is regularly employed therein, (b) who has graduated from a college or university of recognized standing, and (c) who has passed a written examination in accounting, auditing, and such other related subjects as the board determines to be appropriate.

(2) On and after January 1, 1998, the board shall issue a certificate of certified public accountant to any person (a) who is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state and (b) who has passed an examination in accounting, auditing, and such other related subjects as the board determines to be appropriate.

Source: Laws 1957, c. 1, § 9, p. 58; Laws 1963, c. 1, § 1, p. 59; Laws 1974, LB 811, § 1; Laws 1977, LB 290, § 1; Laws 1984, LB 473, § 4; Laws 1991, LB 75, § 3; Laws 1997, LB 114, § 12; Laws 2003, LB 214, § 1.

The term ''shall'' as used in this provision is permissive rather than mandatory. Troshynski v. Nebraska State Bd. of Pub. Accountancy, 270 Neb. 347, 701 N.W.2d 379 (2005).

1-115 Certified public accountant; examinations, when held; use of prepared questions and grading service.

The examinations described in section 1-114 shall be held by the board and shall take place as often as the board determines to be desirable, but such examinations shall be held not less frequently than once each year. The board may make such use of all or any part of the Uniform Certified Public Accountants' Examination or Advisory Grading Service, or either of them, as it deems appropriate to assist it in performing its duties.

Source: Laws 1957, c. 1, § 10, p. 59; Laws 1976, LB 619, § 1; Laws 1984, LB 473, § 5; Laws 1991, LB 75, § 4.

1-116 Certified public accountant; examination; eligibility.

(1) Prior to January 1, 1998, a person shall be eligible to take the examination described in section 1-114 if he or she meets the requirements of subdivision (1)(a) of section 1-114. A person who takes the examination prior to January 1, 1998, remains eligible to take any examination held by the board on or before December 31, 2000, for a maximum of six sittings.

(2) Except as otherwise provided in this subsection, any person making initial application on or after January 1, 1998, shall be eligible to take the examination described in section 1-114 if he or she has completed at least one hundred fifty semester hours or two hundred twenty-five quarter hours of postsecondary

academic credit and has earned a baccalaureate or higher degree from a college or university accredited by the North Central Association of Colleges and Universities or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit. A person who expects to complete the postsecondary academic credit and earn the degree as required by this subsection within sixty days following when the examination is held shall be eligible to take such examination, but such person shall not receive any credit for such examination unless evidence satisfactory to the board showing that such person has completed the postsecondary academic credit and earned the degree as required by this subsection is received by the board within ninety days following when the examination is held. The board shall not prescribe the specific curricula of colleges or universities. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1957, c. 1, § 11, p. 59; Laws 1976, LB 619, § 2; Laws 1984, LB 473, § 6; Laws 1991, LB 75, § 5; Laws 1997, LB 114, § 13; Laws 1997, LB 752, § 49; Laws 1999, LB 346, § 1.

1-117 Certified public accountant; completion of examination; additional requirements.

Any person who has successfully completed the examination described in section 1-114 shall have no status as a certified public accountant unless and until he or she has the requisite experience and also has been issued a certificate as a certified public accountant.

Source: Laws 1957, c. 1, § 12, p. 59; Laws 1976, LB 619, § 3; Laws 1984, LB 473, § 7; Laws 1991, LB 75, § 6; Laws 1997, LB 114, § 14.

1-118 Certified public accountant; reexamination; waiting period.

(1) The board may by rule and regulation prescribe the terms and conditions under which a person who does not pass the examination in one sitting may be reexamined. The board may also provide by rule and regulation for a reasonable waiting period for reexamination.

(2) Any person who is eligible to take the examination under subsection (1) of section 1-116 and passes the examination in one or more of the subjects may be reexamined in the remaining subjects after January 1, 1998, without meeting the requirements of subsection (2) of section 1-116 subject to the rules and regulations of the board.

(3) A person shall be entitled to any number of reexaminations under section 1-114 subject to the rules and regulations of the board.

Source: Laws 1957, c. 1, § 13, p. 59; Laws 1976, LB 619, § 4; Laws 1984, LB 473, § 8; Laws 1991, LB 75, § 7; Laws 1997, LB 114, § 15; Laws 2003, LB 214, § 2.

1-119 Certified public accountant; examination fee.

The board shall charge a fee as established by the board not to exceed three hundred dollars on and after March 4, 2003, and prior to January 1, 2004, and not to exceed two hundred dollars on and after January 1, 2004, for the initial

examination provided for in section 1-114. An applicant for the examination may be required to pay additional fees as charged by and remitted or paid to a third party for administering the examination, if required by the board.

Source: Laws 1957, c. 1, § 14, p. 60; Laws 1976, LB 619, § 5; Laws 1976, LB 961, § 1; Laws 1979, LB 278, § 1; Laws 1984, LB 473, § 9; Laws 1991, LB 75, § 8; Laws 1997, LB 114, § 16; Laws 2003, LB 214, § 3.

1-120 Certified public accountant; reexamination fee.

The board shall charge fees as established by the board for reexaminations under section 1-114. Such fees shall not exceed seventy-five dollars on and after March 4, 2003, and prior to January 1, 2004, and shall not exceed fifty dollars on and after January 1, 2004, for each subject in which a person is reexamined. An applicant for the reexamination may be required to pay additional fees as charged by and remitted or paid to a third party for administering the reexamination, if required by the board.

Source: Laws 1957, c. 1, § 15, p. 60; Laws 1976, LB 619, § 6; Laws 1979, LB 278, § 2; Laws 1984, LB 473, § 10; Laws 1991, LB 75, § 9; Laws 1997, LB 114, § 17; Laws 2003, LB 214, § 4.

1-121 Certified public accountant; fees; when payable.

The applicable fee shall be paid by the applicant at the time he or she applies for initial examination or reexamination.

Source: Laws 1957, c. 1, § 16, p. 60; Laws 1991, LB 75, § 10; Laws 1997, LB 114, § 18.

1-122 Certified public accountant; certificate; use of abbreviation C.P.A.; list.

(1) Any person who has been issued a certificate as a certified public accountant and who holds a permit issued under subdivision (1)(a) of section 1-136, which is in full force and effect, and any person who is classified as inactive under section 1-136, shall be styled and known as a certified public accountant and may also use the abbreviation C.P.A. The board shall maintain a list of active certified public accountants.

(2) Any person who may be known as a certified public accountant may also be known as a public accountant.

Source: Laws 1957, c. 1, § 17, p. 60; Laws 1984, LB 473, § 11; Laws 1997, LB 114, § 19.

1-123 Certified public accountant; certificate under prior law.

Persons who, on September 20, 1957, held certified public accountant certificates theretofore issued under the laws of this state shall not be required to obtain additional certificates under the Public Accountancy Act but shall otherwise be subject to the act, and such certificates theretofore issued shall, for all purposes, be considered certificates issued under the act and subject to its provisions.

Source: Laws 1957, c. 1, § 18, p. 60; Laws 1997, LB 114, § 20.

1-124 Certified public accountant; reciprocal certificate; waiver of examination; fee.

(1)(a) The board may, in its discretion, waive the examination described in section 1-114 and may issue a reciprocal certificate as a certified public accountant to any person who possesses the qualifications specified in subdivision (2)(a) of section 1-114 and section 1-116 and who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accountancy in such country, comparable to that of a certified public accountant of this state, which is then in full force and effect.

(b) The board shall waive the examination described in section 1-114 and the educational requirements specified in section 1-116 and shall issue a reciprocal certificate as a certified public accountant to any person who possesses the qualifications specified in subdivision (2)(a) of section 1-114, who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state, who meets all other current requirements of the board for issuance of a certificate as a certified public accountant, and who, at the time of the application for a reciprocal certificate as a certified public accountant, has had, within the ten years immediately preceding application, at least four years' experience in the practice of public accountancy specified in subsection (1) of section 1-136.02.

(2) The board shall charge each person obtaining a reciprocal certificate issued under this section a fee as established by the board not to exceed four hundred dollars.

Source: Laws 1957, c. 1, § 19, p. 60; Laws 1976, LB 619, § 7; Laws 1976, LB 961, § 2; Laws 1977, LB 290, § 2; Laws 1979, LB 278, § 3; Laws 1984, LB 473, § 12; Laws 1991, LB 75, § 11; Laws 1997, LB 114, § 21; Laws 2003, LB 214, § 5; Laws 2007, LB24, § 1.

1-125 Foreign accountant; registration.

The board may, in its discretion, permit the registration of any foreign accountant who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accountancy in such country. A foreign accountant so registered shall use only the title under which he or she is generally known in his or her own country, followed by the name of the country from which he or she received a certificate, license, or degree.

Source: Laws 1957, c. 1, § 20, p. 61; Laws 1984, LB 473, § 13; Laws 1997, LB 114, § 22.

1-126 Certified public accountant; partnership or limited liability company; registration; requirements.

A partnership or limited liability company engaged in this state in the practice of public accountancy may register with the board as a partnership or limited liability company of certified public accountants if it meets the following requirements:

(1) At least one partner of the partnership or member of the limited liability company shall be a certified public accountant of this state in good standing;

(2) Each partner of the partnership who is a certified public accountant or member of the limited liability company who is a certified public accountant

personally engaged within this state in the practice of public accountancy as a partner or member thereof shall be a certified public accountant of this state in good standing;

(3) Each partner of the partnership who is a certified public accountant or member of the limited liability company who is a certified public accountant shall be a certified public accountant of some state in good standing; and

(4) Each resident manager in charge of an office of the partnership or limited liability company in this state shall be a certified public accountant of this state in good standing.

An application for such registration shall be made upon the affidavit of a general partner of such partnership or a member of such limited liability company who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration.

A partnership or limited liability company which is so registered and which holds a permit issued under subdivision (1)(c) of section 1-136 may use the words certified public accountants or the abbreviation C.P.A.'s in connection with its partnership or limited liability company name.

Notification shall be given to the board, pursuant to board rules and regulations, regarding the admission to or withdrawal of a partner from any partnership or a member from any limited liability company so registered.

Source: Laws 1957, c. 1, § 21, p. 61; Laws 1993, LB 121, § 46; Laws 1994, LB 957, § 3; Laws 1997, LB 114, § 23.

1-127 Repealed. Laws 1993, LB 41, § 7.

1-128 Repealed. Laws 1984, LB 473, § 27.

1-129 Repealed. Laws 1984, LB 473, § 27.

1-130 Repealed. Laws 1997, LB 114, § 65.

1-131 Repealed. Laws 1997, LB 114, § 65.

1-132 Repealed. Laws 1997, LB 114, § 65.

1-133 Public accountant; partnership or limited liability company; registration; requirements.

A partnership or limited liability company engaged in this state in the practice of public accountancy may register with the board as a partnership or limited liability company of public accountants if it meets the following requirements:

(1) At least one partner of the partnership or member of the limited liability company shall be a certified public accountant or a public accountant of this state in good standing;

(2) Each partner of the partnership who is a certified public accountant or public accountant or member of the limited liability company who is a certified public accountant or public accountant personally engaged within this state in the practice of public accountancy as a partner or member thereof shall be a certified public accountant or a public accountant of this state in good standing; and

(3) Each resident manager in charge of an office of a partnership or limited liability company in this state shall be a certified public accountant or a public accountant of this state in good standing.

An application for such registration shall be made upon the affidavit of a general partner of such partnership or a member of such limited liability company who holds a permit to practice in this state as a certified public accountant or as a public accountant. The board shall in each case determine whether the applicant is eligible for registration.

A partnership or limited liability company which is so registered and which holds a permit issued under subdivision (1)(e) of section 1-136 may use the words public accountants in connection with its partnership or limited liability company name.

Notification shall be given to the board, pursuant to board rules and regulations, regarding the admission to or withdrawal of a partner from any partnership or member from any limited liability company so registered.

Source: Laws 1957, c. 1, § 28, p. 63; Laws 1993, LB 121, § 47; Laws 1994, LB 957, § 4; Laws 1997, LB 114, § 24.

1-134 Public accountant; corporation; registration.

A corporation which, on September 20, 1957, had a place of business in this state, was permitted to engage in the practice of public accountancy in this state, was actually so engaged, and which at that time had fully complied with all laws of this state relating to it may register with the board as a corporation engaged in the practice of public accountancy on or before January 1, 1958. Registration also may be made by any corporation organized pursuant to the Nebraska Professional Corporation Act. Application for such registration must be made upon the affidavit of an officer of such corporation. The board shall in each case determine whether the applicant is eligible for registration. A corporation which is so registered and which holds a permit issued under subdivision (1)(f) of section 1-136 may practice public accountancy and, in that connection, may use a corporate name which indicates, as a part of such name, that it is engaged in such practice if it had such corporate name on September 20, 1957.

Source: Laws 1957, c. 1, § 29, p. 64; Laws 1971, LB 858, § 2; Laws 1997, LB 114, § 25.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

1-135 Public accountant; offices; registration; fee; manager.

Each office established or maintained in this state for the practice of public accountancy in this state by a certified public accountant, by a partnership of certified public accountants or a limited liability company of certified public accountants registered under section 1-126, by a public accountant registered under sections 1-128 to 1-130 as such sections existed on September 20, 1957, by a partnership of public accountants or a limited liability company of public accountants registered under section 1-133, by a foreign accountant registered under section 1-125, or by a corporation registered under section 1-134 shall be registered annually under the Public Accountancy Act with the board. The board shall charge an annual fee for the registration of each office as estab-

lished by the board not to exceed one hundred dollars. The board shall by rule and regulation prescribe the procedure to be followed in effecting such registrations.

Each office shall be under the supervision of a manager who holds a permit issued under section 1-136 which is in full force and effect. Such manager may serve in such capacity at one office only, with the exception of a manager who is a sole owner of a firm or a sole proprietor, who may manage one additional office only. Such manager shall be directly responsible for the supervision and management of each office and may be subject to disciplinary action for the actions of the person or firm or any persons employed by each office of the person or firm within the State of Nebraska which relate to the practice of public accountancy.

Source: Laws 1957, c. 1, § 30, p. 64; Laws 1976, LB 961, § 3; Laws 1979, LB 278, § 4; Laws 1984, LB 473, § 16; Laws 1993, LB 121, § 48; Laws 1994, LB 957, § 5; Laws 1997, LB 114, § 26; Laws 2003, LB 214, § 6; Laws 2003, LB 258, § 1.

1-136 Public accountant; permits; issuance; fees; failure to renew; effect; inactive list.

(1) Permits to engage in the practice of public accountancy in this state shall be issued by the board to (a) persons who are holders of the certificate of certified public accountant issued under sections 1-114 to 1-124 and who have met the experience requirements of section 1-136.02, (b) foreign accountants registered under section 1-125, (c) partnerships and limited liability companies of certified public accountants registered under section 1-126, (d) persons registered as public accountants under sections 1-128 to 1-130 as such sections existed on September 20, 1957, (e) partnerships and limited liability companies of public accountants registered under section 1-133, and (f) corporations registered under section 1-134 as long as all offices of such certificate holders or registrants in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

(2)(a) Except as provided in the case of permits subject to subdivision (2)(b) of this section, the board shall charge an annual permit fee as established by the board not to exceed one hundred fifty dollars. All permits subject to this subdivision shall expire on June 30 of each year and may be renewed annually for a period of one year by certificate holders and registrants in good standing upon payment of an annual renewal fee as established by the board not to exceed one hundred fifty dollars. The board may prorate the fee for any permit subject to this subdivision issued for less than one year.

(b) The board shall charge a biennial permit fee as established by the board not to exceed three hundred dollars for permits issued under subdivisions (1)(a), (1)(b), and (1)(d) of this section. All permits subject to this subdivision shall expire on June 30 of the first calendar year after the calendar year of issuance in which the age of the certificate holder or the registrant becomes divisible by two, and may be renewed biennially for a period of two years by certificate holders and registrants in good standing upon payment of a biennial renewal fee as established by the board not to exceed three hundred dollars. The board may prorate the fee for any permit subject to this subdivision issued for less than two years.

(3) Failure of a certificate holder or registrant to apply for a permit within (a) three years from the expiration date of the permit last obtained or renewed or (b) three years from the date upon which the certificate holder or registrant was issued a certificate or registration if no permit was ever issued to such person shall deprive him or her of the right to issuance or renewal of a permit unless the board, in its discretion, determines such failure to have been excusable. In such case the renewal fee or the fee for the issuance of the original permit, as the case may be, shall be such amount as established by the board not to exceed three hundred dollars.

(4) Any certificate holder or registrant who has not lost his or her right to issuance or renewal of a permit and who is not actively engaged in the practice of public accountancy in this state may file a written application with the board to be classified as inactive. A person so classified shall not be issued a permit or be deemed the holder of a permit but shall be carried upon an inactive roll to be maintained by the board upon the payment of an inactive fee as established by the board not to exceed fifty percent of the fee charged persons actively engaged in the practice of public accountancy as provided in this section. A person so classified shall not be deprived of the right to the issuance or renewal of a permit and may, upon application to the board and upon payment of the current permit fee, be issued a current permit.

Source: Laws 1957, c. 1, § 31, p. 65; Laws 1959, c. 1, § 1, p. 57; Laws 1976, LB 961, § 4; Laws 1977, LB 290, § 4; Laws 1979, LB 278, § 5; Laws 1981, LB 92, § 4; Laws 1984, LB 473, § 17; Laws 1986, LB 869, § 1; Laws 1993, LB 121, § 49; Laws 1997, LB 114, § 27; Laws 2003, LB 214, § 7.

A public accountancy ''certificate holder or registrant who has not lost his or her right to issuance or renewal of a permit,'' who may be classified as inactive pursuant to subsection (4) of this section, is a person who is otherwise entitled to issuance of a permit under the requirements set forth in the Public Accountancy Act. Forget v. State, 265 Neb. 488, 658 N.W.2d 271 (2003).

1-136.01 Permit; renewal; professional development; rules and regulations.

(1) As a condition for renewal of a permit issued under subdivision (1)(a), (1)(b), or (1)(d) of section 1-136, the board, pursuant to rules and regulations adopted and promulgated by the board, may require permitholders to furnish evidence of participation in professional development in accounting, auditing, or related areas for fifteen days within the preceding three calendar years or, in order to facilitate the issuance of biennial permits as provided in subdivision (2)(b) of section 1-136, for ten days within the preceding two calendar years. The board may adopt and promulgate rules and regulations regarding such professional development.

(2) In determining compliance with the professional development requirement, the board may include credits earned during the current calendar year in addition to those earned in the preceding calendar years in which professional development is required under subsection (1) of this section. If such credits are included they shall not count toward the next succeeding permit renewal requirement.

Source: Laws 1971, LB 858, § 3; Laws 1979, LB 278, § 6; Laws 1984, LB 473, § 18; Laws 1997, LB 114, § 28.

1-136.02 Permit; when issued.

(1) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a certificate as a certified public accountant when such holder has had:

(a) Two years of public accounting experience satisfactory to the board, in any state, (i) in practice as a certified public accountant or a public accountant, (ii) in employment as a staff accountant by anyone engaging in the practice of public accountancy, or (iii) in any combination of either of such types of experience;

(b) Three years of auditing experience satisfactory to the board in the office of the Auditor of Public Accounts or in the Department of Revenue; or

(c) Experience gained through employment by the federal government as a special agent or an internal revenue agent in the Internal Revenue Service, a degree from a college or university of recognized standing, and certification by a District Director of Internal Revenue that such person has had at least three and one-half years of field experience as a special agent or internal revenue agent.

(2) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a reciprocal certificate issued under section 1-124 upon a showing that:

(a) He or she meets all current requirements in this state for issuance of a permit at the time the application is made; and

(b) At the time of the application for a permit the applicant, within the ten years immediately preceding application, has had at least two years' experience in the practice of public accountancy as a sole proprietor or as a staff accountant.

Source: Laws 1977, LB 290, § 3; Laws 1993, LB 41, § 2; Laws 1997, LB 114, § 29; Laws 2007, LB24, § 2.

1-136.03 Auditing experience; Department of Revenue, office of the Auditor of Public Accounts.

For the purposes of section 1-136.02, auditing experience on and after January 1, 1973, as an auditor in the Department of Revenue or in the office of the Auditor of Public Accounts shall qualify toward the total experience requirements under sections 1-114, 1-124, 1-136, and 1-136.02 to 1-136.04.

Source: Laws 1977, LB 290, § 5.

1-136.04 Permit issuance; experience in lieu of being a college or university graduate.

Any person who has taken the examination described in section 1-114 prior to January 1, 1978, may qualify for issuance of a permit under subdivision (1)(a) of section 1-136 by (1) having four years of public accounting experience satisfactory to the board in any state in practice as a certified public accountant or as a public accountant or in any state in employment as a staff accountant by anyone engaging in the practice of public accountancy, or any combination of either of such types of experience, or (2) having five years of auditing experience satisfactory to the board in the office of the Auditor of Public Accounts or

in the Department of Revenue, in lieu of being a graduate from a college or university of recognized standing.

Source: Laws 1977, LB 290, § 6; Laws 1984, LB 473, § 19; Laws 1991, LB 75, § 13; Laws 1997, LB 114, § 30.

1-137 Individual certificates, registration, and permits; disciplinary action; grounds.

After notice and hearing as provided in sections 1-140 to 1-149, the board may take disciplinary action as provided in section 1-148 for any one or any combination of the following causes:

(1) Fraud or deceit in obtaining a certificate as certified public accountant, registration, or a permit under the Public Accountancy Act;

(2) Dishonesty, fraud, or gross negligence in the practice of public accountancy;

(3) Violation of any of the provisions of sections 1-151 to 1-161;

(4) Violation of a rule of professional conduct adopted and promulgated by the board under the authority granted by the act;

(5) Conviction of a felony under the laws of any state or of the United States;

(6) Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) Cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant in any other state, for any cause other than failure to pay a registration fee in such other state;

(8) Suspension or revocation of the right to practice before any state or federal agency; or

(9) Failure of a certificate holder or registrant to obtain a permit issued under section 1-136, within either (a) three years from the expiration date of the permit last obtained or renewed by the certificate holder or registrant or (b) three years from the date upon which the certificate holder or registrant was issued his or her certificate or registration if no permit was ever issued to him or her, unless under section 1-136 such failure was excused by the board pursuant to section 1-136.

Source: Laws 1957, c. 1, § 32, p. 66; Laws 1974, LB 811, § 2; Laws 1981, LB 92, § 5; Laws 1993, LB 41, § 3; Laws 1997, LB 114, § 31.

The power to revoke the certificate of a certified public accountant is in the State Board of Public Accountancy, not in the executive director. Bohling v. State Bd. of Pub. Accountancy, 243 Neb. 666, 501 N.W.2d 714 (1993).

1-138 Partnership or limited liability company; disciplinary action; grounds.

After notice and hearing as provided in sections 1-140 to 1-149, the board shall revoke the registration and permit of a partnership or a limited liability company of certified public accountants or a partnership or a limited liability company of public accountants if at any time it does not have all the qualifications prescribed by section 1-126 or 1-133, respectively, under which it qualified for registration.

After notice and hearing as provided in sections 1-140 to 1-149, the board may take disciplinary action as provided in section 1-148 for any of the causes enumerated in section 1-137 or for any of the following additional causes:

(1) The revocation or suspension of the certificate or registration or the revocation or suspension or refusal to renew the permit of any partner or member; or

(2) The cancellation, revocation, suspension, or refusal to renew the authority of the partnership or any partner thereof or the limited liability company or any member thereof to practice public accountancy in any other state for any cause other than failure to pay a registration fee in such other state.

Source: Laws 1957, c. 1, § 33, p. 67; Laws 1993, LB 41, § 4; Laws 1993, LB 121, § 50; Laws 1997, LB 114, § 32.

1-139 Corporation; disciplinary action; grounds.

After notice and hearing as provided in sections 1-140 to 1-149, the board may take disciplinary action as provided in section 1-148 if the corporation, or any of its officers, employees, or agents, while acting for or on behalf of such corporation, is guilty of any act, neglect, or failure to act which would have been cause for such act as against an individual under section 1-137.

Source: Laws 1957, c. 1, § 34, p. 68; Laws 1993, LB 41, § 5; Laws 1997, LB 114, § 33.

1-140 Disciplinary action; board; initiation of proceedings.

The board may initiate proceedings under the Public Accountancy Act either on its own motion or on the complaint of any person.

Source: Laws 1957, c. 1, § 35, p. 68; Laws 1997, LB 114, § 34.

1-141 Disciplinary action; notice to accused; how given.

A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on such charges shall be served on the accused not less than thirty days prior to the date of said hearing either personally or by mailing a copy thereof by either registered or certified mail to the address of the accused last known to the board.

Source: Laws 1957, c. 1, § 36, p. 68.

1-142 Disciplinary action; failure of accused to appear and defend; hearing; order.

If, after having been served with the notice of hearing pursuant to section 1-141, the accused fails to appear at the hearing and defend, the board may proceed to hear evidence against him or her and may enter such order as is justified by the evidence, which order shall be final unless he or she petitions for a review as set forth in section 1-149, except that within thirty days from the date of any order, upon a showing of good cause for failing to appear and defend, the board may reopen the proceedings and may permit the accused to submit evidence in his or her behalf.

Source: Laws 1957, c. 1, § 37, p. 69; Laws 1997, LB 114, § 35.

1-143 Disciplinary action; appearance by accused; privileges.

At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his or her own behalf, cross-examine witnesses, and examine such evidence as may be produced against him or her. The accused

shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses on his or her behalf.

Source: Laws 1957, c. 1, § 38, p. 69; Laws 1997, LB 114, § 36.

1-144 Disciplinary action; hearing; board; powers.

The board, or any member thereof, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with or upon hearing under the Public Accountancy Act. In case of disobedience to a subpoena the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Source: Laws 1957, c. 1, § 39, p. 69; Laws 1997, LB 114, § 37.

1-145 Disciplinary action; board; rules of evidence.

The board shall not be bound by rules of evidence.

Source: Laws 1957, c. 1, § 40, p. 69; Laws 1997, LB 114, § 38.

1-146 Disciplinary action; record of hearing.

A stenographic record of the hearing shall be kept and a transcript thereof filed with the board.

Source: Laws 1957, c. 1, § 41, p. 69.

1-147 Disciplinary action; board; legal representation.

At all hearings, the Attorney General of this state, or one of his assistants designated by him, or such other legal counsel as may be employed, shall appear and represent the board.

Source: Laws 1957, c. 1, § 42, p. 69.

1-148 Disciplinary action; action of board.

Upon the completion of any hearing, the board, by majority vote, shall have the authority through entry of a written order to take in its discretion any or all of the following actions:

(1) Issuance of censure or reprimand;

(2) Suspension of judgment;

(3) Placement of the permitholder, certificate holder, or registrant on probation;

(4) Placement of a limitation or limitations on the permit, certificate, or registration and upon the right of the permitholder, certificate holder, or registrant to practice the profession to such extent, scope, or type of practice for such time and under such conditions as are found necessary and proper;

(5) Imposition of a civil penalty not to exceed ten thousand dollars, except that the board shall not impose a civil penalty under this subdivision for any cause enumerated in subdivisions (5) through (9) of section 1-137 and subdivisions (1) and (2) of section 1-138. The amount of the penalty shall be based on the severity of the violation;

(6) Entrance of an order of suspension of the permit, certificate, or registration;

(7) Entrance of an order of revocation of the permit, certificate, or registration;

(8) Imposition of costs as in ordinary civil actions in the district court, which may include attorney and hearing officer fees incurred by the board and the expenses of any investigation undertaken by the board; or

(9) Dismissal of the action.

Source: Laws 1957, c. 1, § 43, p. 70; Laws 1993, LB 41, § 6; Laws 1994, LB 957, § 6; Laws 1997, LB 114, § 39.

1-149 Disciplinary action; appeal; procedure.

Any decision of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1957, c. 1, § 44, p. 70; Laws 1988, LB 352, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

1-150 Disciplinary action; additional board powers.

Upon application in writing and after hearing pursuant to notice, the board may issue a new certificate to a certified public accountant whose certificate has been revoked, may permit the reregistration of a person whose registration has been revoked, or may reissue or modify the suspension of any permit which has been revoked or suspended.

Source: Laws 1957, c. 1, § 45, p. 71; Laws 1997, LB 114, § 40.

1-151 Certified public accountant; person; use of term C.P.A.; requirements.

(1) No person shall assume or use the title or designation certified public accountant or the abbreviation C.P.A. or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person (a) is classified as inactive under section 1-136 or (b) has been issued a certificate as a certified public accountant under sections 1-114 to 1-124 and holds a permit issued under subdivision (1)(a) of section 1-136 which is not revoked or suspended and all of such person's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

(2) A foreign accountant who is registered under section 1-125 and who holds a permit issued under subdivision (1)(b) of section 1-136 which is not revoked or suspended may use the title under which he or she is generally known in his or her country, followed by the name of the country from which he or she received his or her certificate, license, or degree.

Source: Laws 1957, c. 1, § 46, p. 71; Laws 1984, LB 473, § 20; Laws 1997, LB 114, § 41.

1-152 Certified public accountant; partnership or limited liability company; use of term C.P.A.; requirements.

No partnership or limited liability company shall assume or use the title or designation certified public accountant or the abbreviation C.P.A. or any other

title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or limited liability company is composed of certified public accountants unless such partnership or limited liability company is registered as a partnership of certified public accountants or a limited liability company of certified public accountants under section 1-126 and holds a permit issued under subdivision (1)(c) of section 1-136 which is not revoked or suspended and all of such partnership's or limited liability company's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

Source: Laws 1957, c. 1, § 47, p. 72; Laws 1993, LB 121, § 51; Laws 1997, LB 114, § 42.

1-153 Public accountant; person; use of term; requirements.

No person shall assume or use the title or designation public accountant or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person is registered as a public accountant under sections 1-128 to 1-130 as such sections existed on September 20, 1957, and holds a permit issued under subdivision (1)(d) of section 1-136 which is not revoked or suspended and all of such person's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135 or unless such person has been issued a certificate as a certified public accountant under sections 1-114 to 1-124 and holds a permit issued under subdivision (1)(a) of section 1-136 which is not revoked or suspended and all of such person's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

Source: Laws 1957, c. 1, § 48, p. 72; Laws 1997, LB 114, § 43.

1-154 Public accountant; partnership or limited liability company; use of term; requirements.

No partnership or limited liability company shall assume or use the title or designation public accountant or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or limited liability company is composed of public accountants unless such partnership or limited liability company is registered as a partnership of public accountants or a limited liability company of public accountants under section 1-133 or as a partnership of certified public accountants or a limited liability company of certified public accountants under section 1-126 and holds a permit issued under subdivision (1)(c) or (1)(e) of section 1-136 which is not revoked or suspended and all of such partnership's or limited liability company's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

Source: Laws 1957, c. 1, § 49, p. 72; Laws 1993, LB 121, § 52; Laws 1997, LB 114, § 44.

1-155 Use of terms, prohibited; exception.

(1) No person, partnership, or limited liability company shall assume or use the title or designation certified accountant, chartered accountant, enrolled accountant, licensed accountant, or registered accountant or any other title or designation likely to be confused with certified public accountant or public

accountant or any of the abbreviations C.A., P.A., E.A., R.A., or L.A. or similar abbreviations likely to be confused with C.P.A. Any person who holds a permit issued under section 1-136 which is not revoked or suspended and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135 may hold himself or herself out to the public as an accountant or auditor.

(2) A foreign accountant registered under section 1-125, who holds a permit issued under subdivision (1)(b) of section 1-136 which is not revoked or suspended and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135 may use the title under which he or she is generally known in his or her country, followed by the name of the country from which he or she received his or her certificate, license, or degree.

Source: Laws 1957, c. 1, § 50, p. 73; Laws 1993, LB 121, § 53; Laws 1997, LB 114, § 45.

1-156 Corporation; use of terms, prohibited; exception.

No corporation shall assume or use the title or designation certified public accountant or public accountant nor shall any corporation assume or use the title or designation certified accountant, chartered accountant, enrolled accountant, licensed accountant, registered accountant, or any other title or designation likely to be confused with certified public accountant or public accountant or any of the abbreviations C.P.A., P.A., C.A., E.A., R.A., L.A., or similar abbreviations likely to be confused with C.P.A., except that a corporation which is registered under section 1-134 and holds a permit issued under subdivision (1)(f) of section 1-136 which is not revoked or suspended and all of such corporation's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135, may use the words public accountant, accountant, auditor, and other appropriate words to indicate that it is engaged in the practice of public accountancy but may not use the title or designation certified public accountant, certified accountant, chartered accountant, enrolled accountant, licensed accountant, registered accountant, or any other title or designation likely to be confused with certified public accountant or any of the abbreviations C.P.A., C.A., E.A., L.A., R.A., or similar abbreviations likely to be confused with C.P.A.

Source: Laws 1957, c. 1, § 51, p. 73; Laws 1997, LB 114, § 46.

1-157 Accountant or auditor; use of terms; when permitted.

No person shall sign or affix his or her name or any trade or assumed name used by him or her in his or her profession or business with any wording indicating that he or she is an accountant or auditor or with any wording indicating that he or she has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he or she holds a permit issued under subdivision (1)(a), (1)(b), or (1)(d) of section 1-136 which is not revoked or suspended and all of his or her offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135. This section shall not prohibit any officer, employee, partner, limited liability company member, or principal of any organization from affixing his or her signature to any statement or report in reference to the financial affairs of the

organization with any wording designating the position, title, or office which he or she holds in the organization, nor shall this section prohibit any act of a public official or public employee in the performance of his or her duties as such.

Source: Laws 1957, c. 1, § 52, p. 74; Laws 1993, LB 121, § 54; Laws 1994, LB 884, § 1; Laws 1997, LB 114, § 47.

1-158 Partnership or limited liability company; use of terms; requirements.

No person shall sign or affix a partnership or limited liability company name, with any wording indicating that it is a partnership or limited liability company composed of accountants, auditors, or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, unless the partnership or limited liability company holds a permit issued under subdivision (1)(c) or (1)(e) of section 1-136 which is not revoked or suspended and all of its offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

Source: Laws 1957, c. 1, § 53, p. 74; Laws 1993, LB 121, § 55; Laws 1997, LB 114, § 48.

1-159 Corporation; use of terms; requirements.

No person shall sign or affix a corporate name with any wording indicating that it is a corporation performing services as accountants or auditors or composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, except that a corporation which is registered under section 1-134 and holds a permit issued under subdivision (1)(f) of section 1-136 which is not revoked or suspended may affix its corporate name which it had on September 20, 1957, with the wording indicated above.

Source: Laws 1957, c. 1, § 54, p. 75; Laws 1997, LB 114, § 49.

1-160 Public accountant; absence of permit; requirement to so state; exceptions.

No person, partnership, limited liability company, or corporation not holding a permit issued under section 1-136 which is not revoked or suspended shall hold himself, herself, or itself out to the public as an accountant or auditor by use of either or both of such words on any sign, card, or letterhead or in any advertisement or directory without indicating thereon or therein that such person, partnership, limited liability company, or corporation does not hold such a permit. This section shall not prohibit any officer, employee, partner, member, or principal of any organization from describing himself or herself by the position, title, or office he or she holds in such organization nor any act of any public official or public employee in the performance of his or her duties as such.

Source: Laws 1957, c. 1, § 55, p. 75; Laws 1993, LB 121, § 56; Laws 1997, LB 114, § 50.

1-161 Certified public accountant; public accountant; false use of partnership or limited liability company designation; prohibition; exception.

No person shall assume or use the title or designation certified public accountant or public accountant in conjunction with names indicating or implying that there is a partnership or a limited liability company or in conjunction with the designation ''and company'' or ''and Co.'' or a similar designation if, in any such case, there is in fact no bona fide partnership or limited liability company registered under section 1-126 or 1-133, except that a sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on September 20, 1957, may continue to do so if he, she, or it otherwise complies with the Public Accountancy Act.

Source: Laws 1957, c. 1, § 56, p. 75; Laws 1993, LB 121, § 57; Laws 1997, LB 114, § 51.

1-162 Certified public accountant; public accountant; employees and assistants; not prohibited.

Nothing contained in the Public Accountancy Act shall prohibit any person not a certified public accountant or public accountant from serving as an employee of, or an assistant to, a certified public accountant, public accountant, or partnership or limited liability company of certified public accountants or public accountants holding a permit issued under section 1-136 or a foreign accountant registered under section 1-125, except that such employee or assistant shall not issue any accounting or financial statement over his or her name.

Source: Laws 1957, c. 1, § 57, p. 76; Laws 1993, LB 121, § 58; Laws 1997, LB 114, § 52.

1-162.01 Firms; owners permitted; conditions; rules and regulations.

Notwithstanding the Nebraska Professional Corporation Act or the Public Accountancy Act or any other provision of law inconsistent with this section, firms may have persons as owners who are not certified public accountants or public accountants if the following conditions are met:

(1) Such persons shall not exceed forty-nine percent of the total number of owners of such firm;

(2) Such persons shall not hold, in the aggregate, more than forty-nine percent of such firm's equity capital or voting rights or receive, in the aggregate, more than forty-nine percent of such firm's profits or losses;

(3) Such persons shall not hold themselves out as certified public accountants or public accountants;

(4) Such persons shall not hold themselves out to the general public or to any client as an owner, partner, shareholder, limited liability company member, director, officer, or other official of the firm except in a manner specifically permitted by the rules and regulations of the board;

(5) Such persons shall not have ultimate responsibility for the performance of any audit, review, or compilation of financial statements or other forms of attestation related to financial information;

(6) Such persons shall not be owners of a firm engaged in the practice of public accountancy without board approval if such persons (a) have been convicted of any felony under the laws of any state, of the United States, or of any other jurisdiction, (b) have been convicted of any crime, an element of

which is dishonesty or fraud, under the laws of any state, of the United States, or of any other jurisdiction, (c) have had their professional or vocational licenses, if any, suspended or revoked by a licensing agency of any state of the United States or of any other jurisdiction or such persons have otherwise been the subject of other final disciplinary action by any such agency, or (d) are in violation of any rule or regulation regarding character or conduct adopted and promulgated by the board relating to owners who are not certified public accountants or public accountants; and

(7) Such persons, regardless of where located, shall actively participate in the business of the firm.

The board shall adopt and promulgate rules and regulations for purposes of interpretation and enforcement of compliance with this section.

Source: Laws 1994, LB 957, § 1; Laws 1997, LB 114, § 53; Laws 1999, LB 346, § 2.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

1-163 Certified public accountant; public accountant; other states and foreign countries; temporary practice permitted.

Nothing contained in the Public Accountancy Act shall prohibit a certified public accountant or a registered public accountant of another state, or any accountant who holds a certificate, degree, or license in a foreign country constituting a recognized qualification for the practice of public accountancy in such country, from temporarily practicing in this state on professional business incident to his or her regular practice outside this state if such temporary practice is conducted in conformity with the rules and regulations of professional conduct adopted and promulgated by the board.

Source: Laws 1957, c. 1, § 58, p. 76; Laws 1997, LB 114, § 54.

1-164 Banking, law, and agricultural services; not prohibited.

Nothing contained in the Public Accountancy Act shall prohibit any person from carrying on the regular business of banking, nor prohibit any person from carrying on the regular practice of law, nor prohibit any farm organization or agricultural cooperative association, or the employees thereof, from rendering accounting, auditing, or business analysis services when such services are rendered only to its members or to other farm organizations or agricultural cooperative associations.

Source: Laws 1957, c. 1, § 59, p. 76; Laws 1997, LB 114, § 55.

1-164.01 Services related to financial statements; not prohibited.

Nothing in the Public Accountancy Act or the rules and regulations adopted and promulgated under the act shall be construed to prohibit any person who does not hold a permit issued under subdivision (1)(a), (1)(b), or (1)(d) of section 1-136 from preparing, compiling, or signing financial statements if an accompanying report, letter, or other statement does not express an opinion or other form of assurance as to the fairness, accuracy, or reliability of such statements.

Source: Laws 1984, LB 473, § 22; Laws 1997, LB 114, § 56.

1-164.02 Formation of business partnership or limited liability company; not prohibited.

Nothing in the Public Accountancy Act or the rules and regulations adopted and promulgated under the act shall be construed to prohibit a person holding a certificate of certified public accountant from forming a business partnership or limited liability company with a person not holding a certificate or permit.

Source: Laws 1984, LB 473, § 23; Laws 1993, LB 121, § 59; Laws 1997, LB 114, § 57.

1-164.03 Use of title accountant; not prohibited.

Nothing in the Public Accountancy Act or the rules and regulations adopted and promulgated under the act shall be construed to prohibit a person not holding a certificate or permit from using the title accountant in his or her business practices.

Source: Laws 1984, LB 473, § 24; Laws 1997, LB 114, § 58.

1-165 Board; unlawful practice; injunction.

Whenever, in the judgment of the board, any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of sections 1-151 to 1-161, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, a restraining order, or such other order as may be appropriate shall be granted by such court without bond.

Source: Laws 1957, c. 1, § 60, p. 76; Laws 1997, LB 114, § 59.

1-166 Unlawful use of terms; penalty.

Any person who violates sections 1-151 to 1-161 shall be guilty of a Class II misdemeanor. If a member of the board has reason to believe that any person is liable to punishment under this section, the board may certify the facts to the Attorney General of this state, who may in his or her discretion cause appropriate proceedings to be brought.

Source: Laws 1957, c. 1, § 61, p. 77; Laws 1977, LB 40, § 1; Laws 1997, LB 114, § 60.

1-167 Unlawful use of terms; advertising; prima facie evidence of violation.

The display or uttering by a person of a card, sign, advertisement, or other printed, engraved, or written instrument or device, bearing a person's name in conjunction with the words certified public accountant or any abbreviation thereof or public accountant or any abbreviation thereof shall be prima facie evidence in any action brought under section 1-165 or 1-166 that the person whose name is so displayed caused or procured the display or uttering of such card, sign, advertisement, or other printed, engraved, or written instrument or device and that such person is holding himself or herself out to be a certified public accountant or a public accountant holding a permit issued under section 1-136. In any such action evidence of the commission of a single act prohibited by the Public Accountancy Act shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

Source: Laws 1957, c. 1, § 62, p. 77; Laws 1997, LB 114, § 61.

1-168 Certified public accountant; public accountant; working papers and memoranda; property rights.

All statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant or public accountant to a client, shall be and remain the property of such accountant in the absence of an express agreement between such accountant and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners or limited liability company members or new partners or limited liability company members of such accountant.

Source: Laws 1957, c. 1, § 63, p. 77; Laws 1993, LB 121, § 60; Laws 1994, LB 884, § 2.

1-169 Transferred to section 1-105.

1-170 Audit, report, or financial statement; public agency of state; made by whom.

Whenever any statute or rule or regulation adopted and promulgated by authority of any statute requires that any audit, report, financial statement, or other document for any department, division, board, commission, agency, or officer of this state be prepared by certified public accountants, such requirement, except as provided in section 1-171, shall be construed to mean certified public accountants or public accountants holding a permit issued under subdivision (1)(a) or (1)(d) of section 1-136.

Source: Laws 1965, c. 1, § 1, p. 59; Laws 1997, LB 114, § 62.

1-171 Audit, report, or financial statement; federal regulation; made by whom.

Whenever any federal regulation requires any audit, report, financial statement, or other document to be prepared by a certified public accountant, such requirement shall be construed to mean a certified public accountant holding a permit issued under subdivision (1)(a) of section 1-136.

Source: Laws 1965, c. 1, § 2, p. 59; Laws 1997, LB 114, § 63.

1-172 Repealed. Laws 1992, LB 859, § 1.

CHAPTER 2
AGRICULTURE

Article.

Article.

Cross References

Constitutional provisions:

Agricultural and horticultural land, Legislature may provide nonuniform valuation methods, see Article VIII, section 1, Constitution of Nebraska.

Agricultural and horticultural societies, property of, Legislature may exempt from taxation, see Article VIII, section 2, Constitution of Nebraska.

Farm and ranch real estate, restrictions on corporate ownership, see Article XII, section 8, Constitution of Nebraska.

Grain, tax basis, legislative authority, see Article VIII, section 10, Constitution of Nebraska.

Seed, tax basis, legislative authority, see Article VIII, section 10, Constitution of Nebraska.

Agricultural and horticultural societies, property, exemption from taxation, see section 77-202 and Article VIII, section 2, Constitution of Nebraska.

Agricultural equipment businesses, see sections 69-1501 to 69-1504 and 87-701 to 87-711.

Agricultural Research Division, agricultural laboratories, and agricultural research and experiment centers, see Chapter 85, article 2.

Animal damage control, see sections 23-358 to 23-361, 81-2,237, and 81-2,238.

Aquaculture facility permit, see section 37-465.

Aquaculture specialist, see section 85-1,104.01.

Beekeeping, see section 81-2,165 et seq.

Bureau of Animal Industry, see section 81-202.

Captive wildlife auction permit, see section 37-478.

Captive wildlife permit, see section 37-479.
Chemigation, see section 46-1101 et seq.
Commercial feed, see sections 54-847 to 54-863.
Commercial fertilizer and soil conditioners, see section 81-2,162.01 et seq.
Commodity Code, see section 8-1701.
Conservation and Survey Division, see section 85-163 et seq.
Cooperative marketing companies, see section 21-1401 et seq.
Department of Agriculture, general powers, see sections 81-201 to 81-202.02.
Ethanol development, see section 66-1330 et seq.
Farm labor contractors, see section 48-1701 et seq.
Fences, see Chapter 34.
Food:
Organic food, see sections 81-2,233 to 81-2,235.
Pure Food Act, Nebraska, see section 81-2,239 et seq.
Foreclosure, farm homesteads, see section 76-1901 et seq.
Game Law, see section 37-201 et seq.
Grain dealers, see section 75-901 et seq.
Grain warehouses, see section 88-525 et seq.
Ground water, see Chapter 46, articles 6 and 7.
Horseracing Facility Bond Act, County, see section 23-389 et seq.
Hybrid seed corn, see sections 81-2,155 to 81-2,157.
Institute of Agriculture and Natural Resources, University of Nebraska, see section 85-1,104.
Irrigation, see Chapter 46, article 1.
License Suspension Act, see section 43-3301.
Liens:
Agister's, see section 54-201.
Agricultural production input, see sections 52-1401 to 52-1411.
Livestock, see sections 52-1501 to 52-1506 and Chapter 54, article 2.
Petroleum products furnished for agricultural use, see section 52-901 et seq.
Thresher's, harvester's, see sections 52-501 to 52-504.
Livestock:
Auction markets, see Chapter 54, articles 11, 18, and 26.
Disease control and eradication:
Anthrax, see sections 54-754 to 54-763.
Brucellosis, bovine, see section 54-1367 et seq.
Brucellosis, swine, see section 54-1348 et seq.
Hog cholera, see section 54-1513 et seq.
Protection of health, see Chapter 54, article 7.
Pseudorabies, see section 54-2235 et seq.
Scabies, see sections 54-724.01, 54-724.02, and 54-1401 to 54-1411.
Tuberculosis, see sections 54-706.01 to 54-706.17.
Meat and poultry inspection, see section 54-1901 et seq.
Natural resources districts, sales tax exemption, see section 77-2704.15.
Paving district, petition to create, see section 83-136.
Predatory animals, tax on sheep and cattle, see section 23-361.
Publicity, see sections 81-2,163 to 81-2,164.03.
Security interests, farm products, see section 52-1301 et seq.
Seeds, see section 81-2,147 et seq.
State Veterinarian, see section 81-202 et seq.
Taxation, see Chapter 77 and Article VIII, sections 1, 2, and 10, Constitution of Nebraska.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.
Water wells, standards and contractor licensing, see section 46-1201 et seq.
Weights and Measures Act, see section 89-182.01 et seq.
Wildlife permits, captive, see section 37-478 et seq.
Workers' compensation, farm and ranch laborers not covered, see section 48-106.

ARTICLE 1
NEBRASKA STATE FAIR BOARD

Cross References

State fair:
Carnival companies, booking agencies, and shows, see sections 2-220.01 to 2-220.04.
Horseracing, see Chapter 2, article 12.
Prohibited activities, exceptions, and penalties, see sections 2-219 and 2-220.

Section

Section
2-105. State Fair Foundation; authorized.
2-106. Nebraska State Fairgrounds; funding.
2-107. State Fair Cash Fund; created; use; investment.
2-108. Nebraska State Fair Support and Improvement Cash Fund; created; use; investment.
2-109. Report regarding lottery revenue.
2-110. Matching fund requirements.
2-111. Annual report; study of capital facilities and infrastructure requirements.
2-112. Repealed. Laws 1984, LB 641, § 1.
2-113. Repealed. Laws 1984, LB 641, § 1.
2-114. Repealed. Laws 1984, LB 641, § 1.
2-115. Repealed. Laws 2002, LB 1236, § 23.
2-116. Repealed. Laws 2002, LB 1236, § 23.
2-117. Repealed. Laws 2002, LB 1236, § 23.
2-118. Repealed. Laws 2002, LB 1236, § 23.
2-119. Repealed. Laws 1983, LB 1, § 1.
2-120. Repealed. Laws 1983, LB 1, § 1.
2-121. Repealed. Laws 1983, LB 1, § 1.
2-122. Repealed. Laws 1983, LB 1, § 1.
2-123. Repealed. Laws 1983, LB 1, § 1.
2-124. Repealed. Laws 1983, LB 1, § 1.
2-125. Repealed. Laws 2002, LB 1236, § 23.
2-126. Repealed. Laws 2002, LB 1236, § 23.
2-127. Repealed. Laws 2002, LB 1236, § 23.
2-128. Repealed. Laws 2002, LB 1236, § 23.
2-129. Repealed. Laws 1983, LB 1, § 1.
2-130. Repealed. Laws 1983, LB 1, § 1.
2-131. Agriculture Committee of the Legislature; conduct study of Nebraska State Fair; components; Department of Administrative Services; duties; report; hearing.

2-101 Nebraska State Fair Board; purpose; meetings; state fair; location.

(1) The Nebraska State Fair Board, formerly known as the State Board of Agriculture, shall hold an annual meeting for the purpose of deliberating and consulting as to the wants, prospects, and conditions of the agricultural, horticultural, industrial, mechanical, and other interests throughout the state, as well as those interests in the encouragement and perpetuation of the arts, skilled crafts, and sciences.

(2) The Nebraska State Fair Board may provide in its constitution and bylaws for the qualification and participation of delegates at the annual meeting from such associations incorporated under the laws of the state for purposes of promoting and furthering the interests of participants in agricultural, horticultural, industrial, mechanical, or other pursuits or for the encouragement and perpetuation of the arts, skilled crafts, and sciences, and from such associations as provide for the training, encouragement, and competition of the youth of Nebraska in such endeavors. The annual meeting shall be held in every odd-numbered year at the capital of the state and in every even-numbered year at such location as the board determines. The chairperson of the board shall also have the power to call meetings of the board whenever he or she may deem it expedient. All meetings of the board shall be conducted in accordance with the Open Meetings Act.

(3) The state fair shall be held at or near the city of Lincoln, in Lancaster County, under the direction and supervision of the Nebraska State Fair Board, upon the site and tract of land selected and now owned by the state for that

purpose and known as the Nebraska State Fairgrounds. The board may, at its discretion, hold or dispense with the holding of the fair, in any year.

Source: Laws 1879, § 1, p. 396; Laws 1883, c. 1, § 1, p. 57; Laws 1899, c. 1, § 1, p. 51; R.S.1913, § 1; C.S.1922, § 1; C.S.1929, § 2-101; Laws 1937, c. 1, § 1, p. 51; C.S.Supp.,1941, § 2-101; Laws 1943, c. 2, § 1, p. 55; R.S.1943, § 2-101; Laws 1981, LB 544, § 1; Laws 1983, LB 30, § 1; Laws 2002, LB 1236, § 2; Laws 2004, LB 821, § 1.

Cross References

Open Meetings Act, see section 84-1407.

The Nebraska State Board of Agriculture is essentially a private corporation possessing no exemption from suit or liability. The Crete Mills v. Nebraska State Board of Agriculture, 132 Neb. 244, 271 N.W. 684 (1937).

State Board of Agriculture has duty to provide rules and regulations agreeable to which the constitution and bylaws of county agricultural societies must be framed. State ex rel. Otoe County Agricultural Assn. v. Wallen, 117 Neb. 397, 220 N.W. 688 (1928).

2-101.01 Legislative findings.

The Legislature finds that the Nebraska State Fair has been held annually for the exhibition and dissemination of agricultural, horticultural, industrial, mechanical, and other products and innovations and for exhibitions in the arts, skilled crafts, and sciences and is a beneficial cultural and educational event for the state and its citizens. The Legislature declares it to be in the public interest that management of the Nebraska State Fair and the Nebraska State Fairgrounds be based upon a dynamic public-private partnership that includes the active participation of the state and local governments, the private sector, and the citizens of Nebraska. In order to achieve this goal, the Legislature finds that the Nebraska State Fair Board should endeavor to:

(1) Place a priority on the development of private funding sources, including corporate donations and sponsorships;

(2) Work with municipal officials to enhance the board's participation in local planning efforts and to create a partnership with local economic development and tourism officials;

(3) Maintain a policy of openness and accountability that allows for citizen participation in the operation of the Nebraska State Fair and the Nebraska State Fairgrounds; and

(4) Regularly provide the Governor, the Legislature, and appropriate state agencies with information, including, but not limited to, the development of private funding sources, the use of state appropriations, the status of the state fairground facility maintenance and improvements, the fiscal management of the state fair, and the activities and goals established for the state fair and the state fairgrounds.

Source: Laws 2002, LB 1236, § 1.

2-102 Repealed. Laws 2002, LB 1236, § 23.

2-103 Membership.

(1) No later than May 1, 2003, the Nebraska State Fair Board shall be a board consisting of the following members:

(a) Seven members nominated and selected by district as provided in the constitution and bylaws of the board; and

(b) Four members appointed by the Governor and confirmed by the Legislature, two selected to represent the business community of the city of Lincoln, one selected to represent the business community of Omaha, and one selected to represent the business community of the state at large.

(2) The term of office for members of the board shall be for three years, except that the terms of the initial members shall be as follows:

(a) The terms of office for the seven members selected pursuant to subdivision (1)(a) of this section shall be for one, two, or three years as determined by lot, with two members appointed to a term of one year, two members appointed to a term of two years, and three members appointed to a term of three years; and

(b) The terms of office for the members appointed pursuant to subdivision (1)(b) of this section shall be for one, two, or three years, as designated by the Governor, with two members appointed to a term of one year, one member appointed to a term of two years, and one member appointed to a term of three years.

(3) No person may serve more than three consecutive terms as a member of the board, except that members of the State Board of Agriculture having served or serving in an executive capacity may only serve on the Nebraska State Fair Board for one term of three years. No member of the Legislature may serve on the board.

(4) The board shall annually elect from its membership a chairperson, a vice-chairperson, a secretary, and such other officers as the board deems necessary. The officers shall be elected at the annual meeting of the board, or any other meeting of the board called for such purpose, and shall hold their offices for one year and until their successors are elected and qualified.

(5) The chairperson of the Nebraska Arts Council and the chancellor of the University of Nebraska-Lincoln, or their designees, shall be ex officio members of the Nebraska State Fair Board.

Source: Laws 2002, LB 1236, § 3.

2-104 Nebraska State Fairgrounds; management.

(1) The State of Nebraska may provide for the occupation, use, and management of the site and tract of land in Lancaster County, selected and now owned by the State of Nebraska and known as the Nebraska State Fairgrounds, by the Nebraska State Fair Board for purposes of (a) exhibitions of agricultural, horticultural, industrial, mechanical, or other products and resources of the state, including proper exhibits and expositions of the arts, skilled crafts, and sciences, (b) the conduct of live and simulcast horseracing, and (c) other uses and purposes determined by the board, including the leasing of parts of the state fairgrounds. Such occupation, use, and management shall be pursuant to a property management agreement entered into between the board and the Department of Administrative Services on behalf of the State of Nebraska. The board shall assume the role and responsibilities of the State Board of Agriculture under any such property management agreement in effect on January 1, 2003, and such agreement may be amended from time to time as necessary to carry out the purposes of sections 2-101 and 2-103 to 2-106 and as amended shall continue in force and effect.

(2) Any property management agreement between the State of Nebraska and the Nebraska State Fair Board pursuant to this section shall provide for the reporting of information by the board as deemed appropriate by the Department of Administrative Services for ascertaining the development of private funding sources, the use of state appropriations, the status of the Nebraska State Fairgrounds facility maintenance and improvements, the fiscal status of the Nebraska State Fair, and the activities and goals established for the state fair and the state fairgrounds.

Source: Laws 2002, LB 1236, § 4.

2-104.01 Nebraska State Fairgrounds property; lease or agreement for improvements; review required; report; approval.

(1) As a condition of approval, a lease or agreement the purpose of which is to allow an entity other than a state agency to provide improvements or structures in excess of one hundred fifty thousand dollars on the Nebraska State Fairgrounds property shall be reviewed by the state building division and the Task Force for Building Renewal pursuant to sections 81-176, 81-1108.15, and 81-1114. Such review shall include review of the lease, agreement, plans, specifications, other construction or repair documents, potential maintenance requirements, all financing plans, and any other document deemed necessary by the state building division or Task Force for Building Renewal as a requirement for approval of such lease or agreement. Subsequent to such review, the state building division and the task force shall submit a report to the Nebraska State Fair Board, the Governor, the Committee on Building Maintenance of the Legislature, and the Legislative Fiscal Analyst, including a summary of the review, an outline of the terms and conditions of the proposed lease or agreement, and a recommendation for approval or disapproval of the lease or agreement. Such proposed lease or agreement shall be approved by the Nebraska State Fair Board, the Governor, and the Legislature prior to execution. If the Legislature is not in session, the Executive Board of the Legislative Council shall act for the Legislature.

(2) No construction or other work related to proposed improvements or structures requiring approval under this section shall be initiated prior to receiving such approval. This section shall not apply to a lease or agreement executed prior to July 14, 2006. This section shall apply to an amendment of a lease or an agreement if the amendment is executed after July 14, 2006, and the amendment includes improvements or structures in excess of one hundred fifty thousand dollars.

Source: Laws 2006, LB 1038, § 1.

2-105 State Fair Foundation; authorized.

It is the intent of the Legislature that the Nebraska State Fair Board establish the State Fair Foundation as a nonprofit foundation operated exclusively as a corporation for charitable purposes as contemplated by sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, and organized and operated for the benefit of and to carry out the purposes of the board. The foundation may solicit, receive, hold, invest, and contribute funds and property for the use and benefit of the board in a manner consistent with

the public good and primarily for capital expenditure and other needs not funded by other means.

Source: Laws 2002, LB 1236, § 5.

2-106 Nebraska State Fairgrounds; funding.

The State of Nebraska may disburse funds for the maintenance, improvement, or renovation of the buildings, grounds, and facilities of the Nebraska State Fairgrounds from the Building Renewal Allocation Fund, from funds available for complying with the federal Americans with Disabilities Act of 1990, as such act existed on January 1, 2002, or from other funds appropriated by the Legislature for such purpose subject to the same requirements and system of priorities that apply to state property. The property management agreement under which the Nebraska State Fair Board occupies, uses, and manages the Nebraska State Fairgrounds shall provide for the board to provide all necessary information and reports and to comply with requirements governing the disbursement of state funds from the Building Renewal Allocation Fund and other state appropriations. Such disbursement of state funds for the maintenance, improvement, or renovation of the state fairgrounds shall be subject to the board annually submitting to the state building division of the Department of Administrative Services a one-year and three-year capital facilities budget of planned or proposed expenditures sufficient for the maintenance in sound condition of the buildings, grounds, and facilities of the state fairgrounds and identification of revenue sources to fund such expenditures.

Source: Laws 2002, LB 1236, § 6.

2-107 State Fair Cash Fund; created; use; investment.

The State Fair Cash Fund is created. The Tax Commissioner may use the fund to defray the cost of implementing the check-off program under section 77-27,119.05. The Nebraska State Fair shall use the fund to carry out the public-private partnerships established to enhance the work of the Nebraska State Fair. 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 2003, LB 72, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-108 Nebraska State Fair Support and Improvement Cash Fund; created; use; investment.

The Nebraska State Fair Support and Improvement Cash Fund is created. The fund shall be maintained in the state accounting system as a cash fund. The State Treasurer shall credit to the fund the disbursement of state lottery proceeds designated for the Nebraska State Fair and matching funds from the most populous city within the county in which the state fair is located. The balance of any fund that is administratively created to receive lottery proceeds designated for the Nebraska State Fair and matching fund revenue prior to May 25, 2005, shall be transferred to the Nebraska State Fair Support and Improvement Cash Fund on such date. The Nebraska State Fair Support and Improvement Cash Fund shall be expended by the Nebraska State Fair Board to

provide support for operating expenses and capital facility enhancements, including conducting or providing financial support for studies of facility conditions of the Nebraska State Fairgrounds and needs as well as other facility planning activities. Expenditures from the fund shall not be limited to the amount appropriated. 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 2005, LB 426, § 4; Laws 2007, LB435, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-109 Report regarding lottery revenue.

The Department of Revenue shall, on a quarterly basis, provide to the most populous city within the county in which the state fair is located, written notification of the amount estimated by the department to equal ten percent of the lottery revenue to be transferred to the Nebraska State Fair Support and Improvement Cash Fund. The department shall provide a copy of the written notification to the Department of Administrative Services.

Source: Laws 2005, LB 426, § 5.

2-110 Matching fund requirements.

The most populous city within the county in which the state fair is located shall remit quarterly payments to the State Treasurer in amounts equal to the matching fund requirement established by the Department of Revenue under section 2-109. The State Treasurer shall credit the matching funds to the Nebraska State Fair Support and Improvement Cash Fund. The city shall provide written notification to the Department of Administrative Services regarding its compliance with the matching fund requirement. Upon verification by the Department of Administrative Services that a quarterly transfer of lottery proceeds to the Nebraska State Fair Support and Improvement Cash Fund has been executed and that the full amount of the matching funds requirement has been received from the city, the Department of Administrative Services shall authorize the expenditure of the fund by the Nebraska State Fair Board. Matching fund requirements shall not apply to investment income accruing to the fund and investment income may be expended by the board.

Source: Laws 2005, LB 426, § 6.

2-111 Annual report; study of capital facilities and infrastructure requirements.

(1) The Nebraska State Fair Board shall, no later than November 1 of each year, provide an annual report to the Governor and the Legislature regarding the use of the Nebraska State Fair Support and Improvement Cash Fund. The report shall include (a) a detailed listing of how the proceeds of the fund were expended in the prior fiscal year and (b) any distributions from the fund that remain unexpended and on deposit in Nebraska State Fair accounts.

(2) The Nebraska State Fair Board shall cooperate with a study by the Agriculture Committee of the Legislature of capital facilities and infrastructure requirements to serve the purposes and goals of the Nebraska State Fair and

other uses of the Nebraska State Fairgrounds as a year-round multipurpose facility sufficient to host and accommodate events and attractions of local, state, and regional interest and attendance. The Nebraska State Fair Board may utilize available funds, not to exceed one hundred fifty thousand dollars, including funds disbursed from the Nebraska State Fair Support and Improvement Cash Fund and other resources, to assist in completion of such study. This subsection terminates on January 1, 2008.

Source: Laws 2005, LB 426, § 7; Laws 2007, LB435, § 2.

2-112 Repealed. Laws 1984, LB 641, § 1.

2-113 Repealed. Laws 1984, LB 641, § 1.

2-114 Repealed. Laws 1984, LB 641, § 1.

2-115 Repealed. Laws 2002, LB 1236, § 23.

2-116 Repealed. Laws 2002, LB 1236, § 23.

2-117 Repealed. Laws 2002, LB 1236, § 23.

2-118 Repealed. Laws 2002, LB 1236, § 23.

2-119 Repealed. Laws 1983, LB 1, § 1.

2-120 Repealed. Laws 1983, LB 1, § 1.

2-121 Repealed. Laws 1983, LB 1, § 1.

2-122 Repealed. Laws 1983, LB 1, § 1.

2-123 Repealed. Laws 1983, LB 1, § 1.

2-124 Repealed. Laws 1983, LB 1, § 1.

2-125 Repealed. Laws 2002, LB 1236, § 23.

2-126 Repealed. Laws 2002, LB 1236, § 23.

2-127 Repealed. Laws 2002, LB 1236, § 23.

2-128 Repealed. Laws 2002, LB 1236, § 23.

2-129 Repealed. Laws 1983, LB 1, § 1.

2-130 Repealed. Laws 1983, LB 1, § 1.

2-131 Agriculture Committee of the Legislature; conduct study of Nebraska State Fair; components; Department of Administrative Services; duties; report; hearing.

(1) The Agriculture Committee of the Legislature, with the assistance of the state building division of the Department of Administrative Services, shall conduct a study of the Nebraska State Fair consisting of the following components and any other information deemed relevant:

(a)(i) What capital facilities and infrastructure does the Nebraska State Fairgrounds require at its present location to serve the fifteen-year program needs of the State of Nebraska as a state fair site and as a year-round

multipurpose facility sufficient to attract a local, state, and regional audience; and

(ii) What is the projected fifteen-year revenue and cash-flow analysis, including capital construction, operation and maintenance, repair, and code compliance, necessary to meet the program needs identified in subdivision (a)(i) of this subsection; and

(b)(i) What would a new state fairgrounds at a new undetermined and nonspecific site need to include to serve a comparable fifteen-year program for a state fairgrounds and year-round multipurpose facility sufficient to attract a local, state, and regional audience; and

(ii) What is the projected fifteen-year revenue and cash-flow analysis, including capital construction, operation and maintenance, repair, and code compliance, necessary to meet the program needs of the Nebraska State Fair as identified in subdivision (b)(i) of this subsection at a new state fairgrounds location.

(2) The Department of Administrative Services, in consultation with the Agriculture Committee of the Legislature and the Executive Board of the Legislative Council, shall commission an independent, neutral consultant to provide analysis and recommendations relevant to the purposes of the study. The Department of Administrative Services shall utilize funds provided from nongeneral fund contributions received from any source, public or private, to defray the costs of such independent consultant commissioned to perform analysis contemplated under this section. Copies of the report of the analysis and recommendations of such consultant shall be delivered to the chairperson of the Agriculture Committee of the Legislature, the Nebraska State Fair Board, the Clerk of the Legislature, and the Governor on or before November 15, 2007.

(3) The Agriculture Committee of the Legislature shall provide a report of its findings and recommendations arising from the study pursuant to this section on or before December 15, 2007. The committee shall conduct at least one public hearing subsequent to the receipt of the report of the analysis and recommendations of any independent consultant commissioned pursuant to subsection (2) of this section.

(4) This section terminates on January 1, 2008.

Source: Laws 2007, LB435, § 3.
Termination date January 1, 2008.

ARTICLE 2

STATE AND COUNTY FAIRS

Cross References

County Horseracing Facility Bond Act, see sections 23-389 to 23-392.
School exhibits at county fairs, see section 79-709.

(a) MISCELLANEOUS

Section
2-201. Repealed. Laws 1997, LB 469, § 35.
2-202. Transferred to section 2-258.
2-203. Repealed. Laws 1997, LB 469, § 35.
2-203.01. Transferred to section 2-257.
2-203.02. Repealed. Laws 1997, LB 469, § 35.
2-203.03. Repealed. Laws 1997, LB 469, § 35.
2-203.04. Repealed. Laws 1997, LB 469, § 35.

(a) MISCELLANEOUS

2-201 Repealed. Laws 1997, LB 469, § 35.

2-202 Transferred to section 2-258.

2-203 Repealed. Laws 1997, LB 469, § 35.

2-203.01 Transferred to section 2-257.

2-203.02 Repealed. Laws 1997, LB 469, § 35.

2-203.03 Repealed. Laws 1997, LB 469, § 35.

2-203.04 Repealed. Laws 1997, LB 469, § 35.

2-203.05 Repealed. Laws 1997, LB 469, § 35.

2-203.06 Transferred to section 2-259.

2-204 Transferred to section 2-260.

2-205 Repealed. Laws 1997, LB 469, § 35.

2-206 Transferred to section 2-261.

2-207 Transferred to section 2-262.

2-208 Repealed. Laws 1997, LB 469, § 35.

2-209 Transferred to section 2-263.

2-210 Transferred to section 2-264.

2-211 Repealed. Laws 1997, LB 469, § 35.

2-212 Repealed. Laws 1997, LB 469, § 35.

2-213 Repealed. Laws 1997, LB 469, § 35.

2-214 Repealed. Laws 1997, LB 469, § 35.

2-215 Repealed. Laws 1997, LB 469, § 35.

2-216 Repealed. Laws 1997, LB 469, § 35.

2-217 Repealed. Laws 1997, LB 469, § 35.

2-218 Repealed. Laws 1997, LB 469, § 35.

(b) PROHIBITED ACTS

2-219 State, district, and county fairs; prohibited activities; penalty; exceptions; sale of liquor, when.

No person shall be permitted to exhibit or conduct indecent shows or dances or to engage in any gambling or other games of chance or horseracing, either inside the enclosure where any state fair or district or county agricultural society fair is being held or within forty rods thereof, during the time of holding such fairs. Nothing in this section shall be construed to prohibit wagering on the results of horseraces by the parimutuel or certificate method when conducted by licensees within the racetrack enclosure at licensed horserace meetings, to prohibit the operation of bingo games as provided in the Nebraska Bingo Act, to prohibit the conduct of lotteries pursuant to the Nebraska County and City Lottery Act, to prohibit the conduct of lotteries or raffles pursuant to the Nebraska Lottery and Raffle Act or the Nebraska Small Lottery and Raffle Act, or to prohibit the sale of pickle cards pursuant to the Nebraska Pickle Card Lottery Act. Nothing in this section shall be construed to prohibit the sale of intoxicating liquors, wine, or beer by a person properly licensed pursuant to Chapter 53 on premises under the control of the Nebraska State Fair Board or any county agricultural society. Any person who violates this section shall be guilty of a Class V misdemeanor. The trial of speed of horses under direction of the society shall not be included in the term horseracing. Upon the filing of proof with the State Treasurer of a violation of this section inside the enclosure of such fair, the amount of money appropriated shall be withheld from any money appropriated for the ensuing year.

Source: Laws 1879, § 16, p. 401; Laws 1901, c. 2, § 2, p. 44; R.S.1913, § 13; C.S.1922, § 13; C.S.1929, § 2-208; Laws 1935, c. 173, § 16, p. 636; C.S.Supp.,1941, § 2-208; R.S.1943, § 2-219; Laws 1963, c. 4, § 2, p. 63; Laws 1969, c. 12, § 1, p. 150; Laws 1977,

LB 40, § 2; Laws 1978, LB 386, § 1; Laws 1983, LB 213, § 1; Laws 1986, LB 1027, § 1; Laws 1992, LB 398, § 5; Laws 2000, LB 1086, § 1; Laws 2002, LB 1236, § 7.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
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.

Amendment of this section in 1935 was made to show legislative intent that nothing therein should prohibit parimutuel wagering on horse races. State ex rel. Hunter v. The Araho, 137 Neb. 389, 289 N.W. 545 (1940).

Prior to amendment of Constitution of Nebraska in 1934, parimutuel system of betting on horse races was not authorized by this section. State ex rel. Sorensen v. Ak-Sar-Ben Exposition Co., 121 Neb. 248, 236 N.W. 736 (1931), affirming 118 Neb. 851, 226 N.W. 705 (1929).

2-220 State, district, and county fairs; offenders; illegal devices; obstructions; penalties.

The president of any district or county agricultural society, a marshal, or any police officer appointed by the Nebraska State Fair Board shall be empowered to arrest, or cause to be arrested, any person or persons engaged in violating section 2-219. He or she may seize, or cause to be seized, all intoxicating liquors, wine, or beer, of any kind, with the vessels containing the same, and all tools or other implements used in any gambling or other game of chance, and may remove, or cause to be removed, all shows, swings, booths, tents, carriages, wagons, vessels, boats, or any other nuisance that may obstruct, or cause to be obstructed, by collecting persons around or otherwise, any thoroughfare leading to the enclosure in which such fair is being held. Any person owning or occupying any of such causes of obstruction, who may refuse or fail to remove such obstruction or nuisance when ordered to do so by the president or officer, shall be guilty of a Class V misdemeanor.

Source: Laws 1879, § 18, p. 402; R.S.1913, § 14; C.S.1922, § 14; C.S.1929, § 2-209; R.S.1943, § 2-220; Laws 1972, LB 1032, § 91; Laws 1977, LB 40, § 3; Laws 2002, LB 1236, § 8.

(c) CARNIVAL CONTRACT REQUIREMENTS

2-220.01 State and county fairs; carnival companies, booking agencies, and shows; contracts; security required.

All carnival companies, booking agencies, or shows that enter into any contract with the Nebraska State Fair Board, any county agricultural society, or any county fair board may be required, within thirty days after the execution of the contract, to either deposit cash or a certified check payable to the State of Nebraska, the county agricultural society, or the county fair board, as appropriate, or execute and file with the chairperson of the Nebraska State Fair Board, the county agricultural society, or the county fair board, as appropriate, a good and sufficient bond with a corporate surety. The Nebraska State Fair Board, the county agricultural society, or the county fair board, as appropriate, shall determine the amount of the deposit or bond required. Such security shall run to the State of Nebraska, the county agricultural society, or the county fair board, as appropriate, on the condition that the carnival company, booking agency, or show will faithfully perform any contract entered into by it during a period of one year from the date of execution of the contract and shall, at the

time of the filing of the cash, certified check, or bond, file a sworn statement giving the names and addresses of the owners of the carnival company, booking agency, or show. Further cash, certified check, or bond shall not be required on signing any subsequent contract during the year such bond is in force.

Source: Laws 1949, c. 3, § 1, p. 59; Laws 1951, c. 5, § 1, p. 67; Laws 1992, LB 398, § 6; Laws 1997, LB 469, § 25; Laws 2002, LB 1236, § 9.

2-220.02 State and county fairs; carnival companies, booking agencies, and shows; security; action for damages.

The Nebraska State Fair Board, county agricultural society, or county fair board may bring suit upon the deposit or bond required by section 2-220.01 in the county where such contract was to have been performed to recover any damages sustained by reason of breach of contract or failure to carry out the terms thereof.

Source: Laws 1949, c. 3, § 2, p. 59; Laws 1951, c. 5, § 2, p. 68; Laws 1963, c. 4, § 3, p. 64; Laws 1997, LB 469, § 26; Laws 2002, LB 1236, § 10.

2-220.03 State and county fairs; carnival companies, booking agencies, and shows; security; failure to execute and file; violation; penalty.

Each officer, owner, or manager of any carnival company, booking agency, or show who willfully fails to cause cash, certified check, or bond to be executed and filed as required by section 2-220.01, or who willfully fails to cause the receipt or certificate to be filed as provided by section 2-220.01, shall be guilty of a Class IV misdemeanor.

Source: Laws 1949, c. 3, § 3, p. 60; Laws 1951, c. 5, § 3, p. 68; Laws 1977, LB 40, § 4.

2-220.04 State and county fairs; carnival companies, booking agencies, and shows; cash deposit; certified check; return; when.

If cash or certified check is deposited with the Nebraska State Fair Board, a county agricultural society, or a county fair board under section 2-220.01, such deposit shall be returned to the person or company making the deposit within sixty days after the completion of the last performance of the contract unless a written, signed, and verified complaint has been filed within such time.

Source: Laws 1951, c. 5, § 4, p. 68; Laws 1997, LB 469, § 27; Laws 2002, LB 1236, § 11.

(d) COUNTY FAIR BOARDS

2-221 County fairs; county powers.

Counties in the State of Nebraska are hereby authorized to establish and maintain county fair boards, to purchase, hold, and improve real estate for the purpose of holding county fairs, to convey the same, to levy and collect taxes for such purposes, and to do all other things necessary for the proper management of such county fairs. Property acquired for such purpose by an elected county fair board shall be held in the name of the (name of county) County Fair.

Source: Laws 1917, c. 168, § 1, p. 377; C.S.1922, § 57; C.S.1929, § 2-210; R.S.1943, § 2-221; Laws 1999, LB 437, § 1.

A county which has not accepted in the manner prescribed statute authorizing it to establish and maintain county fair is without authority to levy taxes therefor. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

Under this section, counties may establish and maintain county fairs by going through certain procedure and by vote of the people as provided in subsequent sections. Wilson v. Thayer County Agricultural Society, 115 Neb. 579, 213 N.W. 966 (1927), 52 A.L.R. 1393 (1927).

2-221.01 County fairs; joint fairs; permitted.

The boards of county agricultural societies and county fair boards of two or more adjoining counties may hold joint fairs at one location. Such authority shall not disturb their right to purchase, hold, and improve real estate for that purpose, to convey the same, to levy and collect taxes for such purposes, and to do all things necessary for the proper management of such joint county fairs.

Source: Laws 1965, c. 5, § 1, p. 75; Laws 1999, LB 437, § 2.

2-222 County fair; election to establish.

Any county may accept the provisions of and proceed under sections 2-221 to 2-231 by resolution duly adopted by the county board. The resolution shall indicate whether the membership of the county fair board to be established under such sections would be elected or appointed pursuant to section 2-224. If, after the adoption of a resolution for such purpose, fifteen percent of the registered voters of the county file with the county board a petition requesting that the acceptance of the provisions of such sections be submitted to the voters of the county, the county board shall submit the same to a vote of the people in like manner as the question of voting courthouse bonds may be submitted. During the time such question is pending for the vote of the people, no further proceedings shall be had for the establishment of a county fair board. If ten percent of the registered voters of the county file a petition with the county board asking that the question of the acceptance of the provisions of such sections and specifying whether the membership of the county fair board to be established under such sections would be elected or appointed pursuant to section 2-224 be submitted to a vote of the people, the county board shall submit such question to the voters in like manner as the question of voting courthouse bonds may be submitted. If a majority of the votes cast upon the question are in favor of such proposition, the county board shall immediately proceed to establish a county fair board.

Source: Laws 1917, c. 168, § 2, p. 377; C.S.1922, § 58; C.S.1929, § 2-211; R.S.1943, § 2-222; Laws 1999, LB 437, § 3.

Cross References

Issuance of courthouse bonds, see section 23-120.

Under this section, two methods are provided by which a county may accept the provisions of the County Fair Act, and when proceeding under the second method, publication of notice required herein is mandatory. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

2-223 County fair; bonds; special tax.

In any county accepting the provisions of sections 2-221 to 2-231, an elected county fair board or the county board for an appointed county fair board may propose the issuance of bonds or levy a special tax for the purchase and improvement of real estate for county fair purposes in like manner as for the building of a courthouse.

Source: Laws 1917, c. 168, § 4, p. 378; C.S.1922, § 60; C.S.1929, § 2-213; R.S.1943, § 2-223; Laws 1999, LB 437, § 4.

Cross References

Issuance of courthouse bonds, see section 23-120.

Levy of special tax under this section cannot be made where county is not authorized to carry on a county fair. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

2-224 County fair board; membership.

(1) If the membership of the county fair board to be established under sections 2-221 to 2-231 is to be appointed, the county board shall appoint from the residents of the county a county fair board, consisting of nine members who shall in the first instance be appointed as follows: Three for a term of one year, three for a term of two years, and three for a term of three years. Thereafter there shall be appointed each year three members for a term of three years. Vacancies occurring upon such board shall be filled by the county board. No person while a member of the county board shall be a member of the county fair board, nor shall more than two members of the county fair board be residents of the same township, precinct, or incorporated city or village at the time of appointment. An appointed county fair board is a division of the county.

(2)(a) If the membership of the county fair board to be established under sections 2-221 to 2-231 is to be elected, the procedures of this subsection shall be followed.

(b) The county board shall by resolution provide for the election of a nine-member county fair board at a public meeting. The resolution shall designate a time and place for the meeting and shall provide for a notice of the meeting to be published twice in a newspaper of general circulation in the county, the last publication to appear at least five days prior to the meeting. The notice shall be addressed to all registered voters of the county. The registered voters present at the meeting shall elect by majority vote persons who reside in the county as members of the county fair board. The election commissioner or county clerk shall administer the initial election.

(c) At the first meeting of the county fair board, the member receiving the highest number of votes shall preside until officers have been selected as provided in section 2-225. The three persons receiving the highest number of votes shall serve for terms of three years. The three persons receiving the next highest number of votes shall serve for terms of two years. The three persons receiving the next highest number of votes shall serve for terms of one year. As the terms expire, their successors shall be elected for three-year terms at an annual meeting of the registered voters of the county held for that purpose and shall hold office until their successors have been elected.

(d) The county fair board may increase its membership by up to six additional members after the initial election and organization by adoption of a resolution stating the number of additional members and designating the applicable election cycles. The new members shall be elected for three-year terms beginning as provided in the resolution.

(e) If any person offering to vote at any meeting is challenged as unqualified by any voter of such county, the person administering the election or presiding at the meeting shall explain to the person challenged the qualifications of a registered voter. If such person states that he or she is qualified and the challenge is not withdrawn, the person shall take an oath, reduced to writing, in substance as follows: ''I do solemnly swear (or affirm) that I am a citizen of the United States, that I am of the constitutionally prescribed age of an elector

or upwards, that I am domiciled in this county, and that I am registered to vote in this county, so help me God.'' Every person taking such oath and signing his or her name to it shall be permitted to vote on all questions proposed at the meeting.

(f) Notice of the annual meeting shall be published once in a newspaper of general circulation in the county, such publication to appear at least five days prior to the meeting. A vacancy occurring due to resignation, death, or removal of a member because of malfeasance or nonfeasance shall be elected by the remaining board members for the unexpired term.

(g) An elected county fair board constitutes a body politic and corporate and is a political subdivision of the state.

Source: Laws 1917, c. 168, § 5, p. 378; C.S.1922, § 61; C.S.1929, § 2-214; R.S.1943, § 2-224; Laws 1999, LB 437, § 5.

2-225 County fair board; officers; employees.

The county fair board shall select a president, vice president, and treasurer from its own number. The county fair board shall select a county fair secretary who may be a member of the county fair board or may be selected from among other persons. The county fair board may employ such persons as it deems necessary for the proper management of the fair and shall have complete charge and supervision of the real estate and other property. All actions of an elected county fair board shall be taken in the name of the (name of county) County Fair. Actions by an appointed county fair board shall be taken in the name of the county.

Source: Laws 1917, c. 168, § 6, p. 378; C.S.1922, § 62; C.S.1929, § 2-215; R.S.1943, § 2-225; Laws 1999, LB 437, § 6.

2-226 County fair board; expenses of members; compensation of secretary.

The members of the county fair board, other than the secretary if he or she is selected from the board members, shall receive no pay for their services but shall be paid all necessary expenses. The secretary shall receive such salary payable at such times as the county fair board may provide.

Source: Laws 1917, c. 168, § 7, p. 378; C.S.1922, § 63; C.S.1929, § 2-216; R.S.1943, § 2-226; Laws 1999, LB 437, § 7.

2-227 County fair board; rules and regulations; fair management; duties.

The county fair board may adopt from time to time, and when adopted shall publish, such bylaws, rules and regulations as it may deem necessary, and shall publish a premium list, and shall do all things necessary and proper for the successful management of the fair.

Source: Laws 1917, c. 168, § 8, p. 379; C.S.1922, § 64; C.S.1929, § 2-217.

2-228 County fair board; report.

If the county fair board is appointed by the county board, the county fair board shall report in writing to the county board as directed by the county

board showing a complete statement and report of its actions. The report shall be kept in the office of the county clerk and shall be open to public inspection.

Source: Laws 1917, c. 168, § 9, p. 379; C.S.1922, § 65; C.S.1929, § 2-218; R.S.1943, § 2-228; Laws 1999, LB 437, § 8.

2-229 County fair; tax levy; amount; collection; budget statement.

(1) During the month of November each year, each appointed county fair board shall prepare and submit to the county board an estimate, itemized as far as possible, of the amount of money which is necessary to be collected by taxation for the support and management of the fair for the ensuing year. The county board may, subject to section 77-3442, levy such amount of taxes as may be necessary but not to exceed the amount actually required for county fair purposes, including capital construction on and renovation, repair, improvement, and maintenance of county fairgrounds. Such tax shall be levied and collected in like manner as general taxes for the county.

(2) Each elected county fair board shall annually prepare a budget statement setting forth the amount of money necessary for the operation of the county fair board. On or before August 1, the president and the secretary of the board shall certify the amount of tax to be levied upon all the taxable property within the county for the operation of the county fair board for the ensuing year subject to allocation under section 77-3443. The tax shall be assessed, levied, and collected as other county taxes. The proceeds of such tax shall be paid by the county treasurer to the treasurer of the county fair board. The county fair board may act to exceed the allocation provided by the county board under section 77-3444, but if the county fair board acts to exceed the allocation, the total levy shall not exceed three and one-half cents per one hundred dollars of valuation.

Source: Laws 1917, c. 168, § 10, p. 379; C.S.1922, § 66; C.S.1929, § 2-219; R.S.1943, § 2-229; Laws 1992, LB 398, § 7; Laws 1996, LB 1085, § 6; Laws 1996, LB 1114, § 10; Laws 1999, LB 437, § 9.

2-229.01 County fair; additional tax levy; amount.

Pursuant to a request by an elected county fair board, the county board of any county may levy an additional levy of three and five-tenths cents on each one hundred dollars of taxable valuation, or any part thereof, for the purpose of capital construction on and renovation, repair, improvement, and maintenance of the county fairgrounds, over and above the operational tax levy authorized in section 2-229. Such levy shall not exceed the amount actually required for such work. In counties having a population of more than sixty thousand inhabitants but not more than three hundred fifty thousand inhabitants and also containing a city of the primary class, such additional levy or any part thereof may be levied for the purpose of capital construction on and renovation, repair, improvement, and maintenance of the county fairgrounds. The additional levy shall be subject to section 77-3443.

Source: Laws 1999, LB 437, § 18.

2-230 County fair; county aid; restriction.

Whenever any county shall have established a county fair under the provisions of sections 2-221 to 2-231, no money shall be paid by the county to any other society or association maintaining a fair within the county.

Source: Laws 1917, c. 168, § 11, p. 379; C.S.1922, § 67; C.S.1929, § 2-220.

2-231 County fair board; claims filed with county board; payment.

Each appointed county fair board shall cause to be filed with the county board from time to time all claims to be paid from money raised by taxation, and such claims shall be allowed and paid in like manner as general claims against the county.

Source: Laws 1917, c. 168, § 12, p. 379; C.S.1922, § 68; C.S.1929, § 2-221; R.S.1943, § 2-231; Laws 1999, LB 437, § 10.

2-232 County fair; dissolution; sale of property.

Any county in this state which has established a county fair board pursuant to sections 2-221 to 2-231, or which has taken any steps or made any expenditures or investments to establish and maintain a county fair under the terms and provisions of such sections, may dissolve such county fair board and may dispose in whole or in part of the property, real and personal, purchased by the county or county fair board for the purpose of such county fair.

Source: Laws 1927, c. 51, § 1, p. 205; C.S.1929, § 2-222; R.S.1943, § 2-232; Laws 1999, LB 437, § 11.

2-233 County fair; dissolution; procedure.

Whenever it is deemed expedient to dissolve any county fair board established in any county with less than one hundred twenty-five thousand people in this state under sections 2-221 to 2-231 as determined by (1) the county board upon its own motion in counties with appointed county fair boards, (2) the county fair board upon its own motion in counties with elected county fair boards, or (3) petition of not less than twenty-five percent of the registered voters of the county as shown by the list of registered voters of the last general election, the county board shall submit to the people of the county, to be voted upon at a general or special election called by the county board for that purpose, a proposition to dissolve such county fair board. The question of dissolving any such county fair shall not be submitted until the expiration of three years after the vote to establish such fair has been taken.

Source: Laws 1927, c. 51, § 2, p. 205; C.S.1929, § 2-223; R.S.1943, § 2-233; Laws 1997, LB 764, § 1; Laws 1999, LB 437, § 12.

2-234 County fair; dissolution; submission to voters.

The manner of submitting such proposition shall be governed by the provisions of section 23-126.

Source: Laws 1927, c. 51, § 3, p. 206; C.S.1929, § 2-224.

2-235 County fair; dissolution; duty of county board.

(1) Upon being satisfied that sections 2-232 to 2-234 have been substantially complied with and that sixty percent of all the votes cast on the proposition are in favor of the dissolution, the county board shall cause such proposition and

all the proceedings had thereon to be entered upon the records of the county board and shall notify the county fair board of the results of the election.

(2) Upon receiving such notice, an elected county fair board shall transfer by deed all real property and by bill of sale all personal property to the county for disposition pursuant to section 2-236.

Source: Laws 1927, c. 51, § 4, p. 206; C.S.1929, § 2-225; R.S.1943, § 2-235; Laws 1999, LB 437, § 13.

2-236 County fair; dissolution; disposition of property.

Upon the dissolution of such appointed county fair board, all the property, both real and personal, which had been purchased by such county or county fair board or transferred to the county board under subsection (2) of section 2-235 for such county fair purposes may be sold or disposed of by the county board in whole or in part and from time to time in the same manner as other properties of the county may lawfully be sold or disposed of. If any of such property is appropriate for any other lawful use or purpose of such county, such property may be held for or transferred to the county.

Source: Laws 1927, c. 51, § 5, p. 206; C.S.1929, § 2-226; R.S.1943, § 2-236; Laws 1999, LB 437, § 14.

2-237 County fair; dissolution; final report.

Upon the dissolution of any such county fair board in the manner provided in sections 2-232 to 2-236, the county fair board in such county shall cease to exist as an official body of such county, except for the purpose of making its final report and accounting and returning its records. An appointed county fair board shall make its report and accounting and return its records to the county board. An elected county fair board shall publish its final report and accounting one time in a newspaper of general circulation in the county and shall file such report and accounting and its records with the county clerk for inspection by the public.

Source: Laws 1927, c. 51, § 6, p. 206; C.S.1929, § 2-227; R.S.1943, § 2-237; Laws 1999, LB 437, § 15.

2-237.01 Reformation; procedure.

(1) An elected county fair board may be dissolved and reformed as either a county agricultural society or an appointed county fair board as provided in this section. An appointed county fair board may be dissolved and reformed as either a county agricultural society or an elected county fair board as provided in this section.

(2) An elected county fair board may by resolution request the county board to place the question of reformation of the county fair board before the registered voters of the county. The county board may on its own resolution place the question of reformation of an appointed county fair board before the registered voters of the county.

(3) Upon the adoption of a resolution under subsection (2) of this section, the county board shall call a general or special election on the question of reformation. If a majority of those voting on the question vote for reformation, the county board or the county fair board shall proceed with the statutory requirements to form the new entity.

(4) Any contract, action, rule, regulation, resolution, or other matter made, done, or performed by and within the scope of the previous board's authority shall remain in force and effect. Any real or personal property, rights, or credits and any duty, debt, or liability of the previous board shall automatically transfer to the new entity on the date of the entity's first meeting. Upon such transfer, the previous board shall automatically be dissolved. The previous board shall file notice of transfers and dissolutions with the register of deeds.

Source: Laws 1999, LB 437, § 19.

2-238 County fair board; compliance with Open Meetings Act and Records Management Act.

County fair boards established under sections 2-221 to 2-231 shall comply with the Open Meetings Act and the Records Management Act.

Source: Laws 1992, LB 398, § 1; Laws 1997, LB 469, § 28; Laws 1999, LB 437, § 16; Laws 2004, LB 821, § 2.

Cross References

Open Meetings Act, see section 84-1407.
Records Management Act, see section 84-1220.

2-239 County fair board; budget; requirements.

(1) The budget of each appointed county fair board shall be subject to annual review, audit, and approval by the county board of the county in which such fair board is located.

(2) The budget of each elected county fair board shall be subject to the Nebraska Budget Act.

Source: Laws 1992, LB 398, § 2; Laws 1997, LB 469, § 29; Laws 1999, LB 437, § 17.

Cross References

Nebraska Budget Act, see section 13-501.

2-240 County fair board; internal election; proxy vote prohibited.

The vote of a member of a county fair board for any election held within such board shall be cast by the member personally and shall not be cast by a proxy vote.

Source: Laws 1992, LB 398, § 3; Laws 1997, LB 469, § 30.

(e) GENERAL PROVISIONS

2-241 Transferred to section 2-267.

2-242 Transferred to section 2-268.

2-243 Transferred to section 2-269.

2-244 Transferred to section 2-270.

2-245 Transferred to section 2-271.

2-246 Repealed. Laws 1997, LB 469, § 35.

2-247 Repealed. Laws 1997, LB 469, § 35.

2-248 Transferred to section 2-272.

2-249 Transferred to section 2-273.

(f) COUNTY AGRICULTURAL SOCIETY ACT

2-250 Act, how cited.

Sections 2-250 to 2-273 shall be known and may be cited as the County Agricultural Society Act.

Source: Laws 1997, LB 469, § 1; Laws 1999, LB 437, § 20.

2-251 County agricultural societies; compliance with act required.

All county agricultural societies existing, organized, or reinstated on or after January 1, 1998, shall comply with the County Agricultural Society Act and shall annually offer and award premiums and perform such other acts which such society deems will be for the improvement of agriculture, industry, homes, and communities of the state. For purposes of the act, county agricultural society means all county agricultural societies existing, organized, or reinstated on or after January 1, 1998.

Source: Laws 1997, LB 469, § 2.

2-252 Formation; constitution; bylaws.

A county agricultural society shall adopt a constitution and bylaws and may, upon approval of its board of directors, file articles of incorporation with the Secretary of State pursuant to the Nebraska Nonprofit Corporation Act. Any agricultural society forming itself as a nonprofit corporation shall incorporate as a public benefit corporation as defined in section 21-1914.

Source: Laws 1997, LB 469, § 3.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

2-253 Annual meeting; notice; voting.

A county agricultural society shall hold an annual meeting open to all registered voters of the county for the purpose of electing a board of directors and conducting any other business of the county agricultural society. Only registered voters of the county are eligible to participate and vote at the annual meeting of the county agricultural society. The board of directors of the county agricultural society shall give notice of the annual meeting in a newspaper of general circulation within the county once at least five days before the scheduled annual meeting. The notice shall state the time and place of the annual meeting and that all registered voters of the county are eligible to participate and vote at the annual meeting. The vote for any election held in connection with the county agricultural society shall be cast personally and not by proxy vote. At the annual meeting of the county agricultural society, all questions upon motions made at the annual meeting shall be determined by a majority of the registered voters voting and the presiding officer shall ascertain and declare the result of the votes upon each question. If the result of a vote is questioned, the presiding officer shall make the vote certain by recount. If any person offering to vote at the annual meeting is challenged as an unqualified voter, the

presiding officer shall explain to the person challenged the qualifications of a registered voter. If such person states that he or she is qualified and the challenge is not withdrawn, the person shall take an oath, reduced to writing, in substance as follows: ''I do solemnly swear (or affirm) that I am a citizen of the United States, that I am of the constitutionally prescribed age of an elector or upwards, that I am domiciled in this county, and that I am registered to vote in this county, so help me God.'' Every person taking such oath and signing his or her name to it shall be permitted to vote on all questions proposed at the meeting.

Source: Laws 1997, LB 469, § 4; Laws 1999, LB 437, § 22.

Cross References

False swearing, see section 32-1508.
Illegal voting, see sections 32-1529 to 32-1531.

2-254 Organization of county agricultural society; petition.

Subject to sections 2-267 to 2-273, the registered voters of a county may petition the county board to organize a county agricultural society in a county where a county agricultural society has not already been organized. The petition shall be signed by registered voters of the county equal in number to fifteen percent of the whole number of registered voters of the county who cast votes for Governor at the statewide general election next preceding the submission of the petition to the county board. The petition shall be in the form required by section 32-628 and the Secretary of State shall provide such forms upon request.

Source: Laws 1997, LB 469, § 5.

2-255 Petition; signature verification; organizational meeting; notice.

Upon receipt of a petition to create a county agricultural society, the county board shall have the signatures verified by the election commissioner or county clerk pursuant to section 32-631. The election commissioner or county clerk shall return the verified petition within fifteen days after receipt of the petition from the county board. If the number of signatures required under section 2-254 are verified, the county board shall declare the petition approved at the next regularly scheduled meeting following the submission of the petition by the petitioners to the county board. If the petition is approved, the county board shall schedule an organizational meeting for the county agricultural society and shall give notice of the organizational meeting in a newspaper of general circulation within the county once each week for three weeks before the scheduled organizational meeting. The notice shall state the time and place of the organizational meeting and that all registered voters of the county are eligible to participate and vote at the organizational meeting. At the organizational meeting, the registered voters present shall, by majority vote, (1) determine the size of the board of directors for the county agricultural society, an odd number not less than five and not larger than nineteen, and (2) elect the board members.

Source: Laws 1997, LB 469, § 6.

2-256 Board of directors; officers; members.

(1) The board of directors shall annually elect from its membership a chairperson and such other officers as may be necessary. The term of office for

members of the board shall be for three years, except that the term of the members of the board first taking office shall be for one, two, or three years as determined by lot.

(2) The bylaws adopted by a county agricultural society shall state whether the board of directors of the county agricultural society will nominate candidates for membership on the board from districts or from the county at large. The members of the board shall be elected by the registered voters of the entire county whether the candidates are nominated from districts or from the county at large. If nominating districts are used, the board of directors shall divide the county into districts of substantially equal population. Such districts shall be consecutively numbered. The boundaries and numbering of such districts shall be designated at least three months prior to the annual meeting.

(3) If the county agricultural society replaces an existing county fair board as provided in section 2-237.01, the county fair board shall remain in existence until the county agricultural society has its first annual meeting. After the first annual meeting of the county agricultural society, any existing county fair board shall cease to exist.

Source: Laws 1997, LB 469, § 7; Laws 1999, LB 437, § 23.

2-257 Tax levy.

(1) The county board may, at the time other levies and assessments for taxation are made and subject to section 77-3443, levy a tax upon all of the taxable property within the county for the operation of the county agricultural society. The tax shall be assessed, levied, and collected as other county taxes. The proceeds of such tax shall be paid by the county treasurer to the treasurer of the board of directors of such county agricultural society on or before the fifteenth day of each month or more frequently as provided in section 77-1759.

(2) The county agricultural society may act to exceed the allocation provided by the county board under section 77-3444, but if the county agricultural society acts to exceed the allocation, the total levy shall not exceed three and one-half cents per one hundred dollars of valuation.

Source: Laws 1921, c. 5, § 1, p. 66; C.S.1922, § 6; Laws 1925, c. 10, § 1, p. 77; Laws 1927, c. 13, § 1, p. 96; Laws 1929, c. 5, § 1, p. 70; C.S.1929, § 2-201; R.S.1943, § 2-203; Laws 1949, c. 4, § 1(2), p. 60; Laws 1969, c. 11, § 3, p. 148; Laws 1975, LB 378, § 2; Laws 1979, LB 187, § 3; Laws 1992, LB 719A, § 2; Laws 1996, LB 1085, § 3; Laws 1996, LB 1114, § 7; Laws 1997, LB 269, § 2; R.S.Supp.,1996, § 2-203.01; Laws 1997, LB 469, § 8; Laws 2007, LB334, § 1.

2-258 Use of tax money.

The money raised by the operational tax levy authorized in section 2-257 shall be used for the purpose of paying premiums and for permanent improvements for such fair, for the purpose of purchasing the necessary fair supplies, advertising, and the paying of necessary labor in connection therewith, and for other necessary expenses for the operation of the fair. In counties having a population of more than sixty thousand inhabitants but not more than three

hundred fifty thousand inhabitants, and also containing a city of the primary class, the money so raised may be used for permanent improvements on the county fairgrounds or Nebraska State Fairgrounds, or for leasing, contracting for, or in any manner acquiring use of fairground facilities for such fair.

Source: Laws 1921, c. 5, § 1, p. 66; C.S.1922, § 6; Laws 1925, c. 10, § 1, p. 77; Laws 1927, c. 13, § 1, p. 96; Laws 1929, c. 5, § 1, p. 70; C.S.1929, § 2-201; R.S.1943, § 2-202; Laws 1977, LB 484, § 1; R.S.1943, (1991), § 2-202; Laws 1997, LB 469, § 9.

2-259 County fairgrounds; additional tax levy.

Pursuant to a request by a county agricultural society, the county board of any county may levy an additional levy of three and five-tenths cents on each one hundred dollars of taxable valuation, or any part thereof, for the purpose of acquiring an interest in real property to comprise a portion or all of the county fairgrounds or for the purpose of capital construction on and renovation, repair, improvement, and maintenance of the county fairgrounds, over and above the operational tax levy authorized in section 2-257. Such levy shall not exceed the amount actually required for such acquisition or work and shall be subject to section 77-3443.

Source: Laws 1969, c. 11, § 7, p. 149; Laws 1977, LB 484, § 2; Laws 1979, LB 187, § 7; Laws 1988, LB 977, § 1; Laws 1992, LB 398, § 4; Laws 1992, LB 719A, § 4; R.S.Supp.,1996, § 2-203.06; Laws 1997, LB 469, § 10; Laws 1999, LB 437, § 24; Laws 2000, LB 1190, § 1.

2-260 Failure to hold fair; effect.

If an existing county agricultural society fails to hold a fair for at least three successive days, no money so levied for that year shall be paid to the use of such levy, but the same shall be paid into the general fund of the county and expended as other funds therein. Such money shall be paid by the county treasurer to the board of directors of such county agricultural society only after a sworn statement has been filed with the county clerk of such county, which statement shall be signed by the chairperson of the county agricultural society and shall set out when and where such county fair is to be held.

Source: Laws 1881, c. 1, § 1, p. 64; Laws 1889, c. 74, § 1, p. 535; Laws 1901, c. 2, § 1, p. 44; Laws 1905, c. 2, § 1, p. 53; Laws 1913, c. 165, § 1, p. 509; R.S.1913, § 6; Laws 1915, c. 7, § 1, p. 56; Laws 1917, c. 63, § 1, p. 164; Laws 1921, c. 5, § 1, p. 67; C.S.1922, § 6; Laws 1925, c. 10, § 1, p. 78; Laws 1927, c. 13, § 1, p. 97; Laws 1929, c. 5, § 1, p. 72; C.S.1929, § 2-201; R.S.1943, § 2-204; R.S.1943, (1991), § 2-204; Laws 1997, LB 469, § 11.

2-261 County agricultural society; budget; meetings; records.

(1) County agricultural societies are subject to the Nebraska Budget Act. County agricultural societies shall comply with the Open Meetings Act and the Records Management Act.

(2) The budget of each county agricultural society is subject to annual review, audit, and approval by the county board of the county in which such society is located.

Source: Laws 1879, § 12, p. 400; R.S.1913, § 8; C.S.1922, § 8; C.S. 1929, § 2-203; R.S.1943, § 2-206; Laws 1996, LB 299, § 8; R.S.Supp.,1996, § 2-206; Laws 1997, LB 469, § 12; Laws 2004, LB 821, § 3.

Cross References

Nebraska Budget Act, see section 13-501.
Open Meetings Act, see section 84-1407.
Records Management Act, see section 84-1220.

Nebraska State Board of Agriculture is still authorized to adopt rules and regulations which county agricultural societies must comply with and obey to entitle them to financial support from county board. State ex rel. Otoe County Agr. Assn. v. Wallen, 117 Neb. 397, 220 N.W. 688 (1928).

2-262 County agricultural society; right of eminent domain; procedure.

Each county agricultural society may acquire, take, hold, and appropriate so much real estate as may be necessary for the purpose of holding county fairs. No appropriation of private property for the use of such society shall be made until full and just compensation therefor be first made to the owner thereof, and not more than forty acres shall be taken without the consent of the owner. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1879, § 13, p. 400; R.S.1913, § 9; Laws 1915, c. 9, § 1, p. 57; C.S.1922, § 9; C.S.1929, § 2-204; R.S.1943, § 2-207; Laws 1951, c. 101, § 25, p. 458; R.S.1943, (1991), § 2-207; Laws 1997, LB 469, § 13.

Section quoted in tracing history of act. Owen v. Main, 92 Neb. 258, 138 N.W. 154 (1912).

2-263 County agricultural society; neglect of duties; cease to exist; effect.

In all cases when county agricultural societies neglect for two years to hold a county fair or cease to exist, in any county where payments have been made for real estate or improvements upon such real estate for the use of a county agricultural society, then all such real estate and improvements shall vest in fee simple in the county, and the district court of the county, upon proof thereof, shall, upon petition of the county board, make a proper decree vesting the title of such property in the county.

Source: Laws 1879, § 15, p. 401; Laws 1905, c. 1, § 1, p. 51; R.S.1913, § 11; C.S.1922, § 11; C.S.1929, § 2-206; Laws 1931, c. 2, § 1, p. 58; C.S.Supp.,1941, § 2-206; R.S.1943, § 2-209; R.S.1943, (1991), § 2-209; Laws 1997, LB 469, § 14.

Upon dissolution of society under this section, only the real estate purchased and improvements made by money paid out of county treasury vest in the county. Owen v. Main, 92 Neb. 258, 138 N.W. 154 (1912).

2-264 County agricultural society; powers relating to real estate.

A county agricultural society may exchange its real estate and improvements for other real estate or to sell its real estate for the purpose of acquiring other real estate for fairgrounds, and may make, execute, deliver, and accept all proper or necessary conveyances in and about such exchange, sale, or purchase, and the right of the county in the original grounds and improvements as

provided for in section 2-263 shall extend to the real estate derived from exchange or purchase.

A county agricultural society may purchase real estate and improve the same. The payment of the purchase price may be secured by mortgage or deed of trust.

Source: Laws 1879, § 15, p. 401; Laws 1905, c. 1, § 1, p. 52; R.S.1913, § 11; C.S.1922, § 11; C.S.1929, § 2-206; Laws 1931, c. 2, § 1, p. 58; C.S.Supp.,1941, § 2-206; R.S.1943, § 2-210; Laws 1967, c. 3, § 1, p. 71; R.S.1943, (1991), § 2-210; Laws 1997, LB 469, § 15.

2-265 County agricultural society; dissolution; procedure.

(1) To dissolve a county agricultural society established or sought to be established under the County Agricultural Society Act, the county board shall, upon petition of not less than fifteen percent of the registered voters of the county as shown by the poll books of the last previous general election, submit to the people of the county to be voted upon at a general or special election called by the county board for that purpose, a proposition to dissolve such county agricultural society. Such proposition shall be submitted as provided in section 23-126.

(2) If a majority of all the votes cast on the proposition are in favor of the dissolution, the county board shall cause the record of such proposition and all the proceedings thereon to be entered upon the records of the county agricultural society and shall make an order that such county agricultural society is dissolved.

Source: Laws 1997, LB 469, § 16.

2-266 County agricultural society; dissolution; effect.

Upon the dissolution and the abandonment under section 2-265:

(1) All the real and personal property which has been purchased for or by the county agricultural society may be sold or disposed of by the county board in whole or in part and from time to time in the same manner as other properties of the county may lawfully be sold or disposed of. If any of such property is appropriate or available for any other lawful use or purpose of such county, the county board may appropriate, use, and apply any of such property to any such other lawful use or purpose; and

(2) Such county agricultural society shall cease to exist as an official body of such county except for the purpose of making its final report and accounting and returning its records to the county board.

Source: Laws 1997, LB 469, § 17.

2-266.01 County agricultural society; dissolution; reformation; procedure.

(1) A county agricultural society may be dissolved and reformed as either an elected or appointed county fair board as provided in this section in addition to any other procedure for dissolution provided by law.

(2) A county agricultural society board may by resolution request the county board to place the question of reformation of the society before the registered voters of the county.

(3) Upon the adoption of a resolution under subsection (2) of this section, the county board shall place the question of reformation on the ballot at any primary, general, or special election. If a majority of those voting on the question vote for reformation, the county board shall proceed with the statutory requirements to form the new entity.

(4) Any contract, action, rule, regulation, resolution, or other matter made, done, or performed by and within the scope of the county agricultural society's authority shall remain in force and effect. Any real or personal property, rights, or credits and any duty, debt, or liability of the society shall automatically transfer to the new entity on the date of the entity's first meeting. Upon such transfer, the society shall automatically be dissolved. The county agricultural society shall file the notice of transfers and dissolutions with the register of deeds.

Source: Laws 1999, LB 437, § 21.

2-267 County agricultural society; reinstatement authorized.

A county agricultural society operating or organized under the County Agricultural Society Act, which has become inoperative because of neglect in the discharge of its duties devolved upon it by law, or for any other reason, may at any time procure an extension, restoration, renewal, or revival of its corporate existence, together with all the rights, franchises, privileges, and immunities and subject to all of its duties, debts, and liabilities which had been secured or imposed by its original articles of incorporation and its amendments, by filing with the Secretary of State a certificate of its last acting president and secretary or treasurer, chairperson and other officers, or officers elected or appointed as provided in section 2-271.

Source: Laws 1995, LB 671, § 1; R.S.Supp.,1996, § 2-241; Laws 1997, LB 469, § 18.

2-268 County agricultural society; reinstatement; certificate; contents; filing.

The certificate filed pursuant to section 2-267 shall set forth (1) the name of the county agricultural society, which name shall be the existing name of the society or the name it bore when its corporate existence expired, except as otherwise provided in sections 2-267 to 2-271, (2) whether the renewal, restoration, or revival is to be perpetual and if not the time for which the renewal, restoration, or revival is to continue, (3) that the society desiring to be renewed or revived and so renewing or reviving its corporate existence was duly organized under the laws of the State of Nebraska, and (4) the date when the society became inoperative and that this certificate for renewal or revival is filed by authority of those who were directors or managers of the society at the time its corporate existence expired or who were elected or appointed directors of the society as provided in section 2-271. A copy of the certificate, certified by the Secretary of State, shall be recorded in the office of the clerk in and for the county in which the original articles of incorporation of the society are recorded. Upon filing and recording the original of the certificate of revival in the office of the Secretary of State, the society shall be renewed and revived

with the same force and effect as if its corporate existence had not become inoperative.

Source: Laws 1995, LB 671, § 2; R.S.Supp.,1996, § 2-242; Laws 1997, LB 469, § 19.

2-269 County agricultural society; reinstatement; effect.

The reinstatement of a county agricultural society shall validate all contracts, acts, matters, and things made, done, and performed within the scope of its articles of incorporation, its officers, and its agents during the time when the corporate existence was inoperative with the same force and effect and to all intents and purposes as if the corporate existence had at all times remained in full force and effect. All real and personal property, rights, and credits which were of the county agricultural society at the time its corporate existence became inoperative and which were not disposed of prior to the time of the revival or renewal shall be vested in the society, after the revival and renewal, as fully and completely as they were held by the society at and before the time its corporate existence became inoperative. The corporation, after such renewal and revival, shall be as exclusively liable for all contracts, acts, matters, and things made, done, or performed in its name and on its behalf by its officers and agents prior to the reinstatement as if its corporate existence had at all times remained in full force and effect.

Source: Laws 1995, LB 671, § 3; R.S.Supp.,1996, § 2-243; Laws 1997, LB 469, § 20.

2-270 County agricultural society; reinstatement; name change; when.

If, since the corporate existence of a county agricultural society became inoperative, any other county agricultural society organized under the laws of the State of Nebraska adopted the same name as the society sought to be renewed or revived or shall have adopted a name so nearly similar to it as not to distinguish it from the society renewed or revived under the provisions of sections 2-267 to 2-271, then, in such case, the renewed or revived society shall not be renewed under the same name which it bore when its corporate existence became inoperative, but shall adopt and be renewed under a new name which, under existing law, could be adopted by a society formed and organized under the County Agricultural Society Act, and in such case the certificate to be filed under section 2-272 shall set forth the name borne by such society at the time its existence became inoperative and the new name under which the society is to be renewed or revived.

Source: Laws 1995, LB 671, § 4; R.S.Supp.,1996, § 2-244; Laws 1997, LB 469, § 21.

2-271 County agricultural society; reinstatement; reformation of board.

If the last president and secretary or treasurer, chairperson and other officers, or the officers performing the functions of the offices, or any of them, of the county agricultural society renewing or reviving its corporate existence are dead at the time of the renewal or refuse or neglect to act pursuant to section 2-267, the directors of the society or the successors of them, if not less than two, may elect a successor to the officer or officers who are dead or who refuse or neglect to act pursuant to section 2-267. In any case where there are less than two directors of the society living or if any of them refuse or neglect to

act for the purpose of renewing or reviving the corporate existence, the county board may appoint as many directors as necessary, together with the surviving director who is ready and willing to act, to constitute a board of five directors to conduct necessary business until, within ninety days, an annual meeting is held and new directors are elected pursuant to the County Agricultural Society Act.

Source: Laws 1995, LB 671, § 5; R.S.Supp.,1996, § 2-245; Laws 1997, LB 469, § 22.

2-272 County agricultural society; reinstatement; certificate; recording; requirements; effect.

The certificate for the renewal and continuance of the existence of a county agricultural society shall be filed in the office of the Secretary of State, who shall furnish a certified copy of the certificate under his or her hand and seal of office. The certified copy shall be recorded in the office of the clerk of the county in which the principal office of the society is located in this state in a book kept for the purpose. The certificate or a certified copy of the certificate duly certified under the hand of the Secretary of State and his or her seal of office, accompanied with the certificate of the clerk of the county where it is recorded under the clerk's hand and seal of his or her office, stating that it had been recorded, the record of the same in the office of the clerk, or a copy of such record duly certified by the clerk, or the record of such certified copy, recorded in the county clerk's office, is evidence in all courts of law and equity of this state.

Source: Laws 1995, LB 671, § 8; R.S.Supp.,1996, § 2-248; Laws 1997, LB 469, § 23.

2-273 County agricultural society; reinstatement; effect.

A county agricultural society renewing, extending, and continuing its corporate existence shall, upon complying with sections 2-267 to 2-272, be a corporation and continue its existence for the time stated in its certificate of renewal and shall, in addition to the rights, privileges, and immunities conferred by its original articles of incorporation, possess and enjoy all of the benefits of the laws of this state which are applicable to the nature of its business and shall be subject to the restrictions and liabilities imposed on such societies by the laws of this state.

Source: Laws 1995, LB 671, § 9; R.S.Supp.,1996, § 2-249; Laws 1997, LB 469, § 24.

ARTICLE 3

STATE HORTICULTURAL SOCIETY

Section
2-301. Repealed. Laws 1969, c. 2, § 14.
2-302. Repealed. Laws 1969, c. 2, § 14.
2-303. Repealed. Laws 1969, c. 2, § 14.
2-304. Repealed. Laws 1969, c. 2, § 14.
2-305. Repealed. Laws 1969, c. 2, § 14.

2-301 Repealed. Laws 1969, c. 2, § 14.

2-302 Repealed. Laws 1969, c. 2, § 14.

2-303 Repealed. Laws 1969, c. 2, § 14.

2-304 Repealed. Laws 1969, c. 2, § 14.

2-305 Repealed. Laws 1969, c. 2, § 14.

ARTICLE 4

FARMERS' INSTITUTES

Section
2-401. Repealed. Laws 1985, LB 264, § 1.
2-402. Repealed. Laws 1985, LB 264, § 1.
2-403. Repealed. Laws 1985, LB 264, § 1.
2-404. Repealed. Laws 1985, LB 264, § 1.

2-401 Repealed. Laws 1985, LB 264, § 1.

2-402 Repealed. Laws 1985, LB 264, § 1.

2-403 Repealed. Laws 1985, LB 264, § 1.

2-404 Repealed. Laws 1985, LB 264, § 1.

ARTICLE 5

NEBRASKA DAIRYMEN'S ASSOCIATION

Section
2-501. Repealed. Laws 1969, c. 2, § 14.
2-502. Repealed. Laws 1969, c. 2, § 14.
2-503. Repealed. Laws 1969, c. 2, § 14.
2-504. Repealed. Laws 1969, c. 2, § 14.
2-505. Repealed. Laws 1969, c. 2, § 14.

2-501 Repealed. Laws 1969, c. 2, § 14.

2-502 Repealed. Laws 1969, c. 2, § 14.

2-503 Repealed. Laws 1969, c. 2, § 14.

2-504 Repealed. Laws 1969, c. 2, § 14.

2-505 Repealed. Laws 1969, c. 2, § 14.

ARTICLE 6

NEBRASKA CORN IMPROVERS' ASSOCIATION

Section
2-601. Repealed. Laws 1969, c. 2, § 14.
2-602. Repealed. Laws 1969, c. 2, § 14.
2-603. Repealed. Laws 1969, c. 2, § 14.

2-601 Repealed. Laws 1969, c. 2, § 14.

2-602 Repealed. Laws 1969, c. 2, § 14.

2-603 Repealed. Laws 1969, c. 2, § 14.

ARTICLE 7

NEBRASKA STATE POULTRY ASSOCIATION

Section
2-701. Repealed. Laws 1969, c. 2, § 14.
2-702. Repealed. Laws 1969, c. 2, § 14.
2-703. Repealed. Laws 1969, c. 2, § 14.
2-704. Repealed. Laws 1969, c. 2, § 14.
2-705. Repealed. Laws 1969, c. 2, § 14.

2-701 Repealed. Laws 1969, c. 2, § 14.

2-702 Repealed. Laws 1969, c. 2, § 14.

2-703 Repealed. Laws 1969, c. 2, § 14.

2-704 Repealed. Laws 1969, c. 2, § 14.

2-705 Repealed. Laws 1969, c. 2, § 14.

ARTICLE 8

NEBRASKA POTATO IMPROVEMENT ASSOCIATION

Section
2-801. Repealed. Laws 1969, c. 2, § 14.
2-802. Repealed. Laws 1969, c. 2, § 14.
2-803. Repealed. Laws 1969, c. 2, § 14.
2-804. Repealed. Laws 1969, c. 2, § 14.

2-801 Repealed. Laws 1969, c. 2, § 14.

2-802 Repealed. Laws 1969, c. 2, § 14.

2-803 Repealed. Laws 1969, c. 2, § 14.

2-804 Repealed. Laws 1969, c. 2, § 14.

ARTICLE 9

NOXIOUS WEED CONTROL

Section
2-901. Repealed. Laws 1965, c. 7, § 15.
2-902. Repealed. Laws 1965, c. 7, § 15.
2-903. Repealed. Laws 1965, c. 7, § 15.
2-904. Repealed. Laws 1965, c. 7, § 15.
2-905. Repealed. Laws 1965, c. 7, § 15.
2-906. Repealed. Laws 1965, c. 7, § 15.
2-907. Repealed. Laws 1945, c. 2, § 24.
2-908. Repealed. Laws 1945, c. 2, § 24.
2-909. Repealed. Laws 1945, c. 2, § 24.
2-910. Repealed. Laws 1965, c. 7, § 15.
2-911. Repealed. Laws 1965, c. 7, § 15.
2-912. Repealed. Laws 1965, c. 7, § 15.
2-913. Repealed. Laws 1965, c. 7, § 15.
2-914. Repealed. Laws 1965, c. 7, § 15.
2-915. Repealed. Laws 1965, c. 7, § 15.

Section
2-916. Repealed. Laws 1965, c. 7, § 15.
2-917. Repealed. Laws 1965, c. 7, § 15.
2-918. Repealed. Laws 1965, c. 7, § 15.
2-919. Repealed. Laws 1965, c. 7, § 15.
2-920. Repealed. Laws 1965, c. 7, § 15.
2-920.01. Repealed. Laws 1965, c. 7, § 15.
2-921. Repealed. Laws 1965, c. 7, § 15.
2-922. Repealed. Laws 1965, c. 7, § 15.
2-923. Repealed. Laws 1965, c. 7, § 15.
2-924. Repealed. Laws 1965, c. 7, § 15.
2-925. Repealed. Laws 1965, c. 7, § 15.
2-926. Repealed. Laws 1965, c. 7, § 15.
2-927. Repealed. Laws 1965, c. 7, § 15.
2-928. Repealed. Laws 1965, c. 7, § 15.
2-929. Repealed. Laws 1959, c. 3, § 5.
2-930. Repealed. Laws 1959, c. 3, § 5.
2-931. Repealed. Laws 1959, c. 3, § 5.
2-932. Repealed. Laws 1959, c. 3, § 5.
2-933. Repealed. Laws 1959, c. 3, § 5.
2-934. Repealed. Laws 1959, c. 3, § 5.
2-935. Repealed. Laws 1959, c. 3, § 5.
2-936. Repealed. Laws 1965, c. 7, § 15.
2-937. Repealed. Laws 1959, c. 3, § 5.
2-938. Repealed. Laws 1959, c. 3, § 5.
2-939. Repealed. Laws 1959, c. 3, § 5.
2-940. Repealed. Laws 1965, c. 7, § 15.
2-941. Repealed. Laws 1965, c. 7, § 15.
2-942. Repealed. Laws 1965, c. 7, § 15.
2-943. Repealed. Laws 1965, c. 7, § 15.
2-943.01. Repealed. Laws 1965, c. 7, § 15.
2-944. Repealed. Laws 1965, c. 7, § 15.
2-945. Repealed. Laws 1965, c. 7, § 15.
2-945.01. Act, how cited.
2-945.02. Legislative findings and declarations.
2-946. Repealed. Laws 1965, c. 8, § 58.
2-946.01. Counties; appropriate funds.
2-946.02. Noxious weed control; cities and villages; provide funds.
2-947. Repealed. Laws 1965, c. 7, § 15.
2-948. Repealed. Laws 1965, c. 7, § 15.
2-949. Repealed. Laws 1965, c. 7, § 15.
2-950. Repealed. Laws 1965, c. 7, § 15.
2-951. Repealed. Laws 1965, c. 7, § 15.
2-952. Methods.
2-953. Terms, defined.
2-953.01. County weed district board; elections; membership.
2-953.02. County weed district board; per diem; expenses; ex officio member; appointment; when.
2-954. Act; enforcement; director, control authorities, and superintendents; powers and duties; expenses.
2-954.01. Repealed. Laws 1975, LB 14, § 13.
2-954.02. Superintendent; continuing education.
2-955. Notice; kinds; effect; failure to comply; powers of control authority.
2-956. Public lands; cost of control.
2-957. List; publication; equipment; treatment; disposition; violation; penalty.
2-958. Noxious weed control fund; authorized; Noxious Weed Cash Fund; created; use; investment.
2-958.01. Noxious Weed and Invasive Plant Species Assistance Fund; created; use; investment.
2-958.02. Grant program; applications; selection; considerations; priority; section, how construed.
2-959. Control authorities; equipment and machinery; purchase; use; record.

Section
2-960. Charges; protest; hearing; appeal.
2-961. Entry upon land.
2-962. Notices; how served.
2-963. Violations; penalty; county attorney; duties.
2-964. Repealed. Laws 1987, LB 138, § 14.
2-964.01. Action for failure to comply; authorized.
2-965. Project of control without individual notice; control authority; powers.
2-965.01. Advisory committee; membership.
2-966. Certain noxious weed control districts; dissolution; title to real estate.
2-967. Riparian Vegetation Management Task Force; created; members.
2-968. Riparian Vegetation Management Task Force; duties; meetings; recommendations; final report; expenses.

2-901 Repealed. Laws 1965, c. 7, § 15.

2-902 Repealed. Laws 1965, c. 7, § 15.

2-903 Repealed. Laws 1965, c. 7, § 15.

2-904 Repealed. Laws 1965, c. 7, § 15.

2-905 Repealed. Laws 1965, c. 7, § 15.

2-906 Repealed. Laws 1965, c. 7, § 15.

2-907 Repealed. Laws 1945, c. 2, § 24.

2-908 Repealed. Laws 1945, c. 2, § 24.

2-909 Repealed. Laws 1945, c. 2, § 24.

2-910 Repealed. Laws 1965, c. 7, § 15.

2-911 Repealed. Laws 1965, c. 7, § 15.

2-912 Repealed. Laws 1965, c. 7, § 15.

2-913 Repealed. Laws 1965, c. 7, § 15.

2-914 Repealed. Laws 1965, c. 7, § 15.

2-915 Repealed. Laws 1965, c. 7, § 15.

2-916 Repealed. Laws 1965, c. 7, § 15.

2-917 Repealed. Laws 1965, c. 7, § 15.

2-918 Repealed. Laws 1965, c. 7, § 15.

2-919 Repealed. Laws 1965, c. 7, § 15.

2-920 Repealed. Laws 1965, c. 7, § 15.

2-920.01 Repealed. Laws 1965, c. 7, § 15.

2-921 Repealed. Laws 1965, c. 7, § 15.

2-922 Repealed. Laws 1965, c. 7, § 15.

2-923 Repealed. Laws 1965, c. 7, § 15.

2-924 Repealed. Laws 1965, c. 7, § 15.

2-925 Repealed. Laws 1965, c. 7, § 15.

2-926 Repealed. Laws 1965, c. 7, § 15.

2-927 Repealed. Laws 1965, c. 7, § 15.

2-928 Repealed. Laws 1965, c. 7, § 15.

2-929 Repealed. Laws 1959, c. 3, § 5.

2-930 Repealed. Laws 1959, c. 3, § 5.

2-931 Repealed. Laws 1959, c. 3, § 5.

2-932 Repealed. Laws 1959, c. 3, § 5.

2-933 Repealed. Laws 1959, c. 3, § 5.

2-934 Repealed. Laws 1959, c. 3, § 5.

2-935 Repealed. Laws 1959, c. 3, § 5.

2-936 Repealed. Laws 1965, c. 7, § 15.

2-937 Repealed. Laws 1959, c. 3, § 5.

2-938 Repealed. Laws 1959, c. 3, § 5.

2-939 Repealed. Laws 1959, c. 3, § 5.

2-940 Repealed. Laws 1965, c. 7, § 15.

2-941 Repealed. Laws 1965, c. 7, § 15.

2-942 Repealed. Laws 1965, c. 7, § 15.

2-943 Repealed. Laws 1965, c. 7, § 15.

2-943.01 Repealed. Laws 1965, c. 7, § 15.

2-944 Repealed. Laws 1965, c. 7, § 15.

2-945 Repealed. Laws 1965, c. 7, § 15.

2-945.01 Act, how cited.

Sections 2-945.01 to 2-968 shall be known and may be cited as the Noxious Weed Control Act.

Source: Laws 1989, LB 49, § 1; Laws 1994, LB 76, § 450; Laws 2004, LB 869, § 1; Laws 2006, LB 1226, § 2; Laws 2007, LB701, § 3.

2-945.02 Legislative findings and declarations.

The Legislature finds and declares that:

(1) The failure to control noxious weeds on lands in this state is a serious problem which is detrimental to the production of crops and livestock and to the welfare of residents of this state and which may devalue land and reduce tax revenue;

(2) It is the purpose of the Noxious Weed Control Act to establish a workable framework, delineate responsibilities, encourage education of the public concerning noxious weeds, and provide the necessary authority to effectively control noxious weeds;

(3) It is the duty of each person who owns or controls land to effectively control noxious weeds on such land. County boards or control authorities are responsible for administration of noxious weed control laws at the county level;

(4) The Department of Agriculture should have responsibility for (a) establishing basic standards such as designating which plants are to be considered noxious weeds and which control measures are to be used in particular situations and (b) monitoring implementation of the act by the control authorities; and

(5) A state noxious weed advisory committee shall be convened by the director with broad representation to advise the director.

Source: Laws 1989, LB 49, § 2.

2-946 Repealed. Laws 1965, c. 8, § 58.

2-946.01 Counties; appropriate funds.

Counties may appropriate and expend funds for the purchase of materials, machinery and equipment to assist the districts organized under this section and section 2-946.02. Cities or villages may appropriate and expend funds for the purchase of materials, machinery and equipment to assist districts organized within their corporate limits.

Source: Laws 1945, c. 2, § 22, p. 66.

2-946.02 Noxious weed control; cities and villages; provide funds.

All cities and villages in this state shall provide for the control of noxious weeds within their jurisdiction and may appropriate money for and make the necessary expenditures for noxious weed control. The director shall advise cities and villages concerning noxious weed control.

Source: Laws 1945, c. 2, § 23, p. 66; Laws 1975, LB 14, § 1; Laws 1987, LB 138, § 1; Laws 1989, LB 49, § 3.

2-947 Repealed. Laws 1965, c. 7, § 15.

2-948 Repealed. Laws 1965, c. 7, § 15.

2-949 Repealed. Laws 1965, c. 7, § 15.

2-950 Repealed. Laws 1965, c. 7, § 15.

2-951 Repealed. Laws 1965, c. 7, § 15.

2-952 Methods.

It shall be the duty of every person to control the spread of noxious weeds on lands owned or controlled by him or her and to use such methods for that purpose as are specified in rules and regulations adopted and promulgated by the director.

Source: Laws 1965, c. 7, § 1, p. 78; Laws 1975, LB 14, § 2; Laws 1987, LB 138, § 2; Laws 1989, LB 49, § 4.

2-953 Terms, defined.

For purposes of the Noxious Weed Control Act:

(1) Person means any individual, partnership, firm, limited liability company, corporation, company, society, or association, the state or any department, agency, or subdivision thereof, or any other public or private entity;

(2)(a) Control, with respect to land, means the authority to operate, manage, supervise, or exercise jurisdiction over or any similar power. The state or federal government or a political subdivision shall not be deemed to control land on which it has an easement as long as it does not otherwise operate, manage, supervise, or exercise jurisdiction over the land; and

(b) Control, with respect to weeds, means the prevention, suppression, or limitation of the growth, spread, propagation, or development or the eradication of weeds;

(3) County board means the county board of commissioners or supervisors;

(4) Noxious weeds means and includes any weeds designated and listed as noxious in rules and regulations adopted and promulgated by the director;

(5) Control authority means the county weed district board or the county board if it is designated as the control authority pursuant to section 2-953.01, which board shall represent all rural areas and cities, villages, and townships within the county boundaries;

(6) Director means the Director of Agriculture or his or her designated representative; and

(7) Weed management entity means an entity recognized by the director as being established by and consisting of local stakeholders, including tribal governments, for the purpose of controlling or eradicating harmful, invasive weeds and increasing public knowledge and education concerning the need to control or eradicate harmful, invasive weeds.

Source: Laws 1965, c. 7, § 2, p. 78; Laws 1969, c. 13, § 1, p. 151; Laws 1975, LB 14, § 3; Laws 1981, LB 204, § 2; Laws 1987, LB 1, § 1; Laws 1987, LB 138, § 3; Laws 1989, LB 49, § 5; Laws 1993, LB 121, § 61; Laws 1994, LB 76, § 453; Laws 2004, LB 869, § 2.

2-953.01 County weed district board; elections; membership.

The county board may, following an election in which a majority of the votes cast are in favor of such action, function as and exercise the authority and carry out the duties of the county weed district board. To initiate such an election, the county board may, by resolution, require the county clerk of such county to have placed upon the ballot at the election next following such resolution, the question, Shall the county weed district board be dissolved and its duties and authority be exercised by the county board?

Yes .... No ....

If a majority of the votes cast on this question are opposed to dissolution of the county weed district board, the county shall remain subject to the direction and authority of the elected county weed district board. If a majority of the votes cast on this question are in favor of the dissolution of the county weed district board, the county board shall function as and exercise the authority and carry out the duties of the county weed district board. If, at any time following

the dissolution of the county weed district board, county residents, representing at least ten percent of the votes cast in the preceding general election in such county, submit a petition to the county clerk for reestablishment of the county weed district board as an independent elected body, the clerk shall place the following question on the next general election ballot: Shall the county weed district board be reestablished and elected independent of other county officials?

Yes .... No ....

If a majority of the ballots favor reestablishment of the independent board, the county board shall appoint an initial county weed district board and thereafter the county weed district board members shall be elected in conformity with section 32-531.

When the county board does not function as the county weed district board, such board shall be composed of five members, three of whom shall be from rural areas and two of whom shall be from cities, villages, or townships.

Source: Laws 1994, LB 76, § 451.

Cross References

Election of county weed district board members, see section 32-531.

2-953.02 County weed district board; per diem; expenses; ex officio member; appointment; when.

The members of the county weed district board shall be paid a per diem of not less than twelve dollars for each day actually and necessarily engaged in the performance of their official duties as members of such board and shall be allowed mileage reimbursement on the same basis as provided in section 81-1176. The chairperson of the county board may appoint one additional member from the county board to serve as an ex officio member of the county weed district board to provide coordination between such boards, except that the county board member or commissioner so appointed shall not be entitled to the expense reimbursement allowed county weed district board members. The ex officio member shall possess the same authority as other members, including the right to vote.

Source: Laws 1994, LB 76, § 452; Laws 1996, LB 1011, § 1.

2-954 Act; enforcement; director, control authorities, and superintendents; powers and duties; expenses.

(1)(a) The duty of enforcing and carrying out the Noxious Weed Control Act shall be vested in the director and the control authorities as designated in the act. The director shall determine what weeds are noxious for purposes of the act. A list of such noxious weeds shall be included in the rules and regulations adopted and promulgated by the director. The director shall prepare, publish, and revise as necessary a list of noxious weeds. The list shall be distributed to the public by the director, the Cooperative Extension Service, the control authorities, and any other body the director deems appropriate. The director shall, from time to time, adopt and promulgate rules and regulations on methods for control of noxious weeds and adopt and promulgate such rules and regulations as are necessary to carry out the act. Whenever special weed control problems exist in a county involving weeds not included in the rules and regulations, the control authority may petition the director to bring such

weeds under the county control program. The petition shall contain the approval of the county board. Prior to petitioning the director, the control authority, in cooperation with the county board, shall hold a public hearing and take testimony upon the petition. Such hearing and the notice thereof shall be in the manner prescribed by the Administrative Procedure Act. A copy of the transcript of the public hearing shall accompany the petition filed with the director. The director may approve or disapprove the request. If approval is granted, the control authority may proceed under the forced control provisions of sections 2-953 to 2-955 and 2-958.

(b) The director shall (i) investigate the subject of noxious weeds, (ii) require information and reports from any control authority as to the presence of noxious weeds and other information relative to noxious weeds and the control thereof in localities where such control authority has jurisdiction, (iii) cooperate with control authorities in carrying out other laws administered by him or her, (iv) cooperate with agencies of federal and state governments and other persons in carrying out his or her duties under the Noxious Weed Control Act, (v) with the consent of the Governor, conduct investigations outside this state to protect the interest of the agricultural industry of this state from noxious weeds not generally distributed therein, (vi) with the consent of the federal agency involved, control noxious weeds on federal lands within this state, with reimbursement, when deemed by the director to be necessary to an effective weed control program, (vii) advise and confer as to the extent of noxious weed infestations and the methods determined best suited to the control thereof, (viii) call and attend meetings and conferences dealing with the subject of noxious weeds, (ix) disseminate information and conduct educational campaigns with respect to control of noxious weeds, (x) procure materials and equipment and employ personnel necessary to carry out the director's duties and responsibilities, and (xi) perform such other acts as may be necessary or appropriate to the administration of the act.

(c) The director may (i) temporarily designate a weed as a noxious weed for up to eighteen months if the director, in consultation with the advisory committee created under section 2-965.01, has adopted criteria for making temporary designations and (ii) apply for and accept any gift, grant, contract, or other funds or grants-in-aid from the federal government or other public and private sources for noxious weed control purposes and account for such funds as prescribed by the Auditor of Public Accounts.

(d) When the director determines that a control authority has substantively failed to carry out its duties and responsibilities as a control authority or has substantively failed to implement a county weed control program, he or she shall instruct the control authority regarding the measures necessary to fulfill such duties and responsibilities. The director shall establish a reasonable date by which the control authority shall fulfill such duties and responsibilities. If the control authority fails or refuses to comply with instructions by such date, the Attorney General shall file an action as provided by law against the control authority for such failure or refusal.

(2)(a) Each control authority shall carry out the duties and responsibilities vested in it under the act with respect to land under its jurisdiction in accordance with rules and regulations adopted and promulgated by the director. Such duties shall include the establishment of a coordinated program for control of noxious weeds within the county.

(b) A control authority may cooperate with any person in carrying out its duties and responsibilities under the act.

(3)(a) Each county board shall employ one or more weed control superintendents. Each such superintendent shall, as a condition precedent to employment, be certified in writing by the federal Environmental Protection Agency as a commercial applicator under the Federal Insecticide, Fungicide, and Rodenticide Act. Each superintendent shall be bonded for such sum as the county board shall prescribe. The same person may be a weed control superintendent for more than one county. Such employment may be for such tenure and at such rates of compensation and reimbursement for travel expenses as the county board may prescribe. Such superintendent shall be reimbursed for mileage at a rate equal to or greater than the rate provided in section 81-1176.

(b) Under the direction of the control authority, it shall be the duty of every weed control superintendent to examine all land under the jurisdiction of the control authority for the purpose of determining whether the Noxious Weed Control Act and the rules and regulations adopted and promulgated by the director have been complied with. The weed control superintendent shall: (i) Compile such data on infested areas and controlled areas and such other reports as the director or the control authority may require; (ii) consult and advise upon matters pertaining to the best and most practical methods of noxious weed control and render assistance and direction for the most effective control; (iii) investigate or aid in the investigation and prosecution of any violation of the act; and (iv) perform such other duties as required by the control authority in the performance of its duties. Weed control superintendents shall cooperate and assist one another to the extent practicable and shall supervise the carrying out of the coordinated control program within the county.

(c) In cases involving counties in which municipalities have ordinances for weed control, the control authority may enter into agreements with municipal authorities for the enforcement of local weed ordinances and may follow collection procedures established by such ordinances. All money received shall be deposited in the weed control authority fund.

Source: Laws 1965, c. 7, § 3, p. 79; Laws 1969, c. 13, § 2, p. 153; Laws 1975, LB 14, § 4; Laws 1981, LB 204, § 3; Laws 1987, LB 1, § 2; Laws 1987, LB 138, § 4; Laws 1988, LB 807, § 1; Laws 1989, LB 49, § 6; Laws 1991, LB 663, § 24; Laws 1996, LB 1011, § 2; Laws 2004, LB 869, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

2-954.01 Repealed. Laws 1975, LB 14, § 13.

2-954.02 Superintendent; continuing education.

Beginning January 1, 1988, each county weed control superintendent shall be required to complete twenty hours of annual continuing education. The cost of continuing education shall be included in the annual budget of the weed control authority. Such continuing education shall focus on the use of equipment, drift control, calibration, proper selection of pesticides, legal responsibilities, and duties of office. Any statewide association of county weed control superintendents or of local governments responsible for weed control may sponsor the required continuing education program. All continuing education programs

shall be submitted to the director for review and approval. The sponsoring organization shall maintain records of attendance and notify each county board of the hours completed by its weed control superintendent by January 1 of each year. Failure to complete the required number of hours of continuing education shall subject such weed control superintendent to removal from office by the county board.

Source: Laws 1987, LB 138, § 5.

2-955 Notice; kinds; effect; failure to comply; powers of control authority.

(1) Notices for control of noxious weeds shall consist of two kinds: General notices, as prescribed by rules and regulations adopted and promulgated by the director, which notices shall be on a form prescribed by the director; and individual notices, which notices shall be on a form prescribed by this section. Failure to publish general weed notices or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Noxious Weed Control Act and rules and regulations adopted and promulgated pursuant to the act.

(a) General notice shall be published by each control authority, in one or more newspapers of general circulation throughout the area over which the control authority has jurisdiction, on or before May 1 of each year and at such other times as the director may require or the control authority may determine.

(b) Whenever any control authority finds it necessary to secure more prompt or definite control of weeds on particular land than is accomplished by the general published notice, it shall cause to be served individual notice upon the owner of record of such land at his or her last-known address, giving specific instructions and methods when and how certain named weeds are to be controlled. Such methods may include definite systems of tillage, cropping, management, and use of livestock.

Each control authority shall use one or both of the following forms for all individual notices: (i)

..... County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicated the existence of an uncontrolled noxious weed infestation on property owned by you at: . . . . . .

The noxious weed or weeds are ..... . The method of control recommended by the control authority is as follows:

. . . . . .

Other appropriate control methods are acceptable if approved by the county weed control superintendent.

Because the stage of growth of the noxious weed infestation on the above-specified property warrants immediate control, if such infestation remains uncontrolled after ten days from the date specified at the bottom of this notice, the control authority may enter upon such property for the purpose of taking the appropriate weed control measures. Costs for the control activities of the

control authority shall be at the expense of the owner of the property and shall become a lien on the property as a special assessment levied on the date of control.

. . . .

Weed Control Superintendent Dated;

or (ii)

.... County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicates the existence of an uncontrolled noxious weed infestation on property owned by you at: . . . .

The noxious weed or weeds are .... The method of control recommended by the control authority is as follows:

. . . .

Other appropriate control methods are acceptable if approved by the county weed control superintendent. If, within fifteen days from the date specified at the bottom of this notice, the noxious weed infestation on such property, as specified above, has not been brought under control, you may, upon conviction, be subject to a fine of $100.00 per day for each day of noncompliance beginning on ...., up to a maximum of fifteen days of noncompliance (maximum $1,500).

Upon request to the control authority, within fifteen days from the date specified at the bottom of this notice, you are entitled to a hearing before the control authority to challenge the existence of a noxious weed infestation on property owned by you at . . . .

. . . .

Weed Control Superintendent Dated.

In all counties having a population of three hundred thousand or more inhabitants, the control authority may dispense with the individual notices and may publish general notices if published in one or more newspapers of general circulation throughout the area over which such control authority has jurisdiction. Such notice shall be published weekly for four successive weeks prior to May 1 of each year or at such other times as the control authority deems necessary. In no event shall a fine be assessed against a landowner as prescribed in subdivision (3)(a) of this section unless the control authority has caused individual notice to be served upon the landowner as specified in this subdivision.

(2) At the request of any owner served with an individual notice pursuant to subdivision (1)(b)(ii) of this section, the control authority shall hold an informal public hearing to allow such landowner an opportunity to be heard on the

question of the existence of an uncontrolled noxious weed infestation on such landowner's property.

(3) Whenever the owner of the land on which noxious weeds are present has neglected or failed to control them as required pursuant to the act and any notice given pursuant to subsection (1) of this section, the control authority having jurisdiction shall proceed as follows:

(a) If, within fifteen days from the date specified on the notice required by subdivision (1)(b)(ii) of this section, the owner has not taken action to control the noxious weeds on the specified property and has not requested a hearing pursuant to subsection (2) of this section, the control authority shall notify the county attorney who shall proceed against such owner as prescribed in this subdivision. A person who is responsible for an infestation of noxious weeds on particular land under his or her ownership and who refuses or fails to control the weeds on the infested area within the time designated in the notice delivered by the control authority shall, upon conviction, be guilty of an infraction pursuant to sections 29-431 to 29-438, except that the penalty shall be a fine of one hundred dollars per day for each day of violation up to a total of one thousand five hundred dollars for fifteen days of noncompliance; or

(b) If, within ten days from the date specified in the notice required by subdivision (1)(b)(i) of this section, the owner has not taken action to control the noxious weeds on the specified property and the stage of growth of such noxious weeds warrants immediate control to prevent spread of the infestation to neighboring property, the control authority may cause proper control methods to be used on such infested land, including necessary destruction of growing crops, and shall advise the record owner of the cost incurred in connection with such operation. The cost of any such control shall be at the expense of the owner. In addition the control authority shall immediately cause notice to be filed of possible unpaid weed control assessments against the property upon which the control measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the control authority shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the control measures were taken as a special assessment levied on the date of control. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as taxes.

Nothing contained in this section shall be construed to limit satisfaction of the obligation imposed hereby in whole or in part by tax foreclosure proceedings. The expense may be collected by suit instituted for that purpose as a debt due the county or by any other or additional remedy otherwise available. Amounts collected under subdivision (3)(b) of this section shall be deposited to the noxious weed control fund of the control authority.

Source: Laws 1965, c. 7, § 4, p. 82; Laws 1969, c. 13, § 4, p. 158; Laws 1974, LB 694, § 1; Laws 1975, LB 14, § 5; Laws 1983, LB 154, § 1; Laws 1987, LB 1, § 3; Laws 1987, LB 138, § 6; Laws 1989, LB 49, § 7; Laws 1995, LB 589, § 1.

Pursuant to subsection (3)(a) of this section, proof of proper notice is an element of the State's prima facie case. Pursuant to subsection (3)(a) of this section, in order to prove notice, it must be shown that the county control authority made a finding of uncontrolled noxious weeds and issued proper notice to defendant or delegated its statutory duty to the weed control superintendent to make such findings and to give such notice. State v. Beethe, 249 Neb. 743, 545 N.W.2d 108 (1996); State v. Brozovsky, 249 Neb. 723, 545 N.W.2d 98 (1996).

A court may not impose probation upon a defendant convicted under subsection (3)(a) of this section. State v. Martin, 3 Neb. App. 555, 529 N.W.2d 545 (1995).

2-956 Public lands; cost of control.

The cost of controlling noxious weeds on all land, including highways, roadways, streets, alleys, and rights-of-way, owned or controlled by a state department, agency, commission, or board or a political subdivision shall be paid by the state department, agency, commission, or board in control thereof or the political subdivision out of funds appropriated to the state department, agency, commission, or board or budgeted by the political subdivision for its use.

Source: Laws 1965, c. 7, § 5, p. 84; Laws 1975, LB 14, § 6; Laws 1989, LB 49, § 8.

2-957 List; publication; equipment; treatment; disposition; violation; penalty.

To prevent the dissemination of noxious weeds through any article, including machinery, equipment, plants, materials, and other things, the director shall, from time to time, adopt and promulgate rules and regulations which shall include a list of noxious weeds which may be disseminated through articles and a list of articles capable of disseminating such weeds and shall designate in such rules and regulations treatment of such articles as, in the director's opinion, would prevent such dissemination. Until any such article is treated in accordance with the applicable rules and regulations, it shall not be moved from such premises except under and in accordance with the written permission of the control authority having jurisdiction of the area in which such article is located, and the control authority may hold or prevent its movement from such premises. The movement of any such article which has not been so decontaminated, except in accordance with such written permission, may be stopped by the control authority having jurisdiction over the place in which such movement is taking place and further movement and disposition shall only be in accordance with such control authority's direction. Any further movement of any such article not in accordance with the control authority's direction shall constitute a Class IV misdemeanor.

Source: Laws 1965, c. 7, § 6, p. 84; Laws 1987, LB 138, § 7; Laws 1989, LB 49, § 9.

2-958 Noxious weed control fund; authorized; Noxious Weed Cash Fund; created; use; investment.

(1) A noxious weed control fund may be established for each control authority, which fund shall be available for expenses authorized to be paid from such fund, including necessary expenses of the control authority in carrying out its duties and responsibilities under the Noxious Weed Control Act. The weed control superintendent within the county shall (a) ascertain and tabulate each year the approximate amount of land infested with noxious weeds and its location in the county, (b) ascertain and prepare all information required by the county board in the preparation of the county budget, including actual and expected revenue from all sources, cash balances, expenditures, amounts proposed to be expended during the year, and working capital, and (c) transmit

such information tabulated by the control authority to the county board not later than June 1 of each year.

(2) The Noxious Weed Cash Fund is created. The fund shall consist of proceeds raised from fees imposed for the registration of pesticides and earmarked for the fund pursuant to section 2-2634, funds credited or transferred pursuant to sections 81-201 and 81-201.05, any gifts, grants, or donations from any source, and any reimbursement funds for control work done pursuant to subdivision (1)(b)(vi) of section 2-954. An amount from the General Fund may be appropriated annually for the Noxious Weed Control Act. The fund shall be administered and used by the director to maintain the noxious weed control program and for expenses directly related to the program. 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 1965, c. 7, § 7, p. 84; Laws 1969, c. 13, § 5, p. 159; Laws 1969, c. 145, § 11, p. 675; Laws 1987, LB 1, § 4; Laws 1987, LB 138, § 8; Laws 1989, LB 49, § 10; Laws 1993, LB 588, § 35; Laws 1994, LB 1066, § 2; Laws 1996, LB 1114, § 11; Laws 1997, LB 269, § 1; Laws 2001, LB 541, § 1; Laws 2004, LB 869, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-958.01 Noxious Weed and Invasive Plant Species Assistance Fund; created; use; investment.

The Noxious Weed and Invasive Plant Species Assistance Fund is created. The fund may be used to carry out the purposes of section 2-958.02. The State Treasurer shall credit to the fund any money appropriated to the fund by the Legislature and any money received as gifts or grants or other private or public funds obtained for the purposes set forth in section 2-958.02. 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 2004, LB 869, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-958.02 Grant program; applications; selection; considerations; priority; section, how construed.

(1) From funds available in the Noxious Weed and Invasive Plant Species Assistance Fund, the director may administer a grant program to assist local control authorities and other weed management entities in the cost of implementing and maintaining noxious weed control programs and in addressing special weed control problems as provided in this section.

(2) The director shall receive applications by local control authorities and weed management entities for assistance under this subsection and, in consultation with the advisory committee created under section 2-965.01, award grants for any of the following eligible purposes:

(a) To conduct applied research to solve locally significant weed management problems;

(b) To demonstrate innovative control methods or land management practices which have the potential to reduce landowner costs to control noxious weeds or improve the effectiveness of noxious weed control;

(c) To encourage the formation of weed management entities;

(d) To respond to introductions or infestations of invasive plants that threaten or potentially threaten the productivity of cropland and rangeland over a wide area;

(e) To respond to introductions and infestations of invasive plant species that threaten or potentially threaten the productivity and biodiversity of wildlife and fishery habitats on public and private lands;

(f) To respond to special weed control problems involving weeds not included in the list of noxious weeds promulgated by rule and regulation of the director if the director has approved a petition to bring such weeds under the county control program;

(g) To conduct monitoring or surveillance activities to detect, map, or determine the distribution of invasive plant species and to determine susceptible locations for the introduction or spread of invasive plant species; and

(h) To conduct educational activities.

(3) The director shall select and prioritize applications for assistance under subsection (2) of this section based on the following considerations:

(a) The seriousness of the noxious weed or invasive plant problem or potential problem addressed by the project;

(b) The ability of the project to provide timely intervention to save current and future costs of control and eradication;

(c) The likelihood that the project will prevent or resolve the problem or increase knowledge about resolving similar problems in the future;

(d) The extent to which the project will leverage federal funds and other nonstate funds;

(e) The extent to which the applicant has made progress in addressing noxious weed or invasive plant problems;

(f) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds;

(g) The extent to which the project will reduce the total population or area of infestation of a noxious weed;

(h) The extent to which the project uses the principles of integrated vegetation management and sound science; and

(i) Such other factors that the director determines to be relevant.

(4) The director shall receive applications for grants under this subsection and shall award grants to recipients and programs eligible under this subsection. Priority shall be given to grant applicants whose proposed programs are consistent with the policy established in section 2-968. Beginning in fiscal year 2007-08, it is the intent of the Legislature to appropriate two million dollars annually for the management of vegetation within the banks of a natural stream or within one hundred feet of the banks of a channel of any natural stream. Such funds shall only be used to pay for activities and equipment as part of

vegetation management programs that have as their primary objective improving conveyance of streamflow in natural streams. Grants from funds appropriated as provided in this subsection shall be disbursed only to weed management entities, local weed control authorities, and natural resources districts, whose territory includes one or more fully appropriated or overappropriated river basins as designated by the Department of Natural Resources with priority for the first year given to fully appropriated river basins that are the subject of an interstate compact or decree. The Game and Parks Commission shall assist grant recipients in implementing grant projects under this subsection, and interlocal agreements under the Interlocal Cooperation Act or the Joint Public Agency Act shall be utilized whenever possible in carrying out the grant projects. This subsection terminates on June 30, 2009.

(5) Nothing in this section shall be construed to relieve control authorities of their duties and responsibilities under the Noxious Weed Control Act or the duty of a person to control the spread of noxious weeds on lands owned and controlled by him or her.

(6) The Department of Agriculture may adopt and promulgate necessary rules and regulations to carry out this section.

Source: Laws 2004, LB 869, § 5; Laws 2007, LB701, § 4.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

2-959 Control authorities; equipment and machinery; purchase; use; record.

Control authorities, independently or in combination, may purchase or provide for needed or necessary equipment for the control of weeds, whether or not declared noxious, on land under their jurisdiction and may make available the use of machinery and other equipment and operators at such cost as may be deemed sufficient to cover the actual cost of operations, including depreciation, of such machinery and equipment. All funds so received shall be deposited to the noxious weed control fund. Each control authority shall keep a record showing the procurement and rental of equipment, which record shall be open to inspection by citizens of this state.

Source: Laws 1965, c. 7, § 8, p. 85; Laws 1975, LB 14, § 7.

2-960 Charges; protest; hearing; appeal.

If any person is dissatisfied with the amount of any charge made against him or her by a control authority for control work or for the purchase of materials or use of equipment, he or she may, within fifteen days after being advised of the amount of the charge, file a protest with the county board. The county board shall hold a hearing to determine whether the charges were appropriate, taking into consideration whether the control measures were conducted in a timely fashion. Following the hearing, the county board shall have the power to adjust or affirm such charge. If any person is dissatisfied with the decision of the county board or with charges made by the county board for control work performed, such person may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1965, c. 7, § 9, p. 85; Laws 1975, LB 14, § 8; Laws 1982, LB 697, § 1; Laws 1987, LB 138, § 9; Laws 1988, LB 352, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

2-961 Entry upon land.

The director, any control authority, any weed control superintendent, or anyone authorized thereby may enter upon all land under his, her, or its respective jurisdiction for the purpose of performing the duties and exercising the powers under the rules and regulations adopted and promulgated by the director and the Noxious Weed Control Act, including the taking of specimens of weeds or other materials, without the consent of the person owning or controlling such land and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.

Source: Laws 1965, c. 7, § 10, p. 86; Laws 1987, LB 1, § 5; Laws 1987, LB 138, § 10; Laws 1989, LB 49, § 11.

2-962 Notices; how served.

All individual notices, service of which is provided for in the Noxious Weed Control Act, shall be in writing. Service of such notices shall be in the same manner as service of a summons in a civil action in the district court or by certified mail to the last-known address to be ascertained, if necessary, from the last tax list.

Source: Laws 1965, c. 7, § 11, p. 86; Laws 1987, LB 1, § 6; Laws 1987, LB 138, § 11; Laws 1989, LB 49, § 12.

2-963 Violations; penalty; county attorney; duties.

(1) Any person who intrudes upon any land under quarantine, who moves or causes to be moved any article covered by section 2-957 except as provided in such section, who prevents or threatens to prevent entry upon land as provided in section 2-961, or who interferes with the carrying out of the Noxious Weed Control Act shall be guilty of a Class IV misdemeanor in addition to any penalty imposed pursuant to section 2-955.

(2) It shall be the duty of the county attorney of the county in which any violation of section 2-955 or this section occurs, when notified of such violation by the county board or control authority, to cause appropriate proceedings to be instituted and pursued in the appropriate court without delay

Source: Laws 1965, c. 7, § 12, p. 86; Laws 1974, LB 694, § 2; Laws 1975, LB 14, § 9; Laws 1977, LB 40, § 5; Laws 1983, LB 154, § 2; Laws 1987, LB 1, § 7; Laws 1987, LB 138, § 12; Laws 1989, LB 49, § 13.

2-964 Repealed. Laws 1987, LB 138, § 14.

2-964.01 Action for failure to comply; authorized.

Any person or public agency may institute legal action for the failure to comply with the Noxious Weed Control Act.

Source: Laws 1989, LB 49, § 14.

2-965 Project of control without individual notice; control authority; powers.

A control authority may direct and carry out projects of control for one or more specific noxious weeds without individual notice as prescribed in section 2-955 if the control authority has caused publication of notices of such project as provided in this section. The notice shall be published in one or more newspapers of general circulation throughout the area over which such control authority has jurisdiction and shall be published weekly for four successive weeks prior to the project commencement date specified in the notice for the control project. Such notice shall state the noxious weed or weeds to be controlled by the project, the date the project will commence, and the approximate period of time when the project will be carried out. In no event shall a fine or lien be assessed against a landowner as prescribed in section 2-955 for a project under this section unless the control authority has caused individual notice to be served upon the landowner as specified in section 2-955.

Source: Laws 2006, LB 1226, § 1.

2-965.01 Advisory committee; membership.

The director shall convene an advisory committee to advise the director concerning his or her responsibilities under the noxious weed control program. Representatives from the Nebraska Weed Control Association, the leafy spurge task force, state or federal agencies actively concerned with the control of noxious weeds, the University of Nebraska Institute of Agriculture and Natural Resources, and cities and villages of this state, persons actively involved in agriculture, and others in the public and private sector may serve on such committee at the request of the director. If an advisory committee is convened, members shall not receive any reimbursement for expenses.

Source: Laws 1989, LB 49, § 15.

2-966 Certain noxious weed control districts; dissolution; title to real estate.

Title to any real estate standing in the name of any noxious weed control district created under sections 2-910 to 2-951, which district was dissolved by the repeal of such sections by Laws 1965, chapter 7, section 15, is hereby quieted in the county in which such real estate is located. Any such real estate shall be held by the county for the use of the control authority created pursuant to sections 2-952 to 2-963 or may be sold and the proceeds from such sale deposited to the credit of the control authority.

Source: Laws 1969, c. 3, § 1, p. 66; Laws 1975, LB 14, § 11; Laws 1987, LB 1, § 9; Laws 1987, LB 138, § 13.

2-967 Riparian Vegetation Management Task Force; created; members.

The Riparian Vegetation Management Task Force is created. The Governor shall appoint the members of the task force. The members shall include one surface water project representative from each river basin that has been determined to be fully appropriated pursuant to section 46-714 or 46-720 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one representative from the Department of Agriculture, the Department of Environmental Quality, the Department of Natural Resources, the office of the Governor, the office of the State Forester, the Game and Parks Commission, and the University of Nebraska; two representatives nominated by the Nebraska Association of Resources Districts; two representatives nominated by the Nebraska Weed Control Association; one riparian

landowner from each of the state's congressional districts; and one representative from the Nebraska Environmental Trust. In addition to such members, any member of the Legislature may serve as a member of the task force at his or her option. For administrative and budgetary purposes only, the task force shall be housed within the Department of Agriculture. This section terminates on June 30, 2009.

Source: Laws 2007, LB701, § 1.
Termination date June 30, 2009.

2-968 Riparian Vegetation Management Task Force; duties; meetings; recommendations; final report; expenses.

The Riparian Vegetation Management Task Force, in consultation with appropriate federal agencies, shall develop and prioritize vegetation management goals and objectives, analyze the cost-effectiveness of available vegetation treatment, and develop plans and policies to achieve such goals and objectives. Any plan shall utilize the principles of integrated vegetation management and sound science. The task force shall convene within thirty days after the appointment of the members is complete to elect a chairperson and conduct such other business as deemed necessary. The efforts of the task force shall be initially directed toward river basins designated by the Department of Natural Resources as fully appropriated or overappropriated. Task force meetings shall be held in communities within the Republican River and Platte River basins. The task force shall make preliminary recommendations to the Governor and the Legislature regarding funding and legislation needed to achieve its goals on or before December 15, 2007, and each year thereafter, with a final report due prior to June 30, 2009. It is the intent of the Legislature that expenses of the task force be paid from funds appropriated for Laws 2007, LB 701, and shall not exceed twenty-five thousand dollars per fiscal year. This section terminates on June 30, 2009.

Source: Laws 2007, LB701, § 2.
Termination date June 30, 2009.

ARTICLE 10

PLANT DISEASES, INSECT PESTS, AND ANIMAL PESTS

Cross References

Plant diseases, counties cooperate, see section 23-116.

(a) QUARANTINE

Section		
2-1001.	Repealed.	Laws 1988, LB 874, § 49.
2-1002.	Repealed.	Laws 1988, LB 874, § 49.
2-1003.	Repealed.	Laws 1988, LB 874, § 49.
2-1004.	Repealed.	Laws 1988, LB 874, § 49.
2-1005.	Repealed.	Laws 1988, LB 874, § 49.
2-1006.	Repealed.	Laws 1988, LB 874, § 49.
2-1007.	Repealed.	Laws 1988, LB 874, § 49.
2-1008.	Repealed.	Laws 1988, LB 874, § 49.

(b) ERADICATION AND CONTROL IN GENERAL

2-1009.	Repealed.	Laws 1988, LB 874, § 49.
2-1010.	Repealed.	Laws 1988, LB 874, § 49.
2-1011.	Repealed.	Laws 1988, LB 874, § 49.
2-1012.	Repealed.	Laws 1988, LB 874, § 49.

Section
2-1013. Repealed. Laws 1988, LB 874, § 49.
2-1014. Repealed. Laws 1988, LB 874, § 49.
2-1015. Repealed. Laws 1988, LB 874, § 49.
2-1016. Repealed. Laws 1988, LB 874, § 49.
2-1017. Repealed. Laws 1988, LB 874, § 49.
2-1018. Repealed. Laws 1979, LB 537, § 4.
2-1019. Repealed. Laws 1988, LB 874, § 49.
2-1019.01. Repealed. Laws 1988, LB 874, § 49.
2-1020. Repealed. Laws 1988, LB 874, § 49.
2-1021. Repealed. Laws 1988, LB 874, § 49.
2-1022. Repealed. Laws 1988, LB 874, § 49.
2-1023. Repealed. Laws 1988, LB 874, § 49.
2-1024. Repealed. Laws 1988, LB 874, § 49.
2-1025. Repealed. Laws 1988, LB 874, § 49.
2-1026. Repealed. Laws 1988, LB 874, § 49.
2-1027. Repealed. Laws 1988, LB 874, § 49.
2-1028. Repealed. Laws 1988, LB 874, § 49.
2-1029. Repealed. Laws 1988, LB 874, § 49.
2-1030. Repealed. Laws 1988, LB 874, § 49.
2-1031. Repealed. Laws 1988, LB 874, § 49.
2-1032. Repealed. Laws 1988, LB 874, § 49.
2-1033. Repealed. Laws 1988, LB 874, § 49.
2-1034. Repealed. Laws 1988, LB 874, § 49.
2-1035. Repealed. Laws 1988, LB 874, § 49.
2-1036. Repealed. Laws 1988, LB 874, § 49.
2-1037. Repealed. Laws 1988, LB 874, § 49.
2-1038. Repealed. Laws 1988, LB 874, § 49.

(c) ORANGE OR CEDAR RUST

2-1039. Repealed. Laws 1979, LB 537, § 4.
2-1040. Repealed. Laws 1979, LB 537, § 4.
2-1041. Repealed. Laws 1979, LB 537, § 4.
2-1042. Repealed. Laws 1979, LB 537, § 4.
2-1043. Repealed. Laws 1979, LB 537, § 4.
2-1044. Repealed. Laws 1979, LB 537, § 4.
2-1045. Repealed. Laws 1979, LB 537, § 4.

(d) STATE ENTOMOLOGIST

2-1046. Repealed. Laws 1988, LB 874, § 49.
2-1047. Repealed. Laws 1988, LB 874, § 49.

(e) EUROPEAN CORN BORER; OTHER PESTS

2-1048. Repealed. Laws 1988, LB 874, § 49.
2-1049. Repealed. Laws 1988, LB 874, § 49.
2-1050. Repealed. Laws 1988, LB 874, § 49.

(f) SUGAR BEET NEMATODE

2-1051. Repealed. Laws 1988, LB 874, § 49.
2-1052. Repealed. Laws 1988, LB 874, § 49.

(g) PEST ERADICATION DISTRICTS

2-1053. Repealed. Laws 1988, LB 874, § 49.
2-1054. Repealed. Laws 1988, LB 874, § 49.
2-1055. Repealed. Laws 1988, LB 874, § 49.
2-1056. Repealed. Laws 1988, LB 874, § 49.
2-1057. Repealed. Laws 1988, LB 874, § 49.
2-1058. Repealed. Laws 1988, LB 874, § 49.
2-1059. Repealed. Laws 1988, LB 874, § 49.

(h) BUREAU OF INVESTIGATION

2-1060. Repealed. Laws 1945, c. 3, § 3.
2-1061. Repealed. Laws 1945, c. 3, § 3.

Section

(i) PRAIRIE DOGS

(j) GRASSHOPPERS AND OTHER PESTS

(k) PLANT PROTECTION AND PLANT PEST ACT

(a) QUARANTINE

2-1001 Repealed. Laws 1988, LB 874, § 49.

2-1002 Repealed. Laws 1988, LB 874, § 49.

2-1003 Repealed. Laws 1988, LB 874, § 49.

2-1004 Repealed. Laws 1988, LB 874, § 49.

2-1005 Repealed. Laws 1988, LB 874, § 49.

2-1006 Repealed. Laws 1988, LB 874, § 49.

2-1007 Repealed. Laws 1988, LB 874, § 49.

2-1008 Repealed. Laws 1988, LB 874, § 49.

(b) ERADICATION AND CONTROL IN GENERAL

2-1009 Repealed. Laws 1988, LB 874, § 49.

2-1010 Repealed. Laws 1988, LB 874, § 49.

2-1011 Repealed. Laws 1988, LB 874, § 49.

2-1012 Repealed. Laws 1988, LB 874, § 49.

2-1013 Repealed. Laws 1988, LB 874, § 49.

2-1014 Repealed. Laws 1988, LB 874, § 49.

2-1015 Repealed. Laws 1988, LB 874, § 49.

2-1016 Repealed. Laws 1988, LB 874, § 49.

2-1017 Repealed. Laws 1988, LB 874, § 49.

2-1018 Repealed. Laws 1979, LB 537, § 4.

2-1019 Repealed. Laws 1988, LB 874, § 49.

2-1019.01 Repealed. Laws 1988, LB 874, § 49.

2-1020 Repealed. Laws 1988, LB 874, § 49.

2-1021 Repealed. Laws 1988, LB 874, § 49.

2-1022 Repealed. Laws 1988, LB 874, § 49.

2-1023 Repealed. Laws 1988, LB 874, § 49.

2-1024 Repealed. Laws 1988, LB 874, § 49.

2-1025 Repealed. Laws 1988, LB 874, § 49.

2-1026 Repealed. Laws 1988, LB 874, § 49.

2-1027 Repealed. Laws 1988, LB 874, § 49.

2-1028 Repealed. Laws 1988, LB 874, § 49.

2-1029 Repealed. Laws 1988, LB 874, § 49.

2-1030 Repealed. Laws 1988, LB 874, § 49.

2-1031 Repealed. Laws 1988, LB 874, § 49.

2-1032 Repealed. Laws 1988, LB 874, § 49.

2-1033 Repealed. Laws 1988, LB 874, § 49.

2-1034 Repealed. Laws 1988, LB 874, § 49.

2-1035 Repealed. Laws 1988, LB 874, § 49.

2-1036 Repealed. Laws 1988, LB 874, § 49.

2-1037 Repealed. Laws 1988, LB 874, § 49.

2-1038 Repealed. Laws 1988, LB 874, § 49.

(c) ORANGE OR CEDAR RUST

2-1039 Repealed. Laws 1979, LB 537, § 4.

2-1040 Repealed. Laws 1979, LB 537, § 4.

2-1041 Repealed. Laws 1979, LB 537, § 4.

2-1042 Repealed. Laws 1979, LB 537, § 4.

2-1043 Repealed. Laws 1979, LB 537, § 4.

2-1044 Repealed. Laws 1979, LB 537, § 4.

2-1045 Repealed. Laws 1979, LB 537, § 4.

(d) STATE ENTOMOLOGIST

2-1046 Repealed. Laws 1988, LB 874, § 49.

2-1047 Repealed. Laws 1988, LB 874, § 49.

(e) EUROPEAN CORN BORER; OTHER PESTS

2-1048 Repealed. Laws 1988, LB 874, § 49.

2-1049 Repealed. Laws 1988, LB 874, § 49.

2-1050 Repealed. Laws 1988, LB 874, § 49.

(f) SUGAR BEET NEMATODE

2-1051 Repealed. Laws 1988, LB 874, § 49.

2-1052 Repealed. Laws 1988, LB 874, § 49.

(g) PEST ERADICATION DISTRICTS

2-1053 Repealed. Laws 1988, LB 874, § 49.

2-1054 Repealed. Laws 1988, LB 874, § 49.

2-1055 Repealed. Laws 1988, LB 874, § 49.

2-1056 Repealed. Laws 1988, LB 874, § 49.

2-1057 Repealed. Laws 1988, LB 874, § 49.

2-1058 Repealed. Laws 1988, LB 874, § 49.

2-1059 Repealed. Laws 1988, LB 874, § 49.

(h) BUREAU OF INVESTIGATION

2-1060 Repealed. Laws 1945, c. 3, § 3.

2-1061 Repealed. Laws 1945, c. 3, § 3.

(i) PRAIRIE DOGS

2-1062 Repealed. Laws 1995, LB 87, § 1.

2-1063 Repealed. Laws 1995, LB 87, § 1.

2-1064 Repealed. Laws 1984, LB 969, § 2.

2-1065 Repealed. Laws 1984, LB 969, § 2.

(j) GRASSHOPPERS AND OTHER PESTS

2-1066 Plant diseases, insect pests; assent to resolution of Congress; county general fund available for pest control.

The State of Nebraska hereby assents to public resolution No. 91, 75th Congress, Chapter 192, 3d session, S. J. Res. 256, as approved May 9, 1938, by a joint resolution entitled Joint Resolution making funds available for the control of incipient or emergency outbreaks of insect pests or plant diseases, including grasshoppers, Mormon crickets, and chinch bugs, and the several counties of the State of Nebraska are hereby authorized and empowered to expend money from the general funds of the county for the control and eradication of insect pests and plant diseases whenever, in the judgment of the county boards, the control or eradication of such pests becomes necessary for the protection of the agricultural or horticultural crops within the county. The expenditures authorized in this section from the general funds of the several counties may be made to purchase materials or equipment, to lease buildings for storage of material and equipment, or to hire labor needed for a control program in cooperation with the Department of Agriculture of the State of Nebraska, the University of Nebraska Institute of Agriculture and Natural Resources, or the United States Department of Agriculture.

Source: Laws 1941, c. 48, § 1, p. 234; C.S.Supp.,1941, § 2-1314; R.S. 1943, § 2-1066; Laws 1991, LB 663, § 25.

2-1067 Plant diseases, insect pests; control outbreaks; cooperative agreements; authorized; appropriation.

The Department of Agriculture may enter into cooperative agreements with any state or federal agency pursuant to Senate Joint Resolution 256, 75th Congress 3rd Session (May 9, 1938), for the control of incipient or emergency outbreaks of insect pests or plant diseases whenever the Director of Agriculture determines that such control is necessary for the protection of cropland and rangeland in the State of Nebraska. Nothing in this section shall be deemed to authorize the Department of Agriculture to submit a state plan pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, as amended, to the federal Environmental Protection Agency. There are hereby authorized to be appropriated annually from the General Fund such sums as may be necessary to accomplish control activities not to exceed one-third of the cost of controlling such outbreaks.

Source: Laws 1978, LB 135, § 1.

2-1068 Grasshopper control program; authorized.

The Department of Agriculture, in participating in a cooperative federal-state-rancher rangeland grasshopper control program authorized under sections 2-1068 to 2-1070, may enter into such contracts as may be necessary to effectively accomplish the control activities including, but not necessarily limited to, contracts for the spraying of insecticides or other control measures, contracts for the purchase of needed materials and equipment, contracts for the transportation or storage of needed materials and equipment, and contracts with participating ranchers.

Source: Laws 1980, LB 918, § 1.

2-1069 Grasshopper control program; oral bidding procedures authorized.

To facilitate the ability of the Department of Agriculture to conduct a rangeland grasshopper control program with maximum effectiveness, the department shall be allowed to utilize a bidding process involving oral rather than

written bidding procedures when emergency conditions are found to exist by the department. The department shall conduct all aspects of the bidding procedures in writing when such would not hamper the effectiveness of the program. When oral bidding procedures are used or relied upon, agreements or understandings reached shall be reduced to writing as soon thereafter as possible.

Source: Laws 1980, LB 918, § 2.

2-1070 Grasshopper Control Cash Fund; created; deposits; expenditures; investment.

The Department of Agriculture is authorized to collect money paid by participating ranchers as their estimated one-third share of the cost of conducting the control program. Such money shall be credited to the Grasshopper Control Cash Fund, which fund is hereby created. Federal funds paid to the department as the federal one-third share of the cost of the program shall be deposited in a federal fund specifically established for that purpose. All money in such funds shall be expended solely for the administration of the program authorized by sections 2-1068 to 2-1070. Any money in the Grasshopper Control Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1980, LB 918, § 3; Laws 1995, LB 7, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1071 Act, how cited.

Sections 2-1066 to 2-1071, shall be known and may be cited as the Nebraska Rangeland Grasshopper Control Act.

Source: Laws 1980, LB 918, § 4.

(k) PLANT PROTECTION AND PLANT PEST ACT

2-1072 Act, how cited.

Sections 2-1072 to 2-10,117 shall be known and may be cited as the Plant Protection and Plant Pest Act.

Source: Laws 1988, LB 874, § 1; Laws 1993, LB 406, § 1.

2-1073 Public policy declaration.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by preserving and protecting the plant industry. Because of the importance of the plant industry to the welfare and economy of the state and the damage which can result from the uncontrolled proliferation of plant pests, there is a need to impose standards and restrictions on the movement and care of plants within the state. The Department of Agriculture shall be charged with administering and enforcing such standards and restrictions through the Plant Protection and Plant Pest Act.

Source: Laws 1988, LB 874, § 2.

2-1074 Definitions, where found.

For purposes of the Plant Protection and Plant Pest Act, unless the context otherwise requires, the definitions found in sections 2-1074.01 to 2-1089 shall be used.

Source: Laws 1988, LB 874, § 3; Laws 1993, LB 406, § 2.

Note: The Revisor of Statutes, as authorized by section 49-705(2)(f), has corrected an internal reference to correspond with the amendment of section 2-1074 by Laws 1993, LB 406, section 3.

2-1074.01 Biological control, defined.

Biological control shall mean:

(1) The use by humans of living organisms to control or suppress undesirable animals, plants, or microorganisms which affect plants or plant pests; or

(2) The action of parasites, predators, pathogens, or competitive organisms on a host or prey population which affect plants or plant pests to produce a lower general equilibrium than would prevail in the absence of the biological control agents.

Source: Laws 1993, LB 406, § 3.

2-1075 Biological control agent, defined.

Biological control agent shall mean a parasite, predator, pathogen, or competitive organism intentionally released by humans for the purposes of biological control with the intent of causing a reduction of a host or prey population.

Source: Laws 1988, LB 874, § 4; Laws 1993, LB 406, § 4.

2-1075.01 Broker, defined.

Broker shall mean any person who solicits or takes orders for or sells nursery stock in the state other than a grower, dealer, person employed by and while acting as an employee of a grower licensed in this state or a dealer licensed in this state, or person employed by and while acting as an employee of a person meeting the requirements of subsection (1) of section 2-10,104.

Source: Laws 1993, LB 406, § 5.

2-1076 Collector, defined.

Collector shall mean any person who only gathers wild plants for the purpose of distribution.

Source: Laws 1988, LB 874, § 5.

2-1077 Dealer, defined.

Dealer shall mean any person who does not grow nursery stock in Nebraska but is involved in:

(1) The acquisition and further distribution of nursery stock;

(2) The utilization of nursery stock for landscaping or purchase of nursery stock for other persons; or

(3) The distribution of nursery stock with a mechanical digger, commonly known as a tree spade, or by any other means.

Source: Laws 1988, LB 874, § 6.

2-1078 Department, defined.

Department shall mean the Department of Agriculture.

Source: Laws 1988, LB 874, § 7.

2-1078.01 Director, defined.

Director shall mean the Director of Agriculture or his or her designated employee, representative, or authorized agent.

Source: Laws 1993, LB 406, § 6.

2-1079 Distribute, defined.

Distribute shall mean selling, exchanging, bartering, moving, or transporting; offering to sell, exchange, barter, move, or transport; holding nursery stock for sale, exchange, or barter; acting as a broker; or otherwise supplying. Distribute shall not include moving or transporting on contiguous real estate that is owned, leased, or controlled by the same person.

Source: Laws 1988, LB 874, § 8; Laws 1993, LB 406, § 7.

2-1079.01 Distribution location, defined.

Distribution location shall mean each place nursery stock is offered for sale or sold and shall also include all locations of a vehicle from which nursery stock is offered for sale or sold directly. Distribution location shall not include each location from which an order is made by a purchaser ordering by mail, telephone, or facsimile transmission but shall include the location where such orders are received within the state.

Source: Laws 1993, LB 406, § 8.

2-1079.02 Genetically engineered plant organism, defined.

Genetically engineered plant organism shall mean an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant deoxyribonucleic acid techniques.

Source: Laws 1993, LB 406, § 9.

2-1080 Grower, defined.

Grower shall mean any person growing and distributing nursery stock or actively involved in the management or supervision of a nursery.

Source: Laws 1988, LB 874, § 9.

2-1081 Nuisance plant, defined.

Nuisance plant shall mean any plant not economically essential to the welfare of the people of Nebraska, as determined by the department, and which may serve as a favorable host of plant pests or may be detrimental to the agricultural interests of the State of Nebraska.

Source: Laws 1988, LB 874, § 10.

2-1082 Nursery, defined.

Nursery shall mean any property where nursery stock is grown, propagated, collected, or distributed and shall include, but not be limited to, private

property or any property owned, leased, or managed by any agency of the United States, the State of Nebraska or its political subdivisions, or any other state or its political subdivisions where nursery stock is fumigated, treated, packed, or stored by any person.

Source: Laws 1988, LB 874, § 11.

2-1083 Nursery stock, defined.

Nursery stock shall mean all field-grown or container-grown perennial plants, including, but not limited to, vegetative or propagative parts or perennial plants dug from the wild, so labeled, and distributed, and excluding, among other things, greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant.

Source: Laws 1988, LB 874, § 12.

2-1084 Person, defined.

Person shall mean any body politic or corporate, society, community, the public generally, any individual, partnership, limited liability company, joint-stock company, or association, or any agent of any such entity.

Source: Laws 1988, LB 874, § 13; Laws 1993, LB 121, § 62.

2-1084.01 Place of origin, defined.

Place of origin shall mean the county and state where nursery stock was most recently grown for a period of not less than one cycle of active growth.

Source: Laws 1993, LB 406, § 10.

2-1085 Plant, defined.

Plant shall mean any plant, plant product, plant part, or reproductive or propagative part of a plant, plant product, or plant part including, but not limited to, trees, shrubs, vines, forage and cereal plants, fruit, seeds, grain, wood, or lumber. This shall include all growing media, packing material, or containers associated with the plants, plant parts, or plant products named in this section.

Source: Laws 1988, LB 874, § 14.

2-1086 Plant pest, defined.

Plant pest shall mean any insect, arthropod, nematode, mollusk, fungus, bacteria, virus, mycoplasma, parasitic plant, physiological disorder, or other infectious agent which can directly or indirectly injure or cause damage or a pathological condition to plants.

Source: Laws 1988, LB 874, § 15.

2-1087 Property, defined.

Property shall mean any real estate or personal property, including any vessel, automobile, aircraft, rail car, other vehicle, machinery, building, dock, nursery, orchard, or other place where plants are grown or maintained or the contents of such place.

Source: Laws 1988, LB 874, § 16.

2-1088 Rules and regulations, defined.

Rules and regulations shall mean rules and regulations adopted and promulgated by the department pursuant to the Plant Protection and Plant Pest Act.

Source: Laws 1988, LB 874, § 17.

2-1089 Wild plants, defined.

Wild plants shall mean nursery stock from any place other than a nursery.

Source: Laws 1988, LB 874, § 18.

2-1090 State Entomologist; position created; duties.

There is hereby created in the department and under the direction of the Director of Agriculture the position of State Entomologist. Such person shall be a graduate of a recognized university with a major, or its equivalent, in entomology, plant pathology, or an equivalent biological science and have not less than two years of experience in such field and administrative work. It shall be the duty of the State Entomologist through the Plant Protection and Plant Pest Act to protect the interest of Nebraska as stated in section 2-1073, to regulate the distribution of plants, and to assist exporters of plants in meeting the requirements imposed by other states or countries.

Source: Laws 1988, LB 874, § 19.

2-1091 Enforcement of act; department; powers.

For the purpose of enforcement of the Plant Protection and Plant Pest Act or any rule or regulation, the department may:

(1) Enter and inspect at reasonable times and in a reasonable manner without being subject to any action for trespass or damages, if reasonable care is exercised, all property where plants are grown, packed, or distributed and all vehicles, equipment, packing materials, containers, records, and labels on such property. The department may inspect and examine all records and property relating to compliance with the act. Such records and property shall be made available to the department for review at all reasonable times;

(2) In a reasonable manner, hold for inspection and take samples of any plants and associated materials which may not be in compliance with the act;

(3) Inspect or reinspect at any time or place any plants that are in the state or being shipped into or through the state and treat, seize, destroy, require treatment or destruction of, or return to the state of origin any plants in order to inhibit or prevent the movement of plant pests throughout the state;

(4) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this section;

(5) Issue a written or printed withdrawal-from-distribution order and post signs to delineate sections not marked pursuant to subdivision (6) of section 2-1092 or sections of distribution locations and to notify persons of any withdrawal-from-distribution order when the department has reasonable cause to believe any lot of nursery stock is being distributed in violation of the act or any rule or regulation;

(6) Apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the

act or the rules and regulations. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond;

(7) Issue a quarantine or establish a quarantine area;

(8) Cooperate and enter into agreements with any person in order to carry out the purpose of the act;

(9) Establish a restricted plant pest list to prohibit the movement into the state of plant pests not known to occur in Nebraska and to prohibit the movement of those plant pests present in the state but known to be destructive to the plant industry;

(10) Issue phytosanitary and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country;

(11) Inspect plants that any person desires to ship into another state or country when such person has made an application to the department for such inspection. The inspection shall determine the presence of plant pests to determine the acceptance of the plants into other states or countries. The department may accept the inspections of laboratories authorized by the department or field inspectors of the department;

(12) Certify plants or property to meet the requirements of specific quarantines imposed on Nebraska or Nebraska plants. The quarantine certification requirements shall be set forth in the rules and regulations;

(13) Assess and collect charges for inspections, services, or work performed in carrying out subdivisions (10) through (12) of this section. Such charges shall not exceed the actual cost of accomplishing such work. The department may for purposes of administering subdivisions (10) through (12) of this section establish in rules and regulations such items as charges, inspection requirements, standards, and issuance, renewal, or revocation of certificates or permits necessitated by such subdivisions;

(14) Conduct continuing survey and detection programs on plant pests to monitor the population or spread of plant pests;

(15) Issue, place on probation, suspend, or revoke licenses required by the act or deny applications for such licenses pursuant to the act; and

(16) Issue orders imposing administrative fines or cease and desist orders pursuant to the act.

Source: Laws 1988, LB 874, § 20; Laws 1993, LB 406, § 11.

2-1091.01 Licenses; when required; application; contents; licensee duties; lapse of license.

(1) A person shall not operate as a grower, a dealer, or a collector without a valid license issued by the department. A person licensed as a grower shall not be required to obtain a separate dealer's license.

On or after December 31, 1993, a person shall not operate as a broker without a valid license issued by the department.

(2) Application for a license required by subsection (1) of this section shall be made to the director on forms furnished by the department. Such application shall include the full name and mailing address of the applicant, the names and

addresses of any partners, limited liability company members, or corporate officers, the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Plant Protection and Plant Pest Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location of the operation, and the signature of the applicant. A person distributing greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, sod, turf, onions, or potatoes, or seeds of any such plant, shall not be required to obtain a license but may do so pursuant to section 2-10,105.

(3) Each applicant for a license shall furnish a signed written statement that such person will acquire and distribute only nursery stock which has been distributed by a person who is duly licensed pursuant to the act or approved by an authorizing agency within the state of origin recognized by the department.

(4) Every licensee shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is obtained.

(5) Each licensee shall keep and make available for examination by the department for a period of three years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, the amount received, and the variety and place of origin of the nursery stock received. A broker's records shall also include the names of the persons to which nursery stock was delivered, the delivery date, the amount delivered, and the variety and place of origin of the nursery stock delivered.

(6) A license shall lapse automatically upon a change of ownership, and the subsequent owner must obtain a new license. The license of a grower, dealer, or collector shall lapse automatically upon a change of location, and such licensee must obtain a new license. A licensee shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. A licensee shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When a licensee permanently ceases operating, he or she shall return the license to the department.

Source: Laws 1993, LB 406, § 12; Laws 1994, LB 884, § 3.

2-1092 Grower; requirements; license; fee.

All growers in the State of Nebraska shall conform to the following requirements:

(1) Each grower shall apply for a grower's license, on forms furnished by the department, prior to March 15 for the following fiscal year. The application shall include the applicant's social security number. Each fiscal year shall begin on October 1;

(2) All grower's licenses shall expire on September 30 each year unless previously revoked;

(3) Prior to license issuance, all applicants shall submit an inspection fee, not to exceed twenty-five dollars per acre inspected, as set forth in the rules and regulations;

(4) Applications not received prior to April 15 and initial applications not received prior to beginning distribution shall be considered delinquent and

shall have an inspection fee of all actual costs assessed to the person making the application, not to exceed thirty-five dollars per acre inspected, fifty cents per mile traveled for the purpose of inspection, and twenty-five dollars per hour for travel and inspection time, as set forth in the rules and regulations;

(5) A copy of the valid grower's license shall be posted in a conspicuous place at the distribution location; and

(6) Each grower shall post sign markers which delineate sections of nursery stock. A section shall be no larger than five acres.

Source: Laws 1988, LB 874, § 21; Laws 1993, LB 406, § 13; Laws 1997, LB 752, § 50.

2-1093 Growers; nursery inspections.

All growers within the state shall have their nursery inspected by the department at least once each year for compliance with the Plant Protection and Plant Pest Act.

Source: Laws 1988, LB 874, § 22.

2-1094 Grower's license; issuance; distribution locations.

Upon inspection of a representative amount of nursery stock and the satisfaction of requirements prescribed in sections 2-1091.01 and 2-1092, the department shall issue a grower's license, with any applicable restrictions prescribed in section 2-1095, to the grower. Each grower shall be allowed one distribution location per valid grower's license. Each additional distribution location shall require a separate application, inspection, and license, as set forth in section 2-1091.01, with fees assessed as set forth in section 2-1092.

Source: Laws 1988, LB 874, § 23; Laws 1993, LB 406, § 14.

2-1095 Grower; nursery stock; distribution; restrictions; treatment or destruction of stock.

(1) Following the inspection, the department shall provide a copy of the plant inspection report to the grower specifying any area of the nursery from which nursery stock cannot be distributed or any plants which may not be distributed as nursery stock. When deemed necessary to maintain compliance with the purposes of the Plant Protection and Plant Pest Act, the department shall require the grower to withdraw from distribution any variety or amount of nursery stock. A reinspection may be conducted by the department at the grower's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use rates as outlined in subdivision (4) of section 2-1092. The grower shall comply with the recommendations of the department as to the treatment or destruction of nursery stock.

(2) The department may require the treatment or destruction of any nursery stock that is infested or infected with plant pests, nonviable, damaged, or desiccated to the point of not being reasonably capable of growth.

(3) Any nursery stock on which a withdrawal-from-distribution order has been issued shall be released for distribution only by authorized department employees or after written permission has been obtained from the department. Each grower shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements on withdrawal-

from-distribution orders. The department may withhold a grower's license until conditions have been met by the grower as specified in the plant inspection report or any other order issued by the department. A grower's license may be issued covering portions of the nursery which are not infested or infected if the grower agrees to treat, destroy, or remove as specified by the department those plants found to be infested or infected.

Source: Laws 1988, LB 874, § 24; Laws 1993, LB 406, § 15.

2-1096 Grower; nursery stock distribution; requirements.

All nursery stock distributed by any grower shall be only sound, healthy nursery stock that is reasonably capable of growth, labeled correctly, free from injurious plant pests, and stored or displayed under conditions which shall maintain its vigor as outlined in the rules and regulations.

Source: Laws 1988, LB 874, § 25.

2-1097 Dealer; requirements; license; fee.

Every dealer shall conform to the following requirements:

(1) Each dealer shall apply for a dealer's license, on forms furnished by the department, prior to December 31 for the following calendar year;

(2) A dealer's license shall expire on December 31 each year unless previously revoked;

(3) All applications shall be accompanied by a fee not to exceed one hundred dollars as set forth in the rules and regulations and, if the applicant is an individual, shall include the applicant's social security number;

(4) Applications not received prior to February 1 and initial applications not received prior to beginning distribution shall be considered delinquent and shall have an additional delinquent fee assessed of twenty percent per month of the total amount of the fee for the license, not to exceed one hundred percent;

(5) A copy of the valid dealer's license shall be posted in a conspicuous place at the distribution location; and

(6) Every dealer distributing nursery stock from more than one location shall secure a dealer's license for each distribution location.

Source: Laws 1988, LB 874, § 26; Laws 1993, LB 406, § 16; Laws 1997, LB 752, § 51.

2-1098 Nursery stock distributed by dealer; inspection.

The department may inspect nursery stock being distributed by any dealer at any time for care, viability, labeling, and the presence of plant pests.

Source: Laws 1988, LB 874, § 27.

2-1099 Dealer's license; issuance.

If the applicant satisfies the requirements of sections 2-1091.01 and 2-1097, the department shall issue a dealer's license to the applicant.

Source: Laws 1988, LB 874, § 28; Laws 1993, LB 406, § 17.

2-10,100 Dealer; nursery stock; distribution; restrictions; treatment or destruction of stock.

If upon inspection nursery stock is found to be nonviable, mislabeled, or infested or infected with plant pests, the department may specify any area of the distribution location from which nursery stock cannot be distributed or any plants at the distribution location which may not be distributed as nursery stock. The department may post signs pursuant to subdivision (5) of section 2-1091 to specify any such area. A written or printed withdrawal-from-distribution order shall be issued identifying any nursery stock which cannot be distributed. A reinspection may be conducted by the department at the dealer's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use rates as outlined in subdivision (4) of section 2-1092. The dealer shall comply with the recommendations of the department as to the treatment or destruction of nursery stock. Each dealer shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements in withdrawal-from-distribution orders. Nursery stock on which such orders are placed by the department shall be released for distribution only by authorized department employees or after written permission has been obtained from the department.

Source: Laws 1988, LB 874, § 29; Laws 1993, LB 406, § 18.

2-10,100.01 Broker; requirements; license; fee.

Every broker shall conform to the following requirements:

(1) On or before December 31, 1993, and prior to each December 31 thereafter, a broker shall apply for a broker's license for the following calendar year;

(2) A broker's license shall expire on December 31 each year unless previously revoked;

(3) All applications shall be accompanied by a fee of fifty dollars until the director determines the fee shall be increased. Such fee shall not exceed one hundred dollars. All fee changes shall be set forth in the rules and regulations adopted and promulgated by the department. If the applicant is an individual, the application shall include the applicant's social security number; and

(4) The broker's license shall be made available to the department upon request.

Source: Laws 1993, LB 406, § 19; Laws 1997, LB 752, § 52.

2-10,100.02 Broker's license; issuance.

If the applicant satisfies the requirements of sections 2-1091.01 and 2-10,100.01, the department shall issue a broker's license to the applicant.

Source: Laws 1993, LB 406, § 20.

2-10,101 Dealer or broker; nursery stock distribution; requirements.

All nursery stock distributed by any dealer or broker shall be only sound, healthy nursery stock that is reasonably capable of growth, labeled correctly, free from injurious plant pests, and stored or displayed under conditions which shall maintain its vigor as outlined in rules and regulations.

Source: Laws 1988, LB 874, § 30; Laws 1993, LB 406, § 21.

2-10,102 Collectors; grower's license required.

Collectors shall be required to obtain a grower's license and shall be subject to all the requirements that apply to the inspection of nursery stock. All collected nursery stock shall be labeled as such.

Source: Laws 1988, LB 874, § 31.

2-10,103 Licensee; duties.

A licensee shall:

(1) Comply with the Plant Protection and Plant Pest Act and the rules and regulations:

(a) In the care of nursery stock;

(b) In the distribution of nursery stock including nursery stock that has been withdrawn from distribution;

(c) Regarding treatment or destruction of nursery stock as required by a withdrawal-from-distribution order;

(d) In maintaining the nursery stock in a manner accessible to the department; and

(e) In the payment of license fees;

(2) Comply with any order of the director issued pursuant to the act;

(3) Not distribute nursery stock obtained from an unlicensed grower or dealer;

(4) Not allow the license to be used by any person other than the person to whom it was issued; and

(5) Not interfere with the department in the performance of its duties.

Source: Laws 1988, LB 874, § 32; Laws 1993, LB 406, § 22.

2-10,103.01 Licensee; disciplinary actions; procedures.

(1) A licensee may be placed on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to section 2-10,103.02 after:

(a) The director determines the licensee has not complied with section 2-10,103;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and

(c) The director finds that issuing the specified order is appropriate based on the hearing record or the available information if the hearing is waived by the licensee.

(2) A license may be suspended after:

(a) The director determines the licensee has not complied with section 2-10,103;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or the available information if the hearing is waived by the licensee.

(3) A license may be immediately suspended and the director may order the licensee's operation to cease prior to hearing when:

(a) The director determines an immediate danger to the public health, safety, or welfare exists in the licensee's operation; and

(b) The licensee receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the licensee may request in writing a date for a hearing and the director shall consider the interests of the licensee when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a licensee does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the licensee of the date and time of such hearing.

(4) A license may be revoked after:

(a) The director determines the licensee has committed serious, repeated, or multiple violations of any of the requirements of section 2-10,103;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(5) Any licensee whose license has been suspended shall cease operations until the license is reinstated. Any licensee whose license is revoked shall cease operating until a new license is issued.

(6) The director may terminate a proceeding to suspend or revoke a license or subject a licensee to an order of the director described in subsection (1) of this section at any time if the reasons for such proceeding no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a licensee may no longer be subject to the director's order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(7) Proceedings to suspend or revoke a license or subject a licensee to an order of the director described in subsection (1) of this section shall not preclude the department from pursuing other civil or criminal actions.

Source: Laws 1993, LB 406, § 23.

2-10,103.02 Administrative fine; collection; use.

(1) Pursuant to section 2-10,103.01, the director may issue an order imposing an administrative fine on a licensee in an amount which shall not exceed five hundred dollars. In determining whether to impose an administrative fine and, if a fine is imposed, the amount of the fine, the director shall take into consideration (a) the seriousness of the violation, (b) the extent to which the licensee derived financial gain as a result of his or her failure to comply, (c) the extent of intent, willfulness, or negligence by the licensee in the violation, (d) the likelihood of the violation reoccurring, (e) the history of the licensee's failure to comply, (f) the licensee's attempts to prevent or limit his or her failure to comply, (g) the licensee's willingness to correct violations, (h) the nature of the licensee's disclosure of violations, (i) the licensee's cooperation with investi-

gations of his or her failure to comply, and (j) any factors which may be established by the rules and regulations.

(2) All money collected by the department as an administrative fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund.

(3) Any administrative fine imposed under the Plant Protection and Plant Pest Act and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The lien shall attach to the real estate of the violator when notice of such lien is filed and indexed against the real estate in the office of the register of deeds or county clerk in the county where the real estate is located.

Source: Laws 1993, LB 406, § 24.

2-10,103.03 Cease and desist order; hearing.

Whenever the director has reason to believe that any person has violated any provision of the Plant Protection and Plant Pest Act or any rule or regulation, an order may be entered requiring the person to appear before the director to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. Such order shall set forth notice of such hearing. Hearings shall be conducted as provided in section 2-10,103.04. After such hearing, if the director finds such person to be in violation, he or she shall enter an order requiring the person to cease and desist from the specific act, practice, or omission which violated the act.

Source: Laws 1993, LB 406, § 25.

2-10,103.04 Notice or order; service; notice; contents; hearings; procedure; new hearing.

(1) Any notice or order provided for in the Plant Protection and Plant Pest Act shall be personally served on the licensee or on the person authorized by the licensee to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the licensee or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the licensee is charged.

(3) A notice of the licensee's right to a hearing provided for in the act shall set forth the time and place of the hearing except as otherwise provided in subsection (3) of section 2-10,103.01. A notice of the licensee's right to such hearing shall include notice that the licensee's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the licensee's right to a hearing to show cause why the license should not be revoked shall include notice to the licensee that the license may be revoked or suspended, that the licensee may be subject to an order of the director described in subsection (1) of section 2-10,103.01, or that the license may be suspended and the licensee subject to such an order if the director determines such action is more appropriate. A notice of the licensee's right to a hearing to show cause why the license should not be suspended shall include notice to the licensee that the

license may be suspended or that the licensee may be subject to an order of the director described in subsection (1) of section 2-10,103.01 if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A licensee shall be deemed to waive the right to a hearing if such licensee does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the licensee shows the director that the licensee had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the licensee waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

Source: Laws 1993, LB 406, § 26.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,104 Foreign distributor; reciprocity; department; reciprocal agreements.

(1) Any person residing outside the state and desiring to solicit orders or distribute nursery stock in Nebraska may do so if:

(a) Such person is duly licensed under the nursery laws of the state where the nursery stock originates and the laws of that state are essentially equivalent to the laws of Nebraska as determined by the department; and

(b) Such person complies with the Plant Protection and Plant Pest Act and the rules and regulations on all nursery stock distributed in Nebraska.

(2) The department may cooperate with and enter into reciprocal agreements with other states regarding licensing and movement of nursery stock. Reciprocal agreements with other states shall not prevent the department from prohibiting the distribution in Nebraska of nursery stock which fails to meet the minimum criteria for nursery stock of Nebraska-licensed growers, dealers, or both.

Source: Laws 1988, LB 874, § 33.

2-10,105 Optional inspections; grower's license; optional issuance.

(1) Optional inspections of plants may be conducted by the department upon request by any persons desiring such inspection. A fee as set forth in subdivision (4) of section 2-1092 shall be charged for such an inspection.

(2) Any person who desires a grower's license for any greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, may apply for such license to the department. The inspection of such plants shall conform to the same requirements that apply to the inspection of nursery stock as set forth in sections 2-1091.01 to 2-1096. For persons who grow or distribute both nursery stock and greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, one license shall be issued if the annual inspection of such plants is conducted concurrently with the nursery stock inspection and the other requirements of the Plant Protection and Plant Pest Act are met. If a reinspection trip is required, the applicant shall be assessed a reinspection fee as outlined in subdivision (4) of section 2-1092.

Source: Laws 1988, LB 874, § 34; Laws 1993, LB 406, § 27.

2-10,106 Importation and distribution; labeling requirements; exception; department; powers.

(1) It shall be unlawful for any person, including any carrier transporting nursery stock, to bring into or cause to be brought into Nebraska any nursery stock unless such shipment is plainly and legibly marked with a label showing the name and address of the consignor and consignee, the nature and quantity of the contents, the place of origin, and the license or its equivalent issued by the recognized authorizing agency stating that the nursery from which the nursery stock originates has been inspected.

(2) It shall be unlawful for any person to distribute in Nebraska nursery stock for the purpose of resale in Nebraska without meeting the labeling criteria stated in this section.

(3) The requirements of this section shall not apply to nursery stock distributed to the final consumer at a distribution location where a valid grower's or dealer's license has been conspicuously posted.

(4) The department may cause to be held for inspection any plants, regardless of proper labeling according to the Plant Protection and Plant Pest Act, if there is reason to believe they are infested or infected with plant pests. Such plants shall be held only for a period of time reasonable for proper inspection and any treatment deemed necessary by the department. The department shall not be held responsible for costs incurred by treatment or delay.

(5) In carrying out this section, the department may intercept or detain any person or property including vehicles or vessels reasonably believed to be carrying any plants or any other articles capable of carrying plant pests. The department may hold for treatment, destroy, or otherwise dispose of any plants, if found infested or infected with plant pests, at the owner's cost.

Source: Laws 1988, LB 874, § 35.

2-10,107 Nuisance plants; department; powers.

Any person owning or controlling property shall keep such property free from all species of plants declared by the department to be nuisance plants. If

the department determines that any species or variety of plant is a nuisance plant and that such plant should be eradicated in order to safeguard the agricultural interests of the state, the department shall give public notice of proposed eradication by publication in one or more newspapers of general circulation throughout the area over which such nuisance plant exists, designating the species or variety in question, the proposed eradication area, and the reasons for the eradication. Such notice shall designate a place and time for a public hearing at which all interested parties may be heard. After such hearing has been held, the department may cause to be served by first-class mail individual notices upon the owner of record of such land at that person's last-known address stating (1) that the species or variety of plant is a nuisance plant and (2) that the department is authorized to destroy or order the destruction of such plant. It shall be the duty of every person affected by the notice to use measures of arrest and control required of such person by the instructions of the department.

Source: Laws 1988, LB 874, § 36.

2-10,108 Plant pests; department; powers.

(1) Whenever the department finds that there exists, in any other state, territory, country, or part thereof, any plant pests detrimental to the agricultural interests of the state and that the control, eradication, retarding, or prevention of such pests is necessary to protect the plant industry of the state, the department may impose and enforce a quarantine prohibiting the transportation into, within, or through Nebraska of such pests. Quarantine enforcement shall apply to any plants or any other property capable of carrying such plant pests regardless of whether the plants are distributed by a person holding a valid license or its equivalent issued by an authorizing agency within the state of origin recognized by the department. Nursery stock and all other plants shall be subject to any quarantine measures deemed necessary by the department.

(2) When it has been determined that an area of the state is infected or infested with plant pests which may be detrimental to the agricultural interests of the state, such area may be quarantined by the department. Under such quarantine the department may restrict or prevent the movement or transportation of any plants or any other property capable of carrying such plant pests originating in or having been maintained in any area infested or infected with such plant pests. Public notice of any quarantine shall be given by the department by publication in one or more newspapers in circulation within the area of the state affected by such order.

(3) Any plants or other property moved or transported in violation of a quarantine imposed pursuant to this section may be seized, treated, destroyed, or returned to the state of origin without compensation by the department.

Source: Laws 1988, LB 874, § 37.

2-10,109 Withdrawal-from-distribution order; issuance.

If the department finds that plants are distributed in violation of the Plant Protection and Plant Pest Act, the department may issue a written or printed withdrawal-from-distribution order to the person in charge of such plants for the protection of the public health, safety, or welfare and may enforce such order. Such an order shall specify the nature of each violation and the precise action required to bring the plants into compliance with the applicable provi-

sions of the act. Such an order shall advise the person that he or she may request an immediate hearing before the department on the specified violation.

The department may issue a withdrawal-from-distribution order on plants that are perishable, even if the result of such order will bring about the involuntary disposal of such items, when, in the opinion of the person issuing such order, no alternative course of action would sufficiently protect the public health, safety, or welfare under the circumstances.

Source: Laws 1988, LB 874, § 38.

2-10,110 Implementation or enforcement agreements authorized.

The department may cooperate and enter into agreements with the United States Department of Agriculture or any other federal or state agency in the implementation or enforcement of the Plant Protection and Plant Pest Act and the 1944 Organic Act of Congress, as amended, on October 1, 1988.

Source: Laws 1988, LB 874, § 39.

2-10,111 Costs; owner's liability; when.

All costs associated with a withdrawal-from-distribution order or the quarantine, treatment, or destruction of plants shall be incurred by the owner of such plants. The department shall not be liable for any actual or incidental costs incurred by any person due to such departmental actions. The department shall be reimbursed by the owner of such plants for the actual expenses incurred by it in carrying out a withdrawal-from-distribution order or the quarantine, treatment, or destruction of any plants.

Source: Laws 1988, LB 874, § 40.

2-10,112 Excess fees; disposition.

If the department determines that any fee has been erroneously collected or computed, the department shall credit the excess amount collected or paid to any fees then due and owing from the person under the Plant Protection and Plant Pest Act. Any remaining balance may be refunded to the person by whom it was paid.

Source: Laws 1988, LB 874, § 41.

2-10,113 Foreign nursery stock; foreign soil or plant pests for research or educational purposes; biological control agent or genetically engineered plant organism; permit requirements; trade secrets; confidentiality.

(1) Any person receiving any shipment of nursery stock from any foreign country that has not been inspected and released by the United States Department of Agriculture at the port of entry shall notify the department of the arrival of such shipment, its contents, and the name of the consignor. Such person shall hold the shipment unopened until inspected or released by the department.

(2) No person shall import or cause to be brought into Nebraska any soils or plant pests or distribute within the state any nonindigenous plant pests to be used in the open environment for research purposes or other educational uses without permission from the department.

(3) No person shall import or cause to be brought into Nebraska or distribute within the state any nonindigenous biological control agent or genetically engineered plant organism to be used in the open environment without a permit as set forth in rules and regulations. Such rules and regulations may provide for reasonable exemptions from permit requirements. A permit shall not be required under this section if a permit has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., or any regulations adopted and promulgated pursuant to such act.

An application for a permit shall include information regarding where the biological control agent or genetically engineered plant organism will be released and any other information required by the department. An application for a permit to import or distribute an arthropod to be used as a biological control agent shall be accompanied by a voucher specimen. Permits may be issued only after the department determines that the proposed shipment or use will not create sufficient hazard to warrant the refusal of a permit. Sufficient hazard shall include, but not be limited to, a substantial hazard to the environment or to plant or animal life not intended to be affected by the agent or organism. The department may rely upon the findings of interested federal agencies or any experts that the department may deem appropriate in making a determination about the threat posed by such agents or organisms. The department may also request confidential business information.

(4) An applicant submitting information required by this section may mark clearly portions of data which in his or her opinion are trade secrets and submit the marked material separately from other material required to be submitted under this section. The department shall keep such material confidential and in a manner that makes it not accessible to anyone who does not need to have access to it in order to adequately protect the public health, safety, or welfare.

Source: Laws 1988, LB 874, § 42; Laws 1993, LB 406, § 28.

2-10,114 Agents or employees; liability of principal.

In construing and enforcing the Plant Protection and Plant Pest Act, omission or failure of any individual acting for or employed by any other person or other principal within the scope of his or her employment or office shall in every case be deemed the act, omission, or failure of such person or other principal as well as that of the individual.

Source: Laws 1988, LB 874, § 43.

2-10,115 Violations; penalties; appeal of department order; procedure.

(1) Any person shall be guilty of a Class IV misdemeanor for the first violation and a Class II misdemeanor for any subsequent violation of the same nature if that person:

(a) Distributes nursery stock and has not been duly licensed under the Plant Protection and Plant Pest Act;

(b) Receives nursery stock for further distribution from any person who has not been duly licensed or approved under the act;

(c) Uses any license issued by the department after it has been revoked or has expired, while the licensee was under suspension, or for purposes other than those authorized by the act;

(d) Offers any hindrance or resistance to the department in the carrying out of the act, including, but not limited to, denying or concealing information or denying access to any property relevant to the proper enforcement of the act;

(e) Allows any plant declared a nuisance plant as outlined in section 2-10,107 to exist on such person's property or distributes any such plants or materials capable of harboring plant pests;

(f) Acts as a grower, dealer, or broker and:

(i) Fails to comply with provisions for treatment or destruction of nursery stock as required by withdrawal-from-distribution orders;

(ii) Distributes any quarantined nursery stock or nursery stock for which a withdrawal-from-distribution order has been issued;

(iii) Distributes nursery stock for the purpose of further distribution to any person in Nebraska not licensed as a grower or dealer; or

(iv) Fails to pay all fees required by the act and the rules and regulations;

(g) Distributes nursery stock which is not sound, healthy, reasonably capable of growth, labeled correctly, and free from injurious plant pests;

(h) Distributes plants which have been quarantined or are in a quarantined area;

(i) Violates any item set forth as unlawful in section 2-10,106;

(j) Distributes biological control agents or genetically engineered plant organisms without a permit if a permit is required by the act;

(k) Fails to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act;

(l) Violates any order of the director after such order has become final or upon termination of any review proceeding when the order has been sustained by a court of law; or

(m) Violates any other provision of the Plant Protection and Plant Pest Act.

(2) Any lot or shipment of plants not in compliance with the Plant Protection and Plant Pest Act, the rules and regulations, or both shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which such plants are located. If the court finds the plants to be in violation of the act, the rules and regulations, or both and orders the condemnation of the plants, such plants shall be disposed of in any manner deemed necessary by the department. In no instance shall the disposition of the plants be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such plants or for permission to treat or relabel the plants to bring such plants into compliance with the act, the rules and regulations, or both.

(3) It shall be the duty of the Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of a violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, subdivision (6) of section 2-1091, or subsection (3) of section 2-10,103.02 or any combination thereof.

(4) Any person adversely affected by an order made by the department pursuant to the Plant Protection and Plant Pest Act may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1988, LB 874, § 44; Laws 1993, LB 406, § 29.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,115.01 Political subdivision; ordinance or resolution; restrictions.

A political subdivision shall not enact an ordinance or resolution which is in conflict with the Plant Protection and Plant Pest Act.

Source: Laws 1993, LB 406, § 30.

2-10,116 Rules and regulations.

The department shall have authority to adopt and promulgate such rules and regulations as are necessary to the effective discharge of its duties under the Plant Protection and Plant Pest Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The issuance and revocation of licenses as authorized by the Plant Protection and Plant Pest Act;

(2) The assessment and collection of license, inspection, reinspection, and delinquent fees;

(3) The withdrawal from distribution of nursery stock;

(4) The care, viability, and standards for nursery stock;

(5) The labeling and shipment of nursery stock;

(6) The issuance and release of plant pest quarantines and withdrawal-from-distribution orders;

(7) The establishment of a restricted plant pest list;

(8) The preparation, maintenance, handling, and filing of reports by persons subject to the act;

(9) The adoption of the American Association of Nurserymen's American Standard for Nursery Stock insofar as it does not conflict with any provision of the act; and

(10) Factors to be considered when the director issues an order imposing an administrative fine.

Source: Laws 1988, LB 874, § 45; Laws 1993, LB 406, § 31.

2-10,116.01 Fees; when due; penalty fees.

All inspection fees, reinspection fees, and delinquent fees shall be due and payable upon the department's notification of the licensee of the amount of such fees due. The department may impose additional penalty fees after the fees are more than one month late. The penalty fees shall not exceed twenty percent of the fees due for each month such fees are late.

Source: Laws 1993, LB 406, § 32.

2-10,117 Plant Protection and Plant Pest Cash Fund; created; use; investment.

All money received from any source pursuant to the Plant Protection and Plant Pest Act shall be remitted by the department to the State Treasurer and by the State Treasurer credited to the Plant Protection and Plant Pest Cash Fund which is hereby created. The fund also shall include funds transferred pursuant to section 81-201.05. The fund shall be used by the department to aid in

defraying the expenses of administering the act. 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 1988, LB 874, § 46; Laws 1993, LB 406, § 33; Laws 1994, LB 1066, § 3; Laws 2004, LB 869, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 11
AGRICULTURAL COMMODITY STAMP PLANS

Section
2-1101. Repealed. Laws 1947, c. 179, § 1.
2-1102. Repealed. Laws 1947, c. 179, § 1.
2-1103. Repealed. Laws 1947, c. 179, § 1.
2-1104. Repealed. Laws 1947, c. 179, § 1.
2-1105. Repealed. Laws 1947, c. 179, § 1.
2-1106. Repealed. Laws 1947, c. 179, § 1.
2-1107. Repealed. Laws 1947, c. 179, § 1.
2-1108. Repealed. Laws 1947, c. 179, § 1.
2-1109. Repealed. Laws 1947, c. 179, § 1.
2-1110. Repealed. Laws 1947, c. 179, § 1.
2-1111. Repealed. Laws 1947, c. 179, § 1.

2-1101 Repealed. Laws 1947, c. 179, § 1.

2-1102 Repealed. Laws 1947, c. 179, § 1.

2-1103 Repealed. Laws 1947, c. 179, § 1.

2-1104 Repealed. Laws 1947, c. 179, § 1.

2-1105 Repealed. Laws 1947, c. 179, § 1.

2-1106 Repealed. Laws 1947, c. 179, § 1.

2-1107 Repealed. Laws 1947, c. 179, § 1.

2-1108 Repealed. Laws 1947, c. 179, § 1.

2-1109 Repealed. Laws 1947, c. 179, § 1.

2-1110 Repealed. Laws 1947, c. 179, § 1.

2-1111 Repealed. Laws 1947, c. 179, § 1.

ARTICLE 12
HORSERACING

Cross References

County Horseracing Facility Bond Act, see sections 23-389 to 23-392.

Section
2-1201. State Racing Commission; creation; members; terms; qualifications; bond or insurance.

Section

Section
2-1239. Licensed racetrack; telephonic wagering system; requirements.
2-1240. Telephone deposit centers; telephonic wager; limitations; violation; penalty.
2-1241. Licensed racetrack; telephonic wagering on simulcast; authorized.
2-1242. Telephonic wager; payment to Department of Revenue.
2-1243. Horseracing industry participants; legislative findings.
2-1244. Horseracing industry participant, defined.
2-1245. Horseracing industry participants; rights.
2-1246. Rules and regulations; sections; how construed.
2-1247. Interstate Compact on Licensure of Participants in Horse Racing with Pari-Mutuel Wagering.

2-1201 State Racing Commission; creation; members; terms; qualifications; bond or insurance.

There hereby is created a State Racing Commission consisting of three members who shall be appointed by the Governor and subject to confirmation by a majority of the members elected to the Legislature and may be for cause removed by the Governor. One member shall be appointed each year for a term of three years. The members shall serve until their successors are appointed and qualified. Not more than two members of the commission shall belong to the same political party; no two of the members shall reside, when appointed, in the same congressional district; and no two of the members shall reside in any one county. Any vacancy shall be filled by appointment by the Governor for the unexpired term. The members shall serve without compensation, but shall be reimbursed for their actual expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177 for state employees. The members of the commission shall be bonded or insured as required by section 11-201.

Source: Laws 1935, c. 173, § 1, p. 629; C.S.Supp.,1941, § 2-1501; R.S.1943, § 2-1201; Laws 1978, LB 653, § 1; Laws 1981, LB 204, § 4; Laws 2004, LB 884, § 1; Laws 2006, LB 1111, § 1.

2-1201.01 Commission; purposes.

The purpose of the State Racing Commission is to provide statewide regulation of horseracing in order to prevent and eliminate corrupt practices and fraudulent behavior, and thereby maintain a high level of integrity and honesty in the horseracing industry of Nebraska and to insure that all funds received by the commission are properly distributed.

Source: Laws 1980, LB 939, § 1.

2-1202 Commission; chairman; secretary; compensation; duties; bond.

The commission shall elect one of its members to be chairman thereof, and it shall be authorized to employ a secretary and such other assistants and employees as may be necessary to carry out the purposes of sections 2-1201 to 2-1218. Such secretary shall have no other official duties. The secretary shall keep a record of the proceedings of the commission, preserve the books, records and documents entrusted to his care, and perform such other duties as the commission shall prescribe; and the commission shall require the secretary to give bond in such sum as it may fix, conditioned for the faithful performance of his duties. The commission shall be authorized to fix the compensation of its secretary, and also the compensation of its other employees, subject to the

approval of the Governor. The commission shall have an office at such place within the state as it may determine, and shall meet at such times and places as it shall find necessary and convenient for the discharge of its duties.

Source: Laws 1935, c. 173, § 2, p. 630; C.S.Supp.,1941, § 2-1502; R.S.1943, § 2-1202; Laws 1967, c. 4, § 1, p. 72.

Secretary of Racing Commission is an employee thereof and is subject to such duties as commission may prescribe. Neff v. Boomer, 149 Neb. 361, 31 N.W.2d 222 (1948).

2-1202.01 Repealed. Laws 1971, LB 33, § 1.

2-1203 Commission; powers; fines; board of stewards; powers; appeal; fine.

The State Racing Commission shall have power to prescribe and enforce rules and regulations governing horseraces and race meetings licensed as provided in sections 2-1201 to 2-1242. Such rules and regulations shall contain criteria to be used by the commission for decisions on approving and revoking track licenses and licenses for teleracing facilities and telephonic wagering and setting racing dates.

The commission may revoke or suspend licenses issued to racing industry participants and may, in lieu of or in addition to such suspension or revocation, impose a fine in an amount not to exceed five thousand dollars upon a finding that a rule or regulation has been violated by a licensed racing industry participant. The exact amount of the fine shall be proportional to the seriousness of the violation and the extent to which the licensee derived financial gain as a result of the violation.

The commission may delegate to a board of stewards such of the commission's powers and duties as may be necessary to carry out and effectuate the purposes of sections 2-1201 to 2-1242.

Any decision or action of such board of stewards may be appealed to the commission or may be reviewed by the commission on its own initiative. The board of stewards may impose a fine not to exceed fifteen hundred dollars upon a finding that a rule or regulation has been violated.

The commission shall remit administrative fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1935, c. 173, § 3, p. 630; C.S.Supp.,1941, § 2-1503; R.S.1943, § 2-1203; Laws 1975, LB 582, § 1; Laws 1980, LB 939, § 3; Laws 1991, LB 200, § 1; Laws 1992, LB 718, § 1; Laws 1994, LB 1153, § 1; Laws 2001, LB 295, § 2; Laws 2003, LB 243, § 1; Laws 2005, LB 573, § 1.

2-1203.01 State Racing Commission; duties.

The State Racing Commission shall:

(1) Enforce all state laws covering horseracing as required by sections 2-1201 to 2-1242 and enforce rules and regulations adopted and promulgated by the commission under the authority of section 2-1203;

(2) License racing industry participants, race officials, mutuel employees, teleracing facility employees, telephone deposit center employees, concessionaires, and such other persons as deemed necessary by the commission and

approve and license teleracing facilities and telephonic wagering if the license applicants meet eligibility standards established by the commission;

(3) Prescribe and enforce security provisions, including, but not limited to, the restricted access to areas within track enclosures, backstretch areas, and teleracing facilities, and prohibitions against misconduct or corrupt practices;

(4) Determine or cause to be determined by chemical testing and analysis of body fluids whether or not any prohibited substance has been administered to the winning horse of each race and any other horse selected by the board of stewards;

(5) Verify the certification of horses registered as being Nebraska-bred under section 2-1213; and

(6) Collect and verify the amount of revenue received by the commission under section 2-1208.

Source: Laws 1980, LB 939, § 2; Laws 1989, LB 591, § 1; Laws 1992, LB 718, § 2.

2-1203.02 Licensees, administrators, and managers; application; fingerprinting and criminal history record check; costs.

(1) Any person applying for or holding a license to participate in or be employed at a horserace meeting licensed by the State Racing Commission shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation for the purpose of determining whether the commission has a basis to deny the license application or to suspend, cancel, or revoke the person's license, except that the commission shall not require a person to be fingerprinted if such person has been previously fingerprinted in connection with a license application in this state or any other state within the last five years prior to the application for such license. Any person involved in the administration or management of a racetrack, including the governing body, shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation. The applicant, licensee, or person involved in the administration or management of a racetrack shall pay the actual cost of any fingerprinting or check of his or her criminal history record information. The requirements of this subsection shall not apply to employees of concessions who do not work in restricted-access areas, admissions employees whose duties involve only admissions ticket sales and verification or parking receipts sales and verification, and medical or emergency services personnel authorized to provide such services at the racetrack.

(2) If the applicant is an individual who is applying for a license to participate in or be employed at a horserace meeting, the application shall include the applicant's social security number.

Source: Laws 1991, LB 200, § 2; Laws 1994, LB 1153, § 2; Laws 1997, LB 752, § 53.

2-1204 Horseracing; licenses; applications.

The Nebraska State Fair Board, a county fair board, a county agricultural society for the improvement of agriculture organized under the County Agricultural Society Act, or a corporation or association of persons organized and

carried on for civic purposes or which conducts a livestock exposition for the promotion of the livestock or horse-breeding industries of the state and which does not permit its members to derive personal profit from its activities by way of dividends or otherwise may apply to the State Racing Commission for a license to conduct horseracing at a designated place within the state. Such application shall be filed with the secretary of the commission at least sixty days before the first day of the horserace meeting which such corporation or association proposes to hold or conduct, shall specify the day or days when and the exact location where it is proposed to conduct such racing, and shall be in such form and contain such information as the commission shall prescribe.

Source: Laws 1935, c. 173, § 4, p. 630; C.S.Supp.,1941, § 2-1504; R.S.1943, § 2-1204; Laws 1997, LB 469, § 31; Laws 2002, LB 1236, § 12.

Cross References

County Agricultural Society Act, see section 2-250.

2-1205 License; terms and conditions; revocation.

If the commission is satisfied that its rules and regulations and all provisions of sections 2-1201 to 2-1218 have been and will be complied with, it may issue a license for a period of not more than one year. The license shall set forth the name of the licensee, the place where the races or race meetings are to be held, and the time and number of days during which racing may be conducted by such licensee. Any such license issued shall not be transferable or assignable. The commission shall have the power to revoke any license issued at any time for good cause upon reasonable notice and hearing. No license shall be granted to any corporation or association except upon the express condition that it shall not, by any lease, contract, understanding, or arrangement of whatever kind or nature, grant, assign, or turn over to any person, corporation, or association the operation or management of any racing or race meeting licensed under such sections or of the parimutuel system of wagering described in section 2-1207 or in any manner permit any person, corporation, or association other than the licensee to have any share, percentage, or proportion of the money received for admissions to the racing or race meeting or from the operation of the parimutuel system; and any violation of such conditions shall authorize and require the commission immediately to revoke such license.

Source: Laws 1935, c. 173, § 5, p. 631; C.S.Supp.,1941, § 2-1505; R.S.1943, § 2-1205; Laws 1975, LB 599, § 1; Laws 1986, LB 1041, § 3.

Because a relicensure decision would involve a consideration of any rule violations by an equine veterinarian during prior periods of licensure, it is reasonable and consistent with the State Racing Commission's statutory purpose to promptly investigate and resolve alleged rule violations committed during a period of licensure, even if the process of doing so extends into a period when the subject is not licensed. Brunk v. Nebraska State Racing Comm., 270 Neb. 186, 700 N.W.2d 594 (2005).

Because relicensure of an equine veterinarian involves a consideration of prior rule violations, the State Racing Commission has authority to determine that a person who has violated its rules will not be eligible for relicensure for a specified period. Brunk v. Nebraska State Racing Comm., 270 Neb. 186, 700 N.W.2d 594 (2005).

2-1206 Licensee; bond.

Every corporation or association licensed under sections 2-1201 to 2-1218 shall, before said license is issued, give a bond to the State of Nebraska in such reasonable sum as the commission shall fix, with a surety or sureties to be approved by the commission, conditioned to faithfully make the payments

prescribed by said sections, to keep its books and records and make reports as herein provided, and to conduct its racing in conformity with the provisions of said sections and the rules and regulations prescribed by the commission.

Source: Laws 1935, c. 173, § 6, p. 631; C.S.Supp.,1941, § 2-1506.

2-1207 Horseracing; parimutuel wagering; how conducted; certificate, contents; deductions; licensee; duties; person under nineteen years of age prohibited; penalty.

(1) Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. Wagers placed through licensed teleracing facilities or by approved telephonic wagering as authorized by sections 2-1230 to 2-1242 shall be deemed to be wagers placed and accepted within the enclosure of any racetrack. Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting or placed through a licensed teleracing facility or by approved telephonic wagering by any person who may legally wager on any horse in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. Such licensee shall issue to each person so wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner. As each race is run, at the option of the licensee, the licensee may deduct from the total sum wagered on all horses as first winners not less than fifteen percent or more than eighteen percent from such total sum, plus the odd cents of the redistribution over the next lower multiple of ten. At the option of the licensee, the licensee may deduct up to and including twenty-five percent from the total sum wagered by exotic wagers as defined in section 2-1208.03. The State Racing Commission may authorize other levels of deduction on wagers conducted by means of interstate simulcasting. The licensee shall notify the commission in writing of the percentages the licensee intends to deduct during the live race meet conducted by the licensee and shall notify the commission at least one week in advance of any changes to such percentages the licensee intends to make. The licensee shall also deduct from the total sum wagered by exotic wagers, if any, the tax plus the odd cents of the redistribution over the next multiple of ten as provided in subsection (1) of section 2-1208.04. The balance remaining on hand shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses in such race to run first. The licensee may likewise receive such wagers on horses selected to run second, third, or both, or in such combinations as the commission may authorize, the method, procedure, and authority and right of the licensee, as well as the deduction allowed to the licensee, to be as specified with respect to wagers upon horses selected to run first.

(2) At all race meets held pursuant to this section, the licensee shall deduct from the total sum wagered one-third of the amount over fifteen percent deducted pursuant to subsection (1) of this section on wagers on horses selected

to run first, second, or third and one percent of all exotic wagers to be used to promote agriculture and horse breeding in Nebraska and for the support and preservation of horseracing pursuant to section 2-1207.01.

(3) No person under nineteen years of age shall be permitted to make any parimutuel wager, and there shall be no wagering except under the parimutuel method outlined in this section. Any person, association, or corporation who knowingly aids or abets a person under nineteen years of age in making a parimutuel wager shall be guilty of a Class IV misdemeanor.

Source: Laws 1935, c. 173, § 7, p. 631; C.S.Supp.,1941, § 2-1507; R.S.1943, § 2-1207; Laws 1959, c. 5, § 1, p. 71; Laws 1963, c. 6, § 1, p. 66; Laws 1965, c. 9, § 1, p. 123; Laws 1973, LB 76, § 1; Laws 1976, LB 519, § 5; Laws 1977, LB 40, § 12; Laws 1982, LB 631, § 1; Laws 1983, LB 365, § 1; Laws 1986, LB 1041, § 4; Laws 1987, LB 708, § 5; Laws 1989, LB 591, § 2; Laws 1990, LB 1055, § 1; Laws 1992, LB 718, § 3; Laws 1993, LB 471, § 1; Laws 1994, LB 1153, § 3; Laws 2005, LB 573, § 2.

This section only permits a definite form of gambling, known as parimutuel horserace betting, conducted in strict accordance with conditions and limitations set out in act of which this section is a part, and does not throw down the bars to permit gambling generally in connection with horseraces of any kind, wherever held. State ex rel. Hunter v. The Araho, 137 Neb. 389, 289 N.W. 545 (1940).

2-1207.01 Deduction from wagers; distribution; costs.

The amount deducted from wagers pursuant to subsection (2) of section 2-1207 may be used to promote agriculture and horsebreeding in Nebraska and shall be distributed as purse supplements and breeder and stallion awards for Nebraska-bred horses, as defined and registered pursuant to section 2-1213, at the racetrack where the funds were generated, except that if a racetrack does not continue to conduct live race meets, amounts deducted may be distributed as purse supplements and breeder and stallion awards at racetracks that conduct live race meets and amounts deducted pursuant to a contract with the organization representing the majority of the licensed owners and trainers at the racetrack's most recent live race meet shall be used by that organization to promote live thoroughbred horseracing in the state or as purse supplements at racetracks that conduct live race meets in the state. Any costs incurred by the State Racing Commission pursuant to this section and subsection (2) of section 2-1207 shall be separately accounted for and be deducted from such funds.

Source: Laws 1983, LB 365, § 2; Laws 1994, LB 1354, § 1; Laws 1996, LB 1255, § 1.

2-1208 Race meetings; tax; fees.

For all race meetings, every corporation or association licensed under the provisions of sections 2-1201 to 2-1218 shall pay the tax imposed by section 2-1208.01 and shall also pay to the State Racing Commission the sum of sixty-four one hundredths of one percent of the gross sum wagered by the parimutuel method at each licensed racetrack enclosure during the calendar year. For race meetings devoted principally to running live races, the licensee shall pay to the commission the sum of fifty dollars for each live racing day that the licensee serves as the host track for intrastate simulcasting and twenty-five dollars for any other live racing day.

No other license tax, permit tax, occupation tax, or excise tax or racing fee, except as provided in this section and in sections 2-1203, 2-1208.01, and 2-1242, shall be levied, assessed, or collected from any such licensee by the state or by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect any such tax or fee.

Source: Laws 1935, c. 173, § 8, p. 632; C.S.Supp.,1941, § 2-1508; R.S.1943, § 2-1208; Laws 1959, c. 5, § 2, p. 72; Laws 1980, LB 939, § 4; Laws 1992, LB 718, § 4; Laws 1994, LB 1153, § 4; Laws 1999, LB 127, § 1; Laws 2005, LB 573, § 3.

This section imposes a tax directly upon the licensee racetrack. Section 77-2701 et seq. impose a sales tax upon the purchaser. Thus, section 77-2701 does not conflict with the provisions of this section which prohibit any additional taxes from being imposed upon the licensee. Governors of Ak-Sar-Ben v. Department of Rev., 217 Neb. 518, 349 N.W.2d 385 (1984).

2-1208.01 Parimutuel wagering; tax; rates; return.

There is hereby imposed a tax on the gross sum wagered by the parimutuel method at each race enclosure during a calendar year as follows:

(1) For meets conducted on the Nebraska State Fairgrounds, no tax shall be imposed, but the licensee shall apply two percent of any amount in excess of ten million dollars for the purpose of maintenance of buildings, streets, utilities, and other existing improvements on the Nebraska State Fairgrounds; and

(2) For all other meets:

(a) The first ten million dollars shall not be taxed;

(b) Any amount over ten million dollars but less than or equal to seventy-three million dollars shall be taxed at the rate of two and one-half percent;

(c) Any amount in excess of seventy-three million dollars shall be taxed at the rate of four percent; and

(d) An amount equal to two percent of the first taxable seventy million dollars at each race meeting shall be retained by the licensee for capital improvements and for maintenance of the premises within the licensed racetrack enclosure and shall be a credit against the tax levied in this section.

A return as required by the Tax Commissioner shall be filed for a racetrack enclosure for each month during which wagers are accepted at the enclosure. The return shall be filed with and the net tax due pursuant to this section shall be paid to the Department of Revenue on the tenth day of the following month.

Source: Laws 1959, c. 5, § 3, p. 73; Laws 1963, c. 6, § 2, p. 67; Laws 1965, c. 9, § 2, p. 124; Laws 1973, LB 76, § 2; Laws 1982, LB 631, § 2; Laws 1984, LB 830, § 2; Laws 1985, LB 154, § 1; Laws 1986, LB 1041, § 5; Laws 1987, LB 467, § 1; Laws 1989, LB 591, § 3; Laws 1990, LB 1055, § 2; Laws 1993, LB 365, § 1; Laws 2002, LB 1236, § 13.

2-1208.02 Parimutuel wagering; Department of Revenue; taxes due; duties.

(1) The Department of Revenue shall audit and verify the amount of the tax that is due the state as provided by sections 2-1208 to 2-1208.02.

(2) The pertinent provisions of sections 77-2708 to 77-2713, 77-27,125 to 77-27,131, and 77-27,133 to 77-27,135, shall be applicable to the administration and collection of the tax imposed by section 2-1208.01, except that the informa-

tion obtained by the Department of Revenue in its audit and enforcement activities shall continue to be public records as defined in section 84-712.01.

Source: Laws 1959, c. 5, § 4, p. 74; Laws 1980, LB 834, § 50.

2-1208.03 Exotic wagering; terms, defined.

For purposes of sections 2-1208.03 and 2-1208.04, unless the context otherwise requires:

(1) Exotic wagers shall mean daily double, exacta, quinella, trifecta, pick six, and other similar types of bets which are approved by the State Racing Commission;

(2) Gross exotic daily receipts shall mean the total sum of all money wagered, on a daily basis, by means of exotic wagers at race meets;

(3) Race meet shall mean any exhibition of racing of horses at which the parimutuel or certificate method of wagering is used;

(4) Racetrack shall mean any racetrack licensed by the State Racing Commission to conduct race meets; and

(5) Recipient track shall mean a racetrack with a total annual parimutuel handle, based on the previous racing year, of twelve million dollars or less.

Source: Laws 1986, LB 1041, § 1.

For purposes of determining a racetrack's eligibility to receive funds from the track distribution fund, the State Racing Commission must include the total dollar amount of all wagers placed at the track over the course of a calendar year, including amounts wagered on races which are simulcast to the track from another location. State Bd. of Ag. v. State Racing Comm., 239 Neb. 762, 478 N.W.2d 270 (1992).

2-1208.04 Exotic wagering; withholding; Track Distribution Fund; created; distributed; investment.

(1) Racetracks shall separately account for their gross exotic daily receipts. For all meets commencing after July 16, 1994, any racetrack that had for its previous race meet a total parimutuel handle of less than fifty million dollars shall withhold an amount equal to one-half of one percent of such receipts and any racetrack that had for its previous race meet a total parimutuel handle of fifty million dollars or more shall withhold an amount equal to one percent of such receipts, except that for all meets commencing on or after January 1, 1995, each racetrack shall withhold an amount equal to one-fourth of one percent of such receipts, which amount shall be deducted from purses at the withholding track. Such amount withheld shall be paid to the State Racing Commission on the last day of each month during each race meeting for deposit in the Track Distribution Fund, which fund is hereby created.

(2) The fund shall be distributed monthly to recipient racetracks which conduct wagering by the parimutuel method on thoroughbred horseracing. Such racetracks shall receive the percentage which the total number of days of horseraces run at such racetrack in the year of distribution bears to the total number of days of horseraces run at all such racetracks in the year of distribution. Before January 1, 1995, one-half of the amount received under this subsection by a racetrack shall be used to supplement purses at the track, and on and after January 1, 1995, the entire amount received by a racetrack shall be used to supplement purses at the track.

(3) Any money in the Track Distribution Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any money in the

fund which is not distributed at the end of the calendar year shall be available for expenditure by the commission to defray its expenses pursuant to section 2-1209.

(4) The assessment required by this section shall be in addition to the assessments, taxes, and fees required by Chapter 2, article 12.

Source: Laws 1986, LB 1041, § 2; Laws 1987, LB 467, § 2; Laws 1994, LB 1354, § 2; Laws 1995, LB 7, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1209 State Racing Commission; funds; disbursement; reserve fund balance; limitation.

Out of the funds received pursuant to section 2-1208, the expenses of the commissioners, the compensation and reasonable expenses of the secretary, assistants, and employees, and the other reasonable expenses of the State Racing Commission, including suitable furniture, equipment, supplies, and office expenses, shall first be paid. The commission shall maintain a reserve fund balance which shall not exceed ten percent of the appropriation for the commission for the calendar year. If the commission has unexpended funds in excess of its appropriation and authorized reserve fund balance at the end of the calendar year, such funds shall be credited to the General Fund. Sums paid out by the commission shall be subject to the general policy for disbursement of funds by agencies of the state, including regular audit.

Source: Laws 1935, c. 173, § 9, p. 633; C.S.Supp.,1941, § 2-1509; R.S.1943, § 2-1209; Laws 1994, LB 1153, § 5.

2-1210 Repealed. Laws 1994, LB 1153, § 8.

2-1211 Licensees; records; reports; audit.

Every corporation or association licensed under sections 2-1201 to 2-1218 shall so keep its books and records as to clearly show the total number of admissions to races conducted by it on each racing day, including the number of admissions upon free passes or complimentary tickets, and the amount received daily from admission fees and the total amount of money wagered during the race meeting, including wagers at locations to which its races were simulcast and at races which it received via simulcast from other racetracks, and shall furnish to the State Racing Commission such reports and information as it may require with respect thereto. At the end of each race meeting, the licensee shall furnish to the commission and the Governor a complete audit by a certified public accountant detailing all expenses and disbursements. Such audit shall be in the form specified by the commission and shall be filed on or before February 1 following such meet.

Source: Laws 1935, c. 173, § 11, p. 634; C.S.Supp.,1941, § 2-1511; R.S.1943, § 2-1211; Laws 1965, c. 10, § 2, p. 125; Laws 1994, LB 1153, § 6.

2-1212 Repealed. Laws 1981, LB 545, § 52.

2-1213 Horseracing; Sunday racing forbidden; exceptions; voter disapproval; issuance of licenses limited; race of Nebraska-bred horses; commission designate registrar; fees.

(1)(a) No racing under sections 2-1201 to 2-1218 shall be permitted on Sunday except when approved by a majority of the members of the State Racing Commission upon application for approval by any racetrack. Such approval shall be given after the commission has considered: (i) Whether Sunday racing at the applicant track will tend to promote and encourage agriculture and horse breeding in Nebraska; (ii) whether the applicant track operates under a license granted by the commission; (iii) whether the applicant track is in compliance with all applicable health, safety, fire, and police rules and regulations or ordinances; (iv) whether the denial of Sunday racing at the applicant track would impair such track's economic ability to continue to function under its license; and (v) whether the record of the public hearing held on the issue of Sunday racing at the applicant track shows reasonable public support. Notice of such public hearing shall be given at least ten days prior thereto by publication in a newspaper having general circulation in the county in which the applicant track is operating, and the commission shall conduct a public hearing in such county. The commission may adopt, promulgate, and enforce rules and regulations governing the application and approval for Sunday racing in addition to its powers in section 2-1203. If the commission permits racing on Sunday, the voters may prohibit such racing in the manner prescribed in section 2-1213.01. If approval by the commission for Sunday racing at the applicant track is granted, no racing shall occur on Sunday until after 1 p.m.

(b) No license shall be granted for racing on more than one racetrack in any one county, except that the commission may, in its discretion, grant a license to any county agricultural society to conduct racing during its county fair notwithstanding a license may have been issued for racing on another track in such county.

(c) Since the purpose of sections 2-1201 to 2-1218 is to encourage agriculture and horse breeding in Nebraska, every licensee shall hold at least one race on each racing day limited to Nebraska-bred horses, including thoroughbreds or quarter horses. Three percent of the first money of every purse won by a Nebraska-bred horse shall be paid to the breeder of such horse. Beginning September 1, 2005, through January 1, 2008, each licensee who holds a license for quarter horseracing shall, for each live racing day, give preference to Nebraska-bred quarter horses in at least one race in lieu of the requirements of this subdivision.

(2) For purposes of this section, Nebraska-bred horse shall mean a horse registered with the Nebraska Thoroughbred or Quarter Horse Registry and meeting the following requirements: (a) It shall have been foaled in Nebraska; (b) its dam shall have been registered, prior to foaling, with the Nebraska Thoroughbred or Quarter Horse Registry; and (c) its dam shall have been continuously in Nebraska for ninety days immediately prior to foaling, except that such ninety-day period may be reduced to thirty days in the case of a mare in foal which is purchased at a nationally recognized thoroughbred or quarter horse blood stock sale, the name and pedigree of the mare being listed in the sale catalog, and which is brought into this state and remains in this state for thirty days immediately prior to foaling.

The requirement that a dam shall be continuously in Nebraska for either ninety days or thirty days, as specified in subdivision (2)(c) of this section, shall not apply to a dam which is taken outside of Nebraska to be placed for sale at a nationally recognized thoroughbred or quarter horse blood stock sale, the name

and pedigree of the mare being listed in the sale catalog, or for the treatment of an extreme sickness or injury, if written notice of such proposed sale or treatment is provided to the secretary of the commission within three days of the date such horse is taken out of the state.

The commission may designate official registrars for the purpose of registration and to certify the eligibility of Nebraska-bred horses. An official registrar shall perform such duties in accordance with policies and procedures adopted and promulgated by the commission in the current rules and regulations of the commission. The commission may authorize the official registrar to collect specific fees as would reasonably compensate the registrar for expenses incurred in connection with registration of Nebraska-bred horses. The amount of such fee or fees shall be established by the commission and shall not be changed without commission approval. Fees shall not exceed one hundred dollars per horse.

Any decision or action taken by the official registrar shall be subject to review by the commission or may be taken up by the commission on its own initiative.

Source: Laws 1935, c. 173, § 13, p. 635; C.S.Supp.,1941, § 2-1513; R.S.1943, § 2-1213; Laws 1973, LB 178, § 1; Laws 1975, LB 342, § 1; Laws 1978, LB 867, § 1; Laws 1981, LB 136, § 1; Laws 1982, LB 839, § 1; Laws 1987, LB 708, § 6; Laws 1991, LB 334, § 1; Laws 1996, LB 1255, § 2; Laws 2005, LB 573, § 4.

2-1213.01 Sunday horseracing; submission of question; election; manner.

The voters of any county shall have the right to vote on the question of prohibiting or allowing the conducting of racing on Sunday within such county. The question may be submitted at any general state election whenever petitions calling for its submission, signed by at least ten percent of the number of persons voting in the county at the last preceding general state election, are presented to the county clerk or election commissioner not less than thirty days prior to the date of such election. The question shall be placed on the ballot in substantially the following form:

SHALL RACING ON SUNDAY
BE CONDUCTED IN THE COUNTY OF
.....
.... YES .... NO

A majority of the voters voting on the issue shall determine such issue.

Source: Laws 1978, LB 867, § 2; Laws 1981, LB 136, § 2.

2-1214 Sections, how construed.

No part of sections 2-1201 to 2-1218 shall be construed to apply to horseracing or horserace meetings at any state or county fair or elsewhere unless the parimutuel system of wagering hereinbefore described is used or intended to be used in connection therewith; but no person, association or corporation shall hold, conduct or operate any such race or meeting in connection with which said parimutuel system is used or intended to be used without a license as hereinbefore provided.

Source: Laws 1935, c. 173, § 14, p. 635; C.S.Supp.,1941, § 2-1514.

2-1215 Violations; penalty.

Any person, corporation or association holding or conducting any horserace or horserace meeting in connection with which the said parimutuel system of wagering is used or to be used, without a license duly issued by the State Racing Commission; or any person, corporation or association holding or conducting horseraces or horserace meetings in connection with which any wagering is permitted otherwise than in the manner hereinbefore specified; or any person, corporation or association violating any of the provisions of sections 2-1201 to 2-1218 or any of the rules and regulations prescribed by the commission, shall be guilty of a Class I misdemeanor.

Source: Laws 1935, c. 173, § 15, p. 635; C.S.Supp.,1941, § 2-1515; R.S.1943, § 2-1215; Laws 1977, LB 40, § 13.

2-1216 Parimutuel wagering legalized; fees paid, how construed.

The parimutuel system of wagering on the results of horseraces, when conducted within the racetrack enclosure at licensed horserace meetings or through teleracing facilities, shall not under any circumstances be held or construed to be unlawful, any other statutes of the State of Nebraska to the contrary notwithstanding. The money inuring to the State Racing Commission under sections 2-1201 to 2-1218 and 2-1230 to 2-1242 from permit fees or from other sources shall never be considered as license money. It is the intention of the Legislature that the funds arising under such sections be construed as general revenue to be appropriated and allocated exclusively for the specific purposes set forth in such sections.

Source: Laws 1935, c. 173, § 20, p. 637; C.S.Supp.,1941, § 2-1516; R.S.1943, § 2-1216; Laws 1992, LB 718, § 5.

2-1217 Drugging of horses prohibited.

It shall be unlawful for any person to use, or permit to be used a narcotic of any kind to stimulate or retard any horse that is to run in a race in this state to which the provisions of sections 2-1201 to 2-1218 apply, or for a person having the control of such horse and knowledge of such stimulation or retardation to allow it to run in any such race. The owners of such horse, their agents or employees shall permit any member of the State Racing Commission or any person appointed by said commission for that purpose to make such tests as the commission deems proper in order to determine whether any such animal has been so stimulated or retarded. The findings of said commission that a horse has been stimulated or retarded by a narcotic or narcotics shall be prima facie evidence of such fact.

Source: Laws 1935, c. 173, § 21, p. 638; C.S.Supp.,1941, § 2-1517.

2-1218 Violation; penalty.

Any person who shall violate any provisions of section 2-1217 shall be guilty of a Class I misdemeanor.

Source: Laws 1935, c. 173, § 22, p. 638; C.S.Supp.,1941, § 2-1518; R.S.1943, § 2-1218; Laws 1977, LB 40, § 14.

2-1219 State Racing Commission; members; employees; activities prohibited; conflict of interest; penalty.

(1) No horse in which any member of the State Racing Commission or its employees has any interest shall be raced at any meet under the jurisdiction of the commission.

(2) No member of the State Racing Commission or its employees shall have a pecuniary interest or engage in any private employment in a profession or business which is regulated by or interferes or conflicts with the performance or proper discharge of the duties of the commission.

(3) No member of the State Racing Commission or its employees shall wager or cause a wager to be placed on the outcome of any race at a race meeting which is under the jurisdiction and supervision of the commission.

(4) No member of the State Racing Commission or its employees shall have a pecuniary interest or engage in any private employment in a business which does business with any racing association licensed by the commission or in any business issued a concession operator license by the commission.

(5) Any commission member or employee violating this section shall forfeit his or her office.

(6) The commission shall include in its rules and regulations prohibitions against actual or potential specific conflicts of interest on the part of racing officials and other individuals licensed by the commission.

Source: Laws 1965, c. 10, § 1, p. 125; Laws 1980, LB 939, § 5.

2-1220 Racehorses; fraudulent acts; penalty.

It shall be unlawful for any person knowingly and willfully to falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry regarding the prior racing record, pedigree, identity or ownership of a registered animal in any matter related to the breeding, buying, selling, or racing of such animal. Whoever violates any provision of this section shall be fined not more than ten thousand dollars or imprisoned for not more than five years, or be both so fined and imprisoned.

Source: Laws 1973, LB 178, § 2.

2-1221 Accepting anything of value to be wagered, transmitted, or delivered for wager; delivering off-track wagers; prohibited; penalty.

Except as provided in sections 2-1207 and 2-1230 to 2-1242, whoever directly or indirectly accepts anything of value to be wagered or to be transmitted or delivered for wager in any parimutuel system of wagering on horseraces or delivers anything of value which has been received outside of the enclosure of a racetrack holding a race meet licensed under Chapter 2, article 12, to be placed as wagers in the parimutuel pool within such enclosure shall be guilty of a Class II misdemeanor.

Source: Laws 1977, LB 273, § 1; Laws 1978, LB 748, § 1; Laws 1984, LB 915, § 1; Laws 1987, LB 1, § 10; Laws 1992, LB 718, § 6.

Statute upheld as constitutional against attacks that it violates the constitutional right to freely contract, is unconstitutionally vague and overbroad, and denies equal protection of the law. Midwest Messenger Assn. v. Spire, 223 Neb. 748, 393 N.W.2d 438 (1986).

A racetrack messenger service, whether or not it actually engages in gambling, is so intertwined with gambling that it falls within the state's plenary police power to regulate gaming activity. Pegasus of Omaha, Inc. v. State, 203 Neb. 755, 280 N.W.2d 64 (1979).

Prohibition by the Legislature of operation of a racetrack messenger service bears a reasonable relationship to the legitimate state interest in the regulation of gambling. No constitutional provision renders such prohibition unlawful. Pegasus of Omaha, Inc. v. State, 203 Neb. 755, 280 N.W.2d 64 (1979).

This statute regulates commercial and business affairs of the state and, therefore, must be held valid under the due process clause of the 14th Amendment because it does bear a rational relation to a legitimate state objective. Nebraska Messenger Services Ass'n v. Thone, 611 F.2d 250 (8th Cir. 1979).

This section only prohibits messenger services which deliver wagers to the race track for a fee; it does not prevent reasonable use of the messenger service's property. Therefore, the prohibitory effect of this section is not sufficient to render it an unconstitutional taking under the 14th Amendment to the United States Constitution. Nebraska Messenger Services Ass'n v. Thone, 478 F.Supp. 1036 (D. Neb. 1979).

Under this section, the state may prohibit any person from placing monies of another into a parimutuel wagering pool for a fee, and since this does not involve a ''fundamental right'', but rather is a regulation of commercial and business affairs of the state and since the state has some rational basis, this section is not invalid under the due process clause of the 14th Amendment of the United States Constitution. Nebraska Messenger Services Ass'n v. Thone, 478 F.Supp. 1036 (D. Neb. 1979).

2-1221.01 Repealed. Laws 1987, LB 1, § 16.

2-1222 Racing Commission's Cash Fund; created; receipts; use; investment.

There is hereby created the Racing Commission's Cash Fund from which shall be appropriated such amounts as are available therefrom and as shall be considered incident to the administration of the State Racing Commission's office. The fund shall contain all license fees and gross receipt taxes collected by the commission as provided under sections 2-1203, 2-1203.01, 2-1208, and 2-1242 but shall not include taxes collected pursuant to section 2-1208.01, and such fees and taxes collected shall be remitted to the State Treasurer for credit to the Racing Commission's Cash Fund. 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 1980, LB 939, § 6; Laws 1992, LB 718, § 7; Laws 1994, LB 1066, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1223 Licensees; exempt from Uniform Disposition of Unclaimed Property Act.

Those corporations or associations eligible for licenses to conduct horseracing by the parimutuel method as defined in section 2-1204, shall be exempt from the provisions of the Uniform Disposition of Unclaimed Property Act.

Source: Laws 1980, LB 939, § 7.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

2-1224 Simulcast; authorized; legislative findings.

(1) The Legislature finds that:

(a) The horseracing, horse breeding, and parimutuel wagering industry is an important sector of the agricultural economy of the state, provides substantial revenue for state and local governments, and employs many residents of the state;

(b) The simultaneous telecast of live audio and visual signals of horseraces conducted within the state on which parimutuel betting is permitted holds the potential to strengthen and further these economic contributions and it is in the best interest of the state to permit such live telecasts;

(c) Permitting parimutuel wagering on the results of horseracing conducted at racetracks outside the state also holds the potential to strengthen and further these economic contributions and it is in the best interest of the state to permit such wagering; and

(d) No simulcast or interstate simulcast shall be authorized which would jeopardize present live racing, horse breeding, or employment opportunities or which would infringe on current operations or markets of the racetracks which generate significant revenue for local governments in the state.

(2) The Legislature hereby authorizes the telecasts of horseraces conducted within the state on which parimutuel wagering shall be permitted and interstate simulcasting under rules and regulations adopted and promulgated by the State Racing Commission in the manner and subject to the conditions provided in sections 2-1207 and 2-1224 to 2-1229.

Source: Laws 1987, LB 708, § 1; Laws 1989, LB 591, § 4.

2-1225 Terms, defined.

For purposes of sections 2-1207 and 2-1224 to 2-1229, unless the context otherwise requires:

(1) Commission shall mean the State Racing Commission;

(2) Interstate simulcast shall mean parimutuel wagering at any licensed racetrack within the state on the results of any horserace conducted outside the state;

(3) Licensed horserace meeting shall include, but not be limited to, licensed racetracks at which simulcasts or interstate simulcasts are conducted;

(4) Operator shall mean any licensee issued a license under sections 2-1201 to 2-1223 operating a simulcast facility in accordance with sections 2-1224 to 2-1229;

(5) Receiving track shall mean any track which displays a simulcast which originates from another track or which conducts interstate simulcasts;

(6) Sending track shall mean any track from which a simulcast or interstate simulcast originates;

(7) Simulcast shall mean the telecast of live audio and visual signals of any horserace conducted in the state for the purpose of parimutuel wagering;

(8) Simulcast facility shall mean a facility within the state which is authorized to display simulcasts for parimutuel wagering purposes under sections 2-1224 to 2-1227 or to conduct interstate simulcasts under sections 2-1228 and 2-1229; and

(9) Track shall mean the grounds or enclosures within which horseraces are conducted by licensees authorized to conduct such races in accordance with sections 2-1201 to 2-1223.

Source: Laws 1987, LB 708, § 2; Laws 1989, LB 591, § 5.

2-1226 Simulcast facility license; application.

Any racetrack issued a license under sections 2-1201 to 2-1223 which operates at least one live race meet during each calendar year except as provided in section 2-1228 may apply to the commission for a simulcast facility license. An application for such license shall be in such form as may be prescribed by the commission and shall contain such information, material, or

evidence as the commission may require. Any racetrack issued a simulcast facility license may display the simulcast of a horserace on which parimutuel wagering shall be allowed.

Source: Laws 1987, LB 708, § 3; Laws 1996, LB 1255, § 3.

2-1227 Simulcast; license; agreement between tracks; sections applicable; wagering; how conducted.

(1) The commission may authorize and approve one or more applications by any racetrack issued a license under sections 2-1201 to 2-1223 for a license to provide the simulcast of horseraces for wagering purposes from a track operated by the applicant which is conducting a race to a receiving track which is also licensed pursuant to sections 2-1201 to 2-1223 and has applied for a simulcast facility license. No application shall be approved by the commission without a written agreement between the receiving track and the sending track relating to the simulcast. The written agreement between the receiving track and the sending track shall have the consent of the organization representing a majority of the licensed owners and trainers at both the sending and the receiving track.

(2) Every licensee authorized to accept wagers on simulcast racing events pursuant to sections 2-1224 to 2-1227 shall be deemed to be conducting a licensed horserace meeting and shall be subject to all appropriate provisions of sections 2-1201 to 2-1223 relating to the conduct of horserace meetings.

(3) The sums retained by any receiving track from the total deposits in pools wagered on simulcast racing events conducted pursuant to sections 2-1201 to 2-1227 shall be equal to the retained percentages applicable to the sending track. Of the sums retained by the receiving track from simulcast pools, the parimutuel tax shall be levied in accordance with sections 2-1201 to 2-1223. Of the sums retained by the receiving track, an amount as determined by agreement between the sending track and receiving track shall be distributed to the sending track.

(4) Any simulcast between a sending track located in the state and receiving track located in the state as provided in this section shall result in the combination of all wagers placed at the receiving track located in the state with the wagers placed at the sending track located in the state so as to produce common parimutuel betting pools for the calculation of odds and the determination of payouts from such pools, which payout shall be the same for all winning tickets, irrespective of whether the wager is placed at a sending track located in the state or receiving track located in the state.

Source: Laws 1987, LB 708, § 4; Laws 1989, LB 591, § 6; Laws 1993, LB 471, § 2.

2-1228 Interstate simulcast facility license; application.

Any racetrack issued a license under sections 2-1201 to 2-1223 (1) conducting primarily quarterhorse races in the year immediately preceding the year for which application is made, regardless of the total number of days of live racing conducted in such year, or (2) conducting primarily thoroughbred horseraces in the year immediately preceding the year for which application is made which conducted live racing on at least seventy percent of the days for which it was authorized to conduct live racing in 1988 unless the commission determines that such racetrack was unable to conduct live racing on the required

number of days due to factors beyond its control, including, but not limited to, fire, earthquake, tornado, or other natural disaster, may apply to the commission for an interstate simulcast facility license. An application for such license shall be in a form prescribed by the commission and shall contain such information, material, or evidence as the commission may require. Any racetrack issued an interstate simulcast facility license may conduct the interstate simulcast of any horserace permitted under its license, and parimutuel wagering shall be allowed on such horserace. The commission shall not authorize interstate simulcasting for any racetrack pursuant to sections 2-1201 to 2-1223 unless all of the thoroughbred racetracks together applied for and received authority to conduct at least one hundred eighty live racing days in the calendar year in which the application is made. If any racetrack conducts live racing for less than seventy percent of the days assigned such racetrack in 1988, (a) such racetrack shall be precluded from conducting interstate simulcasts and (b) the number of live racing days conducted by such racetrack shall be subtracted from an amount equal to seventy percent of all the days assigned such racetrack in 1988 and the amount remaining shall be deducted from the one-hundred-eighty-day total required by this section. If any racetrack ceases to conduct live racing, seventy percent of the days assigned such racetrack in 1988 shall be deducted from the one-hundred-eighty-day total required by this section.

Source: Laws 1989, LB 591, § 7; Laws 1993, LB 471, § 3.

2-1229 Interstate simulcast facility license; issuance; agreement between tracks.

(1) The commission may authorize and approve an application for an interstate simulcast facility license by a receiving track within the state to receive the interstate simulcast of horseraces for parimutuel wagering purposes from any track located outside of the state. In determining whether such application should be approved, the commission shall consider whether such interstate simulcast would have a significant effect upon either live racing or the simulcasting of live racing of the same type and at the same time conducted in this state and whether it would expand the access to or availability of simulcasting to areas of the state or markets which are not at the time of the application fully served. Prior to approving any such application, the commission shall confer with and receive any recommendations of the organization which represents the majority of the thoroughbred breeders in Nebraska as to what effect an interstate simulcast would have upon horse breeding and horseracing in this state. No application submitted under section 2-1228 shall be approved by the commission without:

(a) The prior written approval of any other racetrack issued a license under sections 2-1201 to 2-1223 and conducting live racing of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the organization which represented a majority of the licensed owners and trainers at the racetrack's immediately preceding live thoroughbred race meeting;

(b) The prior written approval of any other racetrack issued a license under sections 2-1224 to 2-1227 which is simulcasting the racing program of any licensee conducting live racing in this state of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the

organization which represented a majority of the licensed owners and trainers at the racetrack's immediately preceding live thoroughbred race meeting; and

(c) A written agreement between the receiving track and the sending track located outside of the state in any other state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico setting forth the division of all proceeds between the sending and receiving tracks and all other conditions under which such interstate simulcast will be conducted. Such written agreement shall have the consent of the group representing the majority of horsepersons racing at the sending track and of the organization which represented a majority of the licensed owners and trainers at the receiving track's immediately preceding live thoroughbred race meeting.

(2) Every licensee authorized to accept wagers on interstate simulcast events pursuant to this section shall be deemed to be conducting a licensed horserace meeting and shall also be subject to all appropriate provisions of sections 2-1201 to 2-1223 relating to the conduct of horserace meetings.

Source: Laws 1989, LB 591, § 8; Laws 1993, LB 471, § 4.

2-1230 Telephonic and electronic wagering; legislative findings.

(1) The Legislature finds that:

(a) The horseracing, horse breeding, and parimutuel wagering industries are important sectors of the agricultural economy of the state, provide substantial revenue for state and local governments, and employ many residents of the state;

(b) The ability to provide licensed and regulated teleracing facilities through which parimutuel wagering is permitted holds the potential to strengthen the horseracing industry and further its economic contributions to the state and its citizens and it is in the best interests of the state to encourage experimentation with parimutuel wagering through licensed teleracing facilities;

(c) The offering of controlled telephonic wagering also holds the potential to strengthen the horseracing industry and further its economic contributions to the state and its citizens and it is in the best interests of the state to encourage experimentation with telephonic wagering;

(d) The purpose of such experimentation is to determine whether teleracing facilities and telephonic wagering will promote the overall growth of the horseracing industry, resulting in additional revenue for the support of racing organizations, purses, breeders, and labor; and

(e) Parimutuel wagering through teleracing facilities or telephonic wagering should be authorized and regulated in a manner which would not unreasonably jeopardize horseracing or employment opportunities or infringe on current operations or markets of licensed racetracks.

(2) The Legislature hereby authorizes experimentation with parimutuel wagering through teleracing facilities and telephonic wagering on horseraces conducted within the state and on simulcasting and interstate simulcasting received by licensed racetracks within the state under the regulation of the State Racing Commission in the manner and subject to the conditions provided in sections 2-1207 and 2-1230 to 2-1242.

Source: Laws 1992, LB 718, § 8.

Sections 2-1230 through 2-1242 are unconstitutional because they purport to authorize telephonic wagering which does not occur within a licensed racetrack enclosure. State ex rel. Stenberg v. Omaha Expo. & Racing, 263 Neb. 991, 644 N.W.2d 563 (2002).

Article III, section 24, of the Constitution of Nebraska, plainly requires that parimutuel wagering on horses must be conducted by an entity licensed to do so and must be conducted by licensees at a racetrack enclosure which is licensed to operate horse races. Wagering that occurs in a detached facility, one that is by definition outside a licensed racetrack enclosure, cannot logically occur within a licensed racetrack enclosure as required by the constitution. State ex rel. Stenberg v. Douglas Racing Corp., 246 Neb. 901, 524 N.W.2d 61 (1994).

2-1231 Terms, defined.

For purposes of sections 2-1230 to 2-1242:

(1) Deposit account shall mean deposits kept at a telephone deposit center for individual patrons who wish to place telephonic wagers;

(2) Market area shall mean the area within fifty miles of the location of any licensed racetrack but shall not include the primary territory of any other licensed racetrack;

(3) Primary territory shall mean the county in which the licensed racetrack is located;

(4) Telephone deposit center shall mean a unit at the licensed racetrack operated by such licensed racetrack for the purposes of keeping deposit accounts and accepting telephonic wagers as authorized by the State Racing Commission;

(5) Telephonic wagering shall mean the placing of parimutuel wagers by telephone to a telephone deposit center at a licensed racetrack as authorized by the commission;

(6) Teleracing facility shall mean a detached, licensed area occupied solely by a licensee for the purpose of conducting telewagering and containing one or more betting terminals, which facility is either owned or under the exclusive control of the licensee during the period for which it is licensed; and

(7) Telewagering shall mean the placing of a wager through betting terminals electronically linked to a licensed racetrack, which electronic link instantaneously transmits the wagering information to the parimutuel pool for acceptance and issues tickets as evidence of such wager.

Source: Laws 1992, LB 718, § 9.

2-1232 Teleracing facilities and telephonic wagering; commission; jurisdiction; rules and regulations.

The State Racing Commission shall have general jurisdiction over the approval of and shall issue licenses to licensed racetracks for the operation of teleracing facilities and telephonic wagering. The commission shall adopt and promulgate rules and regulations to carry out sections 2-1230 to 2-1242.

Source: Laws 1992, LB 718, § 10.

2-1233 License; issuance; limitations.

The State Racing Commission shall not issue a license for a teleracing facility unless the local governing body of the city or village in which such facility is proposed or of the county, if the facility is not within the corporate limits of a city or village, has by ordinance or resolution approved the operation of the facility within such jurisdiction.

Source: Laws 1992, LB 718, § 11.

2-1234 Licensed racetrack; own and operate teleracing facilities; limitations.

(1) Any licensed racetrack conducting live racing may, alone or jointly with other licensed racetracks conducting live racing, own and operate teleracing facilities and may own and operate as many such facilities in its primary territory as may be authorized by the State Racing Commission.

(2) A licensee may own and operate teleracing facilities outside of the primary territory and market area of any other licensed racetrack as permitted by the commission and subject to sections 2-1230 to 2-1242. A licensed racetrack shall not own or operate any teleracing facility outside its primary territory except with the permission and consent of all licensed racetracks running the same breed of horse. Each licensed racetrack may choose whether or not to participate in the ownership and operation of teleracing facilities outside the primary territory of a licensed racetrack.

Source: Laws 1992, LB 718, § 12.

2-1235 Licensed racetrack; wagering through a teleracing facility on simulcasting; authorized.

A licensed racetrack may conduct wagering through a teleracing facility on intrastate simulcasting and interstate simulcasting if otherwise licensed to do so by the State Racing Commission.

Source: Laws 1992, LB 718, § 13.

2-1236 Licensee; deductions authorized; tickets; wagers; requirements.

A licensee may deduct up to five percent from the winnings of the holder of a winning ticket purchased through a teleracing facility or through telephonic wagering. All tickets purchased through telewagering shall bear distinctive markings, and such tickets may be redeemed at the teleracing facility or at the licensed racetrack owning or operating the facility. All wagers made through a teleracing facility shall be subject to all of the laws and conditions pertaining to wagers made at a licensed racetrack.

Source: Laws 1992, LB 718, § 14.

2-1237 Licensed racetrack; feasibility study and plan of operation; application; contents.

(1) Any licensed racetrack desiring to own and operate a teleracing facility shall submit a feasibility study and plan of operation to the State Racing Commission along with the application therefor.

(2) The feasibility study shall include:

(a) The number of teleracing facilities requested and location of each teleracing facility requested;

(b) The potential market;

(c) The estimated costs of operation; and

(d) The probable impact of the proposed operation on racetrack attendance and parimutuel wagering within the area served by such racetrack.

(3) The plan of operation shall include the following:

(a) A narrative description of the system and how it works;

(b) The types and approximate cost of data processing, communication, and transmission facilities that will be utilized, including any backup systems; an

(c) Security measures.

The commission may request additional information from the applicant.

Source: Laws 1992, LB 718, § 15.

2-1238 Commission; hearing; exception; considerations.

The State Racing Commission shall hold a hearing prior to acting upon an application for a teleracing facility, except that if the teleracing facility requested by the applicant is in its primary territory, the commission need not hold such hearing. The commission shall take into consideration the legislative findings set forth in section 2-1230 in deciding whether to approve and license a facility. All teleracing facilities shall conform to local zoning requirements and ordinances.

Source: Laws 1992, LB 718, § 16.

2-1239 Licensed racetrack; telephonic wagering system; requirements.

A licensed racetrack which conducts live race meets may establish and conduct a telephonic wagering system as may be approved by the State Racing Commission, subject to the following requirements:

(1) The licensed racetrack shall establish and maintain a telephone deposit center;

(2) The telephone deposit center shall accept wagers only up to the amount posted to the credit of the deposit account of the account holder at the time the wager is placed;

(3) All such wagers shall be entered into the parimutuel pool and be subject to all laws and conditions applicable to any other wagers;

(4) No licensed racetrack shall conduct a telephonic wagering system outside its primary territory without the permission and consent of all licensed racetracks running the same breed of horse. Each licensed racetrack may choose whether or not to participate in the ownership and operation of a telephonic wagering system outside the primary territory of a licensed racetrack; and

(5) The licensed racetrack has obtained the written consent of the organization which represents a majority of the thoroughbred breeders in Nebraska and the organization which represents a majority of the owners and trainers at the racetrack of the licensee conducting the live race meeting.

Source: Laws 1992, LB 718, § 17.

2-1240 Telephone deposit centers; telephonic wager; limitations; violation; penalty.

(1) Telephone deposit centers shall only accept telephonic wagers from the holder of a deposit account. No person shall in any manner place any wager by telephone to the telephone deposit center on behalf of a holder of a deposit account. Only the holder of a deposit account may place a telephonic wager.

(2) Any person violating subsection (1) of this section shall be guilty of a Class II misdemeanor.

Source: Laws 1992, LB 718, § 18.

2-1241 Licensed racetrack; telephonic wagering on simulcast; authorized.

Telephonic wagering may be conducted at licensed racetracks conducting either intrastate simulcasting or interstate simulcasting as approved by the State Racing Commission.

Source: Laws 1992, LB 718, § 19.

2-1242 Telephonic wager; payment to Department of Revenue.

An amount equivalent to one-half of one percent of the amount wagered through telephonic wagering shall be paid to the Department of Revenue by licensed racetracks and shall be remitted by the department to the State Treasurer for credit to the Racing Commission's Cash Fund.

Source: Laws 1992, LB 718, § 20.

2-1243 Horseracing industry participants; legislative findings.

The Legislature finds that the horseracing industry is an important facet of economic and recreational development in Nebraska. Breeders, owners, and trainers are an important and integral part of the live horseracing industry in Nebraska.

Source: Laws 1993, LB 471, § 5.

2-1244 Horseracing industry participant, defined.

For purposes of sections 2-1243 to 2-1246, horseracing industry participant shall mean an individual who currently holds a valid license from the State Racing Commission and who owns, trains, cares for, or rides horses stabled at a Nebraska-licensed racetrack for the purpose of horseracing at the live race meeting at such racetrack.

Source: Laws 1993, LB 471, § 6.

2-1245 Horseracing industry participants; rights.

(1) A horseracing industry participant shall be entitled to reasonable treatment from those licensed to conduct thoroughbred race meets.

(2) Private property belonging to a horseracing industry participant at a racetrack facility shall not unlawfully be converted, seized, damaged, or destroyed by racetrack employees or agents without compensation.

(3) A horseracing industry participant shall not be deemed to forfeit or waive any right to privacy without reasonable cause guaranteed by law by virtue of being licensed by the state, by entry upon licensed horseracing facilities, or by engaging in the sport of horseracing in this state.

(4) A horseracing industry participant may not be excluded from the grounds of any licensed racetrack by track management without a hearing by the stewards at such racetrack unless there are reasonable grounds to believe such participant has committed a felony or is posing a physical danger to himself or herself, to others, or to animals in his or her care or his or her physical presence will bring immediate harm to horseracing. Such hearing shall be held as soon as practicable and shall be given first priority and precedence by the stewards. This subsection shall not apply to the allocation of stalls pursuant to an agreement between the horseracing industry participant and the licensed racetrack.

(5) A horseracing industry participant shall be free from unreasonable searches and seizures of his or her person without probable cause and shall be free from unreasonable searches and seizures of his or her housing, vehicle, papers, and effects.

(6) If a horseracing industry participant has been charged with a violation of a rule of racing which involves a substantial risk of loss or suspension of his or her license or which involves a criminal penalty, he or she shall be entitled to the following protections as a matter of right:

(a) To remain silent;

(b) To the benefit of counsel, including the opportunity to confer with counsel in preparation of a defense;

(c) To a speedy and public hearing;

(d) To present evidence and to testify in person at his or her hearing;

(e) To cross-examine the witnesses who testify against him or her; and

(f) To have prospective witnesses excluded from the hearing room during the hearing.

Nothing in this section shall prevent a horseracing industry participant from knowingly waiving any rights afforded under this subsection.

(7) A horseracing industry participant shall not be required to waive his or her constitutional rights nor the rights granted pursuant to sections 2-1243 to 2-1246 as a condition of pursuing a livelihood in this state or at any licensed thoroughbred horseracing facility.

Source: Laws 1993, LB 471, § 7.

2-1246 Rules and regulations; sections; how construed.

(1) The State Racing Commission shall adopt and promulgate rules and regulations which provide for dismissal, license revocation or suspension, fines, or other suitable penalties necessary to enforce sections 2-1243 to 2-1245.

(2) Nothing in such sections shall affect in any way the right of any horseracing industry participant to bring any action in any appropriate forum for the violation of any law of this state or any rule of racing.

Source: Laws 1993, LB 471, § 8.

2-1247 Interstate Compact on Licensure of Participants in Horse Racing with Pari-Mutuel Wagering.

The Interstate Compact on Licensure of Participants in Horse Racing with Pari-Mutuel Wagering is hereby enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I. PURPOSES

Section 1. Purposes.

The purposes of this compact are to:

1. Establish uniform requirements among the party states for the licensing of participants in live horse racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to this compact meet a uniform minimum standard of honesty and integrity.

2. Facilitate the growth of the horse racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live horse racing with pari-mutuel wagering.

3. Authorize the Nebraska State Racing Commission to participate in this compact.

4. Provide for participation in this compact by officials of the party states, and permit those officials, through the compact committee established by this compact, to enter into contracts with governmental agencies and nongovernmental persons to carry out the purposes of this compact.

5. Establish the compact committee created by this compact as an interstate governmental entity duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation and other state and local law enforcement agencies.

ARTICLE II. DEFINITIONS

Section 2. Definitions.

''Compact committee'' means the organization of officials from the party states that is authorized and empowered by this compact to carry out the purposes of this compact.

''Official'' means the appointed, elected, designated or otherwise duly selected member of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

''Participants in live racing'' means participants in live horse racing with pari-mutuel wagering in the party states.

''Party state'' means each state that has enacted this compact.

''State'' means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and each territory or possession of the United States.

ARTICLE III. ENTRY INTO FORCE, ELIGIBLE PARTIES AND WITHDRAWAL

Section 3. Entry into force.

This compact shall come into force when enacted by any four (4) states. Thereafter, this compact shall become effective as to any other state upon both (i) that state's enactment of this compact and (ii) the affirmative vote of a majority of the officials on the compact committee as provided in Section 8.

Section 4. States eligible to join compact.

Any state that has adopted or authorized horse racing with pari-mutuel wagering shall be eligible to become party to this compact.

Section 5. Withdrawal from compact and impact thereof on force and effect of compact.

Any party state may withdraw from this compact by enacting a statute repealing this compact, but no such withdrawal shall become effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If as a result of withdrawals participation in this compact decreases to less than three (3) party states, this compact no longer shall be in force

and effect unless and until there are at least three (3) or more party states again participating in this compact.

ARTICLE IV. COMPACT COMMITTEE

Section 6. Compact committee established.

There is hereby created an interstate governmental entity to be known as the ''compact committee,'' which shall be comprised of one (1) official from the racing commission or its equivalent in each party state. The Nebraska State Racing Commission shall designate one of its members to represent the State of Nebraska as the compact committee official. A compact committee official shall be appointed, serve and be subject to removal in accordance with the laws of the party state he represents. Pursuant to the laws of his party state, each official shall have the assistance of his state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his responsibilities as the representative from his state to the compact committee. If an official representing the State of Nebraska is unable to perform any duty in connection with the powers and duties of the compact committee, the Nebraska State Racing Commission shall designate another of its members or its executive secretary as an alternate who shall serve and represent the State of Nebraska as its official on the compact committee until the commission determines that the original representative official is able once again to perform the duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the Nebraska State Racing Commission to the compact committee as the committee's bylaws may provide.

Section 7. Powers and duties of compact committee.

In order to carry out the purposes of this compact, the compact committee is hereby granted the power and duty to:

1. Determine which categories of participants in live racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, should be licensed by the committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. Provided, however, that with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements.

2. Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the Federal Bureau of Investigation and relevant state and local law enforcement agencies, and, where appropriate, from the Royal Canadian Mounted Police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the committee as provided in paragraph 1 above. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only

for the purposes of this compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and, pursuant to Public Law 92-544 or Public Law 100-413, shall be forwarded to a state identification bureau, or to the Association of Racing Commissioners, International, an association of state officials regulating pari-mutuel wagering designated by the Attorney General of the United States, for submission to the Federal Bureau of Investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the Federal Bureau of Investigation or other receiving law enforcement agency.

3. Issue licenses to, and renew the licenses of, participants in live racing listed in paragraph 1 of this section who are found by the committee to have met the licensure and renewal requirements established by the committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the applicant that it will not be able to process his application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant shall have the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the compact committee using the requirements established pursuant to paragraph 1 of this section.

4. Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to effectuate the purposes of this compact.

5. Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of this compact, prescribe their powers, duties and qualifications, hire persons to fill those offices, employments and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits and other conditions of employment of its officers, employees and other positions.

6. Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation or other entity.

7. Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the purposes of this compact.

8. Charge a fee to each applicant for an initial license or renewal of a license.

9. Receive other funds through gifts, grants and appropriations.

Section 8. Voting requirements.

A. Each official shall be entitled to one (1) vote on the compact committee.

B. All action taken by the compact committee with regard to the addition of party states as provided in Section 3, the licensure of participants in live racing, and the receipt and disbursement of funds shall require a majority vote of the total number of officials (or their alternates) on the committee. All other action

by the compact committee shall require a majority vote of those officials (or their alternates) present and voting.

C. No action of the compact committee may be taken unless a quorum is present. A majority of the officials (or their alternates) on the compact committee shall constitute a quorum.

Section 9. Administration and management.

A. The compact committee shall elect annually from among its members a chairman, a vice-chairman, and a secretary/treasurer.

B. The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials (or their alternates) on the committee at that time and shall have the power by the same vote to amend and rescind these bylaws. The committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the secretary of state or equivalent agency of each of the party states.

C. The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and his support staff.

D. Employees of the compact committee shall be considered governmental employees.

Section 10. Immunity from liability for performance of official responsibilities and duties.

No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his responsibilities and duties under this compact.

ARTICLE V. RIGHTS AND RESPONSIBILITIES OF EACH PARTY STATE

Section 11. Rights and responsibilities of each party state.

A. By enacting this compact, each party state:

1. Agrees (i) to accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing pursuant to the committee's licensure requirements, and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his alternate.

2. Agrees not to treat a notification to an applicant by the compact committee under paragraph 3 of Section 7 that the compact committee will not be able to process his application further as the denial of a license, or to penalize such applicant in any other way based solely on such a decision by the compact committee.

3. Reserves the right (i) to charge a fee for the use of a compact committee license in that state, (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked, (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee, and (iv) to establish its own licensure standards for the licensure of non-racing employees at horse racetracks and employees at sepa-

rate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.

B. No party state shall be held liable for the debts or other financial obligations incurred by the compact committee.

ARTICLE VI. CONSTRUCTION AND SEVERABILITY

Section 12. Construction and severability.

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable, and, if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of the United States or of any party state, or the applicability of this compact to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If all or some portion of this compact is held to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Source: Laws 2001, LB 295, § 1.

ARTICLE 13

NONPROFIT AGRICULTURAL CORPORATIONS

Section
2-1301. Refunding of bonded indebtedness; section, how construed.
2-1302. Refunding debentures; form.

2-1301 Refunding of bonded indebtedness; section, how construed.

Any corporation organized and existing under and by virtue of the laws of the State of Nebraska if created not for private gain or profit and under legal restrictions which preclude it from being organized for private gain or profit, and if organized and existing for the purpose of promoting and advancing the interests of agriculture and farm husbandry in the State of Nebraska, having outstanding any bonds or debentures matured or about to mature, may refund such bond indebtedness or debentures in an amount not exceeding the existing unpaid principal and interest due on such bonds or debentures, by issuing new bonds or new debentures in exchange for bonds or debentures maturing or about to mature, or to be sold for the purpose of securing funds to redeem principal and interest of the bonds or debentures maturing or about to mature. Such new bonds or debentures shall not be issued in excess of the amount required to refund the existing indebtedness, shall not be sold or exchanged at less than par and shall not draw interest at a rate in excess of three percent per annum, which interest may be made payable annually or semiannually. No authority is hereby granted nor shall this section be construed to grant authority to any such corporation to increase its indebtedness, the sole object and purpose of this section being to authorize refunding of existing indebtedness.

Source: Laws 1937, c. 2, § 1, p. 52; C.S.Supp.,1941, § 2-1601.

2-1302 Refunding debentures; form.

Said refunding debentures shall be in substantially the form as provided in section 2-111, Compiled Statutes of Nebraska, 1929.

Source: Laws 1937, c. 2, § 2, p. 53; C.S.Supp.,1941, § 2-1602; R.S.1943, § 2-1302; Laws 1983, LB 421, § 9.

ARTICLE 14

AGRICULTURAL STATISTICS

Section
2-1401. Repealed. Laws 1979, LB 25, § 1.

2-1401 Repealed. Laws 1979, LB 25, § 1.

ARTICLE 15

NEBRASKA NATURAL RESOURCES COMMISSION

Cross References

Natural resources districts, see Chapter 2, article 32.

(a) GENERAL PROVISIONS

Section
2-1501. Terms, defined.
2-1502. Soil and water conservation and flood control needs; state financial assistance; conditions.
2-1503. Transferred to section 2-1501.
2-1503.01. Small Watersheds Flood Control Fund; created; use; investment.
2-1503.02. Commission; flood control funds; allocations; acquisition of land or easements.
2-1503.03. Commission; department; powers; authority.
2-1504. Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy.
2-1504.01. Repealed. Laws 1972, LB 542, § 7.
2-1504.02. Repealed. Laws 2000, LB 900, § 256.
2-1504.03. Repealed. Laws 2000, LB 900, § 256.
2-1505. Commission; organization; compensation of members.
2-1506. Repealed. Laws 2000, LB 900, § 256.
2-1506.01. Repealed. Laws 2000, LB 900, § 256.
2-1506.02. Repealed. Laws 1983, LB 35, § 32.
2-1506.03. Repealed. Laws 1983, LB 35, § 32.
2-1506.04. Repealed. Laws 1983, LB 35, § 32.
2-1506.05. Repealed. Laws 1983, LB 35, § 32.
2-1506.06. Repealed. Laws 1983, LB 35, § 32.
2-1506.07. Repealed. Laws 1983, LB 35, § 32.
2-1506.08. Repealed. Laws 1983, LB 35, § 32.
2-1506.09. Repealed. Laws 1983, LB 35, § 32.
2-1506.10. Repealed. Laws 1983, LB 35, § 32.
2-1506.11. Repealed. Laws 1973, LB 188, § 4.
2-1506.12. Repealed. Laws 1983, LB 35, § 32.
2-1506.13. Repealed. Laws 1983, LB 35, § 32.
2-1506.14. Repealed. Laws 1983, LB 35, § 32.
2-1506.15. Repealed. Laws 1983, LB 35, § 32.
2-1506.16. Repealed. Laws 1983, LB 35, § 32.
2-1506.17. Repealed. Laws 1983, LB 35, § 32.
2-1506.18. Repealed. Laws 1983, LB 35, § 32.
2-1506.19. Repealed. Laws 1983, LB 35, § 32.
2-1506.20. Repealed. Laws 1983, LB 35, § 32.
2-1506.21. Repealed. Laws 1983, LB 35, § 32.
2-1506.22. Repealed. Laws 1983, LB 35, § 32.
2-1506.23. Repealed. Laws 1983, LB 35, § 32.

Section		
2-1506.24.	Repealed.	Laws 1983, LB 35, § 32.
2-1506.25.	Repealed.	Laws 1983, LB 35, § 32.
2-1506.26.	Repealed.	Laws 1983, LB 35, § 32.
2-1506.27.	Repealed.	Laws 1983, LB 35, § 32.
2-1507.	Repealed.	Laws 2000, LB 900, § 256.
2-1507.01.	Repealed.	Laws 1983, LB 36, § 5.
2-1507.02.	Repealed.	Laws 1983, LB 36, § 5.
2-1508.	Repealed.	Laws 1977, LB 510, § 10.
2-1509.	Repealed.	Laws 1977, LB 510, § 10.
2-1510.	Repealed.	Laws 1977, LB 510, § 10.
2-1511.	Repealed.	Laws 1977, LB 510, § 10.
2-1512.	Repealed.	Laws 1977, LB 510, § 10.
2-1513.	Repealed.	Laws 1977, LB 510, § 10.
2-1514.	Repealed.	Laws 1977, LB 510, § 10.
2-1515.	Repealed.	Laws 1977, LB 510, § 10.
2-1516.	Repealed.	Laws 1977, LB 510, § 10.
2-1517.	Repealed.	Laws 1977, LB 510, § 10.
2-1517.01.	Repealed.	Laws 1977, LB 510, § 10.
2-1517.02.	Repealed.	Laws 1977, LB 510, § 10.
2-1517.03.	Repealed.	Laws 1977, LB 510, § 10.
2-1517.04.	Repealed.	Laws 1973, LB 335, § 5.
2-1518.	Repealed.	Laws 1977, LB 510, § 10.
2-1519.	Repealed.	Laws 1977, LB 510, § 10.
2-1520.	Repealed.	Laws 1977, LB 510, § 10.
2-1521.	Repealed.	Laws 1977, LB 510, § 10.
2-1522.	Repealed.	Laws 1977, LB 510, § 10.
2-1523.	Repealed.	Laws 1977, LB 510, § 10.
2-1524.	Repealed.	Laws 1977, LB 510, § 10.
2-1525.	Repealed.	Laws 1977, LB 510, § 10.
2-1526.	Repealed.	Laws 1977, LB 510, § 10.
2-1527.	Repealed.	Laws 1977, LB 510, § 10.
2-1528.	Repealed.	Laws 1977, LB 510, § 10.
2-1529.	Repealed.	Laws 1983, LB 36, § 5.
2-1530.	Repealed.	Laws 1977, LB 510, § 10.
2-1530.01.	Repealed.	Laws 1977, LB 510, § 10.
2-1531.	Repealed.	Laws 1977, LB 510, § 10.
2-1532.	Repealed.	Laws 1977, LB 510, § 10.
2-1533.	Repealed.	Laws 1977, LB 510, § 10.
2-1534.	Repealed.	Laws 1977, LB 510, § 10.
2-1535.	Repealed.	Laws 1977, LB 510, § 10.
2-1536.	Repealed.	Laws 1977, LB 510, § 10.
2-1537.	Repealed.	Laws 1977, LB 510, § 10.
2-1538.	Repealed.	Laws 1977, LB 510, § 10.
2-1539.	Repealed.	Laws 1977, LB 510, § 10.
2-1540.	Repealed.	Laws 1977, LB 510, § 10.
2-1541.	Repealed.	Laws 1977, LB 510, § 10.
2-1542.	Repealed.	Laws 1977, LB 510, § 10.
2-1543.	Repealed.	Laws 1977, LB 510, § 10.
2-1544.	Repealed.	Laws 1977, LB 510, § 10.
2-1545.	Repealed.	Laws 1977, LB 510, § 10.
2-1546.	Repealed.	Laws 1977, LB 510, § 10.
2-1547.	Transferred to section 61-210.	
2-1548.	Repealed.	Laws 1977, LB 510, § 10.
2-1549.	Repealed.	Laws 1977, LB 510, § 10.
2-1549.01.	Repealed.	Laws 1977, LB 510, § 10.
2-1549.02.	Repealed.	Laws 1977, LB 510, § 10.
2-1549.03.	Repealed.	Laws 1977, LB 510, § 10.
2-1549.04.	Repealed.	Laws 1977, LB 510, § 10.
2-1550.	Repealed.	Laws 1977, LB 510, § 10.
2-1551.	Repealed.	Laws 1977, LB 510, § 10.
2-1552.	Repealed.	Laws 1977, LB 510, § 10.

Section
2-15,104. Repealed. Laws 2000, LB 900,§ 256.
2-15,105. Public hearings; materials; made available to public.
2-15,106. Annual report; contents.

(f) WATER MANAGEMENT

2-15,107. Repealed. Laws 1991, LB 772, § 8.
2-15,108. Repealed. Laws 1991, LB 772, § 8.
2-15,109. Repealed. Laws 1991, LB 772, § 8.
2-15,110. Repealed. Laws 1991, LB 772, § 8.
2-15,111. Repealed. Laws 1991, LB 772, § 8.
2-15,112. Repealed. Laws 1991, LB 772, § 8.
2-15,113. Repealed. Laws 1991, LB 772, § 8.
2-15,114. Repealed. Laws 1991, LB 772, § 8.
2-15,115. Repealed. Laws 1991, LB 772, § 8.
2-15,116. Repealed. Laws 1991, LB 772, § 8.
2-15,117. Repealed. Laws 1991, LB 772, § 8.
2-15,118. Repealed. Laws 1989, LB 710, § 2.
2-15,119. Repealed. Laws 1989, LB 710, § 2.
2-15,120. Repealed. Laws 1989, LB 710, § 2.
2-15,121. Repealed. Laws 2000, LB 900, § 256.

(g) NATURAL RESOURCES WATER QUALITY FUND

2-15,122. Natural Resources Water Quality Fund; created; use; investment.
2-15,123. Natural Resources Water Quality Fund; allocation; programs; rules and regulations.

(a) GENERAL PROVISIONS

2-1501 Terms, defined.

As used in Chapter 2, article 15, unless the context otherwise requires:

(1) Commission means the Nebraska Natural Resources Commission;

(2) State means the State of Nebraska;

(3) Agency of this state means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(4) United States or agencies of the United States means the United States of America, the Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(5) Government or governmental means the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them;

(6) Lands, easements, and rights-of-way means lands and rights or interests in lands whereon channel improvements, channel rectifications, or water-retarding or gully-stabilization structures are located, including those areas for flooding and flowage purposes, spoil areas, borrow pits, access roads, and similar purposes;

(7) Local organization means any natural resources district, drainage district, irrigation district, or other public district, county, city, or state agency;

(8) Subwatershed means a portion of a watershed project as divided by the department on a complete hydrologic unit;

(9) Rechanneling means the channeling of water from one watercourse to another watercourse by means of open ditches;

(10) Watercourse means any depression two feet or more below the surrounding land serving to give direction to a current of water at least nine months of the year, having a bed and well-defined banks and, upon order of the commission, also includes any particular depression which would not otherwise be within the definition of watercourse;

(11) Director means the Director of Natural Resources; and

(12) Department means the Department of Natural Resources.

Source: Laws 1937, c. 8, § 3, p. 93; C.S.Supp.,1941, § 2-1903; R.S.1943, § 2-1503; Laws 1951, c. 7, § 1, p. 73; Laws 1959, c. 6, § 2, p. 75; Laws 1961, c. 4, § 1, p. 65; Laws 1961, c. 3, § 2, p. 62; Laws 1963, c. 8, § 2, p. 73; Laws 1963, c. 9, § 1, p. 76; Laws 1969, c. 16, § 1, p. 164; Laws 1969, c. 9, § 66, p. 138; Laws 1971, LB 415, § 1; Laws 1972, LB 542, § 1; Laws 1977, LB 510, § 1; Laws 1984, LB 1106, § 11; Laws 1999, LB 403, § 1; R.S.Supp.,1999, § 2-1503; Laws 2000, LB 900, § 17.

2-1502 Soil and water conservation and flood control needs; state financial assistance; conditions.

(1) The purpose of the Small Watersheds Flood Control Fund is to assist local organizations by paying all or part of the cost of purchase of needed lands, easements, and rights-of-way for soil and water conservation and flood control needs when the following conditions have been met:

(a) The local organizations have agreed on a program of work;

(b) Such a program of work has been found to be feasible, practicable, and will promote the health, safety, and general welfare of the people of the state;

(c) The department has either participated in the planning or reviewed the plans and has approved the program of work;

(d) Local organizations have obtained a minimum of seventy-five percent of the needed number of easements and rights-of-way in the project or a subwatershed prior to the use of state funds for this purpose;

(e) Local organizations have made a formal request or application to the department for state funds for the purpose of purchasing lands, easements, and rights-of-way;

(f) Local organizations and the department have entered into an agreement on the administration and expenditure of these state funds;

(g) The purchase price of the land, easement, or right-of-way has been established either by the courts or by one credentialed real property appraiser approved by the department, which appraisal costs shall be a nonstate cost; and

(h) Local organizations have given assurance to the department that they have obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.

(2) State funds to be used for lands, easements, and rights-of-way shall be granted to the local organizations in whose name the land, easement, or right-of-way shall be recorded. Rental or lease revenue from these lands may be used subject to the approval of the department by the local organization in the proper management of these lands, such management to include, but not be limited to, weed control, construction, and maintenance of conservation meas-

ures, seeding of grass, planting of trees, and construction and maintenance of fences. Within ten years from the purchase date of lands and rights-of-way, and if the lands and rights-of-way are not granted or retained for public purposes as otherwise provided by this section, it shall be the duty of the local organization to sell the property purchased wholly or partially from state funds and to remit to the department a pro rata share of the proceeds of such sale equal to the percentage of the total cost of the acquisition of such real property made from any state allocation made hereunder and all such remittances shall be deposited in the Small Watersheds Flood Control Fund. The local organization shall retain any easement or right-of-way needed to assure the continued operation, maintenance, inspection, and repair of the works of improvement constructed on the land to be sold. The commission and local organization may grant for public purposes title to lands and rights-of-way acquired in whole or in part with funds from the Small Watersheds Flood Control Fund to any public district, city, county, political subdivision of the state, or agency of the state or federal government, or the local organization, with approval of the commission, may retain for public purposes the title to such lands and rights-of-way. Whenever any such grant or retention is approved, the department shall be reimbursed in the amount of the pro rata share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Small Watersheds Flood Control Fund. All such proceeds to the department shall be remitted to the State Treasurer for credit to the Small Watersheds Flood Control Fund.

Source: Laws 1937, c. 8, § 2, p. 92; C.S.Supp.,1941, § 2-1902; R.S.1943, § 2-1502; Laws 1957, c. 3, § 1, p. 80; Laws 1963, c. 8, § 1, p. 69; Laws 1965, c. 12, § 1, p. 131; Laws 1969, c. 9, § 65, p. 136; Laws 1979, LB 31, § 1; Laws 1981, LB 224, § 1; Laws 1990, LB 1153, § 51; Laws 1991, LB 203, § 1; Laws 1994, LB 1107, § 1; Laws 2000, LB 900, § 18; Laws 2006, LB 778, § 1.

2-1503 Transferred to section 2-1501.

2-1503.01 Small Watersheds Flood Control Fund; created; use; investment.

The Small Watersheds Flood Control Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated during any session of the Legislature. The State Treasurer shall also credit such fund with money contributed to or remitted by local organizations which was obtained through the sale or lease of property procured through the use of state funds as authorized in sections 2-1502 to 2-1503.03. In addition, funds, services, and properties made available by the United States or one of its departments or agencies may be credited to the fund. The money in the fund shall not be subject to fiscal year or biennium limitations. 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 1963, c. 8, § 3, p. 74; Laws 1969, c. 584, § 26, p. 2357; Laws 1986, LB 258, § 2; Laws 1995, LB 7, § 5; Laws 2000, LB 900, § 19.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1503.02 Commission; flood control funds; allocations; acquisition of land or easements.

The commission shall adopt and promulgate rules and regulations for the administration of the Small Watersheds Flood Control Fund. The commission may allocate to any local organization in this state, from the Small Watersheds Flood Control Fund, such sum or sums as in the judgment of the commission may be necessary to enable such local organization to acquire real property or easements needed to permit the local organizations to install upstream flood control or watershed protection and flood prevention structures on rivers, tributaries, streams, or watersheds thereof, including cooperative projects between the local organization and the United States. When any property or easement has been acquired by the use of any funds allocated under this section and the property is thereafter sold or leased, it shall be the duty of the local organization to remit to the department a pro rata share of the proceeds of such sale or lease equal to the percentage of total state funds involved.

Source: Laws 1963, c. 8, § 4, p. 75; Laws 1963, c. 3, § 1, p. 62; Laws 2000, LB 900, § 20.

2-1503.03 Commission; department; powers; authority.

The commission shall have sole power and authority to specify the date and all other terms for the sale of any lands or rights-of-way acquired wholly or in part with funds from the Small Watersheds Flood Control Fund and to require the execution of all necessary documents to complete such sales. The department shall, upon acquisition by the local organization of any such lands or rights-of-way, prepare and file with the register of deeds in the county where such lands or rights-of-way are located an affidavit stating that state funds were utilized for the acquisition of such lands or rights-of-way by the organization receiving such funds and that such lands or rights-of-way cannot be sold, conveyed, granted, or in any way transferred by such organization except at the direction of the commission and in compliance with its rules and regulations.

Source: Laws 1973, LB 188, § 3; Laws 2000, LB 900, § 21.

2-1504 Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy.

(1) The Nebraska Natural Resources Commission is established. The commission shall advise the department as requested by the director and shall perform such other functions as are specifically conferred on the commission by law. The commission shall have no jurisdiction over matters pertaining to water rights.

(2) The commission shall consist of the following members, all of whom shall have attained the age of majority:

(a) One resident of each of the following river basins, with delineations being those on the Nebraska river basin map officially adopted by the commission and on file with the department: (i) The Niobrara River, White River, and Hat Creek basin, (ii) the North Platte River basin, (iii) the South Platte River basin, (iv) the middle Platte River basin, (v) the lower Platte River basin, (vi) the Loup River basin, (vii) the Elkhorn River basin, (viii) the Missouri tributaries basin, (ix) the Republican River basin, (x) the Little Blue River basin, (xi) the Big Blue River basin, and (xii) the Nemaha River basin;

(b) One additional resident of each river basin which encompasses one or more cities of the metropolitan class. Each such additional basin member shall be a resident of a natural resources district which encompasses one or more cities of the metropolitan class and shall be selected in the same manner, at the same time, and for a four-year term having the same term sequence as provided for the other member from such basin; and

(c) Three members to be appointed by the Governor, subject to confirmation by the Legislature, who shall serve at the pleasure of the Governor. Of the members appointed by the Governor, one shall represent municipal users of water, one shall represent surface water irrigators, and one shall represent ground water irrigators.

(3) Successors to the members of the commission representing river basins shall be selected for four-year terms at individual caucuses of the natural resources district directors residing in the river basin from which the member is selected. Such caucuses shall be held for each basin within ten days following the first Thursday after the first Tuesday of the year the term of office of the member from that basin expires. The dates and locations for such caucuses shall be established by the commission. Terms of office shall follow the sequence originally determined by the river basin representatives to the commission at their first meeting on the third Thursday after the first Tuesday in January 1975. All river basin members shall take office on the third Thursday after the first Tuesday in January following their selection and any vacancy shall be filled for the unexpired term by a caucus held within thirty days following the date such vacancy is created. Each member of the commission representing a river basin shall qualify by filing with the other members of the commission an acceptance in writing of his or her selection.

Source: Laws 1937, c. 8, § 4, p. 94; C.S.Supp.,1941, § 2-1904; R.S.1943, § 2-1504; Laws 1951, c. 7, § 2, p. 74; Laws 1957, c. 3, § 2, p. 82; Laws 1959, c. 6, § 3, p. 76; Laws 1961, c. 4, § 2, p. 66; Laws 1963, c. 9, § 2, p. 78; Laws 1967, c. 7, § 1, p. 78; Laws 1967, c. 5, § 1, p. 73; Laws 1969, c. 9, § 67, p. 140; Laws 1972, LB 542, § 2; Laws 1973, LB 337, § 1; Laws 1977, LB 510, § 2; Laws 1980, LB 423, § 1; Laws 1983, LB 36, § 1; Laws 1983, LB 37, § 1; Laws 1984, LB 1106, § 13; Laws 2000, LB 900, § 22.

Cross References

Department of Natural Resources, powers, see Chapter 61, article 2.

Designation by Legislature of University of Nebraska officers as members of Natural Resources Commission was a legislative appointment in violation of Constitution; but designation of Director of Water Resources was valid as simply adding to the duties of a state officer. Neeman v. Nebraska Nat. Resources Commission, 191 Neb. 672, 217 N.W.2d 166 (1974).

2-1504.01 Repealed. Laws 1972, LB 542, § 7.

2-1504.02 Repealed. Laws 2000, LB 900, § 256.

2-1504.03 Repealed. Laws 2000, LB 900, § 256.

2-1505 Commission; organization; compensation of members.

The commission shall designate a chairperson, a vice-chairperson, and such other officers as it may desire and may, from time to time, change such designation. A majority of the commission shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for

its determination. Each of the members of the commission shall receive a per diem of fifty dollars per day for each day in the performance of his or her duties on the commission, but no member shall receive more than two thousand dollars in any one year, and in addition shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his or her duties on the commission, as provided in sections 81-1174 to 81-1177.

Source: Laws 1937, c. 8, § 4, p. 95; C.S.Supp.,1941, § 2-1904; R.S.1943, § 2-1505; Laws 1957, c. 3, § 3, p. 84; Laws 1961, c. 4, § 3, p. 68; Laws 1972, LB 542, § 3; Laws 1978, LB 653, § 2; Laws 1980, LB 701, § 1; Laws 1981, LB 204, § 5; Laws 2000, LB 900, § 23.

2-1506 Repealed. Laws 2000, LB 900, § 256.

2-1506.01 Repealed. Laws 2000, LB 900, § 256.

2-1506.02 Repealed. Laws 1983, LB 35, § 32.

2-1506.03 Repealed. Laws 1983, LB 35, § 32.

2-1506.04 Repealed. Laws 1983, LB 35, § 32.

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2-1506.13 Repealed. Laws 1983, LB 35, § 32.

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2-1547 Transferred to section 61-210.

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2-1557 Repealed. Laws 1977, LB 510, § 10.

2-1558 Repealed. Laws 1977, LB 510, § 10.

2-1559 Repealed. Laws 1977, LB 510, § 10.

2-1560 Repealed. Laws 1977, LB 510, § 10.

2-1561 Repealed. Laws 1977, LB 510, § 10.

2-1562 Repealed. Laws 1977, LB 510, § 10.

2-1563 Repealed. Laws 1977, LB 510, § 10.

2-1564 Repealed. Laws 1977, LB 510, § 10.

2-1565 Repealed. Laws 1977, LB 510, § 10.

2-1566 Repealed. Laws 1977, LB 510, § 10.

2-1567 Repealed. Laws 1977, LB 510, § 10.

2-1568 Department; data bank; establish; maintain; administer; available to other agencies.

The department shall maintain and administer a data bank in the field of soil and water resources in the State of Nebraska. The collection of basic data and necessary interpretations of these data in the area of soil and water resources by agencies, departments, and political subdivisions of the State of Nebraska shall not be affected by this section. Such data and necessary interpretations of them shall be made available to the department for inclusion in the data bank when published or earlier if deemed by the originator to be suitable for inclusion. The source of data shall be identified in the data bank and when appropriate shall be associated with subsequent publication or other use. Processing and interpretation of the basic data shall be carried out by the department, except that this section does not preclude the independent processing and interpretation of such data by the collecting agency or other agencies. The resources of the data bank shall be made available to all interested agencies and persons.

Source: Laws 1969, c. 382, § 1, p. 1348; Laws 2000, LB 900, § 24; Laws 2005, LB 342, § 1.

Cross References

Intergovernmental Data Communications Advisory Council, see section 86-539.

2-1569 Basic data, defined.

For purposes of section 2-1568, basic data means recorded observations, calculations, or other information concerning: (1) Climatological, meteorological, hydrologic, hydraulic, topographic, and geologic conditions and phenomena, including soils and land use, as these relate to or affect surface and ground water resources, developed water supplies, water demands, and hydraulic

structures; (2) occurrence, quantity, and quality of surface water resources, including variations with time, both short term and long range; (3) occurrence, quantity, and quality of ground water resources, including variations with time, natural and artificial recharge, natural and artificial disposal, and information as to the hydraulic characteristics of underground aquifers and reservoirs; (4) sediment production, transport, and disposition; (5) biologic data for streams, lakes, and reservoirs; (6) water rights; (7) occurrence, types, locations, and amounts of consumptive and nonconsumptive uses and demands for water, including diversions and extractions therefor, and variations over time; (8) occurrence, quantity, and quality of waste discharges and return flows, and variations thereof over time; (9) locations, characteristics, and operational criteria of works constructed to store, replenish, regulate, divert, extract, transport, distribute, protect, and improve surface and ground water resources; (10) project and facility operation data; (11) demographic data; and (12) economic and fiscal information.

Source: Laws 1969, c. 382, § 2, p. 1349; Laws 2005, LB 342, § 2.

2-1570 Repealed. Laws 2005, LB 342, § 4.

2-1571 Repealed. Laws 1983, LB 36, § 5.

2-1572 Repealed. Laws 1983, LB 36, § 5.

2-1573 Repealed. Laws 1983, LB 36, § 5.

2-1574 Repealed. Laws 1983, LB 36, § 5.

(b) NEBRASKA SOIL AND WATER CONSERVATION ACT

2-1575 Act, how cited.

Sections 2-1575 to 2-1585 shall be known and may be cited as the Nebraska Soil and Water Conservation Act.

Source: Laws 1977, LB 450, § 1; Laws 1983, LB 236, § 1; Laws 2000, LB 900, § 26; Laws 2002, LB 1003, § 8; Laws 2003, LB 619, § 1.

2-1576 Legislative intent.

The Legislature recognizes and hereby declares that it is the public policy of this state to properly conserve, protect, and utilize the water and related land resources of the state, to better utilize surface waters and available precipitation, to encourage ground water recharge to protect the state's dwindling ground water supply, to protect the quality of surface water and ground water resources, and to reduce soil erosion and sediment damages. The Legislature further declares that it is in the public interest of this state to financially assist in encouraging water and related land resource conservation and protection measures on privately owned land and that this will produce long-term benefits for the general public.

Source: Laws 1977, LB 450, § 2; Laws 1983, LB 236, § 2; Laws 1986, LB 474, § 14; Laws 1993, LB 247, § 1; Laws 2002, LB 1003, § 9.

2-1577 Nebraska Soil and Water Conservation Fund; created; investment.

(1) There is hereby created the Nebraska Soil and Water Conservation Fund to be administered by the department. The State Treasurer shall credit to the fund such money as is (a) appropriated to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any agency of the United States may also be credited to such fund if so directed by such agency.

(2) The money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any such fiscal year or biennium.

(3) 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 1977, LB 450, § 3; Laws 1983, LB 236, § 3; Laws 1986, LB 258, § 3; Laws 1995, LB 7, § 7; Laws 2000, LB 900, § 27.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1578 Commission; rules and regulations.

The commission shall adopt and promulgate appropriate rules and regulations necessary for the administration of the Nebraska Soil and Water Conservation Fund.

Source: Laws 1977, LB 450, § 4; Laws 1983, LB 236, § 4; Laws 2000, LB 900, § 28.

2-1579 Fund; grants; conditions; acceptance, how construed.

(1) Except as provided in subsection (2) of this section, expenditures may be made from the Nebraska Soil and Water Conservation Fund as grants to individual landowners of not to exceed seventy-five percent of the actual cost of eligible projects and practices for soil and water conservation or water quality protection, with priority given to those projects and practices providing the greatest number of public benefits.

(2) The department shall reserve at least two percent of the funds credited to the fund for grants to landowners ordered by a natural resources district pursuant to the Erosion and Sediment Control Act to install permanent soil and water conservation practices. Such funds shall be made available for ninety percent of the actual cost of the required practices and shall be granted on a first-come, first-served basis until exhausted. Applications not served shall receive priority in ensuing fiscal years.

(3) The commission shall determine which specific projects and practices are eligible for the funding assistance authorized by this section and shall adopt, by reference or otherwise, appropriate standards and specifications for carrying out such projects and practices. A natural resources district assisting the department in the administration of the program may, with commission approval, further limit the types of projects and practices eligible for funding assistance in that district.

(4) As a condition for receiving any cost-share funds pursuant to this section, the landowner shall be required to enter into an agreement that if a conservation practice is terminated or a project is removed, altered, or modified so as to lessen its effectiveness, without prior approval of the department or its delegated agent, for a period of ten years after the date of receiving payment, the landowner shall refund to the fund any public funds used for the practice or project. When deemed necessary by the department or its delegated agent, the landowner may as a further condition for receiving such funds be required to grant a right of access for the operation and maintenance of any eligible project constructed with such assistance. Acceptance of money from the fund shall not in any other manner be construed as affecting land ownership rights unless the landowner voluntarily surrenders such rights.

(5) To the extent feasible, the department and the commission shall administer the fund so that federal funds available within the state for the same general purposes are supplemented and not replaced with state funds.

(6) Within five days after July 20, 2002, the State Treasurer shall transfer two hundred fifty thousand dollars from the General Fund to the Water Policy Task Force Cash Fund. It is the intent of the Legislature that the General Fund appropriation to the Department of Natural Resources, Program 304, for fiscal year 2002-03 be reduced by two hundred fifty thousand dollars.

Source: Laws 1977, LB 450, § 5; Laws 1978, LB 707, § 1; Laws 1979, LB 326, § 1; Laws 1980, LB 687, § 1; Laws 1983, LB 236, § 5; Laws 1986, LB 474, § 15; Laws 1990, LB 906, § 1; Laws 1993, LB 247, § 2; Laws 2000, LB 900, § 29; Laws 2002, LB 1003, § 11.

Cross References

Erosion and Sediment Control Act, see section 2-4601.

2-1580 Fund; erosion and sediment control payments; conditions.

Payments may be made from the Nebraska Soil and Water Conservation Fund to owners of private land which is being converted to urban use for the purpose of controlling erosion and sediment loss from construction and development. As a condition for receiving any funds pursuant to this section, the landowner shall agree in writing that the erosion and sediment control practices will be installed prior to the land-disturbing activity, when possible, and that the practices will be adequately maintained or replaced at the landowner's expense until ninety-five percent of the site is permanently stabilized. Payments made pursuant to this section shall be in accordance with and conditional upon such terms as are established by the commission. Such terms may be different from those established by section 2-1579 for payments relating to other types of projects and practices.

Source: Laws 2002, LB 1003, § 10.

2-1581 Fund; payments to reduce consumptive use of water; conditions.

Payments may be made from the Nebraska Soil and Water Conservation Fund to the owners of private land for the purpose of adopting or implementing practices or measures to reduce the consumptive use of water in river basins in which an interstate agreement, compact, or decree could require reduction in water usage.

Payments made pursuant to this section may be made as part of research, cost-sharing, or other programs implemented by natural resources districts, irrigation districts, or other entities to develop incentive-based practices or measures to reduce the consumptive use of water.

Payments made pursuant to this section shall be in accordance with terms and conditions established by the commission. The commission may establish terms and conditions for receipt of payments under this section which are different than those established for receipt of payments pursuant to section 2-1579.

Source: Laws 2003, LB 619, § 2.

2-1582 Repealed. Laws 1983, LB 1, § 1.

2-1583 Fund; land diversion payments; authorized.

Expenditures may be made from the Nebraska Soil and Water Conservation Fund to individual landowners as land diversion payments for the purpose of encouraging alternate cropping patterns which, when implemented, will assure a longer conservation practice construction period. No such payments shall be made until the intended projects or practices have been completed.

Source: Laws 1983, LB 236, § 6.

2-1584 Department; assistance from local, state, or federal agencies.

The department may request and utilize assistance in the administration of the Nebraska Soil and Water Conservation Fund from natural resources districts, from the Natural Resources Conservation Service and the Farm Service Agency of the United States Department of Agriculture, and from any other appropriate local, state, or federal agencies. Such assistance may include accepting and approving applications for funds and designing, laying out, and certifying the proper completion of projects and practices.

Source: Laws 1983, LB 236, § 7; Laws 1993, LB 247, § 3; Laws 1999, LB 403, § 3; Laws 2000, LB 900, § 30.

2-1585 Long-term agreements; authorized; conditions.

If the commission determines that more effective soil and water conservation or water quality protection could be achieved if financial assistance from the Nebraska Soil and Water Conservation Fund were available for multiyear implementation of comprehensive conservation plans, the department may enter into long-term agreements with landowners for such purposes. Such long-term agreements shall be for a term not to exceed ten years and shall specify the eligible projects and practices to be installed and applied, the year of intended installation, and the estimated cost of each such project or practice. Such agreements shall also provide that financial assistance in any year of the agreement be subject to the appropriation of adequate funds by the Legislature and may provide that priority shall be given to funding such projects and practices over those not identified in other long-term agreements and over those identified in more recently executed long-term agreements. The department shall not in any biennium approve any long-term agreements which

would cause the total of then existing state obligations under all such agreements to exceed the amount of new funds appropriated for that biennium.

Source: Laws 1983, LB 236, § 8; Laws 1986, LB 258, § 4; Laws 1993, LB 247, § 4; Laws 2000, LB 900, § 31.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

2-1586 Statement of purpose.

The Legislature finds that it is a public purpose of the state to properly develop the water and related land resources of the state and that it is in the public interest (1) to provide financial assistance to programs and projects essential to the development, preservation, and maintenance of the state's water and related land resources, including programs and projects for the (a) abatement of pollution, (b) reduction of potential flood damages, (c) reservation of lands for resource development projects, (d) provision of public irrigation facilities, (e) preservation and development of fish and wildlife resources, (f) protection and improvement of public lands, (g) provision of public outdoor recreation lands and facilities, (h) provision and preservation of the waters of the state for all beneficial uses, including domestic, agricultural, and manufacturing uses, (i) conservation of land resources, and (j) protection of the health, safety, and general welfare of the people, and (2) to provide financial assistance to natural resources districts in the preparation of management plans pursuant to section 46-709.

Source: Laws 1974, LB 975, § 1; R.S.1943, (1977), § 2-3263; Laws 1984, LB 1106, § 16; Laws 1996, LB 108, § 1; Laws 2004, LB 962, § 1.

2-1587 Nebraska Resources Development Fund; created; reserve fund; administration; investment.

(1) There is hereby created the Nebraska Resources Development Fund to be administered by the department. The State Treasurer shall credit to the fund, to carry out sections 2-1586 to 2-1595, such money as is (a) appropriated to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any department or agency of the United States may also be credited to this fund if so directed by such department or agency. The money in the fund shall not be subject to any fiscal year or biennium limitation requiring reappropriation of the unexpended balance at the end of the fiscal year or biennium.

(2) To aid in the funding of projects and to prevent excessive fluctuations in appropriation requirements for the fund, the department shall create a reserve fund to be used only for projects requiring total expenditures from the Nebraska Resources Development Fund in excess of five million dollars. Unless disapproved by the Governor, the department may credit to such reserve fund that portion of any appropriation to the Nebraska Resources Development Fund which exceeds five million dollars. The department may also credit to the reserve fund such other funds as it determines are available.

(3) Any money in the Nebraska Resources Development 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 1974, LB 975, § 2; R.S.1943, (1977), § 2-3264; Laws 1984, LB 985, § 1; Laws 1986, LB 258, § 5; Laws 1995, LB 7, § 8; Laws 2000, LB 900, § 32.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1588 Fund; allocation; report; projects; costs.

(1) Any money in the Nebraska Resources Development Fund may be allocated by the commission in accordance with sections 2-1586 to 2-1595 for utilization by the department, by any state office, agency, board, or commission, or by any political subdivision of the state which has the authority to develop the state's water and related land resources. Such money may be allocated in the form of grants or loans or for acquiring state interests in water and related land resources programs and projects undertaken within the state. The allocation of funds to a program or project in one form shall not of itself preclude additional allocations in the same or any other form to the same program or project. Funds may also be allocated to assist natural resources districts in the preparation of management plans as provided in section 46-709. Funds so allocated shall not be subject to sections 2-1589 to 2-1595.

(2) No project, including all related phases, segments, parts, or divisions, shall receive more than ten million dollars from the fund. On July 1 of each year, the director shall adjust the project cost and payment limitation of this subsection by an amount equal to the average percentage change in a readily available construction cost index for the prior three years.

(3) Prior to September 1 of each even-numbered year, a biennial report shall be made to the Governor and the Clerk of the Legislature describing the work accomplished by the use of such development fund during the immediately preceding two-year period. The report shall include a complete financial statement. Each member of the Legislature shall receive a copy of such report upon making a request to the director.

Source: Laws 1974, LB 975, § 3; Laws 1979, LB 322, § 3; Laws 1981, LB 545, § 2; R.S.Supp.,1982, § 2-3265; Laws 1984, LB 1106, § 17; Laws 1985, LB 102, § 2; Laws 1993, LB 155, § 1; Laws 1996, LB 108, § 2; Laws 1998, LB 656, § 5; Laws 2000, LB 900, § 33; Laws 2001, LB 129, § 1; Laws 2004, LB 962, § 2; Laws 2006, LB 1226, § 3.

2-1589 Fund; allocations, grants, loans; conditions.

(1) The commission shall adopt and promulgate rules and regulations governing the administration of the Nebraska Resources Development Fund. The commission may make an allocation from the fund as a grant to an agency or political subdivision if the commission determines that such an allocation will not be reimbursed from revenue or receipts and when the program or project appears to be of general public benefit, thereby making reimbursement of such money from local tax funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program or project requiring such contribution to meet the requirements for a matching federal grant.

(2) The commission may make an allocation from the fund as a loan to an agency or political subdivision for any program or project or any part thereof consistent with the purposes of the fund which will directly generate revenue or receipts, which can be anticipated to culminate in a program or project which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment from local tax funds appropriate.

Source: Laws 1974, LB 975, § 4; R.S.1943, (1977), § 2-3266; Laws 2000, LB 900, § 34.

The adoption and implementation of a general benefit project by a natural resources district is an exercise of a power which is legislative in nature, and the requirements of due process that apply to judicial or quasi-judicial proceedings are not applicable. Fisher & Trouble Creek v. Lower Platte No. Nat. Resources Dist., 212 Neb. 196, 322 N.W.2d 403 (1982).

2-1590 Department; commission; fund; powers.

In order to develop Nebraska's land and water resources, the department, with the approval of the commission, may acquire interests in water and related land resources projects in the name of the state utilizing the Nebraska Resources Development Fund. Such use of the fund shall be made when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. Such use of the fund may be made upon the determination by the department and the commission that such acquisition is appropriate under sections 2-1586 to 2-1595 and may be initiated upon a request filed in accordance with section 2-1593 or by the department itself without such a request. The department, with the approval of the commission, may also acquire interests in water resource projects in the name of the state to meet future demands for usable water. Such resource projects may include, but not be limited to, the construction of dams and reservoirs to provide surplus water storage capacity for municipal and industrial water demands and for other projects to assure an adequate quantity of usable water. In furtherance of these goals the department may contract with the federal government or any of its agencies or departments for the inclusion of additional water supply storage space behind existing or proposed structures.

Source: Laws 1974, LB 975, § 5; R.S.1943, (1977), § 2-3267; Laws 2000, LB 900, § 35.

2-1591 Repealed. Laws 1984, LB 1106, § 73.

2-1592 Grant or loan; application; procedure.

(1) Any organization qualified to apply for and receive funds from the Nebraska Resources Development Fund may file an application with the department for a grant or loan from such fund. Applications for grants to the department itself shall be filed by the department. Each application shall be filed in such manner and form and be accompanied by such information as may be prescribed by the director and the commission.

(2) Any such application shall:

(a) Describe the nature and purpose of the proposed program or project;

(b) Set forth or be accompanied by a plan for development of the proposed program or project, together with engineering, economic, and financial feasibil-

ity data and information, and such estimated costs of construction or implementation as may be required by the director and the commission;

(c) State whether money other than that for which the application is made will be used to help in meeting program or project costs and whether such money is available or has been sought for this purpose;

(d) When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands and has or may acquire all water rights necessary for the proposed project;

(e) Show that the applicant possesses all necessary authority to undertake or participate in the proposed program or project; and

(f) Demonstrate the probable environmental and ecological consequences that may result from such proposed program or project.

(3) Upon receipt of an application, the director shall evaluate and investigate all aspects of the proposed program or project and the proposed schedule for development and completion of such program or project, determine the eligibility of the program or project for funding, and make appropriate recommendations to the commission pursuant to sections 2-1586 to 2-1595. As a part of his or her investigation, the director shall consider whether the plan for development of the program or project is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

(4) Requests for utilization of the Nebraska Resources Development Fund for state participation in any water and related land-water resources projects through acquisition of a state interest therein shall also be filed with the department for the director's evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the department and the commission.

Source: Laws 1974, LB 975, § 7; R.S.1943, (1977), § 2-3269; Laws 1984, LB 1106, § 18; Laws 2000, LB 900, § 36.

2-1593 Program or project; funding; review; approve or reject; procedure.

Each program or project for which funding is requested, whether such request has as its origin an application or the action of the department itself, shall be reviewed as provided in sections 2-1586 to 2-1595 by the director prior to the approval of any allocation for such program or project by the commission. The director shall within a reasonable time, not to exceed six months, after receipt of such request report to the commission the results of his or her review and shall recommend approval or rejection of funding for the program or project. The director shall indicate what form of allocation he or she deems to be appropriate. In the case of an approved application recommended for a loan, the commission shall indicate the appropriate repayment period and the rate of interest. The commission shall act in accordance with such recommendations unless action to the contrary is approved by each commission member eligible to vote on the specific recommendation under consideration. No

member of the commission shall be eligible to participate in the action of the commission concerning an application for funding to any entity in which such commission member has any interest. The director may be delegated additional responsibilities consistent with the purposes of sections 2-1586 to 2-1595. It shall be the sole responsibility of the commission to determine the priority in which funds are allocated for eligible programs and projects under sections 2-1586 to 2-1595.

Source: Laws 1974, LB 975, § 8; R.S.1943, (1977), § 2-3270; Laws 1984, LB 1106, § 19; Laws 2000, LB 900, § 37.

2-1594 Program or project; costs or acquisition of interest; approval.

The director may recommend approval of and the commission may approve grants or loans for program or project costs or acquisition of interests in projects if after investigation and evaluation the director finds that:

(1) The plan does not conflict with any existing Nebraska state land plan;

(2) The proposed program or project is economically and financially feasible based upon standards adopted by the commission pursuant to sections 2-1586 to 2-1595;

(3) The plan for development of the proposed program or project is satisfactory;

(4) The plan of development minimizes any adverse impacts on the natural environment;

(5) The applicant is qualified, responsible, and legally capable of carrying out the program or project;

(6) In the case of a loan, the borrower has demonstrated the ability to repay the loan and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the project;

(7) The plan considers other plans and programs of the state in accordance with section 84-135 and resources development plans of the political subdivisions of the state; and

(8) The money required from the Nebraska Resources Development Fund is available.

The director and staff of the department shall carry out their powers and duties under sections 2-1586 to 2-1595 independently of and without prejudice to their powers and duties under other provisions of law.

Source: Laws 1974, LB 975, § 9; Laws 1981, LB 326, § 11; R.S.Supp.,1982, § 2-3271; Laws 1984, LB 1106, § 20; Laws 1985, LB 102, § 3; Laws 2000, LB 900, § 38; Laws 2001, LB 129, § 2.

2-1595 Application for a grant, loan, or acquisition; agreement; provisions; successor in interest; lien; filing; foreclosure.

(1) If after review of the recommendation by the director the commission determines that an application for a grant, loan, acquisition of an interest, or combination thereof pursuant to sections 2-1586 to 2-1595 is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated, the department shall enter into an agreement in the name of the state with the applicant agency or organization and with any

other organizations it deems to be involved in the program or project to which funds shall be applied. The department shall also enter into such agreements as are appropriate before allocation of any funds for the acquisition of interest in any qualified project when such acquisition is initiated by the department itself pursuant to section 2-1590. All agreements entered into pursuant to this section shall include, but not be limited to, a specification of the amount of funds involved, whether the funds are considered as a grant, loan, or for the acquisition of an interest in the name of the state, and, if a combination of these is involved, the amount of funds allocated to each category, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to be imposed upon the applicant organization should it fail to apply or repay the funds in accordance with the agreement.

(2) If the allocation to be approved is a loan, the department and the applicant or applicants shall include in the agreement provisions for repayment to the Nebraska Resources Development Fund of money loaned together with any interest at reasonable rates as established by the commission. The agreement shall further provide that repayment of the loan together with any interest thereon shall commence no later than one full year after construction of the project is completed and that repayment shall be completed within the time period specified by the commission. The repayment period shall not exceed fifty years, except that the commission may extend the time for making repayment in the event of extreme emergency or hardship. Such agreement shall also provide for such assurances of and security for repayment of the loan as shall be considered necessary by the department.

(3) With the express approval of the commission, an applicant may convey its interest in a project to a successor. The department shall contract with the qualified successor in interest of the original obligor for repayment of the loan together with any interest thereon and for succession to its rights and obligations in any contract with the department.

(4) The state shall have a lien upon a project constructed, improved, or renovated with money from the fund for the amount of the loan together with any interest thereon. This lien shall attach to all project facilities, equipment, easements, real property, and property of any kind or nature in which the loan recipient has an interest and which is associated with the project. The department shall file a statement of the lien, its amount, terms, and a description of the project with the county register of deeds of each county in which the project or any part thereof is located. The county register of deeds shall record the lien and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens. Any lien provided for by this section may be subordinate to that which secures federal assistance or other secured assistance received on the same project.

Source: Laws 1974, LB 975, § 10; R.S.1943, (1977), § 2-3272; Laws 1984, LB 679, § 2; Laws 1984, LB 1106, § 21; Laws 2000, LB 900, § 39.

(d) NEBRASKA SOIL SURVEY FUND

2-1596 Legislative intent.

The Legislature finds that an accelerated completion of modern soil surveys will be an asset to the State of Nebraska and good for the general welfare of the

citizens of the state. The Legislature further finds that the completion of modern soil surveys can be most appropriately accomplished by accelerating, in a manner deemed appropriate by the department, state financial input into the combined state and federal effort currently being conducted cooperatively by the Natural Resources Conservation Service of the United States Department of Agriculture and the Conservation and Survey Division of the University of Nebraska. It is therefor the intent of this Legislature to embark upon an accelerated program for the completion of Nebraska's modern soil surveys and to recommend that the State of Nebraska and the Legislature appropriate the funds necessary to carry out this accelerated program during the years required for its completion.

Source: Laws 1976, LB 180, § 1; R.S.1943, (1977), § 2-3273; Laws 1999, LB 403, § 4; Laws 2000, LB 900, § 40.

2-1597 Nebraska Soil Survey Fund; created; purposes; administration.

The Nebraska Soil Survey Fund is created. The State Treasurer shall credit to such fund for the uses and purposes of sections 2-1596 to 2-1598 such money as is specifically appropriated, and such funds, fees, donations, gifts, services, devises, or bequests of real or personal property received by the department from any source, federal, state, public or private, to be used by the department for the purposes of accelerating the completion of modern soil surveys. The department shall allocate money from the fund for the purposes of sections 2-1596 to 2-1598. The Director of Administrative Services, upon receipt of proper vouchers approved by the department, shall issue warrants on such fund, and the State Treasurer shall countersign and pay from, but not in excess of, the amounts to the credit of such fund.

Source: Laws 1976, LB 180, § 2; R.S.1943, (1977), § 2-3274; Laws 2000, LB 900, § 41.

2-1598 Nebraska Soil Survey Fund; how expended.

The Nebraska Soil Survey Fund shall be expended by contractual agreement with the Conservation and Survey Division of the University of Nebraska for the purposes of accelerating the program of modern soil survey throughout the state in such manner as the department deems proper and necessary.

Source: Laws 1976, LB 180, § 3; R.S.1943, (1977), § 2-3275; Laws 2000, LB 900, § 42.

(e) WATER PLANNING AND REVIEW PROCESS

2-1599 Statement of purpose.

In order to provide for the effective conservation and management of Nebraska's water resources, the Legislature hereby endorses the concept of a state water planning and review process. The purpose of this planning process shall be to coordinate and direct the planning efforts of the state agencies and university divisions with responsibilities and interest in the water resources field. This interagency planning process shall be designed to: (1) Provide the Legislature and the citizens of Nebraska with information and alternative methods of addressing important water policy issues and areawide or statewide water resources problems; (2) provide coordinated interagency reviews of

proposed local, state, and federal water resources programs and projects; (3) develop and maintain the data, information, and analysis capabilities necessary to provide state agencies and other water interests with a support base for water planning and management activities; (4) provide the state with the capacity to plan and design water resources projects; and (5) conduct any other planning activities necessary to protect and promote the interests of the state and its citizens in the water resources of Nebraska.

Source: Laws 1981, LB 326, § 1; R.S.Supp.,1982, § 2-3282.

2-15,100 Water planning and review; how conducted; assistance.

The state water planning and review process shall be conducted under the guidance and general supervision of the director. The director shall be assisted in the state water planning and review process by the Game and Parks Commission, the Department of Agriculture, the Governor's Policy Research Office, the Department of Health and Human Services, the Department of Environmental Quality, the Water Center of the University of Nebraska, and the Conservation and Survey Division of the University of Nebraska. In addition, the director may obtain assistance from any private individual, organization, political subdivision, or agency of the state or federal government.

Source: Laws 1981, LB 326, § 2; R.S.Supp.,1982, § 2-3283; Laws 1984, LB 1106, § 38; Laws 1993, LB 3, § 2; Laws 1996, LB 1044, § 37; Laws 2000, LB 900, § 43; Laws 2007, LB296, § 16.

2-15,101 Appropriations; procedure.

Appropriations may be made to the department for all or part of the costs incurred by agencies other than the department in conducting the state water planning and review process. The state budget administrator shall create a separate budget program within each agency that is to receive a portion of such appropriations. To properly account for such funds, recipients shall submit to the department, in the form prescribed by the department, documentation of all costs incurred in rendering services determined by the department to be eligible for reimbursement.

Source: Laws 1981, LB 326, § 3; R.S.Supp.,1982, § 2-3284; Laws 2000, LB 900, § 44.

2-15,102 Repealed. Laws 1985, LB 102, § 22.

2-15,103 Commission; duties.

The commission shall provide the director and the Legislature upon request with the opinion of the general public and various water interests in the state. It is the intent of the Legislature that the commission consider the different opinions of the individual members but, as a body, it shall provide the director with input and comments on state water planning and review process activities as they relate to the overall use of Nebraska's water resources. The functions of the commission shall include providing upon request advice and assistance in the planning process by: (1) Identifying legislative and administrative policy issues; (2) developing and reviewing alternative solutions for legislative and administrative policy problems, including impact assessment; (3) recommending the types of problems needing analysis and where such problems are located or likely to be located; (4) disseminating information and materials

generated by the planning process to the public; (5) determining the conditions under which and the methods by which additional public input is to be obtained; and (6) reviewing and commenting on reports produced through the planning process.

Source: Laws 1981, LB 326, § 5; R.S.Supp.,1982, § 2-3286; Laws 1984, LB 1106, § 39; Laws 2000, LB 900, § 45.

2-15,104 Repealed. Laws 2000, LB 900, § 256.

2-15,105 Public hearings; materials; made available to public.

It is the intent of the Legislature that the public have maximum input into the formulation of state water policy. The director shall conduct one or more public hearings prior to the completion of any recommendations to the Legislature on methods of addressing water policy issues. All materials produced as part of the state water planning and review process shall be available to interested persons and groups upon request. The department or other agency providing such material may make a charge therefor which does not exceed the actual cost of providing the same.

Source: Laws 1981, LB 326, § 7; R.S.Supp.,1982, § 2-3288; Laws 1984, LB 1106, § 41; Laws 2000, LB 900, § 46.

2-15,106 Annual report; contents.

On or before September 15 for each odd-numbered year and on or before the date provided in section 81-132 for each even-numbered year, the director shall submit an annual report and plan of work for the state water planning and review process to the Legislature and Governor. The report shall include a listing of expenditures for the past fiscal year, a summary and analysis of work completed in the past fiscal year, funding requirements for the next fiscal year, and a projection and analysis of work to be completed and estimated funding requirements for such work for the next succeeding four years. The explanation of future funding requirements shall include an explanation of the proposed use of such funds and the anticipated results of the expenditure of such funds. The report shall, to the extent possible, identify such information as it affects each agency or other recipient of program funds. The explanation of future funding requirements shall be in a form suitable for providing an explanation of that portion of the budget request pertaining to the state water planning and review process.

Source: Laws 1981, LB 326, § 8; R.S.Supp.,1982, § 2-3289; Laws 1984, LB 1106, § 42; Laws 2000, LB 900, § 47; Laws 2002, Second Spec. Sess., LB 12, § 1.

(f) WATER MANAGEMENT

2-15,107 Repealed. Laws 1991, LB 772, § 8.

2-15,108 Repealed. Laws 1991, LB 772, § 8.

2-15,109 Repealed. Laws 1991, LB 772, § 8.

2-15,110 Repealed. Laws 1991, LB 772, § 8.

2-15,111 Repealed. Laws 1991, LB 772, § 8.

2-15,112 Repealed. Laws 1991, LB 772, § 8.

2-15,113 Repealed. Laws 1991, LB 772, § 8.

2-15,114 Repealed. Laws 1991, LB 772, § 8.

2-15,115 Repealed. Laws 1991, LB 772, § 8.

2-15,116 Repealed. Laws 1991, LB 772, § 8.

2-15,117 Repealed. Laws 1991, LB 772, § 8.

2-15,118 Repealed. Laws 1989, LB 710, § 2.

2-15,119 Repealed. Laws 1989, LB 710, § 2.

2-15,120 Repealed. Laws 1989, LB 710, § 2.

2-15,121 Repealed. Laws 2000, LB 900, § 256.

(g) NATURAL RESOURCES WATER QUALITY FUND

2-15,122 Natural Resources Water Quality Fund; created; use; investment.

There is hereby created the Natural Resources Water Quality Fund. The State Treasurer shall credit to the fund for the uses and purposes of section 2-15,123 such money as is specifically appropriated, such funds, fees, donations, gifts, services, or devises or bequests of real or personal property received by the department from any source, federal, state, public, or private, to be used by the department for the purpose of funding programs listed in subsection (2) of section 2-15,123, and such money credited under sections 2-2634, 2-2638, and 2-2641. The department shall allocate money from the fund pursuant to section 2-15,123. The fund shall be exempt from provisions relating to lapsing of appropriations, and the unexpended and unencumbered balance existing in the fund on June 30 each year shall be reappropriated. 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 1994, LB 961, § 5; Laws 1995, LB 7, § 9; Laws 2000, LB 900, § 48; Laws 2001, LB 329, § 1; Laws 2006, LB 874, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-15,123 Natural Resources Water Quality Fund; allocation; programs; rules and regulations.

(1) The Natural Resources Water Quality Fund shall be allocated by contractual agreement with natural resources districts for the purpose of funding programs listed in subsection (2) of this section. A natural resources district receiving an allocation shall provide a one hundred fifty percent match of district funds. The initial allocations each fiscal year shall be made by the department, based on needs of individual natural resources districts relative to needs of other districts, to districts which have qualifying programs. The director shall have sole discretion to decide whether a district's program qualifies for funding pursuant to this section. The unused allocations may be

reallocated to another district if the director determines that one or more districts cannot reasonably be expected to use their full allocation for that fiscal year. The commission shall adopt and promulgate rules and regulations to administer the Natural Resources Water Quality Fund.

(2) The fund shall be allocated to natural resources districts for programs related to water quality, including, but not limited to:

(a) Natural resources districts' water quality programs;

(b) Natural resources districts' illegal water wells decommissioning programs;

(c) Inspections by natural resources districts conducted pursuant to the Nebraska Chemigation Act;

(d) Source water protection programs undertaken by natural resources districts;

(e) Purchases of special equipment required by natural resources districts in management areas and control areas formed pursuant to the Nebraska Ground Water Management and Protection Act; and

(f) Application of soil and water conservation practices.

Source: Laws 1994, LB 961, § 6; Laws 2000, LB 900, § 49; Laws 2001, LB 329, § 2.

Cross References

Nebraska Chemigation Act, see section 46-1101.
Nebraska Ground Water Management and Protection Act, see section 46-701.

ARTICLE 16
COUNTY EXTENSION WORK

Cross References

Cooperative Extension Service, see section 85-1,104.

Section
2-1601. Agricultural extension work authorized.
2-1602. Extension work; scope.
2-1603. County extension society; formation; petition for appropriation.
2-1604. County extension work; funds to aid; referendum; amount.
2-1605. Farm operator, defined; determination of number.
2-1606. County extension society; annual report; budget.
2-1607. County extension work; counties may join; joint board; duties.
2-1608. Joint county extension organizations; employees; retirement system; organizations; duties.

2-1601 Agricultural extension work authorized.

In order to aid in diffusing among the people of Nebraska useful and practical information on subjects relating to agriculture, home economics, and rural life and to encourage the application of the same, there may be inaugurated, in each of the several counties of the State of Nebraska, extension work which shall be carried on in cooperation with the University of Nebraska Institute of Agriculture and Natural Resources and the United States Department of Agriculture as provided in the Act of Congress of May 8, 1914.

Source: Laws 1939, c. 1, § 1, p. 53; C.S.Supp.,1941, § 2-2001; R.S.1943, § 2-1601; Laws 1991, LB 663, § 27.

2-1602 Extension work; scope.

Cooperative extension work shall consist of the giving of practical demonstrations in agriculture and home economics and imparting information on such subjects through field and home demonstrations, 4-H clubs, public meetings, publications, and otherwise. The work shall be carried on in each county under the direction of the executive board of the extension organization in the county in such manner as may be mutually agreed upon by the executive board of such county provided for in section 2-1603 and the Regents of the University of Nebraska Institute of Agriculture and Natural Resources, through their duly appointed extension representatives.

Source: Laws 1939, c. 1, § 2, p. 53; C.S.Supp.,1941, § 2-2002; R.S.1943, § 2-1602; Laws 1991, LB 663, § 28.

2-1603 County extension society; formation; petition for appropriation.

For the purpose of carrying out the provisions of sections 2-1601 to 2-1608, there may be created in each county or combination of counties within the State of Nebraska an organization to be created in the following manner: Whenever a number of farm operators of a county or counties effect an organization for doing extension work in agriculture and home economics, adopt a constitution and bylaws as are not inconsistent with the Cooperative Extension Service of the University of Nebraska, and are recognized by the extension service as the official body within the county or counties for carrying on extension work in agriculture and home economics within the county or counties, such organization may make such regulations and bylaws for its government and the carrying on of its work as are not inconsistent with the provisions of such sections, except that for the purposes of such sections only one such organization shall be recognized in any one county or counties so affiliated. Any farm operator or spouse of a farm operator who is a legal voter in the county may at any time petition the county board to appropriate a sum of money from the general fund of the county, as provided by section 2-1604, for the purpose of employing and maintaining a county agricultural agent and for carrying out generally the purposes as expressed in sections 2-1601 and 2-1602. It shall be understood that for each family operating a farm, there shall be only one person whose name shall be counted in judging the sufficiency of such petition. When any farm operator or spouse of a farm operator has so petitioned the county board, both spouses shall be deemed members of the county extension organization provided for in sections 2-1601 to 2-1603 and shall be entitled to all voting and participating rights thereto.

Source: Laws 1939, c. 1, § 3, p. 54; C.S.Supp.,1941, § 2-2003; R.S.1943, § 2-1603; Laws 1991, LB 663, § 29; Laws 1992, LB 672, § 1.

2-1604 County extension work; funds to aid; referendum; amount.

If on or before September 1 of any even-numbered year a petition is filed with the county clerk containing the names of twenty percent or more of the farm operators of any county, as determined by the last available federal census, asking the submission to the voters of the question of whether county funds should be appropriated for the continuance or support of county agricultural extension work in the county on January 1 after the filing of the petition, the clerk of the county shall place upon the ballot at the election following the filing of the petition the question, Shall an appropriation be made annually

from the general fund of the county for the support of agricultural extension work? Yes ... No ...

If a majority of the votes cast on this question are opposed to such appropriation, the county board shall deny the appropriation. If a majority of the votes cast on this question are in favor of the appropriation, the county board may annually set aside in the general fund of the county an amount equal to the county extension budget established under section 2-1606 or 2-1607. Such amount shall not exceed thirty thousand dollars or an amount equal to a levy of two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property in such county, whichever is the greater. As claims are approved by the board of directors or by a joint board established pursuant to section 2-1607 and filed with the county clerk, the county board may order warrants to be drawn upon the general fund of the county in payment of such claims. In counties where extension work is being conducted in accordance with sections 2-1110 to 2-1117, C.S.Supp., 1937, which sections have been repealed, the county board may continue to appropriate funds for the continuance of extension work until such support is denied by vote as provided for in this section. If any county has an organization recognized as the sponsoring organization for extension work by the director of extension service within a county not then receiving a county appropriation and can show on August 1 of any odd-numbered year that it has a membership of not less than twenty-five percent of the farm operators of the county included within the organization as petitioners and members, the county board of commissioners or supervisors may appropriate funds for extension work within that county for one year and the county clerk shall submit the question of continued support at the next general election.

Source: Laws 1939, c. 1, § 4, p. 55; C.S.Supp.,1941, § 2-2004; R.S.1943, § 2-1604; Laws 1947, c. 3, § 1, p. 58; Laws 1951, c. 8, § 1, p. 77; Laws 1955, c. 4, § 1, p. 57; Laws 1961, c. 5, § 1, p. 78; Laws 1967, c. 10, § 1, p. 93; Laws 1979, LB 187, § 8; Laws 1992, LB 719A, § 5; Laws 1992, LB 672, § 2; Laws 1996, LB 1085, § 7; Laws 1996, LB 1114, § 12.

After favorable vote by county for agricultural extension service, the county board shall annually set aside in county general fund the amount equal to county extension service budget. State ex rel. Agricultural Extension Service v. Miller, 182 Neb. 285, 154 N.W.2d 469 (1967).

Under prior act, where a petition of fifty-one percent or more of the qualified voters was filed requesting discontinuance of appropriation for extension work, the county board was required to discontinue such appropriation. Thurston County Farm Bureau v. Thurston County, 136 Neb. 575, 287 N.W. 180 (1939).

2-1605 Farm operator, defined; determination of number.

In sections 2-1601 to 2-1608 the term farm operator shall mean any person who actually manages, and either by his or her own or other's labor, operates a tract of agricultural land of not less than three acres, and whose name appears on the tax rolls of the county as owning property or equipment such as might be used in operating such tract of agricultural land. The number of farmers in a county shall be determined by the report of the last federal census.

Source: Laws 1939, c. 1, § 5, p. 56; C.S.Supp.,1941, § 2-2005; R.S.1943, § 2-1605; Laws 1992, LB 672, § 3.

2-1606 County extension society; annual report; budget.

The president and secretary of the organization shall on or before January 1 of each year file with the county clerk (1) a report of their work during the

preceding year; (2) a sworn itemized statement of expenditures under sections 2-1601 to 2-1608 during the preceding year; and (3) a budget or estimate of the funds necessary for the carrying on of such work in the county during the ensuing year.

Source: Laws 1939, c. 1, § 6, p. 56; C.S.Supp.,1941, § 2-2006; R.S.1943, § 2-1606; Laws 1992, LB 672, § 4.

The president and secretary of the county extension service submit proposed budget to county board. State ex rel. Agricultural Extension Service v. Miller, 182 Neb. 285, 154 N.W.2d 469 (1967).

2-1607 County extension work; counties may join; joint board; duties.

(1) Whenever two or more counties which have complied with the provisions of sections 2-1601 to 2-1608 desire to unite for the purpose of continuance, support, and management of extension work, they may do so. The participating county organizations shall form a joint board to direct combined extension work in the participating counties and annually select a president and a secretary. The joint board shall each year establish a combined annual budget for such extension work, and each participating county shall pay its proportionate share of expenses under each combined annual budget as such share of expenses shall be determined by the joint board, except that the share of annual expenses to be paid by a participating county shall not exceed the maximum annual extension budget authorized for it under section 2-1604. The participating counties shall be recognized as but one organization for state and federal aid.

(2) The president and secretary of the joint board shall on or before January 1 of each year file with the county clerk of each participating county (a) a report of the combined extension work of the participating counties for the preceding year, (b) a sworn statement of itemized expenditures under sections 2-1601 to 2-1608 during the preceding year, and (c) the extension budget for each participating county which shall be the amount to be set aside in the general fund of each participating county to pay its proportionate share of the expenses of the combined extension work during the ensuing year.

Source: Laws 1939, c. 1, § 7, p. 56; C.S.Supp.,1941, § 2-2007; R.S.1943, § 2-1607; Laws 1992, LB 672, § 5.

2-1608 Joint county extension organizations; employees; retirement system; organizations; duties.

Whenever two or more county extension organizations have united as provided in section 2-1607 for the purpose of support and management of extension work, county extension employees jointly employed by the participating extension organizations shall be considered persons employed by a county for the purpose of subdivision (10) of section 23-2301 and shall participate in the Retirement System for Nebraska Counties under the County Employees Retirement Act. To accomplish such participation, the participating county extension organizations shall (1) pick up employee contributions as salary deductions on behalf of such county extension employees in the manner required for a county in section 23-2307 and (2) pay to the Public Employees Retirement Board or an entity designated by the board an amount in accordance with the provisions of section 23-2308. In all other respects the participation of such county extension employees in the retirement system shall be in accordance with the act.

Source: Laws 1992, LB 672, § 6; Laws 1996, LB 847, § 1; Laws 1998, LB 1191, § 1; Laws 2002, LB 687, § 2; Laws 2003, LB 451, § 1; Laws 2006, LB 366, § 1.

Cross References

County Employees Retirement Act, see section 23-2331.

ARTICLE 17

MANUFACTURE OF SYNTHETIC RUBBER FROM FARM PRODUCTS

Section
2-1701. Repealed. Laws 1980, LB 633, § 10; Laws 1980, LB 741, § 1.

2-1701 Repealed. Laws 1980, LB 633, § 10; Laws 1980, LB 741, § 1.

ARTICLE 18

POTATO DEVELOPMENT

PART I

Section
2-1801. Act, how cited.
2-1802. Division of Potato Development; established.
2-1803. Nebraska Potato Development Committee; membership; appointment; term; powers; expenses.
2-1804. Statement of policy; department; powers and duties.
2-1805. Potato shipper; license required.
2-1806. Potato shipper; license; application; issuance; display; records; cancellation and annulment of license; grounds; violations; penalty.
2-1807. Potato shipper; annual statement; excise tax; amount; violations; penalty.
2-1808. Nebraska Potato Development Fund; creation; disbursement; investment.
2-1809. Department; rules and regulations; duties; criminal actions.
2-1810. Terms, defined.
2-1811. Violation; penalty.
2-1812. Applicability of sections.

PART II

2-1813. Act, how cited.
2-1814. Terms, defined.
2-1815. Seed potatoes; when exempt from act.
2-1816. Inspection fee; estimate, how obtained; compulsory potato inspection; establishment; termination.
2-1817. Petition; contents; prima facie evidence.
2-1818. Potato inspection; director; powers.
2-1819. Director; rules and regulations; cooperate; agreements.
2-1820. Director; provide for inspection and grading services; expense.
2-1821. Inspection; certificate; grades used.
2-1822. Inspection; grade; appeal; procedure.
2-1823. Compulsory inspection and grading; special permits; application; issuance.
2-1824. Department; official inspection and grade legend; adopt.
2-1825. Violations; penalties.
2-1826. Acts; how designated.

PART I

2-1801 Act, how cited.

Sections 2-1801 to 2-1811 may be cited as the Nebraska Potato Development Act.

Source: Laws 1945, c. 4, § 1, p. 70.

2-1802 Division of Potato Development; established.

There is hereby established a Division of Potato Development in the Department of Agriculture. The Director of Agriculture shall appoint the division head and any assistants as may be necessary to carry out the provisions of the Nebraska Potato Development Act.

Source: Laws 1945, c. 4, § 2, p. 70; Laws 1991, LB 358, § 1.

2-1803 Nebraska Potato Development Committee; membership; appointment; term; powers; expenses.

With the exception of the ex officio member, the Governor shall appoint an advisory committee to be known as the Nebraska Potato Development Committee. The committee shall be composed of three shippers and four growers from the industry and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources who shall be an ex officio member. The Director of Agriculture shall be the chairperson. The committee shall adopt and provide rules and regulations for the conduct of the affairs of the Division of Potato Development and advise the director regarding the appointment of the division head and any assistants as may be appointed. The members of the committee shall serve without pay but shall receive actual and necessary expenses incurred while on official business as provided in sections 81-1174 to 81-1177. As the terms of office of such appointees expire, successors shall be appointed by the Governor for a period of two years and until their successors are appointed and qualified.

Source: Laws 1945, c. 4, § 3, p. 70; Laws 1947, c. 4, § 1, p. 60; Laws 1981, LB 204, § 7; Laws 1991, LB 358, § 2.

Cross References

Nebraska Potato Council, see section 2-2811.

2-1804 Statement of policy; department; powers and duties.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by conserving, developing, and promoting the state's potato industry. The Department of Agriculture shall be the agency of the State of Nebraska for such purpose. In connection therewith and in furtherance thereof, such department shall have the power, among other things, to: (1) Adopt and devise a program of education to promote better practices and methods in the production, storage, grading, and transportation of potatoes grown within the state; (2) disseminate information to landowners and to producers and shippers of potatoes that will enable them to increase the yield and improve the quality of potatoes; (3) undertake, at such times and in such manner as the department shall determine, an active advertising campaign to acquaint the general public with the high quality and the desirability of the use of potatoes grown in the State of Nebraska; (4) encourage and foster research designed to determine new and better methods of improving the yield and quality of Nebraska potatoes and of converting potatoes to various commercial and industrial uses; (5) enter into such contracts as may be necessary in carrying out the purposes of the Nebraska Potato Development Act and the Nebraska Potato Inspection Act; (6) pay inspection and grading fees prescribed by the Nebraska Potato

Inspection Act; and (7) conduct, in addition to the things enumerated, any other work for the improvement of Nebraska potatoes.

Source: Laws 1945, c. 4, § 4, p. 70; Laws 1969, c. 20, § 1, p. 185; Laws 1987, LB 20, § 1.

Cross References

Nebraska Potato Inspection Act, see section 2-1813.

2-1805 Potato shipper; license required.

After sections 2-1801 to 2-1811 shall have been in effect thirty days, it shall be unlawful for any person to act as or conduct the business of a potato shipper without having obtained and being the holder of a license from the Department of Agriculture as hereinafter provided.

Source: Laws 1945, c. 4, § 5, p. 71.

2-1806 Potato shipper; license; application; issuance; display; records; cancellation and annulment of license; grounds; violations; penalty.

Every person desiring to engage in business as a potato shipper shall file with the Department of Agriculture an application for a license in such form and detail as the department may prescribe. If it is found that there has been compliance with the provisions of sections 2-1801 to 2-1811 and the rules and regulations of the department issued in conformance therewith, a license shall forthwith be issued to the applicant. Every person who engages in business as a potato shipper without having a license shall be guilty of a Class IV misdemeanor. Each licensed potato shipper shall display conspicuously in his place of business the license granted to him. Should the licensed potato shipper change his place of business he shall immediately notify the department. Each licensed potato shipper shall keep such records with respect to shipments of potatoes by him as the department may by regulation require. Such records shall be preserved for a period of not less than two years and be, at all times during business hours, subject to inspection by authorized agents of the department. In the event that a licensed potato shipper shall violate any of the provisions of sections 2-1801 to 2-1811 or the regulations of the department issued in conformance therewith, the department may, upon due notice and after full hearing, cancel and annul his license.

Source: Laws 1945, c. 4, § 6, p. 71; Laws 1947, c. 4, § 2, p. 60; Laws 1951, c. 9, § 1, p. 79; Laws 1977, LB 40, § 16.

2-1807 Potato shipper; annual statement; excise tax; amount; violations; penalty.

(1) Beginning July 1, 1997, every potato shipper shall render and have on file with the Department of Agriculture by the last day of July an annual statement under oath, on forms prescribed by the department, which shall set forth the number of pounds of potatoes grown in Nebraska which were sold or shipped by him or her during the preceding fiscal year beginning on July 1 and ending on June 30. For every potato shipper who was required to file an annual statement for calendar year 1996, a short period statement covering January 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. For every potato shipper who was required to file a quarterly statement for the period of January 1, 1997, through March 31,

1997, a final quarterly statement covering April 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. At the time the sworn statement is filed and in connection therewith, each such potato shipper shall pay and remit to the department an excise tax of not to exceed two cents per one hundred pounds upon the potatoes shown in such statement to have been sold, which tax is hereby levied and imposed. The tax shall be set in the manner prescribed in subsection (3) of this section. The department shall transmit to the State Treasurer all money, checks, drafts, or other mediums of exchange thus received. The department shall have authority to adjust all errors in making payment. Any such potato shipper who shall neglect or refuse to file such statement, or to pay the tax herein imposed, within the time prescribed, shall be guilty of a Class IV misdemeanor. No potatoes shall be subject to tax more than once under the Nebraska Potato Development Act.

(2) All excise taxes imposed by this section are delinquent on August 1 of the year due. The department shall impose a penalty of five percent per month of the excise taxes for each month or portion thereof such taxes are delinquent not to exceed one hundred percent of such taxes.

(3) The department shall, upon the recommendation of the committee, have the power to set the excise tax prescribed in subsection (1) of this section. The tax shall be one cent per one hundred pounds from July 19, 1980, until adjusted by the department. Adjusted rates shall be effective for periods of not less than one year. The applicable rate of the excise tax shall be prescribed in rules and regulations adopted by the department in the manner prescribed by law.

Source: Laws 1945, c. 4, § 7, p. 72; Laws 1947, c. 4, § 3, p. 61; Laws 1951, c. 9, § 2, p. 80; Laws 1963, c. 12, § 1, p. 90; Laws 1969, c. 20, § 2, p. 186; Laws 1977, LB 40, § 17; Laws 1980, LB 833, § 1; Laws 1997, LB 202, § 1.

2-1808 Nebraska Potato Development Fund; creation; disbursement; investment.

The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Potato Development Fund, to which fund shall be credited, for the uses and purposes of the Nebraska Potato Development Act and its enforcement, all taxes, penalties and fees collected by the Department of Agriculture. After appropriation, the Director of Administrative Services, upon receipt of proper vouchers approved by the director of the department, shall issue his or her warrants on such funds and the State Treasurer shall pay the same out of the money credited to the fund. 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 1945, c. 4, § 8, p. 72; Laws 1969, c. 584, § 29, p. 2359; Laws 1995, LB 7, § 10.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1809 Department; rules and regulations; duties; criminal actions.

The Department of Agriculture shall have authority to promulgate such rules and regulations as are necessary to promptly and effectively enforce the provisions of sections 2-1801 to 2-1811. The department may call upon the Attorney General of Nebraska for legal assistance. All criminal actions for the violation of any provisions of sections 2-1801 to 2-1811 shall be prosecuted by the Attorney General. It shall be the duty of the department to immediately report to the Attorney General any information coming into its possession concerning any violation of sections 2-1801 to 2-1811 or the failure or refusal of any person to comply therewith.

Source: Laws 1945, c. 4, § 9, p. 73.

2-1810 Terms, defined.

As used in the Nebraska Potato Development Act:

(1) Person shall mean and include any natural person, firm, partnership, limited liability company, association, or corporation;

(2) Potato shipper shall mean and include any person engaged in the business of shipping potatoes who, in any calendar year, sells one hundred eighty thousand pounds of potatoes grown in Nebraska, including potato growers who sell one hundred eighty thousand pounds of potatoes not through licensed shippers and any person who utilizes for any purpose in any calendar year one hundred eighty thousand pounds of potatoes grown in Nebraska not purchased from licensed shippers;

(3) Potato grower shall mean the actual grower within the State of Nebraska of at least three acres of potatoes during the crop year; and

(4) Department shall mean the Department of Agriculture.

Source: Laws 1945, c. 4, § 10, p. 73; Laws 1947, c. 4, § 4, p. 62; Laws 1969, c. 20, § 3, p. 186; Laws 1987, LB 20, § 2; Laws 1993, LB 121, § 63.

2-1811 Violation; penalty.

Any person violating any of the provisions of sections 2-1801 to 2-1811 shall be guilty of a Class II misdemeanor.

Source: Laws 1945, c. 4, § 11, p. 73; Laws 1977, LB 40, § 18.

2-1812 Applicability of sections.

Section 2-1807 and subdivision (2) of section 2-1810 shall not apply to the shipping or utilizing of seed potatoes grown in Nebraska and planted in the state by the grower or shipper.

Source: Laws 1969, c. 20, § 4, p. 187.

PART II

2-1813 Act, how cited.

Sections 2-1813 to 2-1825 may be cited as the Nebraska Potato Inspection Act.

Source: Laws 1969, c. 20, § 5, p. 187.

2-1814 Terms, defined.

As used in sections 2-1813 to 2-1825, unless the context otherwise requires:

(1) Department shall mean the Department of Agriculture;

(2) Director shall mean the Director of Agriculture;

(3) Nebraska Potato Development Committee shall mean the advisory committee established by section 2-1803;

(4) Commercial potato growing area shall mean a geographic area in which potatoes are produced and offered for sale in commercial quantities;

(5) Commercial shipment shall mean any potatoes shipped in commerce or processed and destined for human consumption, and noncertified seed potatoes shipped out of the state;

(6) Commercial potato acreage shall mean a potato field of three acres or more; and

(7) Preceding crop year shall mean the last calendar year for which official acreage statistics have been compiled by the state-federal division of agricultural statistics.

Source: Laws 1969, c. 20, § 6, p. 187.

2-1815 Seed potatoes; when exempt from act.

The provisions of sections 2-1813 to 2-1825 shall not include seed potatoes officially designated by law as Nebraska Certified.

Source: Laws 1969, c. 20, § 7, p. 188.

2-1816 Inspection fee; estimate, how obtained; compulsory potato inspection; establishment; termination.

Any person, for the purpose of obtaining information relative to the cost of potato inspection and grading services for a designated area, may request in writing that an estimate be prepared by the director of the costs of such a service. The director may consult with the Nebraska Potato Development Committee to establish an estimated inspection fee based upon the inspector's salary, mileage and other travel expenses, cost of inspection certificates, and other necessary expenses to cover the inspection service and the administration thereof.

To establish compulsory inspection of commercial shipments of potatoes in a designated area, a petition, signed by potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year, with an estimate of inspection costs attached, may be presented to the director requesting that all commercial shipments of potatoes originating in the designated area be officially inspected and graded by the department at the point of origin or at locations approved by the director. The director shall fix a time and place for hearing on the petition and shall publish notice thereof in a newspaper having general circulation in the area designated in the petition for three consecutive weeks. At the time and place established by such notice, the director or his or her designate shall hold a public hearing upon the petition at which time evidence will be taken in support of or in opposition to the petition. If the evidence reveals that potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year are in favor of the compulsory program set forth in the petition request, the director shall enter an order establishing compulsory inspection of commercial ship-

ments of potatoes in the area designated in the petition. A petition to terminate compulsory inspection, signed by potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year, may be filed with the director at any time and such petition shall be set for public hearing in the manner aforesaid. If the director finds from the evidence submitted at such hearing to terminate inspection services that the petition to terminate represents fifty-one percent or more of the commercial potato acreage of the last preceding crop year, he or she shall enter an order declaring that compulsory potato inspection is terminated. In order to determine the commercial potato acreage of the last preceding crop year, the director shall use the tabulated crop acreage reports of the county assessors, compiled by the state-federal division of agricultural statistics.

Source: Laws 1969, c. 20, § 8, p. 188; Laws 1994, LB 884, § 4.

2-1817 Petition; contents; prima facie evidence.

A petition filed pursuant to section 2-1816 shall be prima facie evidence that (1) it has been properly circulated, (2) the signatures thereon are genuine, (3) the signatures thereon reflect the correct representation of the number of acres specified, (4) the land described therein was devoted to potato production in the last preceding crop year, (5) such petition represents fifty-one percent or more of the commercial acreage in the area designated therein, and (6) each and every other allegation contained therein is true. Any fact contained therein may be rebutted at the hearing before the director.

Source: Laws 1969, c. 20, § 9, p. 189.

2-1818 Potato inspection; director; powers.

The director is empowered to make all arrangements to implement the inspection service or terminate existing inspection service following entry of an order establishing or terminating such services and to this extent he is authorized to appoint persons or designate agents as may be necessary to carry out the duties of the department and to expend such funds as are necessary to accomplish the purposes of sections 2-1813 to 2-1825. The director may require that all persons assigned to inspection and grading duties possess a federal potato inspector's license.

Source: Laws 1969, c. 20, § 10, p. 189.

2-1819 Director; rules and regulations; cooperate; agreements.

The director may promulgate rules and regulations necessary to carry out the provisions, purposes, and intent of sections 2-1813 to 2-1825; and is authorized to cooperate with the United States Department of Agriculture, the University of Nebraska Institute of Agriculture and Natural Resources, and other public or private agencies or groups and to enter into agreements with the same in carrying out the provisions of sections 2-1813 to 2-1825.

Source: Laws 1969, c. 20, § 11, p. 190.

2-1820 Director; provide for inspection and grading services; expense.

The director may, upon written request of any potato grower, provide for inspection and grading services for commercial shipments of potatoes in areas where compulsory inspection and grading are not in force. In all such cases,

the inspection and grading service shall be at the expense of the potato grower requesting the same and shall be determined in the manner prescribed in section 2-1816.

Source: Laws 1969, c. 20, § 12, p. 190.

2-1821 Inspection; certificate; grades used.

An official certificate evidencing official inspection and designating the grade of potatoes inspected shall be issued by the appointed inspector or agent of the director to the person or persons for whom the inspection and grading service was completed. All inspections shall be made on the basis of the official grades established from time to time by the United States Department of Agriculture and such additional grades as may be duly adopted by the director; *Provided*, that when United States grades are used, they shall conform in all respects to the requirements and standards prescribed by the United States Department of Agriculture.

Source: Laws 1969, c. 20, § 13, p. 190.

2-1822 Inspection; grade; appeal; procedure.

Any person having a direct financial interest, who is dissatisfied with the grade established by inspection under the Nebraska Potato Inspection Act, may appeal to the director in writing for reinspection. Such appeal shall be made within ten days after inspection and before shipment of the inspected potatoes. Upon receipt of such appeal, the director shall cause a reinspection to be completed to determine the grade in dispute, and upon completion of the reinspection, he or she shall make known his or her findings to all persons having a direct financial interest. All parties shall be bound by the findings following the reinspection. In the event that the reinspection does not determine a new or different grade, all costs of the reinspection shall be paid to the director by the person requesting reinspection. Any official inspection certificate issued as the result of a reinspection shall supersede the original official certificate. The findings may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 20, § 14, p. 190; Laws 1988, LB 352, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

2-1823 Compulsory inspection and grading; special permits; application; issuance.

In any area designated for compulsory inspection and grading by order of the director pursuant to the provisions of sections 2-1813 to 2-1825, special permits may be issued authorizing shipment of uninspected potatoes when an official inspection cannot be made. Application to the director for special permits authorizing shipment must establish an emergency in which delay may cause substantial financial injury to the applicant.

Source: Laws 1969, c. 20, § 15, p. 191.

2-1824 Department; official inspection and grade legend; adopt.

The department may adopt an official Nebraska inspection and grade legend, assign official inspection numbers to persons or establishments under inspec-

tion and require that such numbers be exclusive to them, and otherwise control the use of the official Nebraska legend. United States grade designations and authorized legends in connection therewith shall be used in accordance with the requirements of the United States Department of Agriculture.

Source: Laws 1969, c. 20, § 16, p. 191.

2-1825 Violations; penalties.

(1) Any person, firm, corporation, limited liability company, association, or officer or member thereof who (a) destroys or alters any official certificate, (b) ships or attempts to ship any potatoes out of any designated area where compulsory inspection is maintained without first obtaining a special permit or without first complying with section 2-1816, or (c) violates any other provision of the Nebraska Potato Inspection Act or the rules and regulations promulgated thereunder for which no specific penalty is provided shall be guilty of a Class III misdemeanor.

(2) Any inspector or agent of the director who fails to remit to the department all fees collected in his or her official capacity shall be guilty of a Class III misdemeanor.

(3) Any person, firm, corporation, limited liability company, association, or officer or member thereof who forges or counterfeits any official inspection legend or official certificate adopted by the director for use under the Nebraska Potato Inspection Act or who, not being an inspector or appointed agent of the director, attaches any certificate of inspection whether or not forged or counterfeited to any commercial shipment of potatoes shall be guilty of a Class IV felony.

Source: Laws 1969, c. 20, § 17, p. 191; Laws 1977, LB 40, § 19; Laws 1987, LB 20, § 3; Laws 1994, LB 884, § 5.

2-1826 Acts; how designated.

The Nebraska Potato Development Act and the Nebraska Potato Inspection Act shall become one act in two parts with the Nebraska Potato Development Act designated as Part I and the Nebraska Potato Inspection Act designated as Part II thereof and the Revisor of Statutes shall make appropriate changes in the statutes necessitated by such redesignation.

Source: Laws 1969, c. 20, § 18, p. 192; Laws 1987, LB 20, § 4.

Cross References

Nebraska Potato Development Act, see section 2-1801.
Nebraska Potato Inspection Act, see section 2-1813.

ARTICLE 19

DIVISION OF NEBRASKA RESOURCES

Section
2-1901. Repealed. Laws 1967, c. 566, § 15.
2-1902. Repealed. Laws 1967, c. 566, § 15.
2-1903. Repealed. Laws 1967, c. 566, § 15.
2-1904. Repealed. Laws 1967, c. 566, § 15.
2-1905. Repealed. Laws 1967, c. 566, § 15.
2-1906. Repealed. Laws 1967, c. 566, § 15.
2-1907. Repealed. Laws 1967, c. 566, § 15.

Section
2-1908. Repealed. Laws 1967, c. 566, § 15.
2-1909. Repealed. Laws 1967, c. 566, § 15.
2-1910. Repealed. Laws 1967, c. 566, § 15.
2-1911. Repealed. Laws 1967, c. 566, § 15.
2-1912. Repealed. Laws 1967, c. 566, § 15.
2-1913. Repealed. Laws 1967, c. 566, § 15.

2-1901 Repealed. Laws 1967, c. 566, § 15.

2-1902 Repealed. Laws 1967, c. 566, § 15.

2-1903 Repealed. Laws 1967, c. 566, § 15.

2-1904 Repealed. Laws 1967, c. 566, § 15.

2-1905 Repealed. Laws 1967, c. 566, § 15.

2-1906 Repealed. Laws 1967, c. 566, § 15.

2-1907 Repealed. Laws 1967, c. 566, § 15.

2-1908 Repealed. Laws 1967, c. 566, § 15.

2-1909 Repealed. Laws 1967, c. 566, § 15.

2-1910 Repealed. Laws 1967, c. 566, § 15.

2-1911 Repealed. Laws 1967, c. 566, § 15.

2-1912 Repealed. Laws 1967, c. 566, § 15.

2-1913 Repealed. Laws 1967, c. 566, § 15.

ARTICLE 20
AGRICULTURAL ASSOCIATIONS

Section
2-2001. Formation; name; title.
2-2002. Annual statement; contents; filing.
2-2003. Annual report; failure to file; effect.
2-2004. Filing fee; waived.

2-2001 Formation; name; title.

Any agricultural association formed for the purpose of developing and improving some form of agriculture in this state which files with the Secretary of State a copy of its constitution and bylaws, shall be declared a corporation under the name and title designated in such constitution.

Source: Laws 1949, c. 2, § 1, p. 57.

2-2002 Annual statement; contents; filing.

Each of such associations shall file with the Secretary of State prior to February 1 of each year an annual statement for the previous calendar year. The statement shall contain (1) a list of its members, (2) names and addresses of its officers, and (3) an itemization of its receipts and disbursements.

Source: Laws 1949, c. 2, § 2, p. 57.

2-2003 Annual report; failure to file; effect.

Any association formed as provided by section 2-2001 failing to file the annual statement as provided in section 2-2002 shall cease to exist as such.

Source: Laws 1949, c. 2, § 3, p. 58.

2-2004 Filing fee; waived.

No fee of any kind shall be required by the Secretary of State for any filings made under sections 2-2001 and 2-2002.

Source: Laws 1949, c. 2, § 4, p. 58.

ARTICLE 21

RURAL REHABILITATION CORPORATION

Section
2-2101. Nebraska Rural Rehabilitation Corporation; dissolved; acceptance of federal law.
2-2102. Director of Agriculture; agent.
2-2103. Director; authority.
2-2104. Director; powers; agreements authorized.
2-2105. Director; agreements with federal government; execute.
2-2106. Director; reports.
2-2107. Director; notice of acceptance.

2-2101 Nebraska Rural Rehabilitation Corporation; dissolved; acceptance of federal law.

The State of Nebraska hereby accepts the provisions of Public Law 499, enacted by the Eighty-first Congress of the United States, and entitled An Act to provide for the liquidation of the trusts under the transfer agreements with the state rural rehabilitation corporations, and for other purposes. In connection with such acceptance, the State of Nebraska finds and declares that the Nebraska Rural Rehabilitation Corporation has been dissolved.

Source: Laws 1951, c. 4, § 1, p. 64.

2-2102 Director of Agriculture; agent.

The State of Nebraska hereby designates the Director of Agriculture as the sole agent to represent the State of Nebraska in the administration of any funds made available under the provisions of the federal act specified in section 2-2101.

Source: Laws 1951, c. 4, § 2, p. 65.

2-2103 Director; authority.

The Director of Agriculture, on behalf of the State of Nebraska, is authorized to enter into an agreement with the Secretary of Agriculture of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, to accept, administer, expend, and use in the State of Nebraska all or any part of the trust assets or any other funds made available under the provisions of the federal act specified in section 2-2101.

Source: Laws 1951, c. 4, § 3, p. 65.

2-2104 Director; powers; agreements authorized.

The Director of Agriculture, on behalf of the State of Nebraska, is specifically authorized to agree that:

(1) The State of Nebraska and the Director of Agriculture as its agent will abide by the determinations and apportionments of the Secretary of Agriculture of the United States provided for in the federal act specified in section 2-2101 and the payments made by the Secretary of Agriculture pursuant thereto;

(2) The returned assets of the Nebraska Rural Rehabilitation Corporation and the income therefrom will be used only for such of the rural rehabilitation purposes permissible under the charter of the Nebraska Rural Rehabilitation Corporation as may from time to time be agreed upon by the Director of Agriculture of Nebraska and the Secretary of Agriculture of the United States; and

(3) The Nebraska Rural Rehabilitation Corporation funds may be distributed to public colleges, universities, or vocational or technical schools exclusively owned and controlled by the State of Nebraska or a governmental subdivision thereof. The agreement may provide for the qualifications of recipients to be benefited by the funds and for the method of their selection, but nothing in this section shall be construed to limit the director from agreeing to any other reasonable provisions in such agreement. Administrative costs for the distribution of these funds shall not exceed five percent of the book value of the entire fund and the administrative costs may include clerical and administrative services.

The Director of Agriculture is further authorized and empowered, upon behalf of the State of Nebraska, to make such provisions as may be necessary to hold the United States and its Secretary of Agriculture free from liability by virtue of the transfer of the assets and income therefrom to him or her under sections 2-2101 to 2-2107.

Source: Laws 1951, c. 4, § 4, p. 65; Laws 1965, c. 15, § 1, p. 146; Laws 1972, LB 1036, § 1; Laws 1980, LB 633, § 1.

2-2105 Director; agreements with federal government; execute.

The Director of Agriculture is further authorized to enter into an agreement or agreements with the Secretary of Agriculture of the United States to use the assets and funds received under sections 2-2101 to 2-2107 to carry out the provisions of the Bankhead-Jones Farm Tenant Act, enacted by the Congress of the United States, and in accordance with the applicable provisions thereof.

Source: Laws 1951, c. 4, § 5, p. 66.

2-2106 Director; reports.

The Director of Agriculture shall make reports to the Secretary of Agriculture of the United States, in such form, and containing such information, as the secretary may from time to time reasonably require. The Secretary of Agriculture of the United States, upon request, shall be given access to the records upon which such information is based.

Source: Laws 1951, c. 4, § 6, p. 66.

2-2107 Director; notice of acceptance.

The State of Nebraska shall transmit, through the Director of Agriculture, to the Secretary of Agriculture of the United States notice of acceptance of the

provisions of the federal act specified in section 2-2101, and accompany such acceptance with a certified copy of sections 2-2101 to 2-2107.

Source: Laws 1951, c. 4, § 7, p. 66.

ARTICLE 22

NEBRASKA SWINE PRODUCERS ASSOCIATION

Section
2-2201. Repealed. Laws 1980, LB 633, § 10.
2-2202. Repealed. Laws 1980, LB 633, § 10.
2-2203. Repealed. Laws 1980, LB 633, § 10.
2-2204. Repealed. Laws 1980, LB 633, § 10.
2-2205. Repealed. Laws 1980, LB 633, § 10.

2-2201 Repealed. Laws 1980, LB 633, § 10.

2-2202 Repealed. Laws 1980, LB 633, § 10.

2-2203 Repealed. Laws 1980, LB 633, § 10.

2-2204 Repealed. Laws 1980, LB 633, § 10.

2-2205 Repealed. Laws 1980, LB 633, § 10.

ARTICLE 23

WHEAT DEVELOPMENT

Section
2-2301. Act, how cited.
2-2302. Nebraska Wheat Development, Utilization, and Marketing Board; created; initial members.
2-2303. Terms, defined.
2-2304. Board; membership; qualifications; appointment; districts; enumerated.
2-2305. Board; transitional provisions; vacancy; how filled; term.
2-2306. Board; voting members; expenses.
2-2307. Board; removal of member; grounds.
2-2308. Board; chairperson; meetings; conduct of business.
2-2309. Declaration of policy; board; powers and duties.
2-2310. Board; administrative office.
2-2311. Excise tax; amount; adjustment.
2-2312. Excise tax; deduct from loan proceeds.
2-2313. Excise tax; stored wheat.
2-2314. Excise tax; federal government; sale; exception.
2-2315. Excise tax; purchaser; records; reports; forms; remittance.
2-2316. Repealed. Laws 1981, LB 545, § 52.
2-2316.01. Repealed. Laws 1981, LB 11, § 38.
2-2317. Nebraska Wheat Development, Utilization, and Marketing Fund; creation; disbursement; investment.
2-2318. Board; restriction; cooperate with University of Nebraska and other organizations; purpose.
2-2319. Violations; penalty.
2-2320. Repealed. Laws 1987, LB 1, § 16.
2-2321. Board; use of funds; restriction.

2-2301 Act, how cited.

Sections 2-2301 to 2-2319 may be cited as the Nebraska Wheat Resources Act.

Source: Laws 1955, c. 5, § 1, p. 59.

2-2302 Nebraska Wheat Development, Utilization, and Marketing Board; created; initial members.

There is hereby established the Nebraska Wheat Development, Utilization, and Marketing Board. The present members of the Nebraska Wheat Development, Utilization, and Marketing Committee shall serve as members of such board until the expiration of their respective terms, after which time members shall be appointed by the Governor to the board pursuant to section 2-2305.

Source: Laws 1955, c. 5, § 2, p. 59; Laws 1981, LB 11, § 21.

2-2303 Terms, defined.

For purposes of the Nebraska Wheat Resources Act, unless the context otherwise requires:

(1) Board shall mean the Nebraska Wheat Development, Utilization, and Marketing Board;

(2) Grower shall mean any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, and both the owner and the tenant jointly and shall include a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business units, devices, and arrangements;

(3) First purchaser shall mean any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property in or to wheat from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower when the actual or constructive possession of such wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(4) Commercial channels shall mean the sale of wheat for any use when sold to any commercial buyer, dealer, processor, cooperative, or any person, public or private, who resells any wheat or product produced from wheat; and

(5) Sale shall also include any pledge or mortgage of wheat after harvest to any person, public or private.

Source: Laws 1955, c. 5, § 3, p. 59; Laws 1981, LB 11, § 22; Laws 1987, LB 1, § 11; Laws 1993, LB 121, § 64.

2-2304 Board; membership; qualifications; appointment; districts; enumerated.

(1) The board shall be composed of seven members who shall (a) be citizens of Nebraska, (b) be at least twenty-one years of age, (c) have been actually engaged in growing wheat in this state for a period of at least five years, and (d) derive a substantial portion of their income from growing wheat. The Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources shall serve as nonvoting members of the board. With the exception of the nonvoting members, the Governor shall appoint the members to the board.

(2) The seven appointed members shall be appointed from the following districts:

(a) District 1: The counties of Sioux, Scotts Bluff, Dawes, Box Butte, Morrill, Sheridan, and Garden;

(b) District 2: The counties of Kimball, Banner, and Cheyenne;

(c) District 3: The counties of Perkins, Deuel, Keith, Arthur, McPherson, Logan, Grant, Hooker, Thomas, and Cherry;

(d) District 4: The counties of Lincoln, Chase, Dundy, Hayes, Hitchcock, and Frontier;

(e) District 5: The counties of Buffalo, Dawson, Phelps, Custer, Gosper, Kearney, Red Willow, Furnas, Harlan, and Franklin;

(f) District 6: The counties of Adams, Webster, Nuckolls, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, Richardson, Otoe, Cass, Lancaster, Seward, York, Hamilton, Hall, Sherman, Howard, Merrick, Nance, Polk, Butler, Saunders, Sarpy, Douglas, Washington, Dodge, Colfax, Platte, Burt, Cuming, Stanton, Madison, Boone, Valley, Greeley, Antelope, Pierce, Wayne, Thurston, Dakota, Dixon, Cedar, Knox, Wheeler, Garfield, Loup, Blaine, Brown, Rock, Holt, Boyd, Keya Paha, Clay, Fillmore, and Saline; and

(g) District 7: The at-large district.

Source: Laws 1955, c. 5, § 4, p. 60; Laws 1969, c. 21, § 1, p. 193; Laws 1981, LB 11, § 23; Laws 1991, LB 685, § 1; Laws 2002, LB 474, § 1.

2-2305 Board; transitional provisions; vacancy; how filled; term.

The member serving former district 1 will assume the role of serving new district 1 on February 28, 2002, and his or her term shall expire on June 30, 2004. The member serving former district 2 will assume the role of serving new district 2 on February 28, 2002, and his or her term shall expire on June 30, 2003. The term of the member serving district 3 shall expire on June 30, 2002. The term of the member serving district 4 shall expire on June 30, 2006. The term of the member serving district 5 shall expire on June 30, 2005. The member serving former district 6 will assume the role of serving new district 6 on February 28, 2002, and his or her term shall expire on June 30, 2004. The member serving former district 7 will assume the role of serving new district 7 on February 28, 2002, and his or her term shall expire on June 30, 2005. As the terms of office of the members serving on February 28, 2002, expire as provided in this section, their successors shall be appointed to serve for terms of five years and until their successors are appointed and qualified. Terms of office shall commence on July 1. A member appointed to fill a vacancy, occurring before the expiration of the term of a member separated from the board for any cause, shall be appointed for the remainder of the term of the member whose office has been so vacated in the same manner as his or her predecessor.

Source: Laws 1955, c. 5, § 5, p. 61; Laws 1969, c. 21, § 2, p. 194; Laws 1981, LB 11, § 24; Laws 1991, LB 685, § 2; Laws 2002, LB 474, § 2.

2-2306 Board; voting members; expenses.

All voting members of the board shall be entitled to actual and necessary expenses, as provided for in sections 81-1174 to 81-1177 for state employees, while attending meetings of the board or while engaged in the performance of official responsibilities as determined by the board.

Source: Laws 1955, c. 5, § 6, p. 61; Laws 1981, LB 11, § 25.

2-2307 Board; removal of member; grounds.

A member of the board shall be removable by the Governor for cause. He or she shall first be given a copy of written charges against him or her and also an opportunity to be heard publicly. In addition to all other causes, a member ceasing to (1) be a resident of the state, (2) live in the district from which he or she was appointed, or (3) be actually engaged in growing wheat in the state shall be deemed sufficient cause for removal from office.

Source: Laws 1955, c. 5, § 7, p. 61; Laws 1981, LB 11, § 26.

2-2308 Board; chairperson; meetings; conduct of business.

At the first meeting of the board, it shall elect a chairperson from among its members. The board shall meet at least once every three months and at such other times as called by the chairperson or by any three members of the board. The majority of the members of the board shall constitute a quorum for transaction of business. The affirmative vote of the majority of all members of the board shall be necessary for the adoption of rules and regulations.

Source: Laws 1955, c. 5, § 8, p. 62; Laws 1981, LB 11, § 27.

2-2309 Declaration of policy; board; powers and duties.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the wheat industry and the economy of the areas producing wheat. The Nebraska Wheat Development, Utilization, and Marketing Board shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such purpose, such board shall have the power to:

(1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of wheat grown within the State of Nebraska;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Wheat Resources Act and to enter into such contracts as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the Nebraska Wheat Resources Act. The rules and regulations shall include provisions which prescribe the procedure for adjustment of the excise tax by the board pursuant to section 2-2311;

(5) Conduct, in addition to the things enumerated, any other program for the development, utilization, and marketing of wheat grown in the State of Nebraska. Such programs may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(6) Make refunds for overpayments of the excise tax according to rules and regulations adopted and promulgated by the board; and

(7) Employ personnel and contract for services which are necessary for the proper operation of the program.

Source: Laws 1955, c. 5, § 9, p. 62; Laws 1959, c. 8, § 1, p. 105; Laws 1981, LB 11, § 28; Laws 1983, LB 505, § 1; Laws 1986, LB 1230, § 17; Laws 1988, LB 963, § 1.

2-2310 Board; administrative office.

The board may establish an administrative office in the State of Nebraska at such place as may be suitable for the furtherance of sections 2-2301 to 2-2319. The board shall not purchase, construct, or otherwise obtain title to its own administrative office, but shall be limited to leasing state or commercial office space.

Source: Laws 1955, c. 5, § 10, p. 63; Laws 1981, LB 11, § 29; Laws 1987, LB 1, § 12.

2-2311 Excise tax; amount; adjustment.

(1) Commencing July 1, 1988, there is hereby levied an excise tax of one cent per bushel upon all wheat sold through commercial channels in the State of Nebraska. Commencing July 1, 1989, the board may levy an excise tax of not to exceed one and one-fourth cents per bushel upon all wheat sold through commercial channels in the State of Nebraska. Commencing July 1, 1990, the board may levy an excise tax of not to exceed one and one-half cents per bushel upon all wheat sold through commercial channels in the State of Nebraska. The tax shall be levied and imposed on the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the Nebraska Wheat Resources Act, no wheat shall be subject to the tax more than once.

(2) The board shall have the power to reduce the excise tax for such period as it shall deem justified, but not less than one year, whenever it shall determine that the excise tax provided by this section is yielding more than is required to carry out the intent and purposes of the Nebraska Wheat Resources Act. If the board, after reducing such excise tax, finds that sufficient revenue is not being produced by such excise tax, it may restore in full or in part such excise tax not to exceed the amount per bushel authorized in subsection (1) of this section.

Source: Laws 1955, c. 5, § 11, p. 63; Laws 1977, LB 390, § 1; Laws 1981, LB 11, § 30; Laws 1983, LB 505, § 2; Laws 1987, LB 1, § 13; Laws 1987, LB 610, § 1; Laws 1988, LB 963, § 2.

2-2312 Excise tax; deduct from loan proceeds.

In the case of a pledge or mortgage of wheat as security for a loan under the federal price support program, the tax shall be deducted from the proceeds of such loan at the time the loan is made.

Source: Laws 1955, c. 5, § 12, p. 63.

2-2313 Excise tax; stored wheat.

The tax, provided for by the provisions of section 2-2311, shall be deducted, as provided by sections 2-2301 to 2-2319, whether such wheat is stored in this or any other state.

Source: Laws 1955, c. 5, § 13, p. 63.

2-2314 Excise tax; federal government; sale; exception.

The tax, herein levied and imposed by the provisions of section 2-2311, shall not apply to the sale of wheat to the federal government for ultimate use or consumption by the people of the United States, where the State of Nebraska is

prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1955, c. 5, § 14, p. 63.

2-2315 Excise tax; purchaser; records; reports; forms; remittance.

(1) The purchaser, at the time of settlement therefor, shall deduct the wheat excise tax as provided in section 2-2311 and shall maintain the necessary record of the excise tax for each purchase of wheat on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the purchaser shall provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of bushels of wheat sold; and (d) the amount of wheat excise tax collected on each purchase. Such records shall be open for inspection and audit by authorized representatives of the board during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the board by the last day of each January, April, July, and October on forms prescribed by the board, a statement of the number of bushels of wheat purchased in Nebraska. At the time the statement is filed, the purchaser shall pay and remit to the board the tax as provided for in section 2-2311.

Source: Laws 1955, c. 5, § 15, p. 63; Laws 1959, c. 8, § 2, p. 106; Laws 1965, c. 16, § 1, p. 148; Laws 1969, c. 21, § 3, p. 195; Laws 1981, LB 11, § 31.

2-2316 Repealed. Laws 1981, LB 545, § 52.

2-2316.01 Repealed. Laws 1981, LB 11, § 38.

2-2317 Nebraska Wheat Development, Utilization, and Marketing Fund; creation; disbursement; investment.

The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Wheat Development, Utilization, and Marketing Fund, to which fund shall be credited, for the uses and purposes of the Nebraska Wheat Resources Act and its enforcement, all taxes collected by the board pursuant to the act. After appropriation, the Director of Administrative Services shall, upon receipt of proper vouchers approved by an officer of the board, issue his or her warrants on such fund and the State Treasurer shall pay the same out of the money credited to such fund. The board shall at each regular meeting review and approve all expenditures made since its last regular meeting. 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 1955, c. 5, § 17, p. 64; Laws 1969, c. 584, § 30, p. 2359; Laws 1981, LB 11, § 33; Laws 1983, LB 53, § 1; Laws 1987, LB 1, § 14; Laws 1995, LB 7, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-2318 Board; restriction; cooperate with University of Nebraska and other organizations; purpose.

The Nebraska Wheat Development, Utilization, and Marketing Board shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts, not exceeding one year in duration, with the Department of Agriculture, University of Nebraska Institute of Agriculture and Natural Resources, or other proper local, state, or national organizations, public or private, in carrying out the purposes of sections 2-2301 to 2-2319.

Source: Laws 1955, c. 5, § 18, p. 64; Laws 1981, LB 11, § 35; Laws 1987, LB 1, § 15.

2-2319 Violations; penalty.

Any person violating any of the provisions of sections 2-2301 to 2-2319 shall be guilty of a Class III misdemeanor.

Source: Laws 1955, c. 5, § 19, p. 65; Laws 1977, LB 40, § 20.

2-2320 Repealed. Laws 1987, LB 1, § 16.

2-2321 Board; use of funds; restriction.

No funds collected by the board shall be expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation.

Source: Laws 1981, LB 11, § 34; Laws 1985, LB 60, § 1.

ARTICLE 24

WEATHER CONTROL

(a) WEATHER MODIFICATION

Section		
2-2401.	Repealed.	Laws 1996, LB 966, § 4.
2-2402.	Repealed.	Laws 1996, LB 966, § 4.
2-2403.	Repealed.	Laws 1996, LB 966, § 4.
2-2404.	Repealed.	Laws 1982, LB 542, § 8.
2-2405.	Repealed.	Laws 1996, LB 966, § 4.
2-2406.	Repealed.	Laws 1996, LB 966, § 4.
2-2407.	Repealed.	Laws 1996, LB 966, § 4.
2-2408.	Repealed.	Laws 1996, LB 966, § 4.
2-2408.01.	Repealed.	Laws 1996, LB 966, § 4.
2-2408.02.	Repealed.	Laws 1996, LB 966, § 4.
2-2409.	Repealed.	Laws 1996, LB 966, § 4.

(b) WEATHER CONTROL DISTRICTS

2-2410.	Repealed.	Laws 1959, c. 9, § 24.
2-2411.	Repealed.	Laws 1959, c. 9, § 24.
2-2412.	Repealed.	Laws 1959, c. 9, § 24.
2-2413.	Repealed.	Laws 1959, c. 9, § 24.
2-2414.	Repealed.	Laws 1959, c. 9, § 24.
2-2415.	Repealed.	Laws 1959, c. 9, § 24.
2-2416.	Repealed.	Laws 1959, c. 9, § 24.
2-2417.	Repealed.	Laws 1959, c. 9, § 24.
2-2418.	Repealed.	Laws 1959, c. 9, § 24.

Section
2-2419. Repealed. Laws 1959, c. 9, § 24.
2-2420. Repealed. Laws 1959, c. 9, § 24.
2-2421. Repealed. Laws 1959, c. 9, § 24.
2-2422. Repealed. Laws 1959, c. 9, § 24.
2-2423. Repealed. Laws 1959, c. 9, § 24.
2-2424. Repealed. Laws 1959, c. 9, § 24.
2-2425. Repealed. Laws 1959, c. 9, § 24.
2-2426. Repealed. Laws 1959, c. 9, § 24.
2-2427. Repealed. Laws 1959, c. 9, § 24.
2-2428. Repealed. Laws 1998, LB 1161, § 98.
2-2429. Repealed. Laws 1998, LB 1161, § 98.
2-2430. Repealed. Laws 1998, LB 1161, § 98.
2-2431. Repealed. Laws 1998, LB 1161, § 98.
2-2432. Repealed. Laws 1998, LB 1161, § 98.
2-2433. Repealed. Laws 1998, LB 1161, § 98.
2-2434. Repealed. Laws 1998, LB 1161, § 98.
2-2435. Repealed. Laws 1998, LB 1161, § 98.
2-2436. Repealed. Laws 1998, LB 1161, § 98.
2-2437. Repealed. Laws 1998, LB 1161, § 98.
2-2438. Repealed. Laws 1998, LB 1161, § 98.
2-2439. Repealed. Laws 1998, LB 1161, § 98.
2-2440. Repealed. Laws 1998, LB 1161, § 98.
2-2441. Repealed. Laws 1998, LB 1161, § 98.
2-2442. Repealed. Laws 1998, LB 1161, § 98.
2-2443. Repealed. Laws 1998, LB 1161, § 98.
2-2444. Repealed. Laws 1998, LB 1161, § 98.
2-2445. Repealed. Laws 1998, LB 1161, § 98.
2-2446. Repealed. Laws 1998, LB 1161, § 98.
2-2447. Repealed. Laws 1998, LB 1161, § 98.
2-2448. Repealed. Laws 1998, LB 1161, § 98.
2-2449. Repealed. Laws 1998, LB 1161, § 98.

(a) WEATHER MODIFICATION

2-2401 Repealed. Laws 1996, LB 966, § 4.

2-2402 Repealed. Laws 1996, LB 966, § 4.

2-2403 Repealed. Laws 1996, LB 966, § 4.

2-2404 Repealed. Laws 1982, LB 542, § 8.

2-2405 Repealed. Laws 1996, LB 966, § 4.

2-2406 Repealed. Laws 1996, LB 966, § 4.

2-2407 Repealed. Laws 1996, LB 966, § 4.

2-2408 Repealed. Laws 1996, LB 966, § 4.

2-2408.01 Repealed. Laws 1996, LB 966, § 4.

2-2408.02 Repealed. Laws 1996, LB 966, § 4.

2-2409 Repealed. Laws 1996, LB 966, § 4.

(b) WEATHER CONTROL DISTRICTS

2-2410 Repealed. Laws 1959, c. 9, § 24.

2-2411 Repealed. Laws 1959, c. 9, § 24.

2-2412 Repealed. Laws 1959, c. 9, § 24.

2-2413 Repealed. Laws 1959, c. 9, § 24.

2-2414 Repealed. Laws 1959, c. 9, § 24.

2-2415 Repealed. Laws 1959, c. 9, § 24.

2-2416 Repealed. Laws 1959, c. 9, § 24.

2-2417 Repealed. Laws 1959, c. 9, § 24.

2-2418 Repealed. Laws 1959, c. 9, § 24.

2-2419 Repealed. Laws 1959, c. 9, § 24.

2-2420 Repealed. Laws 1959, c. 9, § 24.

2-2421 Repealed. Laws 1959, c. 9, § 24.

2-2422 Repealed. Laws 1959, c. 9, § 24.

2-2423 Repealed. Laws 1959, c. 9, § 24.

2-2424 Repealed. Laws 1959, c. 9, § 24.

2-2425 Repealed. Laws 1959, c. 9, § 24.

2-2426 Repealed. Laws 1959, c. 9, § 24.

2-2427 Repealed. Laws 1959, c. 9, § 24.

2-2428 Repealed. Laws 1998, LB 1161, § 98.

2-2429 Repealed. Laws 1998, LB 1161, § 98.

2-2430 Repealed. Laws 1998, LB 1161, § 98.

2-2431 Repealed. Laws 1998, LB 1161, § 98.

2-2432 Repealed. Laws 1998, LB 1161, § 98.

2-2433 Repealed. Laws 1998, LB 1161, § 98.

2-2434 Repealed. Laws 1998, LB 1161, § 98.

2-2435 Repealed. Laws 1998, LB 1161, § 98.

2-2436 Repealed. Laws 1998, LB 1161, § 98.

2-2437 Repealed. Laws 1998, LB 1161, § 98.

2-2438 Repealed. Laws 1998, LB 1161, § 98.

2-2439 Repealed. Laws 1998, LB 1161, § 98.

2-2440 Repealed. Laws 1998, LB 1161, § 98.

2-2441 Repealed. Laws 1998, LB 1161, § 98.

2-2442 Repealed. Laws 1998, LB 1161, § 98.

2-2443 Repealed. Laws 1998, LB 1161, § 98.

2-2444 Repealed. Laws 1998, LB 1161, § 98.

2-2445 Repealed. Laws 1998, LB 1161, § 98.

2-2446 Repealed. Laws 1998, LB 1161, § 98.

2-2447 Repealed. Laws 1998, LB 1161, § 98.

2-2448 Repealed. Laws 1998, LB 1161, § 98.

2-2449 Repealed. Laws 1998, LB 1161, § 98.

ARTICLE 25

AGRICULTURAL PRODUCTS RESEARCH AND DEVELOPMENT

(a) AGRICULTURAL PRODUCTS RESEARCH FUND

Section
2-2501. Transferred to section 81-1278.
2-2502. Transferred to section 81-1279.
2-2503. Repealed. Laws 1967, c. 11, § 8.
2-2504. Transferred to section 81-1280.
2-2504.01. Repealed. Laws 1987, LB 1, § 16.
2-2505. Repealed. Laws 1989, LB 10, § 5.
2-2506. Repealed. Laws 1989, LB 10, § 5.
2-2507. Repealed. Laws 1987, LB 1, § 16.

(b) AGRICULTURAL PRODUCTS DEVELOPMENT

2-2508. Transferred to section 2-3816.
2-2509. Transferred to section 2-3817.
2-2510. Transferred to section 2-3818.
2-2511. Transferred to section 2-3819.
2-2512. Transferred to section 2-3820.
2-2513. Transferred to section 2-3821.
2-2514. Transferred to section 2-3822.
2-2515. Transferred to section 2-3823.

(c) AGRICULTURE PROMOTION AND DEVELOPMENT PROGRAM

2-2516. Transferred to section 2-3815.

(a) AGRICULTURAL PRODUCTS RESEARCH FUND

2-2501 Transferred to section 81-1278.

2-2502 Transferred to section 81-1279.

2-2503 Repealed. Laws 1967, c. 11, § 8.

2-2504 Transferred to section 81-1280.

2-2504.01 Repealed. Laws 1987, LB 1, § 16.

2-2505 Repealed. Laws 1989, LB 10, § 5.

2-2506 Repealed. Laws 1989, LB 10, § 5.

2-2507 Repealed. Laws 1987, LB 1, § 16.

(b) AGRICULTURAL PRODUCTS DEVELOPMENT

2-2508 Transferred to section 2-3816.

2-2509 Transferred to section 2-3817.

2-2510 Transferred to section 2-3818.

2-2511 Transferred to section 2-3819.

2-2512 Transferred to section 2-3820.

2-2513 Transferred to section 2-3821.

2-2514 Transferred to section 2-3822.

2-2515 Transferred to section 2-3823.

(c) AGRICULTURE PROMOTION AND DEVELOPMENT PROGRAM

2-2516 Transferred to section 2-3815.

ARTICLE 26
PESTICIDES

Section
2-2601. Repealed. Laws 1993, LB 588, § 39.
2-2602. Repealed. Laws 1993, LB 588, § 39.
2-2603. Repealed. Laws 1993, LB 588, § 39.
2-2604. Repealed. Laws 1993, LB 588, § 39.
2-2605. Repealed. Laws 1993, LB 588, § 39.
2-2606. Repealed. Laws 1993, LB 588, § 39.
2-2607. Repealed. Laws 1993, LB 588, § 39.
2-2608. Repealed. Laws 1993, LB 588, § 39.
2-2609. Repealed. Laws 1993, LB 588, § 39.
2-2610. Repealed. Laws 1993, LB 588, § 39.
2-2611. Repealed. Laws 1993, LB 588, § 39.
2-2612. Repealed. Laws 1993, LB 588, § 39.
2-2613. Repealed. Laws 1993, LB 588, § 39.
2-2614. Repealed. Laws 1993, LB 588, § 39.
2-2615. Repealed. Laws 1978, LB 692, § 6.
2-2616. Repealed. Laws 1993, LB 588, § 39.
2-2617. Repealed. Laws 1993, LB 588, § 39.
2-2618. Repealed. Laws 1993, LB 588, § 39.
2-2619. Repealed. Laws 1993, LB 588, § 39.
2-2620. Repealed. Laws 1993, LB 588, § 39.
2-2621. Repealed. Laws 1993, LB 588, § 39.
2-2622. Act, how cited.
2-2623. Legislative intent.
2-2624. Terms, defined.
2-2625. Local ordinances and resolutions; preemption; regulatory functions; contracts authorized.
2-2626. Department; powers and duties.
2-2627. Pesticide Administrative Cash Fund; created; use; investment.
2-2628. Registration required; when.
2-2629. Registration; application; contents; department; powers; confidentiality; agent for service of process.
2-2630. Label; contents; requirements.
2-2631. Registration; expiration; renewal.
2-2632. Registration; denial or change in status; grounds; procedure.

2-2601 Repealed. Laws 1993, LB 588, § 39.

2-2602 Repealed. Laws 1993, LB 588, § 39.

2-2603 Repealed. Laws 1993, LB 588, § 39.

2-2604 Repealed. Laws 1993, LB 588, § 39.

2-2605 Repealed. Laws 1993, LB 588, § 39.

2-2606 Repealed. Laws 1993, LB 588, § 39.

2-2607 Repealed. Laws 1993, LB 588, § 39.

2-2608 Repealed. Laws 1993, LB 588, § 39.

2-2609 Repealed. Laws 1993, LB 588, § 39.

2-2610 Repealed. Laws 1993, LB 588, § 39.

2-2611 Repealed. Laws 1993, LB 588, § 39.

2-2612 Repealed. Laws 1993, LB 588, § 39.

2-2613 Repealed. Laws 1993, LB 588, § 39.

2-2614 Repealed. Laws 1993, LB 588, § 39.

2-2615 Repealed. Laws 1978, LB 692, § 6.

2-2616 Repealed. Laws 1993, LB 588, § 39.

2-2617 Repealed. Laws 1993, LB 588, § 39.

2-2618 Repealed. Laws 1993, LB 588, § 39.

2-2619 Repealed. Laws 1993, LB 588, § 39.

2-2620 Repealed. Laws 1993, LB 588, § 39.

2-2621 Repealed. Laws 1993, LB 588, § 39.

2-2622 Act, how cited.

Sections 2-2622 to 2-2654 shall be known and may be cited as the Pesticide Act.

Source: Laws 1993, LB 588, § 1; Laws 2002, LB 436, § 1.

2-2623 Legislative intent.

The intent of the Pesticide Act is to regulate, in the public interest, the labeling, distribution, storage, transportation, use, application, and disposal of pesticides for the protection of human health and the environment. The Legislature hereby finds that pesticides are valuable to our state's agricultural production and to the protection of humans and the environment from insects, rodents, weeds, and other forms of life which may be pests but that it is essential to the public health and the welfare that pesticides be regulated to prevent adverse effects on humans and the environment. New pesticides are continually being discovered, synthesized, or developed which are valuable for the control of pests and for use as defoliants, desiccants, and plant regulators, but such pesticides may be ineffective, may cause injury to humans, or may cause unreasonably adverse effects on the environment if not properly used. Pesticides may injure humans or animals, either by direct poisoning or by gradual accumulation of pesticide residues in the tissues. Crops or other plants may also be injured by improper use of pesticides, and the drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. A pesticide used for the purpose of exerting pesticidal action in a crop which is not itself injured by the pesticide may drift and injure other crops or nontarget organisms with which it comes in contact. The monitoring of pesticides in ground water and surface water is essential for human health and the environment. Therefor, it is deemed necessary to provide for regulation of pesticides.

Source: Laws 1993, LB 588, § 2; Laws 2002, LB 436, § 2.

2-2624 Terms, defined.

For purposes of the Pesticide Act:

(1) Active ingredient means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;

(c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;

(2) Administrator means the Administrator of the United States Environmental Protection Agency;

(3) Adulterated means:

(a) That the strength or purity of a pesticide falls below the professed standard of quality as expressed on the labeling under which a pesticide is sold;

(b) That any substance is substituted wholly or in part for the pesticide; or

(c) That any valuable constituent of the pesticide has been wholly or in part abstracted;

(4) Animal means a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;

(5) Antidote means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk means any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Commercial applicator means any applicator required by the act to obtain a commercial applicator license;

(9) Dealer means any manufacturer, registrant, or distributor who is required to be licensed as such under section 2-2635;

(10) Defoliant means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(11) Department means the Department of Agriculture;

(12) Desiccant means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(13) Device means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device does not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

(14) Director means the Director of Agriculture or his or her designee;

(15) Distribute means to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(16) Environment includes water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(17) Federal act means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it, as the act and regulations existed on January 1, 2006;

(18) Federal agency means the United States Environmental Protection Agency;

(19) Fungus means any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, and bacteria, but does not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(20) Inert ingredient means an ingredient that is not an active ingredient;

(21) Ingredient statement means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, a statement of the percentage of total water-soluble arsenic calculated as elementary arsenic shall be included;

(22) Insect means any of the numerous small invertebrate animals generally having a segmented body and for the most part belong to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(23) Label means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(24) Labeling means all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(25) License holder means any person licensed under the Pesticide Act;

(26) Licensed certified applicator means any person licensed and certified under the act as a commercial applicator, noncommercial applicator, or private applicator;

(27) Misbranded means that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator pursuant to section 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under section 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or section 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 2-2628 and 2-2629 and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode means an invertebrate animal of the phylum Nemathelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator means (a) any applicator who is not a commercial applicator and uses restricted-use pesticides only on property owned or controlled by his or her employer or for a federal entity or state agency or a political subdivision of the state or (b) any employee or other person acting on behalf of a political subdivision of the state who is not a commercial applicator who uses pesticides for outdoor vector control;

(30) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest means:

(a) Any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life, excluding humans; or

(b) Any virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals, as defined by the department;

(32) Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, including any biological control agent. Pesticide includes specialty pesticides. Pesticide does not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the section existed on January 1, 2006, that has been determined by the Secretary of Health and Human Services to be a new animal drug by regulation establishing conditions of use for the article, or that is an animal feed within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), as the section existed on January 1, 2006, bearing or containing a new animal drug;

(33) Pesticide management plan means a management plan for a specific, identified pesticide to implement a strategy to prevent, monitor, evaluate, and mitigate (a) any occurrence of the pesticide or pesticide breakdown products in ground water and surface water in the state or (b) any other unreasonable adverse effect of the pesticide on humans or the environment;

(34) Plant regulator means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but does not include a substance

to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(35) Pollute means to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to humans, the environment, or the public health, safety, or welfare;

(36) Private applicator means an applicator who is not a commercial applicator or a noncommercial applicator and uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

(37) Property means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any vehicle used for transportation;

(38) Restricted-use pesticide means a pesticide classified as a restricted-use pesticide by the federal agency, a state-limited-use pesticide, or any pesticide for which an exemption under section 136p of the federal act has been granted;

(39) Specialty pesticide means (a) a disinfectant, sanitizer, germicide, or biocide or (b) a pesticide labeled solely for use directly on humans or pets or in, on, or around areas associated with the household or home life, including lawn and garden and ornamental uses, but does not include turf as determined by the director;

(40) State management plan means a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(41) State pesticide plan means the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(42) State-limited-use pesticide means any pesticide included on a list of state-limited-use pesticides by the department pursuant to a pesticide management plan;

(43) Unreasonable adverse effect on humans or the environment means any unreasonable risk to humans or the environment taking into account the severity and longevity of adverse effects of use of the pesticide and also taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. The costs and benefits of a public health pesticide shall also weigh any risks of the use of the pesticide against the health risks to be mitigated or controlled by the use of the pesticide;

(44) Vector means any organism capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including mosquitoes, flies, fleas, cockroaches, ticks, mites, other insects, mice, and rats; and

(45) Weed means any plant that grows where not wanted.

Source: Laws 1993, LB 267, § 32; Laws 1993, LB 588, § 3; Laws 1994, LB 884, § 7; Laws 2002, LB 436, § 3; Laws 2003, LB 157, § 1; Laws 2006, LB 874, § 2.

2-2625 Local ordinances and resolutions; preemption; regulatory functions; contracts authorized.

Except as specifically provided in the Pesticide Act, the provisions of the act shall preempt ordinances and resolutions by political subdivisions that prohibit or regulate any matter relating to the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides. The department may contract with a city of the metropolitan or primary class it deems qualified to conduct, on a case-by-case basis, any regulatory functions authorized pursuant to the act relating to the disposal of pesticides except those functions relating to the issuance, suspension, or revocation of permits or any order of probation, suspension, immediate suspension, or revocation.

Source: Laws 1993, LB 588, § 4; Laws 2002, LB 436, § 4.

2-2626 Department; powers and duties.

The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Department of Natural Resources, or the Department of Health and Human Services, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health and Human Services shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2006. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause

unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health and Human Services pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under section 136p of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. 171, as the regulation existed on January 1, 2006; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under section 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any building or place owned, controlled, or operated by a registrant, licensed certified applicator, or dealer

if, from probable cause, it appears that the building or place contains a pesticide;

(6) To sample, inspect, make analysis of, and test any pesticide found within this state;

(7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(9) To impose or levy an administrative fine of not more than five thousand dollars on any person who has violated the provisions, requirements, conditions, limitations, or duties imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means any separate activity or day in which an activity takes place;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take measures necessary to ensure that all fees, fines, and penalties prescribed by the act and the rules or regulations adopted under the act are assessed and collected;

(12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

(13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(14) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;

(15) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(16) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may

reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(17) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(18) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(19) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(20) To issue a cease and desist order pursuant to section 2-2649;

(21) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(22) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(23) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB296, § 17.

2-2627 Pesticide Administrative Cash Fund; created; use; investment.

The Pesticide Administrative Cash Fund is hereby created. The fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the Pesticide Administrative Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1993, LB 588, § 6; Laws 1994, LB 1066, § 5; Laws 2001, LB 329, § 3; Laws 2006, LB 874, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-2628 Registration required; when.

(1) Except as provided by subsection (2) or (3) of this section, no pesticide shall be distributed in this state or delivered for transportation or transported in intrastate commerce or between points within the state through a point outside the state unless it is registered with the department pursuant to section 2-2629. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.

(2) Registration shall not be required for the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person if the pesticide is used solely at the second plant or warehouse as a constituent of a pesticide that is registered under such section.

(3) Registration shall not be required if the pesticide is distributed under the provisions of an experimental-use permit issued by the federal agency.

Source: Laws 1993, LB 588, § 7.

2-2629 Registration; application; contents; department; powers; confidentiality; agent for service of process.

(1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The name of the pesticide;

(c) Two complete copies of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant, including whether the product is a specialty pesticide, if the pesticide is not required by federal law to be registered under a use classification;

(f) A designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(4) The department may require a full description of the tests made and the results of the tests on which claims are based before approving registration of a pesticide that is not registered under the federal act or for which federal or state restrictions on use are being considered.

(5) Information collected under subsection (3) or (4) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

Source: Laws 1993, LB 267, § 33; Laws 1993, LB 588, § 8; Laws 2002, LB 436, § 6; Laws 2006, LB 874, § 5.

2-2630 Label; contents; requirements.

(1) Each pesticide distributed in this state shall bear a label containing the following information relating to the pesticide:

(a) The name, brand, or trademark under which the pesticide is distributed;

(b) The name and percentage of each active ingredient and the total percentage of inert ingredients;

(c) Directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate for the protection of health and the environment;

(d) If the pesticide contains any form of arsenic, the percentage of total water-soluble arsenic, calculated as elementary arsenic;

(e) The name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;

(f) Numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and

(g) A clear display of appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.

(2) The labeling of each pesticide distributed in this state shall state the use classification for which the product is registered.

(3) The label bearing the ingredient statement under subdivision (1)(b) of this section shall be on or attached to that part of the immediate container that is presented or displayed under customary conditions of purchase and, if the ingredient statement cannot be clearly read without removing the outer wrapping, on any outer container or wrapper of a retail package.

(4) Any word, statement, or information required by the Pesticide Act to appear on a label or in labeling of a pesticide or device shall be prominently and conspicuously placed so that, if compared with other material on the label or in the labeling, it is likely to be understood by the ordinary individual under customary condition of use.

Source: Laws 1993, LB 588, § 9.

2-2631 Registration; expiration; renewal.

Registration of a pesticide shall expire annually on December 31 unless sooner canceled. A person who applies for renewal of registration shall include in the renewal application only information that is different from the information furnished at the time of the most recent registration or renewal. A registration in effect on December 31 for which a renewal application has been filed and renewal fees have been paid shall continue in effect until the department notifies the applicant that the registration has been renewed or denied renewal.

Source: Laws 1993, LB 588, § 10.

2-2632 Registration; denial or change in status; grounds; procedure.

(1) The department may deny an application for registration of a pesticide under the Pesticide Act or may cancel, suspend, or modify such registration if the department finds that:

(a) The composition of the pesticide does not warrant the proposed claims made for it;

(b) The pesticide, its labeling, or other materials required to be submitted do not comply with the requirements of the Pesticide Act; or

(c) The department has reason to believe that any use of a registered pesticide is in violation of a provision of the act or is dangerous or harmful.

(2) The department shall issue written notice of its denial, cancellation, suspension, or modification and shall give such registrant or applicant an

opportunity to make necessary corrections or to have a hearing pursuant to the procedure in section 2-2649.02.

(3) After an opportunity at a hearing for presentation of evidence by interested parties, the department may deny, cancel, suspend, or modify the registration of the pesticide if the department finds that:

(a) Use of the pesticide has demonstrated uncontrollable adverse environmental effects;

(b) Use of the pesticide is a detriment to the environment that outweighs the benefits derived from its use;

(c) Even if properly used, the pesticide is detrimental to vegetation except weeds, to domestic animals, or to public health and safety;

(d) A false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature;

(e) The registrant has not complied or the pesticide does not comply with a requirement of the act or the rules and regulations adopted and promulgated under the act;

(f) The composition of the pesticide does not warrant the proposed claims made for it; or

(g) The pesticide, its labeling, or other materials required to be submitted do not comply with the requirements of the act.

Source: Laws 1993, LB 588, § 11; Laws 2002, LB 436, § 7.

2-2633 Registration for special local need; procedure.

(1) The department may register a pesticide for additional uses and methods of application not covered by federal regulation but not inconsistent with federal law for the purpose of meeting a special local need.

(2) Before approving a registration under this section, the department shall determine that the applicant meets the other requirements of the Pesticide Act and that a special local need exists.

(3) The department shall notify the federal agency of the issuance of any special local need registration. If the federal agency disapproves of any special local need registration within ninety days after issuance, such registration shall not be effective longer than such time.

Source: Laws 1993, LB 588, § 12.

2-2634 Registration and renewal fees; late registration fee.

(1) As a condition to registration or renewal of registration as required by sections 2-2628 to 2-2633, an applicant shall pay to the department a fee of two hundred dollars for each pesticide to be registered that is not classified as a specialty pesticide by the department and one hundred thirty-five dollars for each pesticide to be registered that is classified as a specialty pesticide by the department, except that the fee may be increased by the director after a public hearing is held outlining the reason for any proposed change in the fee. In no event shall such fee exceed two hundred ten dollars for each pesticide to be registered. All fees collected shall be remitted to the State Treasurer for credit as follows:

(a) Thirty dollars of each such fee to the Noxious Weed Cash Fund as provided in section 2-958;

(b) Sixty dollars of each such fee to the Buffer Strip Incentive Fund as provided in section 2-5106; and

(c) The remainder of each such fee for a pesticide that is not classified as a specialty pesticide, if any, to the Natural Resources Water Quality Fund, and the remainder of each such fee for a pesticide that is classified as a specialty pesticide, if any, to the Pesticide Administrative Cash Fund.

(2) If a person fails to apply for renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, for each product to be renewed in addition to the renewal fee. The purpose of the late registration fee is to cover the administrative costs associated with collecting fees, and all money collected as a late registration fee shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

Source: Laws 1993, LB 588, § 13; Laws 1998, LB 1126, § 12; Laws 2001, LB 329, § 4; Laws 2006, LB 874, § 6.

2-2635 Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process.

(1) Except as provided in subsection (2) of this section, a person shall not distribute at wholesale or retail or possess pesticides with an intent to distribute them without a pesticide dealer license for each distribution location. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his, her, or its principal out-of-state location or outlet.

(2) The requirements of subsection (1) of this section shall not apply to:

(a) A commercial applicator or noncommercial applicator licensed under sections 2-2636 to 2-2642 who uses restricted-use pesticides only as an integral part of a pesticide application service and does not distribute any unapplied pesticide;

(b) A federal, state, county, or municipal agency using restricted-use pesticides only for its own program;

(c) Persons who sell only pesticide products in containers holding fifty pounds or less by weight or one gallon or less by volume and do not sell any restricted-use pesticides or bulk pesticides; or

(d) Persons who sell only general-use specialty pesticides.

(3) A pesticide dealer may distribute restricted-use pesticides only to:

(a) A licensed pesticide dealer;

(b) A licensed certified applicator issued a license with the appropriate category for using the restricted-use pesticide being distributed;

(c) An applicator issued a license by another state with the appropriate category for using the restricted-use pesticide being distributed;

(d) A noncertified applicator authorized by the Pesticide Act to apply restricted-use pesticides if the licensed certified applicator supervising the noncertified

applicator is issued a license with the appropriate category for using the restricted-use pesticide being distributed; or

(e) Any other person if the pesticide dealer maintains records set out in rules and regulations adopted and promulgated pursuant to the act requiring the person to verify in writing that:

(i) The restricted-use pesticide will be delivered to an applicator described in subdivision (3)(b), (c), or (d) of this section; and

(ii) The applicator receiving the restricted-use pesticide acknowledges and agrees to the distribution.

(4) A pesticide dealer license shall expire on December 31 of each year, unless it is suspended or revoked before that date. Such license shall not be transferable to another person or location and shall be prominently displayed to the public in the pesticide dealer's place of business.

(5) If the pesticide dealer has had a license suspended or revoked, or has otherwise had a history of violations of the Pesticide Act, the department may require an additional demonstration of dealer qualifications prior to issuance or renewal of a license to such person.

(6) Application for an initial pesticide dealer license shall be submitted to the department prior to commencing business as a pesticide dealer. Application for renewal of a pesticide dealer license shall be submitted to the department by January 1 of each year. All applications shall be accompanied by an annual license fee of twenty-five dollars. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred dollars per license. Application shall be on a form prescribed by the department and shall include the full name of the person applying for such license. If such applicant is an individual, the application shall include the applicant's social security number. If such applicant is a partnership, limited liability company, association, corporation, or organized group of persons, the full name of each member of the firm, partnership, or limited liability company or of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of each outlet to be licensed, the principal business address of the applicant, the name of the person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department.

An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

If an application for renewal of a pesticide dealer license is not filed before January 1 of the year for which the license is to be issued, an additional fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, shall be paid by the applicant before the license may be issued.

An application for a duplicate pesticide dealer's license shall be accompanied by a nonrefundable application fee of ten dollars.

All fees collected shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

(7) Each licensed pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and distribution of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, modification, or revocation after a hearing for any violation of the act, whether committed by the dealer or by the dealer's officer, agent, or employee.

(8) The department shall require each pesticide dealer to maintain records of the dealer's purchases and distribution of all restricted-use pesticides and may require such records to be kept separate from other business records. The department may prescribe by rules and regulations the information to be included in the records. The dealer shall keep such records for a period of three years and shall provide the department access to examine such records and a copy of any record on request.

Source: Laws 1993, LB 267, § 34; Laws 1993, LB 588, § 14; Laws 1994, LB 884, § 8; Laws 1997, LB 752, § 54; Laws 2001, LB 329, § 5; Laws 2002, LB 436, § 8.

2-2636 Pesticide applicators; restrictions; department; duties; reciprocity.

(1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. 171, as the regulation existed on January 1, 2006, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. The department may waive part or all of any license certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) Licensed as a commercial or noncommercial applicator and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use;

(b) Licensed as a private applicator; or

(c) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use pesticides for outdoor vector control unless the applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(5) In order to receive a commercial, noncommercial, or private applicator license, a person shall be at least sixteen years of age.

Source: Laws 1993, LB 588, § 15; Laws 2002, LB 436, § 9; Laws 2006, LB 874, § 7.

2-2637 Commercial and noncommercial licenses; classification; testing; Cooperative Extension Service; conduct training sessions.

(1) The department may classify commercial and noncommercial licenses under subcategories within categories according to the subject, method, or place of pesticide application.

(2) The director shall establish separate testing requirements for certification and licensing in each category for which the department is responsible and may establish separate testing requirements for licensing in subcategories within a category. All written examinations for certification shall be the property of the department. Any person taking such an examination shall return the examination to the director's authorized agent prior to leaving the examination site.

(3) The Cooperative Extension Service of the University of Nebraska, through its county extension educators and specialists in the State of Nebraska, shall conduct training sessions on the use of restricted-use pesticides for private, commercial, and noncommercial applicators. The programs shall be directed toward thorough comprehension and knowledge on the safe use of restricted-use pesticides. The Cooperative Extension Service shall schedule regular and frequent training sessions and shall issue recommendations to the director of satisfactory training for private, commercial, and noncommercial applicators completing the training.

Source: Laws 1993, LB 588, § 16; Laws 2002, LB 436, § 10.

2-2638 Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.

(1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and shall be a commercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control pesticides on the property of another person in the State of Nebraska for hire or compensation shall be a commercial applicator license holder, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. If the applicant is an individual, the application shall include the applicant's social security number. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 17; Laws 1997, LB 752, § 55; Laws 2001, LB 329, § 6; Laws 2002, LB 436, § 11; Laws 2006, LB 874, § 8.

2-2639 Noncommercial applicator license; application; denial, when; resident agent for service of process.

(1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and shall be a noncommercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. If the applicant is an individual, the application shall include the applicant's social security number. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed an examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(5) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 18; Laws 1997, LB 752, § 56; Laws 2002, LB 436, § 13; Laws 2006, LB 874, § 9.

2-2640 Commercial and noncommercial applicator licenses; examination required.

Each person applying for a license as a commercial or noncommercial applicator shall meet the certification requirement of passing an examination demonstrating that the person:

(1) Is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility; and

(2) Has knowledge of the use and effects of restricted-use pesticides in the categories and subcategories in which the person is to be licensed.

Source: Laws 1993, LB 588, § 19; Laws 2002, LB 436, § 14.

2-2641 Private applicator; qualifications; application for license; requirements; fee.

(1) A person shall be deemed to be a private applicator if the person uses a restricted-use pesticide in the State of Nebraska for the purpose of producing an agricultural commodity:

(a) On property owned or rented by the person or person's employer or under the person's general control; or

(b) On the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(2) An employee shall qualify as a private applicator under subdivision (1)(a) of this section only if he or she provides labor for the pesticide use but does not provide the necessary equipment or pesticides.

(3) Every person applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. If the applicant is an individual, the application shall include the applicant's social security number.

(4) Application for an original or renewal private applicator license shall be made to the department and accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

Source: Laws 1993, LB 588, § 20; Laws 1997, LB 752, § 57; Laws 2001, LB 329, § 7; Laws 2002, LB 436, § 15; Laws 2006, LB 874, § 10.

2-2642 Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.

(1) Each commercial, noncommercial, and private applicator license shall expire on April 15 following the third year in which it was issued.

(2) Except as provided by subsection (3) of this section, a person having a valid commercial or noncommercial applicator license may renew the license for another three-year period by:

(a) Paying to the department an amount equal to the license fee required by section 2-2638 for commercial applicator licenses or section 2-2639 for noncommercial applicator licenses, if any; and

(b)(i) Undertaking the training approved by the department; or

(ii) Submitting to retesting prior to renewal of the license.

(3) Any person who allows his or her commercial or noncommercial applicator license to expire shall be required to submit to testing prior to the renewal of the license.

(4) The application for renewal of a private applicator license shall be the same as the application for an initial license.

(5) Notwithstanding sections 2-2636 to 2-2642, any individual required to be a licensed certified applicator may use pesticides as a noncertified applicator for only one consecutive sixty-day period of time if:

(a) The individual or his or her employer applies to the department for a license as a licensed certified applicator within ten days of making the first pesticide use. Such license application shall include the name and license number of the licensed certified applicator who is supervising the noncertified applicator;

(b) All pesticide uses made by an individual as a noncertified applicator are made under the direct supervision of a licensed certified applicator; and

(c) The licensed certified applicator provides such training and supervision as is necessary to:

(i) Determine the level of experience and knowledge of the noncertified applicator in the use of a pesticide;

(ii) Provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his or her direct supervision;

(iii) Accompany the noncertified applicator to at least one site which would be typical of each type of pesticide use that the noncertified applicator performs;

(iv) Be accessible by voice or electronic means to provide further instructions at all times during the noncertified applicator's use of the pesticide; and

(v) Be able to be physically on the site, should the need arise, where the pesticide use or storage is taking place within a reasonable period of time as established by the director by rules and regulations. Both the licensed certified applicator and noncertified applicator shall be responsible for the acts of the noncertified applicator and each shall be subject to all penalties and violations under the Pesticide Act. The department may deny or suspend the use of pesticides by a noncertified applicator if it has reasonable cause to believe that such person may not become eligible to become a licensed certified applicator or uses any pesticide in violation of the act.

Source: Laws 1993, LB 588, § 21; Laws 2002, LB 436, § 16.

2-2643 Records; requirements.

(1) The department shall require each licensed certified applicator to maintain records of the use of all restricted-use pesticides. The department may by rules and regulations prescribe the information to be included in the records.

(2) The department may require a license holder to keep records of the licensee's use of general-use pesticides. The department may by rules and regulations prescribe the information to be included in the records.

(3) The license holder shall keep records required under this section for a period of three years from the date of the pesticide use.

(4) The license holder shall provide the department access to such records and a copy of any requested record pertaining to the use of pesticides.

Source: Laws 1993, LB 588, § 22; Laws 2002, LB 436, § 17.

2-2643.01 License holder; prohibited acts.

A license holder shall not:

(1) Make a pesticide recommendation or use a pesticide in a manner inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state, the federal agency, or the federal act;

(2) Operate in a faulty, careless, or negligent manner;

(3) Refuse or neglect to keep and maintain the records required by the Pesticide Act or to make reports as required;

(4) Make false or fraudulent records, invoices, or reports;

(5) Use fraud or misrepresentation in making an application for a license or renewal of a license; or

(6) Aid or abet a license holder or an unlicensed person to evade the Pesticide Act, conspire with a license holder or an unlicensed person to evade the act, or allow the license holder's license to be used by another person.

Source: Laws 2002, LB 436, § 18.

2-2643.02 License holder; duties.

A license holder shall comply with the Pesticide Act, the rules and regulations adopted and promulgated pursuant to the act, and any order of the director issued pursuant to the act. A license holder shall not interfere with the department in the performance of its duties.

Source: Laws 2002, LB 436, § 19.

2-2643.03 License holder; disciplinary actions; procedure.

(1) A license holder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to subdivision (9) of section 2-2626 after: (a) The director determines the license holder has not complied with section 2-2643.02; (b) the license holder is given written notice to comply and written notice of the right to a hearing to show cause why an order should not be issued; and (c) the director finds that issuing an order is appropriate based on the hearing record or on the available information if the hearing is waived by the license holder.

(2) A license issued under the Pesticide Act may be modified or suspended until the license holder complies with the conditions set out in an order issued by the director or for a specific period of time after: (a) The director determines the license holder has not complied with section 2-2643.02; (b) the license holder is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be modified or

suspended; and (c) the director finds that issuing an order modifying or suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the license holder.

(3) A license may be immediately suspended prior to hearing if: (a) The director determines an immediate danger to the public health, safety, or welfare exists; and (b) the license holder receives the written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. If a license is suspended under this subsection, the license holder may request a date and time for hearing. The director shall accommodate the requested date and time, if possible. In any event, if the license holder requests that the hearing be held within two business days, the director shall set the date and time for the hearing within two business days of the request. If a license holder does not request a hearing date within fifteen days after the suspension, the director shall establish a hearing date and shall notify the license holder of the date and time of such hearing.

(4) A license may be revoked after: (a) The director determines the license holder has committed serious, repeated, or multiple violations of any of the requirements of section 2-2643.02; (b) the license holder is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and (c) the director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the license holder.

(5) Any license holder who has a license which has been suspended shall cease operating as a license holder until the license is reinstated. Any license holder who has a license which has been revoked shall cease operating as a license holder until a new license is issued.

(6) The director may terminate any proceedings to suspend or revoke a license or to subject a license holder to an order of the director at any time if the reasons for such proceedings no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a license holder may no longer be subject to an order of the director if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(7) Proceedings for license modification, suspension, revocation, or probation shall not preclude the department from pursuing other administrative, civil, or criminal actions.

Source: Laws 2002, LB 436, § 20; Laws 2006, LB 874, § 11.

2-2644 Repealed. Laws 2002, LB 436, § 29.

2-2645 Violation of act; claim of damages; inspection; failure to file report; effect.

(1) A person claiming damages from a pesticide use may file with the department a written report claiming that the person has been damaged. The report shall be filed as soon as possible following the day of the alleged occurrence.

(2) Except as otherwise provided in the Pesticide Act, upon receipt of a report if the department has reasonable cause to believe that a violation of the act has occurred, it shall investigate such report to determine if any violation has occurred and if any further enforcement action shall be taken under the act.

The department is not required to investigate any complaint that the department determines is made more than ninety days after the person complaining knew of the damages, is outside the scope of the Pesticide Act, or is frivolous or minor. If a complaint is investigated, the department shall notify the licensee, owner, or lessee of the property on which the alleged act occurred and any other person who may be charged with responsibility for the damages claimed. The department shall furnish copies of the report to such licensee, owner, lessee, or other person upon written request.

(3) The department shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage. The claimant shall permit the department and the licensee to observe, within reasonable hours, the property alleged to have been damaged.

(4) Failure to file a report shall not bar maintenance of a civil or criminal action. If a person fails to file a report and is the only person claiming injury from the particular use of a pesticide, the department may, if in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license issued under the act to the person alleged to have caused the damage.

Source: Laws 1993, LB 588, § 24; Laws 2002, LB 436, § 23.

2-2646 Prohibited acts.

It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;

(d) A pesticide that is adulterated;

(e) A pesticide or device that is misbranded;

(f) A pesticide in a container that is unsafe due to damage;

(g) A pesticide which differs from its composition as registered; or

(h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;

(2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

(3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

(4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to:

(a) Use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling if the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency or, if the pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for preconstruction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with section 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

(12) To fail to keep or refuse to make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(13) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(14) To violate any state management plan or pesticide management plan developed or approved by the department;

(15) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

(16) To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;

(17) To fail to follow any order of the department;

(18) Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide on property without the permission of the owner or lawful tenant. Applications for outdoor vector control authorized by a federal or state agency or political subdivision shall not be in violation of this subdivision when the application is made from public access property and cannot practically be confined to public property;

(19) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act; and

(20) To violate any other provision of the act.

Source: Laws 1993, LB 588, § 25; Laws 2002, LB 436, § 24; Laws 2003, LB 157, § 2; Laws 2006, LB 874, § 12.

Cross References

Environmental Protection Act, see section 81-1532.

2-2646.01 Pesticide business; owner or operator; liability.

Any person who owns or operates a business that uses pesticides on the property of another person for hire or compensation shall be responsible for the acts or omissions of anyone using a pesticide for such business. Such person shall be subject to the same penalties and violations as the applicator.

Source: Laws 2002, LB 436, § 12.

2-2647 Violations; penalties; Attorney General or county attorney; duties.

(1) Any person who commits an unlawful act under the Pesticide Act, any rules and regulations adopted and promulgated under the act, or any final order of the department shall (a) be guilty of a Class III misdemeanor and, upon a subsequent conviction thereof, be guilty of a Class I misdemeanor and (b) be subject to a restraining order, a temporary or permanent injunction, or a mandatory injunction if such person has violated, is violating, or is threatening to violate the act, the rules and regulations adopted and promulgated pursuant

to the act, or any final order of the department. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which the violation of the act has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section.

(3) Nothing in this section shall be construed to require the director to report all acts for prosecution if in the opinion of the director the public interest will best be served through other administrative or civil procedures.

Source: Laws 1993, LB 588, § 26.

2-2648 Violations; civil fine; jurisdiction; Attorney General or county attorney; duties.

(1) Any person who violates any provision of the Pesticide Act, the rules and regulations adopted and promulgated under the act, or any final order of the department may be subject to a civil fine of not more than fifteen thousand dollars for each offense, and in the case of a continuing violation, each day of violation shall constitute a separate offense. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which the violation of the act has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section.

Source: Laws 1993, LB 588, § 27.

2-2649 Violations; hearing; order.

Whenever the director has reason to believe that any person has violated any provision of the Pesticide Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the department, the director may issue a notice of hearing as provided for in section 2-2649.02 requiring the person to appear before the director (1) to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. If after a hearing the director finds such person to be in violation of the act or the rules and regulations, he or she shall enter an order requiring the person to cease and desist from the specific act, practice, or omission, (2) to determine whether an administrative fine should be imposed or levied against the person pursuant to subdivision (9) of section 2-2626, or (3) to determine whether the license of such person should be denied. Proceedings initiated pursuant to this section shall not preclude the department from pursuing other administrative, civil, or criminal actions.

Source: Laws 1993, LB 588, § 28; Laws 2002, LB 436, § 25; Laws 2006, LB 874, § 13.

2-2649.01 Violation warning letter; contents.

Whenever the director has reason to believe that a violation of any provision of the Pesticide Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the director has occurred, the director may issue a violation warning letter. A violation warning letter shall specify all provisions of the act, rules and regulations, or order alleged to have been violated and the acts or omissions with which the person named in the violation warning letter is charged. A violation warning letter shall become final unless the person named in the violation warning letter, within twenty days after receiving the violation warning letter, requests a hearing before the director. Whenever a hearing is requested pursuant to this section, the director shall issue a notice of hearing as provided for in section 2-2649.02.

Source: Laws 2002, LB 436, § 21.

2-2649.02 Notice; requirements; hearings; procedure; request for new hearing.

Under the Pesticide Act:

(1) Any notice or order shall be personally served on the license holder, the person named in the notice, or a person authorized by the license holder to receive notices and orders of the department or shall be sent by registered or certified mail, return receipt requested, to the last-known address of the license holder, the person named in the notice, or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department;

(2) A notice to comply under the act shall set forth the acts or omissions with which the license holder or person named in the notice is charged;

(3) A notice of the right of the license holder or person named in the notice to a hearing shall set forth the time and place of the hearing except as provided in subsection (3) of section 2-2643.03. A notice of such right to a hearing shall include notice that the right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the right to a hearing shall include notice of the potential actions that may be taken against the license holder or person named in the notice;

(4) The hearings shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-2643.03, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act;

(5) A license holder or person named in the notice shall be deemed to waive the right to a hearing if such license holder or person does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the license holder or person named in the notice shows the director that he or she had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the license holder or person named in the notice waives the

right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-2643.03, the director shall sustain, modify, or rescind the order; and

(6) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. An order of the director becomes final upon the expiration of ten days after the entry of the order if no request for a new hearing is made.

Source: Laws 2002, LB 436, § 22.

Cross References

Administrative Procedure Act, see section 84-920.

2-2650 Violations; severity of penalty; considerations.

Whenever a violation of the Pesticide Act has occurred, the following shall be considered when determining the severity or amount of any administrative or civil fine, the issuance of a cease and desist order, or the disposition of any license:

(1) The culpability and good faith of and any past violations by such person;

(2) The seriousness of the violation, including the amount of any actual or potential risk to human health or environment; and

(3) The extent to which the person derived financial gain as a result of permitting or committing the violation, including a determination of the size of the company itself and the impact on it.

Source: Laws 1993, LB 588, § 29.

2-2651 Fines; distribution and collection.

(1) All money collected as a civil or an administrative fine shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any civil or administrative fine which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper forum of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property.

Source: Laws 1993, LB 588, § 30; Laws 2006, LB 874, § 14.

2-2652 Final judgments; failure to satisfy; effect.

(1) A pesticide dealer or a commercial, noncommercial, or private applicator or an applicant for any such license shall not allow a final judgment against the applicant or licensee for damages arising from a violation of a provision of the Pesticide Act to remain unsatisfied for a period of more than thirty days.

(2) Failure to satisfy within thirty days a final judgment resulting from any activity regulated under the act shall result in automatic suspension or denial of the applicable license.

Source: Laws 1993, LB 588, § 31.

2-2653 Duties and responsibilities of department; subject to appropriation.

Notwithstanding any other provision of the Pesticide Act, the duties and responsibilities of the department under the act shall be subject to adequate federal, cash, and general funding appropriation being made by the Legislature. If adequate funds are not made available under the act, the department shall submit a revised state pesticide plan to the federal agency outlining the current program.

Source: Laws 1993, LB 588, § 32.

2-2654 Department order; appeal.

Any person aggrieved by any order of the department may appeal such order to the district court. Such appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 588, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

2-2655 Repealed. Laws 2002, LB 436, § 29.

ARTICLE 27
TRACTOR TESTS

Section
2-2701. Current tractor model; testing required; application; procedure; temporary permit; failure to meet requirements; effect.
2-2701.01. Terms, defined.
2-2701.02. Sales permit; information required; notice to purchaser; liability for damages.
2-2702. Board of Regents of the University of Nebraska; powers and duties.
2-2703. Tractor model test results; board; duties.
2-2703.01. Supplemental sale permit; issuance; testing; when required.
2-2704. Repealed. Laws 1986, LB 768, § 15.
2-2705. Tractor model tests; fees; University of Nebraska Tractor Test Cash Fund; created; use; investment.
2-2705.01. Application fee; Tractor Permit Cash Fund; created; use; investment.
2-2706. Tractor model; failure to meet specifications; retesting permitted; effect on sale of other models; permit specify model.
2-2707. Tractor model tests; report; publication; public record.
2-2708. Tractor model tests results; improper use; penalty.
2-2709. Tractor model testing order; discrimination prohibited; exception.
2-2710. Sales without permit; penalty.
2-2711. Department; enforcement; rules and regulations.
2-2712. Repealed. Laws 1986, LB 768, § 15.
2-2713. Repealed. Laws 1986, LB 768, § 15.

2-2701 Current tractor model; testing required; application; procedure; temporary permit; failure to meet requirements; effect.

(1) No person shall be permitted to sell or dispose of any current tractor model in the State of Nebraska without first having (a) made application for a permit and obtained a permit to sell the tractor model, (b) the model tested by the University of Nebraska onsite or offsite or by any Organization for Economic Cooperation and Development test station, and (c) the model passed upon by the board. Each and every tractor model presented for testing shall be a stock model and shall not be equipped with any special accessory unless regularly supplied to the trade. Any tractor model not complying with this section shall

not be tested under sections 2-2701 to 2-2711. Applications shall be made to the board and shall be accompanied by specifications of the tractor model required by the board and by the applicable fees specified in sections 2-2705 and 2-2705.01.

(2) If an official test application, with the required specifications and fees, is submitted to any Organization for Economic Cooperation and Development test station or to the University of Nebraska and an application for a temporary permit and the fee prescribed in section 2-2705.01 are submitted, the department, with the approval of the board, may issue a temporary permit for the sale of the tractor model specified in the official test application. The date on which the temporary permit terminates shall be fixed by the board. All temporary permits shall be conditioned upon such tractor model being tested at a mutually agreed-upon date, and the person to whom a temporary permit has been issued shall submit a tractor model for testing which conforms to the specifications filed with the official test application. Such tractor model shall be delivered for testing at the mutually agreed-upon date. Upon failure so to do, all such fees deposited by such person shall be forfeited to the University of Nebraska Tractor Test Cash Fund, except that the fee imposed in section 2-2705.01 shall be deposited in and forfeited to the Tractor Permit Cash Fund, and in addition such person shall not be issued any temporary permit for a period of five years from the date such tractor was to be delivered for testing and until such person meets the obligations required under subsection (3) of this section to the department's satisfaction. Any person who, prior to April 17, 1986, has been barred from applying for temporary permits may again make applications for temporary permits if five years have passed from the date such person last failed to deliver a tractor as specified by the board.

(3) All sales of tractors upon which a temporary permit has been issued shall be made subject to the final official test and approval of the tractor model as follows:

(a) If a tractor model upon which a temporary permit has been issued was not submitted for the official test and approval on the mutually agreed-upon date, the person to whom the temporary permit was issued shall repurchase any such tractor sold in Nebraska under the temporary permit; and

(b) If a tractor model upon which a temporary permit has been issued fails in the official test to meet the specifications of the tractor model which were filed with the application and fees, the person to whom the temporary permit was issued shall send a notice, as approved by the department, to any person in Nebraska who has purchased a tractor sold under the temporary permit. The person to whom the temporary permit was issued shall either modify the tractor to meet the specifications filed with the board or remedy to the satisfaction of the purchaser any injury incurred by the purchaser which was caused by the failure of the tractor to meet the specifications claimed. Such person shall be prohibited from modifying sales literature, advertisement claims, or specifications of the tractor to avoid such notice.

Source: Laws 1963, c. 425, art. III, § 36, p. 1394; R.R.S.1943, § 75-336; Laws 1967, c. 480, § 1, p. 1486; Laws 1971, LB 692, § 1; Laws 1986, LB 768, § 2.

2-2701.01 Terms, defined.

For purposes of sections 2-2701 to 2-2711, unless the context otherwise requires:

(1) Board shall mean the University of Nebraska Board of Tractor Test Engineers which shall consist of three engineers under the control of the university;

(2) Current tractor model shall mean any model included in the manufacturer's annual price list of tractors being offered for sale by its dealers or distributors;

(3) Department shall mean the Department of Agriculture;

(4) Director shall mean the Director of Agriculture or his or her authorized representative;

(5) Person shall mean bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(6) Tractor shall mean an agricultural tractor of forty or more horsepower which is a traction machine designed and advertised primarily to supply power to agricultural implements and farmstead equipment. An agricultural tractor propels itself and provides a force in the direction of travel to enable attached soil-engaging and other agricultural implements to perform their intended function.

Source: Laws 1986, LB 768, § 1; Laws 1989, LB 381, § 1; Laws 1993, LB 121, § 67.

2-2701.02 Sales permit; information required; notice to purchaser; liability for damages.

(1) Any person who applies for a permit to sell a tractor model in the state shall provide to the department at the time of application information on the availability and accessibility of service and replacement parts for such tractor model. Such information shall include the names and addresses of any regional service, parts, or supply dealers, instructions on how to order parts and supplies, and any limitations as to the availability and accessibility of service and replacement parts. Any person who fails to provide the information required in this section shall not be issued a sales permit for the tractor model. The information received by the department pursuant to this section shall be public information.

(2) Any person who initially sells to the ultimate consumer a current tractor model for which a sales permit has been issued after April 17, 1986, shall provide to the purchaser written notice that the information required in subsection (1) of this section has been filed with and is available at the department. Any remedy for failure to comply with this subsection shall be as provided in subsection (3) of this section.

(3) Any person who provides to the department information required in subsection (1) of this section which is inaccurate at the time of application shall be liable for damages to any injured purchaser of the tractor for which a sales permit has been issued, and any person who fails to provide the notice required in subsection (2) of this section shall be liable for damages to the person who purchased such tractor from such person. For purposes of this section, damages may include, but shall not be limited to, loss of profits, the additional cost of shipment of parts, and the additional cost of obtaining parts or services from

another provider. In any action brought under this section, the court may award reasonable attorney's fees to the prevailing party.

Source: Laws 1986, LB 768, § 3.

2-2702 Board of Regents of the University of Nebraska; powers and duties.

(1)(a) The Board of Regents of the University of Nebraska shall adopt and promulgate rules and regulations setting forth codes for the official testing of tractors.

(b) The Board of Regents of the University of Nebraska shall adopt procedures for the official testing of agricultural tractors as prescribed by the Organization for Economic Cooperation and Development.

(c) The Board of Regents of the University of Nebraska shall also adopt and promulgate rules and regulations for the testing of tractors as published by the Society of Automotive Engineers and the American Society of Agricultural Engineers.

(2) In addition to the powers and duties prescribed in sections 2-2701 to 2-2711, the University of Nebraska shall have the power to:

(a) Authorize the use of the Nebraska Tractor Testing Laboratory facilities to conduct Organization for Economic Cooperation and Development testing;

(b) Cooperate with the United States Department of Commerce when planning and conducting Organization for Economic Cooperation and Development testing;

(c) Conduct offsite tractor tests; and

(d) Submit and certify tractor test results to the federal government.

Source: Laws 1963, c. 425, art. III, § 37, p. 1395; R.R.S.1943, § 75-337; Laws 1967, c. 480, § 2, p. 1487; Laws 1971, LB 692, § 2; Laws 1986, LB 768, § 4.

2-2703 Tractor model test results; board; duties.

After a tractor model has been duly tested by the University of Nebraska or by any Organization for Economic Cooperation and Development test station, the board shall submit the results of such test to the department. Prior to the issuance of a permanent sales permit by the department to any person for the sale of a tractor model, the board shall compare the test results with the manufacturer's representations as to power, fuel, and other ratings of the tractor model. If any such representations are found to be false, the board shall recommend that the department deny a permit for the sale of such tractor model. Any representation which a person makes with regard to the performance of its tractor at other than the customarily used power outlets shall be subject to test at the option of the board.

Source: Laws 1963, c. 425, art. III, § 38, p. 1395; R.R.S.1943, § 75-338; Laws 1967, c. 480, § 3, p. 1487; Laws 1971, LB 692, § 3; Laws 1986, LB 768, § 5.

2-2703.01 Supplemental sale permit; issuance; testing; when required.

Upon application by any person and payment of the fee required in section 2-2705.01, the board may recommend to the department that a supplemental permit be issued to such person for the sale of a new tractor model based upon

the official test results of a previous tractor model. The specifications and performance representations of the new tractor model shall be compared to the official test results of the previous tractor model, and if there are no substantial changes in specifications, performance representations, and the capacity of the new tractor model to meet such specifications and representations of performance, the board shall recommend to the department the issuance of a supplemental permit. The board may require further testing of the new tractor model upon which a permit is sought and may require the person making application to provide for reimbursement for the cost of such tests pursuant to section 2-2705. If further testing is performed, the board shall certify the results of such tests and forward them to the department.

Source: Laws 1986, LB 768, § 6.

2-2704 Repealed. Laws 1986, LB 768, § 15.

2-2705 Tractor model tests; fees; University of Nebraska Tractor Test Cash Fund; created; use; investment.

Application to the board for the testing of a tractor model by the University of Nebraska shall be accompanied by the fee prescribed in section 2-2705.01 and such fee as is prescribed by the Board of Regents of the University of Nebraska as a partial reimbursement for making the application.

Fees collected for the testing of tractors by the Nebraska Tractor Testing Laboratory shall be credited to the University of Nebraska Tractor Test Cash Fund, which fund is hereby created. The fund shall be used by the Nebraska Tractor Testing Laboratory to defray the expenses of testing tractors. Any accrued interest shall also be credited to the fund, except that the cash carryover of such fund from one biennium to the next biennium shall not exceed, by more than fifteen percent, the total cash fund expenditures for the average of the five preceding years. Any amount in excess of such fifteen percent shall be forwarded to the University of Nebraska. 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.

The Board of Regents of the University of Nebraska may establish and change from time to time as it determines advisable a schedule of fees for such tractor tests, except that such fee schedule shall not include the application fee prescribed in section 2-2705.01.

Source: Laws 1963, c. 425, art. III, § 40, p. 1396; R.R.S.1943, § 75-340; Laws 1967, c. 480, § 5, p. 1488; Laws 1971, LB 692, § 5; Laws 1986, LB 768, § 7; Laws 1995, LB 7, § 13.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-2705.01 Application fee; Tractor Permit Cash Fund; created; use; investment.

There is hereby imposed a fee of fifty dollars for each application for any permit made to the board pursuant to sections 2-2701 to 2-2711. Such fee shall be in addition to the fees provided for in section 2-2705 and shall be paid to the department. All fees collected by the department pursuant to this section shall

be remitted to the State Treasurer for credit to the Tractor Permit Cash Fund, which fund is hereby created. The fund shall be used by the department to defray the expenses of administering sections 2-2701 to 2-2711. 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 1986, LB 768, § 8; Laws 1995, LB 7, § 14.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-2706 Tractor model; failure to meet specifications; retesting permitted; effect on sale of other models; permit specify model.

The failure of any tractor model to meet the specifications and representations made by the applicant shall not prevent the applicant from placing on the market other tractor models that do comply with the permit requirements of sections 2-2701 to 2-2711. Any tractor model that fails in the official test to meet the applicant's own specifications and representations may be retested upon submission of a new test application and the fees prescribed in sections 2-2705 and 2-2705.01. Each and every permit issued under sections 2-2701 to 2-2711 shall specify the model or models included in such permit to sell.

Source: Laws 1963, c. 425, art. III, § 41, p. 1396; R.R.S.1943, § 75-341; Laws 1967, c. 480, § 6, p. 1488; Laws 1971, LB 692, § 6; Laws 1986, LB 768, § 9.

2-2707 Tractor model tests; report; publication; public record.

The report of the official test required by section 2-2701 shall be published by the board and made available in the Agricultural Engineering Department of the University of Nebraska and in such other places as may be designated by the board. All information pertaining to the official testing of a tractor shall be public record and available for inspection during normal business hours.

Source: Laws 1963, c. 425, art. III, § 42, p. 1397; R.R.S.1943, § 75-342; Laws 1967, c. 480, § 7, p. 1488; Laws 1971, LB 692, § 7; Laws 1972, LB 1284, § 11; Laws 1986, LB 768, § 10.

2-2708 Tractor model tests results; improper use; penalty.

No person shall use the results of such tests in such manner as would cause it to appear that the University of Nebraska or the department intended to recommend the use of any given tractor model in preference to any other model. For any violation of this section the department may suspend any permit issued to that person or deny such person the right of obtaining future permits to sell tractors in the state.

Source: Laws 1963, c. 425, art. III, § 43, p. 1397; R.R.S.1943, § 75-343; Laws 1967, c. 480, § 8, p. 1489; Laws 1971, LB 692, § 8; Laws 1986, LB 768, § 11.

2-2709 Tractor model testing order; discrimination prohibited; exception.

Except when a temporary permit has been issued pursuant to subsection (2) of section 2-2701, tractors shall be tested by the board in the order in which

they are presented for such tests, and no discrimination shall be made for or against any person in any manner whatsoever. Complaints alleging a violation of this section shall be heard by the department.

Source: Laws 1963, c. 425, art. III, § 44, p. 1397; R.R.S.1943, § 75-344; Laws 1967, c. 480, § 9, p. 1489; Laws 1971, LB 692, § 9; Laws 1986, LB 768, § 12.

2-2710 Sales without permit; penalty.

Any person selling a current tractor model for use in the State of Nebraska without a permit issued by the department for such tractor model shall be required to repurchase any such tractor model sold in Nebraska for which a permit has not been issued.

Source: Laws 1963, c. 425, art. III, § 45, p. 1397; R.R.S.1943, § 75-345; Laws 1967, c. 480, § 10, p. 1489; Laws 1971, LB 692, § 10; Laws 1977, LB 40, § 24; Laws 1986, LB 768, § 13.

2-2711 Department; enforcement; rules and regulations.

The department shall have full authority to enforce sections 2-2701 to 2-2711 both by denial of a permit to sell tractors in the state and by injunctive relief in the district court having jurisdiction. The department shall adopt and promulgate rules and regulations as are necessary to enforce the intent and purposes of such sections.

Source: Laws 1963, c. 425, art. III, § 46, p. 1398; R.R.S.1943, § 75-346; Laws 1967, c. 480, § 11, p. 1490; Laws 1971, LB 692, § 11; Laws 1986, LB 768, § 14.

2-2712 Repealed. Laws 1986, LB 768, § 15.

2-2713 Repealed. Laws 1986, LB 768, § 15.

ARTICLE 28

AGRICULTURAL ORGANIZATIONS

Section
2-2801. Agricultural organizations; purpose.
2-2802. Qualifying organizations; constitution and bylaws or articles of incorporation; file; Attorney General; duties.
2-2803. Qualifying organizations; enumerated.
2-2804. Nebraska Dairymen's Association; purpose.
2-2805. State Horticultural Society; purpose.
2-2806. Nebraska Livestock Feeders and Breeders Association; purpose.
2-2807. Nebraska Home Economics Association of Organized Agriculture; purpose.
2-2808. Nebraska Crop Improvement Association; purpose.
2-2809. Western Nebraska Organized Agriculture Association; purpose.
2-2810. Nebraska Poultry Improvement Association; purpose.
2-2811. Nebraska Potato Council; purpose.
2-2812. Appropriations; use; budget.
2-2813. Repealed. Laws 1981, LB 545, § 52.

2-2801 Agricultural organizations; purpose.

The purpose of sections 2-2801 to 2-2812 is to provide for the organization, procedure, and financial support of associations or societies of Nebraska

citizens who seek (1) to improve segments of the agricultural industry, homes, and communities of the state, and (2) to cooperate with and to supplement and complement the programs of the University of Nebraska Institute of Agriculture and Natural Resources and other state or local organizations.

Source: Laws 1969, c. 2, § 1, p. 62.

2-2802 Qualifying organizations; constitution and bylaws or articles of incorporation; file; Attorney General; duties.

Qualifying organizations shall adopt and file with the Secretary of State a constitution and bylaws or articles of incorporation which are consistent with the purposes of sections 2-2801 to 2-2812. The Attorney General shall render an opinion as to the eligibility of each association or society to receive and use appropriated funds.

Source: Laws 1969, c. 2, § 2, p. 62.

2-2803 Qualifying organizations; enumerated.

Qualifying organizations shall include, but not be limited to the Nebraska Dairymen's Association, the State Horticultural Society, the Nebraska Livestock Feeders and Breeders Association, the Nebraska Home Economics Association of Organized Agriculture, the Nebraska Crop Improvement Association, the Western Nebraska Organized Agriculture Association, the Nebraska Poultry Improvement Association, and the Nebraska Potato Council.

Source: Laws 1969, c. 2, § 3, p. 63.

2-2804 Nebraska Dairymen's Association; purpose.

The general purposes of the Nebraska Dairymen's Association are (1) to encourage efficient and profitable production through an awards program that recognizes outstanding production in herds and individual animals, (2) to provide dairymen with latest technical and research information to help them improve their herds, and (3) to generate interest in youth by encouraging their participation in junior dairy programs and recognizing their achievements.

Source: Laws 1969, c. 2, § 4, p. 63.

2-2805 State Horticultural Society; purpose.

The general purposes of the State Horticultural Society are (1) to unify horticulturists and organizations throughout the state in cooperation with the University of Nebraska for mutual development, and (2) to promote and develop horticulture in the state through education and research with producers and processors in the areas of ornamentals, fruits and vegetables.

Source: Laws 1969, c. 2, § 5, p. 63.

2-2806 Nebraska Livestock Feeders and Breeders Association; purpose.

The general purposes of the Nebraska Livestock Feeders and Breeders Association are (1) to disseminate information on the principles and practices of improved breeding, feeding, management and marketing of all classes of livestock and livestock products, (2) to assist in the promotion of the general interests of the livestock industry of Nebraska, and (3) to improve the quality of

Nebraska livestock products, by cooperation with processors and increase their acceptance by consumers.

Source: Laws 1969, c. 2, § 6, p. 63.

2-2807 Nebraska Home Economics Association of Organized Agriculture; purpose.

The general purpose of the Nebraska Home Economics Association of Organized Agriculture is to acquaint homemakers with new developments in home economics and to stimulate interest in home economics. The program carried on by such organization to achieve this purpose shall be (1) to hold an annual Home Economics Day for homemakers with well-qualified speakers discussing research and new trends in home economics, (2) to prepare exhibits and other visuals for use at the annual meeting and other state and district meetings to acquaint the public with home economics information, and (3) to recognize volunteer leaders in the home economics extension program.

Source: Laws 1969, c. 2, § 7, p. 63.

2-2808 Nebraska Crop Improvement Association; purpose.

The general purposes of the Nebraska Crop Improvement Association are (1) to carry on all activities incident to the certification of crop seeds as authorized by the University of Nebraska Institute of Agriculture and Natural Resources under rules and regulations approved by such college, (2) to maintain and make available to the public, through certification, high quality seeds of superior crop varieties so grown and distributed as to ensure genetic identity and genetic purity, (3) to publicize, advertise, and otherwise promote the merits and use of certified seed, and (4) to carry on educational work for improving the agronomic practices and furthering agricultural interests in the state.

Source: Laws 1969, c. 2, § 8, p. 64.

2-2809 Western Nebraska Organized Agriculture Association; purpose.

The general purpose of the Western Nebraska Organized Agriculture Association is to cooperate with the State of Nebraska, the University of Nebraska Institute of Agriculture and Natural Resources, and other organizations by bringing to the people of rural communities assistance in solving the problems peculiar to western Nebraska through educational meetings, exhibits, demonstrations, and other means.

Source: Laws 1969, c. 2, § 9, p. 64.

2-2810 Nebraska Poultry Improvement Association; purpose.

The general purpose of the Nebraska Poultry Improvement Association is to foster, promote, improve, and protect all branches of the poultry, turkey, egg, and allied industries. For uses appropriate to its purpose and business, such association may take by gift, purchase, devise, or bequest real and personal property, and may handle, manage, control, sell, lease, and mortgage the same. It may employ such necessary agents, servants, fiduciaries, and assistants as may be necessary to care for its business and property.

Source: Laws 1969, c. 2, § 10, p. 64.

2-2811 Nebraska Potato Council; purpose.

The general purpose of the Nebraska Potato Council is to coordinate the interests and objectives of all segments of the Nebraska potato industry. It shall be the official organization representing potato growers, shippers, processors, and dealers in specialized supplies within the state. The council shall foster improvements in the production and marketing of seed and table stock and the processing of potatoes, and shall sponsor the annual Nebraska Potato Show.

Source: Laws 1969, c. 2, § 11, p. 65.

Cross References

Nebraska Potato Development Act, see section 2-1801.

2-2812 Appropriations; use; budget.

Funds may be appropriated by the Legislature for the use of such qualified organizations and shall be made available through the University of Nebraska budgeting and accounting facilities or such other channel as the Legislature may direct. Each organization shall file a separate biennial budget request with the Legislature.

Source: Laws 1969, c. 2, § 12, p. 65.

2-2813 Repealed. Laws 1981, LB 545, § 52.

ARTICLE 29

PREDATOR CONTROL AIDE

Cross References

Animal damage control programs:
County programs, see sections 23-358 to 23-361.
State-federal program, see sections 81-2,236 to 81-2,238.

Section
2-2901. Repealed. Laws 1987, LB 102, § 9.
2-2902. Repealed. Laws 1987, LB 102, § 9.
2-2903. Repealed. Laws 1987, LB 102, § 9.
2-2904. Repealed. Laws 1987, LB 102, § 9.
2-2905. Repealed. Laws 1987, LB 102, § 9.
2-2906. Repealed. Laws 1987, LB 102, § 9.
2-2907. Repealed. Laws 1987, LB 102, § 9.
2-2908. Repealed. Laws 1987, LB 102, § 9.

2-2901 Repealed. Laws 1987, LB 102, § 9.

2-2902 Repealed. Laws 1987, LB 102, § 9.

2-2903 Repealed. Laws 1987, LB 102, § 9.

2-2904 Repealed. Laws 1987, LB 102, § 9.

2-2905 Repealed. Laws 1987, LB 102, § 9.

2-2906 Repealed. Laws 1987, LB 102, § 9.

2-2907 Repealed. Laws 1987, LB 102, § 9.

2-2908 Repealed. Laws 1987, LB 102, § 9.

ARTICLE 30
POULTRY DISEASE CONTROL

Section
2-3001. Act, how cited.
2-3002. Terms, defined.
2-3003. Intent of act.
2-3004. Prohibited acts; exception.
2-3005. State Veterinarian; rules and regulations; powers.
2-3006. Field sampling and testing; expense of owner; no state-funded indemnity.
2-3007. Inspection; hindrance; unlawful.
2-3008. Violations; penalty; enforcement.

2-3001 Act, how cited.

Sections 2-3001 to 2-3008 may be cited as the Nebraska Poultry Disease Control Act.

Source: Laws 1969, c. 6, § 1, p. 91.

2-3002 Terms, defined.

As used in the Nebraska Poultry Disease Control Act, unless the context otherwise requires:

(1) Breeding poultry flock means two or more individuals of the same species and different sexes maintained together for the purpose of producing fertile eggs for the hatching of offspring;

(2) Commercial poultry flock means meat-type chickens, meat-type turkeys, or table-egg layers;

(3) Hatchery means hatchery equipment on one premises operated or controlled by any person;

(4) Hatching eggs means eggs of poultry for hatching purposes including embryonated eggs;

(5) Noncommercial poultry means backyard flocks and hobby and pet birds;

(6) Person means an individual, corporation, firm, partnership, or limited liability company or any member or officer thereof;

(7) Poultry means domesticated fowl which are bred for the primary purpose of producing eggs or meat, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, except doves and pigeons; and

(8) Pullorum and typhoid clean means poultry in which no pullorum-typhoid reactors were found on the first official blood test or which have been subjected to official retesting which produced two consecutive negative results.

Source: Laws 1969, c. 6, § 2, p. 91; Laws 1989, LB 38, § 1; Laws 1993, LB 121, § 68; Laws 2001, LB 197, § 1; Laws 2006, LB 856, § 1.

2-3003 Intent of act.

The intent of the Nebraska Poultry Disease Control Act shall be to control and eradicate diseases of poultry, to provide for cooperation with the United States Department of Agriculture and other states to that end, and to provide authority

to test breeding poultry flocks and commercial poultry flocks and quarantine infected flocks.

Source: Laws 1969, c. 6, § 3, p. 92; Laws 2001, LB 197, § 2; Laws 2006, LB 856, § 2.

2-3004 Prohibited acts; exception.

No person shall sell, offer for sale, ship or import into this state, or buy from another state hatching eggs or poultry, except for immediate slaughter, unless the flock or hatchery of origin is following a disease control program officially approved or recognized by the State Veterinarian.

Source: Laws 1969, c. 6, § 4, p. 92; Laws 2001, LB 197, § 3.

2-3005 State Veterinarian; rules and regulations; powers.

(1) The State Veterinarian, subject to the approval of the Director of Agriculture, shall adopt and promulgate such rules and regulations to carry out the purposes and intent of the Nebraska Poultry Disease Control Act. As far as practical, the disease provisions of the rules and regulations officially promulgated by the United States Department of Agriculture, commonly known and cited as the National Poultry Improvement Plan and Auxiliary Provisions, shall be adopted (a) to establish and maintain breeding poultry flocks and hatcheries as pullorum and typhoid clean, (b) to establish requirements for poultry being exhibited, (c) to assure that only breeding poultry flocks and hatching eggs which are pullorum and typhoid clean are moved into and within Nebraska, (d) to establish testing requirements to monitor the presence of pullorum and typhoid in Nebraska, and (e) to establish testing requirements to monitor the presence of H5/H7 subtypes of low pathogenic avian influenza Type A in breeding poultry flocks and commercial poultry flocks.

(2) The State Veterinarian shall have authority to monitor for the presence of various subtypes of avian influenza in noncommercial poultry and any other dangerous, infectious, contagious, or otherwise transmissible disease of poultry. For fiscal year 2006-07, the State Veterinarian shall carry out a program of surveillance of noncommercial poultry flocks for the presence of various subtypes of avian influenza and may cooperate with the University of Nebraska to develop and carry out such program of surveillance. The State Veterinarian may continue such program of surveillance beyond fiscal year 2006-07 as deemed necessary subject to the availability of funds for such purpose. Any activities carried out by or on behalf of the State Veterinarian pursuant to this section shall be conducted with the voluntary cooperation of noncommercial poultry flock owners or the property owner where such poultry are located to the extent that this section does not conflict with the State Veterinarian's disease surveillance authorities pursuant to section 54-701.02.

(3) The State Veterinarian shall have quarantine power and may require reports and records from persons subject to the act as established in the rules and regulations.

Source: Laws 1969, c. 6, § 5, p. 92; Laws 1988, LB 871, § 1; Laws 1989, LB 38, § 2; Laws 2001, LB 197, § 4; Laws 2006, LB 856, § 3.

2-3006 Field sampling and testing; expense of owner; no state-funded indemnity.

Field sampling and testing required by the provisions of the Nebraska Poultry Disease Control Act and the rules and regulations duly promulgated under the provisions of the act, and the costs of maintaining quarantined poultry shall be at the expense of the owner. No state-funded indemnity shall be paid to owners of pullorum-or typhoid-infected flocks slaughtered or disposed of in any manner. No state-funded indemnity shall be paid to owners of poultry flocks infected with avian influenza that are slaughtered or disposed of in any manner.

Source: Laws 1969, c. 6, § 6, p. 92; Laws 2006, LB 856, § 4.

2-3007 Inspection; hindrance; unlawful.

The State Veterinarian or anyone authorized thereby, upon contacting the person in charge, may enter upon all land or enter any building maintained for the production of poultry or hatching eggs to examine the poultry or hatching eggs to ascertain the existence of pullorum, typhoid, avian influenza, or any other dangerous, infectious, contagious, or otherwise transmissible disease in poultry. It shall be unlawful to hinder, impede, or prevent any authorized agent of the Department of Agriculture from entering any building maintained for the production of poultry or hatching eggs in the performance of his or her duty or from making any examination duly ordered by the State Veterinarian.

Source: Laws 1969, c. 6, § 7, p. 92; Laws 2006, LB 856, § 5.

2-3008 Violations; penalty; enforcement.

(1) Any person violating the Nebraska Poultry Disease Control Act or the rules and regulations adopted and promulgated under the act shall be guilty of a Class III misdemeanor.

(2) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the Department of Agriculture of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (3) of this section without delay.

(3) In order to insure compliance with the Nebraska Poultry Disease Control Act, the Department of Agriculture may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Source: Laws 1969, c. 6, § 8, p. 93; Laws 1977, LB 40, § 25; Laws 1988, LB 871, § 2.

ARTICLE 31

SOIL AND PLANT ANALYSIS LABORATORIES

Section
2-3101. Act, how cited.
2-3102. Terms, defined.
2-3103. Registration; application; renewal; fees.
2-3104. Enforcement of act; inspection; hindrance; unlawful.
2-3105. Proficiency testing; samples; check; report; fees.

Section

2-3101 Act, how cited.

Sections 2-3101 to 2-3110 may be cited as the Nebraska Soil and Plant Analysis Laboratory Act.

Source: Laws 1969, c. 8, § 1, p. 96.

2-3102 Terms, defined.

As used in the Nebraska Soil and Plant Analysis Laboratory Act, unless the context otherwise requires:

(1) Authorized proficiency testing service means proficiency testing done by the department or any person the department approves to perform proficiency testing;

(2) Department means the Department of Agriculture;

(3) Director means the Director of Agriculture or his or her designated employee, representative, or authorized agent;

(4) Laboratory includes, but is not restricted to, facilities or parts of facilities maintained and utilized for the purpose of performing soil and plant analysis and may be either fixed or mobile;

(5) Person includes an individual, partnership, limited liability company, firm, association, corporation, or body corporate or any officer or member of the same;

(6) Proficiency testing means the process of providing check samples to laboratories, collecting check sample test results from the laboratories, and compiling and analyzing check sample test results; and

(7) Soil and plant analysis means the use of biological, chemical, or physical procedures in determining amounts of elements or compounds in the soil or in plants for the express purpose of providing a basis for plant nutrient application.

Source: Laws 1969, c. 8, § 2, p. 96; Laws 1993, LB 121, § 69; Laws 1999, LB 198, § 1.

2-3103 Registration; application; renewal; fees.

It shall be unlawful for any person to operate a laboratory in this state for conducting soil and plant analysis for others unless such laboratory is registered with the department. Application for registration shall be made to the director upon forms furnished by him or her for that purpose. On each initial or renewal application for registration, the director may cause the laboratory facilities, methods, procedures, and equipment to be inspected and shall review the qualifications of personnel. Each application shall specify the types of analysis to be conducted and the names of the analytical methods used. All registrations shall be personal to the holder thereof and shall be nontransferable. Registrations shall expire on June 30 of each year. Each initial and renewal

application for registration shall be accompanied by a fee of one hundred dollars.

Source: Laws 1969, c. 8, § 3, p. 97; Laws 1980, LB 633, § 2; Laws 1995, LB 356, § 1.

2-3104 Enforcement of act; inspection; hindrance; unlawful.

The director may appoint qualified personnel to enforce the provisions of the Nebraska Soil and Plant Analysis Laboratory Act and any duly authorized representative of the director may at any reasonable time enter any laboratory for the purpose of reviewing qualifications of personnel, for examination of equipment in use for soil and plant analysis, and for inspection of the laboratory facilities, methods, and procedures. Every laboratory shall be inspected at least once every two years. It shall be unlawful to hinder, impede, or prevent entry by the director or his or her authorized representatives for the performance of their duties.

Source: Laws 1969, c. 8, § 4, p. 97; Laws 1995, LB 356, § 2.

2-3105 Proficiency testing; samples; check; report; fees.

(1) Each laboratory shall be required by the department to participate in proficiency testing provided by an authorized proficiency testing service four times each calendar year. The authorized proficiency testing service shall require the laboratory to analyze at least three soil samples and one plant sample supplied quarterly by the authorized proficiency testing service. Each laboratory receiving check samples shall report check sample test results to the authorized proficiency testing service pursuant to the requirements of such service. The authorized proficiency testing service shall submit to the director all check sample test results. The director may require each laboratory to submit to the department a copy of the check sample test results reported to the authorized proficiency testing service. The director shall evaluate check sample test results submitted by each laboratory or the authorized proficiency testing service to determine if the laboratory's analysis is accurate within an acceptable range.

(2) When the department is the authorized proficiency testing service, the director shall fix and collect fees for the proficiency testing, which charges shall not exceed the cost of such testing.

Source: Laws 1969, c. 8, § 5, p. 98; Laws 1995, LB 356, § 3; Laws 1999, LB 198, § 2.

2-3106 Samples; results; rules and regulations; standards; conform.

All results obtained from all soil or plant analysis shall be reported in accordance with standard reporting units as established by rule and regulation. Such standard units shall conform insofar as is practical to uniform standards which may be adopted on a regional or national basis.

Source: Laws 1969, c. 8, § 6, p. 98; Laws 1995, LB 356, § 4.

2-3107 Registration; disciplinary actions; procedure; appeal.

If the director determines that a laboratory does not meet the requirements, as established by rule and regulation, with respect to qualified personnel, quality assurance procedures, reporting format, laboratory facilities, equip-

ment, or analytical procedures or methods or that analysis being performed by a laboratory is inaccurate as evidenced by analytical results which are outside of an acceptable range, he or she may issue an order for a hearing pursuant to and in accordance with the Administrative Procedure Act. Following the hearing, the director may suspend or revoke registration or issue a compliance order against the respondent laboratory. Any person aggrieved by the decision of the director may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 8, § 7, p. 98; Laws 1988, LB 352, § 5; Laws 1995, LB 356, § 5; Laws 1999, LB 198, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

2-3108 Director of Agriculture; rules and regulations.

The director is authorized and directed to adopt and promulgate rules and regulations for the establishment of minimum standards for laboratories, equipment, personnel, reporting format, and procedures and methods used in soil or plant analysis to ensure that test results will be accurate within an acceptable range and such other rules and regulations as are necessary to the proper administration and enforcement of the Nebraska Soil and Plant Analysis Laboratory Act. In formulating proposed rules and regulations, the director shall consult with representatives of the fertilizer industry, representatives of the laboratories in this state, and the University of Nebraska Institute of Agriculture and Natural Resources. All rules and regulations shall be established in accordance with the procedure defined in the Administrative Procedure Act.

Source: Laws 1969, c. 8, § 8, p. 99; Laws 1988, LB 871, § 3; Laws 1991, LB 663, § 31; Laws 1995, LB 356, § 6; Laws 1999, LB 198, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

2-3109 Violations; penalty; enforcement.

(1) Any person who violates any provision of the Nebraska Soil and Plant Analysis Laboratory Act for which no specific penalty is provided or any rule or regulation made pursuant thereto shall be guilty of a Class IV misdemeanor.

(2) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (3) of this section without delay.

(3) In order to insure compliance with the Nebraska Soil and Plant Analysis Laboratory Act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Source: Laws 1969, c. 8, § 9, p. 99; Laws 1977, LB 40, § 26; Laws 1988, LB 871, § 4.

2-3110 Soil and Plant Analysis Laboratory Cash Fund; created; use; investment.

All fees collected by the director under the Nebraska Soil and Plant Analysis Laboratory Act shall be remitted to the State Treasurer for credit to the Soil and Plant Analysis Laboratory Cash Fund, which fund is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the Nebraska Soil and Plant Analysis Laboratory Act. Any money in the Soil and Plant Analysis Laboratory Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1969, c. 8, § 10, p. 99; Laws 1988, LB 871, § 5; Laws 1995, LB 7, § 15.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 32
NATURAL RESOURCES

Cross References

Natural resources districts, sales tax exemption, see section 77-2704.15.
Nebraska Natural Resources Commission, see Chapter 2, article 15.

Section

Section

2-3201 Natural resources, declaration of intent.

The Legislature hereby recognizes and declares that it is essential to the health and welfare of the people of the State of Nebraska to conserve, protect, develop, and manage the natural resources of this state. The Legislature further recognizes the significant achievements that have been made in the conservation, protection, development, and management of our natural resources and declares that the most efficient and economical method of accelerating these achievements is by creating natural resources districts encompassing all of the area of the state. The Legislature further declares that the functions performed by soil and water conservation districts, watershed conservancy districts, watershed districts, advisory watershed improvement boards, and watershed planning boards shall be consolidated and made functions of natural resources districts. The governing boards of such districts and boards shall complete, before July 1, 1972, the necessary transfers and other arrangements so that such boards may on that date begin the operation of natural resources districts. The Legislature further declares that other special-purpose districts, including rural water districts, drainage districts, reclamation districts, and irrigation districts, are hereby encouraged to cooperate with and, if appropriate, to merge with natural resources districts.

Source: Laws 1969, c. 9, § 1, p. 100; Laws 1971, LB 544, § 1; Laws 1972, LB 543, § 1; Laws 1973, LB 335, § 1; Laws 1991, LB 15, § 1; Laws 1998, LB 896, § 1.

This statute does not expressly grant or imply the power to represent the public interest in litigation in which a natural resources district does not otherwise have standing. Metropolitan Utilities Dist. v. Twin Platte NRD, 250 Neb. 442, 550 N.W.2d 907 (1996).

The statutes providing for natural resources districts held to be constitutional. Neeman v. Nebraska Nat. Resources Commission, 191 Neb. 672, 217 N.W.2d 166 (1974).

2-3202 Terms, defined.

For purposes of Chapter 2, article 32, unless the context otherwise requires:
(1) Commission means the Nebraska Natural Resources Commission;

(2) Natural resources district or district means a natural resources district operating pursuant to Chapter 2, article 32;

(3) Board means the board of directors of a district;

(4) Director means a member of the board;

(5) Other special-purpose districts means rural water districts, drainage districts, reclamation districts, and irrigation districts;

(6) Manager means the chief executive hired by a majority vote of the board to be the supervising officer of the district; and

(7) Department means the Department of Natural Resources.

Source: Laws 1969, c. 9, § 2, p. 101; Laws 1972, LB 543, § 2; Laws 1973, LB 335, § 2; Laws 1984, LB 861, § 1; Laws 1988, LB 1045, § 1; Laws 1994, LB 480, § 1; Laws 1998, LB 896, § 2; Laws 2000, LB 900, § 51; Laws 2006, LB 1113, § 13; Laws 2007, LB701, § 5.

Cross References

Department of Natural Resources, see Chapter 61, article 2.
Nebraska Natural Resources Commission, see section 2-1504.

2-3203 Natural resources districts; establishment.

In furtherance of the policy set forth in section 2-3201, the entire area of the State of Nebraska shall be divided into natural resources districts. The Nebraska Natural Resources Commission is hereby authorized and directed to determine and establish the exact number, and the boundaries of such districts. Boundaries of natural resources districts shall be established on or before October 1, 1971. When establishing such boundaries the commission shall employ the following guidelines and criteria:

(1) The primary objective shall be to establish boundaries which provide effective coordination, planning, development and general management of areas which have related resources problems. Such areas shall be determined according to the hydrologic patterns. The recognized river basins of the state shall be utilized in determining and establishing the boundaries for districts and where necessary for more efficient development and general management two or more districts shall be created within a basin;

(2) Boundaries of districts shall follow approximate hydrologic patterns except where doing so would divide a section, a city or village, or produce similar incongruities which might hinder the effective operation of the districts;

(3) Existing boundaries of political subdivisions or voting precincts may be followed wherever feasible. Districts shall be of sufficient size to provide adequate finances and administration for plans of improvement; and

(4) The number of districts shall be not less than sixteen nor more than twenty-eight.

Source: Laws 1969, c. 9, § 3, p. 101; Laws 1971, LB 538, § 1.

2-3203.01 Repealed. Laws 1982, LB 592, § 2.

2-3203.02 Repealed. Laws 2000, LB 900, § 256.

2-3204 Repealed. Laws 1999, LB 436, § 12.

2-3205 Repealed. Laws 1987, LB 1, § 16.

2-3206 Districts; assumption of assets and liabilities; apportionment; taxes; special fund.

(1) Each district established pursuant to section 2-3203 shall assume, on July 1, 1972, all assets, liabilities, and obligations of any soil and water conservation district, watershed conservancy district, watershed district, advisory watershed improvement board, and watershed planning board, whose territory is included within the boundaries of such natural resources district. When the jurisdiction of any soil and water conservation district, watershed conservancy district, watershed district, advisory watershed improvement board, or watershed planning board, is included within two or more natural resources districts, the commission shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on the proportionate land area included in each district. Physical assets attached to the land shall be assumed by the district in which they are located. The value of attached physical assets shall be considered in the apportionment of the assets, liabilities and obligations, and any such assets may be encumbered or otherwise liquidated by the assuming district to effect the proper apportionment. When any other special-purpose district is merged with a natural resources district as contemplated by section 2-3201 and in the manner provided in sections 2-3207 to 2-3212, the assets, liabilities, and obligations of such special-purpose district shall similarly be assumed by the natural resources district.

(2) All taxes levied in 1971 by the counties of this state pursuant to sections 2-1560 and 31-827 for watershed districts and watershed conservancy districts shall be treated as assets of such watershed districts and watershed conservancy districts and when funds are not available or paid to such districts on account of such levies until after July 1, 1972, such funds shall be paid to the order of the natural resources district or districts within the boundaries of which such watershed district or watershed conservancy district lies, and in the proportionate amounts as other assets are to be divided. Tax funds in possession of or payable to each watershed district and watershed conservancy district at the time of merger shall be put in a special fund of the natural resources district or districts receiving the assets of such watershed district or watershed conservancy district and such funds shall be expended within the boundaries of such watershed district or watershed conservancy district and for projects begun or planned by such districts.

Source: Laws 1969, c. 9, § 6, p. 104; Laws 1971, LB 544, § 3; Laws 1972, LB 543, § 4.

2-3207 Districts; change of boundaries, division, or merger.

With the approval of the affected natural resources districts, the commission may change the boundaries of natural resources districts, merge two or more such districts into a single district, divide one district into two or more new districts, or divide and merge one district into two or more other existing districts. The commission may also provide for the merger with such districts of other special-purpose districts as enumerated in section 2-3201. In exercising such powers, the commission shall be bound by the criteria and procedures provided by sections 2-3201 to 2-3212.

Source: Laws 1969, c. 9, § 7, p. 105; Laws 1972, LB 543, § 5; Laws 1988, LB 1045, § 2.

2-3208 Districts; proposed changes; procedure.

A hearing by the commission on proposed changes as provided by section 2-3207 may be initiated by any of the following methods:

(1) By the commission on its own motion;

(2) By written request of a majority of the directors of any or each natural resources district the boundaries of which are proposed to be changed or which is proposed to be merged or divided;

(3) By petition, signed by twenty-five percent of the legal voters residing within an area proposed to be transferred from one district to an adjoining district by a change in boundaries; or

(4) By formal written request of a majority of the directors or supervisors of any other special-purpose district wishing to merge with a natural resources district.

Such proposals shall be filed with the department and shall set forth any proposed new boundaries and such other information as the commission requires.

Source: Laws 1969, c. 9, § 8, p. 106; Laws 1988, LB 1045, § 3; Laws 2000, LB 900, § 52.

2-3209 Repealed. Laws 1988, LB 1045, § 12.

2-3210 Districts; change of boundaries, division, or merger; notice.

Within sixty days after such proposal for a change of boundaries, division, or merger is made and filed with the department, the department shall begin publication of the notices for a public hearing by the commission on the question. Notice requirements shall be satisfied by publishing such notice at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in the areas affected. A public hearing shall then be held as set forth in the notice and in accord with law and the rules and regulations of the commission.

Source: Laws 1969, c. 9, § 10, p. 106; Laws 1988, LB 1045, § 4; Laws 2000, LB 900, § 53.

2-3211 Districts; change of boundaries, division, or merger; hearing; order; notice.

After the hearing, as provided in section 2-3210, the commission shall determine, upon the basis of the proposed change, upon the facts and evidence presented at such hearing, upon consideration of the standards provided in section 2-3203 relative to the organization of districts, and upon such other relevant facts and information as may be available, whether such changes in boundaries, division, or merger would promote the public interest and would be administratively and financially practicable and feasible. The commission shall make and record such determination and shall make such other determinations as are required by sections 2-3211.01 and 2-3211.02. The department shall notify the boards of the affected districts of such determinations in writing. No change in boundaries, division, or merger as provided for by

sections 2-3207 to 2-3212 shall take place unless the boards of the affected districts favor such change, division, or merger.

Source: Laws 1969, c. 9, § 11, p. 107; Laws 1988, LB 1045, § 5; Laws 2000, LB 900, § 54.

2-3211.01 Districts; change of boundaries, division, or merger; assets, liabilities, obligations, and tax receipts; treatment.

(1) Each new natural resources district established by merging two or more natural resources districts in their entirety shall assume all assets, liabilities, and obligations of such merged districts on the effective date of the merger.

(2) Whenever a change of boundaries, division of one district into two or more new districts, or division and merger of one district into two or more existing districts takes place, the commission shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on all relevant factors, including, but not limited to, the proportionate land areas involved in the change, division, or merger and the extent to which particular assets, liabilities, or obligations are related to specific land areas. Interests in real estate and improvements to real estate shall be assumed by the district in which they are located on the effective date of the change, division, or merger. The value of such interests in real estate and improvements shall be considered in the apportionment, and any such assets may be encumbered or otherwise liquidated by the assuming district to effect the proper apportionment.

(3) All taxes levied pursuant to section 2-3225 and all assessments levied pursuant to sections 2-3254 to 2-3254.06 prior to the change of boundaries, division, or merger shall be apportioned by the commission on the basis of the relationship between the intended uses of such taxes or assessments and the land areas involved in the change, division, or merger. Taxes or assessments levied pursuant to sections 2-3254 to 2-3254.06 which are in the possession of or payable to a district at the time of the change, division, or merger and taxes or assessments in the possession of or payable to any other special-purpose district merged into a natural resources district shall be put into a special fund by the district receiving such assets and shall be expended as nearly as practicable for the purposes for which they were levied or assessed.

Source: Laws 1988, LB 1045, § 6; Laws 1996, LB 108, § 3; Laws 1996, LB 1114, § 16.

2-3211.02 Districts; change of boundaries, division, or merger; naming or renaming.

If a change of boundaries, division, or merger requires the naming of a newly created natural resources district or the renaming of one or more existing districts, names shall be given by the commission at the time the change, division, or merger is approved. The board of directors of a district may recommend that a specific name be approved.

Source: Laws 1988, LB 1045, § 7.

2-3211.03 Districts; change of boundaries, division, or merger; commission; duties.

In making the determinations required by sections 2-3211 to 2-3211.02, the commission shall, whenever consistent with applicable law and the state's interests, give effect to the desires of the affected natural resources districts including the terms of any written agreements between or among such districts.

Source: Laws 1988, LB 1045, § 8.

2-3212 Districts; change of boundaries, division, or merger; application; contents; filing; when effective; Secretary of State; duties.

If the boards of the affected districts favor a change of boundaries, division, or merger as provided by sections 2-3211 to 2-3211.02, the various affected district boards shall each present to the Secretary of State an application, signed by them, for a certificate evidencing the change, division, or merger. The application shall be filed with the Secretary of State accompanied with a statement by the department certifying that the change, division, or merger is in accordance with the procedures prescribed in sections 2-3207 to 2-3212 and setting forth any new boundary line or other information as in the judgment of the department and Secretary of State is adequate to describe such change, division, or merger. When the application and statement have been filed with the Secretary of State, the change, division, or merger shall be deemed effective and the Secretary of State shall issue to the directors of each of the districts a certificate evidencing the change, division, or merger.

Source: Laws 1969, c. 9, § 12, p. 107; Laws 1988, LB 1045, § 9; Laws 2000, LB 900, § 55.

2-3212.01 Merger and transfer of existing districts or boards; effect.

Mergers and transfers of existing districts or boards into natural resources districts pursuant to sections 2-3207 to 2-3212 shall not be construed as being discontinuances or dissolutions of those districts or boards as may be provided for by statute outside such sections.

Source: Laws 1969, c. 9, § 59, p. 134; R.S.1943, (1987), § 2-3259; Laws 1994, LB 480, § 3; Laws 1998, LB 896, § 3; Laws 1999, LB 436, § 1.

2-3213 Board of directors; membership; number of directors; executive committee; terms.

(1) Except as provided in subsections (2) and (3) of this section, each district shall be governed by a board of directors of five, seven, nine, eleven, thirteen, fifteen, seventeen, nineteen, or twenty-one members. The board of directors shall determine the number of directors and in making such determination shall consider the complexity of the foreseeable programs and the population and land area of the district. Districts shall be political subdivisions of the state, shall have perpetual succession, and may sue and be sued in the name of the district.

(2) At least six months prior to the primary election, the board of directors of any natural resources district may change the number of directors for the district and may change subdistrict boundaries to accommodate the increase or decrease in the number of directors. The board of directors shall utilize the criteria found in subsection (1) of this section and in subsection (2) of section 2-3214 when changing the number of directors. Except as provided in subsec-

tion (5) of this section, no director's term of office shall be shortened as a result of any change in the number of directors. Any reduction in the number of directors shall be made as directors take office during the two succeeding elections or more quickly if the reduction can be made by not filling vacancies on the board and if desired by the board. If necessary to preserve staggered terms for directors when the reduction in number is made in whole or in part through unfilled vacancies, the board may provide for a one-time election of one or more directors for a two-year term. The board of directors shall inform the Secretary of State whenever any such one-time elections have been approved. Notwithstanding subsection (1) of this section, the district may be governed by an even number of directors during the two-year transition to a board of reduced number.

(3) Whenever any change of boundaries, division, or merger results in a natural resources district director residing in a district other than the one to which such director was elected to serve, such director shall automatically become a director of the board of the district in which he or she then resides. Except as provided in subsection (5) of this section, all such directors shall continue to serve in office until the expiration of the term of office for which they were elected. Directors or supervisors of other special-purpose districts merged into a natural resources district shall not become members of the natural resources district board but may be appointed as advisors in accordance with section 2-3228. No later than six months after any change, division, or merger, each affected board, in accordance with the procedures and criteria found in this section and section 2-3214, shall determine the number of directors for the district as it then exists, the option chosen for nomination and election of directors, and, if appropriate, new subdistrict boundaries.

(4) To facilitate the task of administration of any board increased in size by a change of boundaries or merger, such board may appoint an executive committee to conduct the business of the board in the interim until board size reductions can be made in accordance with this section. An executive committee shall be empowered to act for the full board in all matters within its purview unless specifically limited by the board in the establishment and appointment of the executive committee.

(5) Notwithstanding the provisions of section 2-3214 and subsections (3) and (4) of this section, the board of directors of any natural resources district established by merging two or more districts in their entirety may provide that all directors be nominated and elected at the first primary and general elections following the year in which such merger becomes effective. In districts which have one director elected from each subdistrict, each director elected from an even-numbered subdistrict shall be elected for a two-year term and each director from an odd-numbered district and any member to be elected at large shall be elected for a four-year term. In districts which have two directors elected from each subdistrict, the four candidates receiving the highest number of votes at the primary election shall be carried over to the general election, and at such general election the candidate receiving the highest number of votes shall be elected for a four-year term and the candidate receiving the second highest number of votes shall be elected for a two-year term. Thereafter each director shall be elected for a four-year term.

Source: Laws 1969, c. 9, § 13, p. 108; Laws 1971, LB 544, § 4; Laws 1972, LB 543, § 6; Laws 1973, LB 335, § 3; Laws 1978, LB 411, § 2; Laws 1981, LB 81, § 1; Laws 1986, LB 302, § 1;

Laws 1986, LB 124, § 1; Laws 1987, LB 148, § 2; Laws 1988, LB 1045, § 10; Laws 1994, LB 76, § 458; Laws 1994, LB 480, § 4.

2-3214 Board of directors; nomination; election; subdistricts; oath.

(1) District directors shall be elected as provided in section 32-513. Elections shall be conducted as provided in the Election Act. Registered voters residing within the district shall be eligible for nomination as candidates for any at-large position or, in those districts that have established subdistricts, as candidates from the subdistrict within which they reside.

(2) The board of directors may choose to: (a) Nominate candidates from subdistricts and from the district at large who shall be elected by the registered voters of the entire district; (b) nominate and elect each candidate from the district at large; or (c) nominate and elect candidates from subdistricts of substantially equal population except that any at-large candidate would be nominated and elected by the registered voters of the entire district. Unless the board of directors determines that the nomination and election of all directors will be at large, the board shall strive to divide the district into subdistricts of substantially equal population, except that no subdistrict shall have a population greater than three times the population of any other subdistrict within the district. Such subdistricts shall be consecutively numbered and shall be established with due regard to all factors including, but not limited to, the location of works of improvement and the distribution of population and taxable values within the district. The boundaries and numbering of such subdistricts shall be designated at least six months prior to the primary election. Unless the district has been divided into subdistricts with substantially equal population, all directors shall be elected by the registered voters of the entire district and all registered voters shall vote on the candidates representing each subdistrict and any at-large candidates. If a district has been divided into subdistricts with substantially equal population, the board of directors may determine that directors shall be elected only by the registered voters of the subdistrict except that an at-large director may be elected by registered voters of the entire district.

(3) Except in districts which have chosen to have a single director serve from each subdistrict, the number of subdistricts for a district shall equal a number which is one less than a majority of directors for the district. In districts which have chosen to have a single director serve from each subdistrict, the number of subdistricts shall equal a number which is equal to the total number of directors of the district or which is one less than the total number of directors for the district if there is an at-large candidate. If the number of directors to be elected exceeds the number of subdistricts or if the term of the at-large director expires in districts which have chosen to have a single director serve from each subdistrict, candidates may file as a candidate from the district at large. Registered voters may each cast a number of votes not larger than the total number of directors to be elected.

(4) Elected directors shall take their oath of office in the same manner provided for county officials.

(5) At least six months prior to the primary election, the board of directors may choose to have a single director serve from each subdistrict.

(6) The board of directors shall certify to the Secretary of State and the election commissioners or county clerks the number of directors to be elected at each election and the length of their terms as provided in section 32-404.

Source: Laws 1969, c. 9, § 14, p. 110; Laws 1972, LB 543, § 7; Laws 1974, LB 641, § 1; Laws 1986, LB 302, § 2; Laws 1987, LB 148, § 3; Laws 1994, LB 76, § 459; Laws 1994, LB 480, § 5.

Cross References

Election Act, see section 32-101.

2-3215 Board; vacancy; how filled.

In addition to the events listed in section 32-560, a vacancy on the board shall exist in the event of the removal from the district or subdistrict of any director. After notice and hearing, a vacancy shall also exist in the event of the absence of any director from more than two consecutive regular meetings of the board unless such absences are excused by a majority of the remaining board members. In the event of a vacancy from any of such causes or otherwise, such vacancy shall be filled by the board of directors. The person so appointed shall have the same qualifications as the person whom he or she succeeds. Such appointments shall be in writing, for the remainder of the unexpired term, and until a successor is elected and qualified. The written appointment shall be filed with the Secretary of State.

Source: Laws 1969, c. 9, § 15, p. 112; Laws 1972, LB 543, § 8; Laws 1985, LB 569, § 1; Laws 1988, LB 1045, § 11; Laws 1994, LB 76, § 460.

2-3216 Repealed. Laws 1984, LB 975, § 14.

2-3216.01 Repealed. Laws 1986, LB 548, § 15.

2-3216.02 Repealed. Laws 1986, LB 548, § 15.

2-3216.03 Repealed. Laws 1986, LB 548, § 15.

2-3216.04 Repealed. Laws 1986, LB 548, § 15.

2-3216.05 Repealed. Laws 1986, LB 548, § 15.

2-3216.06 Repealed. Laws 1986, LB 548, § 15.

2-3217 Officers; election; bond; premium.

The board shall elect the officers of the district, including a chairman, vice-chairman, secretary, and treasurer. The offices of secretary and treasurer may be held by one person, and such person need not be a member of the board. The officers and employees of the district authorized to handle funds shall furnish and maintain a corporate surety bond in an amount not less than fifty thousand dollars, nor more than the amount of all money coming into their possession or control, to be determined by the governing board. Such bond shall be in a form and with sureties approved by the board of directors, and after approval shall be filed with the Secretary of State. The premium on such bond shall be paid by the district.

Source: Laws 1969, c. 9, § 17, p. 112; Laws 1973, LB 206, § 2.

2-3218 Members of board; compensation; expenses.

Board members shall be reimbursed for their actual and necessary expenses incurred in connection with their duties. Each board may provide a per diem payment for directors not to exceed seventy dollars for each day that a director attends meetings of the board or is engaged in matters concerning the district, but no director shall receive more than three thousand six hundred dollars in any one year. Such per diem payments shall be in addition to and separate from reimbursement for expenses.

Source: Laws 1969, c. 9, § 18, p. 113; Laws 1972, LB 543, § 9; Laws 1981, LB 204, § 10; Laws 1986, LB 374, § 1; Laws 1991, LB 264, § 1; Laws 2001, LB 134, § 1; Laws 2006, LB 32, § 1.

2-3219 Board; meetings; time; place; notice.

(1) The board shall hold regularly scheduled monthly meetings. A majority of the voting members of the board shall constitute a quorum, and the concurrence of a majority of a quorum shall be sufficient to take action and make determinations. Within ninety days after the creation of any natural resources district, the board thereof shall, by appropriate rules and regulations, designate the regular time and place such meetings are to be held. At the first meeting of each year, the board shall review its program for the preceding year and outline its plans for the following year. At the first regularly scheduled meeting after the completion of the yearly audit required by section 2-3223, it shall present a report of the financial condition of the district and open discussion relevant to the same. Notice shall be given of all board meetings pursuant to section 84-1411.

(2) The boards of directors of the natural resources districts within each river basin shall meet jointly at least twice a year at such times and places as may be mutually agreed upon for the purpose of receiving and coordinating their efforts for the maximum benefit of the basin.

Source: Laws 1969, c. 9, § 19, p. 113; Laws 1972, LB 543, § 10; Laws 1988, LB 812, § 1; Laws 1994, LB 480, § 6; Laws 1998, LB 896, § 4; Laws 1999, LB 436, § 2.

2-3220 Board; minutes; records; monthly publication of expenditures; publication fee; public inspection.

The board shall cause to be kept accurate minutes of its meetings and accurate records and books of account, conforming to approved methods of bookkeeping prescribed by the Auditor of Public Accounts, clearly setting out and reflecting the entire operation, management and business of the district. It shall be the duty of the board to prepare and publish each month in a newspaper or newspapers which provide general coverage of the district, a detailed list of all expenditures of the district for the preceding month. Any newspaper utilized by the district shall publish such list of expenditures for a fee no greater than the rate provided by law for the publication of proceedings of county boards. Such publication shall set forth the amount of each claim approved, the purpose of the claim, and the name of the claimant. Such books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and

electors. Such books and records shall at reasonable business hours be open to public inspection.

Source: Laws 1969, c. 9, § 20, p. 114; Laws 1975, LB 404, § 2.

2-3221 Repealed. Laws 1972, LB 543, § 18.

2-3222 Board; copy of certain documents; furnish to department.

The board shall furnish to the department copies of its rules, regulations, audits, meeting minutes, and other documents as the department may require in the performance of its duties.

Source: Laws 1969, c. 9, § 22, p. 114; Laws 1994, LB 480, § 7; Laws 1998, LB 896, § 5; Laws 1999, LB 436, § 3; Laws 2000, LB 900, § 56.

2-3223 Fiscal year; audit; filing; failure to file; withhold funds.

The fiscal year of the district shall begin July 1 and end June 30. The board of directors, at the close of each year's business, shall cause an audit of the books, records and financial affairs of the district to be made by a public accountant or firm of such accountants, who shall be selected by the district. The audit shall be in a form prescribed by the Auditor of Public Accounts. Such audits shall show (1) the gross income from all sources of the district for the previous year; (2) the amount expended during the previous year for maintenance; (3) the amount expended during the previous year for improvements and other such programs, including detailed information on bidding and notices of requests for bids and the disposition thereof; (4) the amount of depreciation of the property of the district during the previous year; (5) the number of employees as of June 30 of each year; (6) the salaries paid employees; and (7) all other facts necessary to give an accurate and comprehensive view of the cost of operating, maintaining, and improving the district.

An authenticated copy of the audit shall be filed with the Auditor of Public Accounts within six months after the end of the fiscal year. Upon the failure by the district to file the audit report within such time, the Auditor of Public Accounts shall notify the county treasurer or treasurers within the district who shall withhold distribution of all tax funds to which the district may be entitled pursuant to section 2-3225.

Source: Laws 1969, c. 9, § 23, p. 114; Laws 1972, LB 107, § 1; Laws 1975, LB 404, § 3.

2-3223.01 Audit; failure to file; publication of failure; individuals responsible; penalty.

(1) If any district fails to file a copy of the audit within the required time, pursuant to section 2-3223, the name of the district, the officers, and the board of directors of the district shall be published in a newspaper or newspapers which provide general coverage of the district, which publication shall state the failure of the district and its directors, with publication costs to be paid by the district.

(2) Any officer or member of the board of directors responsible for such failure to file shall be guilty of a Class IV misdemeanor.

Source: Laws 1975, LB 404, § 4; Laws 1977, LB 40, § 27.

2-3224 Funds of districts; disbursement; treasurer's bond; secretary report changes.

Funds of the district shall be paid out or expended only upon the authorization or approval of the board of directors and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or such other officer, employee or agent of the district as shall be authorized by the treasurer to sign in his behalf; *Provided*, such authorization shall be in writing and filed with the secretary of the district; *and provided further*, in the event that the treasurer's bond shall not expressly insure the district 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 thus authorized, there shall be procured and filed with the secretary of the district, together with the authorization, a corporate surety bond, effective for protection against such loss, in such form and amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the district 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 1969, c. 9, § 24, p. 115.

2-3225 Districts; tax; levies; limitation; use; collection.

(1)(a) Each district shall have the power and authority to levy a tax of not to exceed four and one-half cents on each one hundred dollars of taxable valuation annually on all of the taxable property within such district unless a higher levy is authorized pursuant to section 77-3444.

(b) Each district shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition to the power and authority granted in subdivisions (1)(a) and (b) of this section, each district located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2011-12.

(d) In addition to the power and authority granted in subdivisions (a) through (c) of this subsection, a district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin may annually levy a tax

not to exceed ten cents per one hundred dollars of taxable valuation of all taxable property in the district for the payment of principal and interest on bonds and refunding bonds issued pursuant to section 2-3226.01. Such levy is not includable in the computation of other limitations upon the district's tax levy.

(2) The proceeds of the tax levies authorized in subdivisions (1)(a) through (c) of this section shall be used, together with any other funds which the district may receive from any source, for the operation of the district. When adopted by the board, the tax levies authorized in subdivisions (1)(a) through (d) of this section shall be certified by the secretary to the county clerk of each county which in whole or in part is included within the district. Such levy shall be handled by the counties in the same manner as other levies, and proceeds shall be remitted to the district treasurer. Such levy shall not be considered a part of the general county levy and shall not be considered in connection with any limitation on levies of such counties.

Source: Laws 1969, c. 9, § 25, p. 115; Laws 1972, LB 540, § 1; Laws 1975, LB 577, § 19; Laws 1979, LB 187, § 10; Laws 1981, LB 110, § 1; Laws 1987, LB 148, § 4; Laws 1992, LB 719A, § 10; Laws 1993, LB 734, § 14; Laws 1996, LB 1114, § 17; Laws 2004, LB 962, § 3; Laws 2006, LB 1226, § 4; Laws 2007, LB701, § 11.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

2-3226 Districts; bonds; issuance.

Each district shall have the power and authority to issue revenue bonds for the purpose of financing construction of facilities authorized by law. Issuance of revenue bonds must be approved by two-thirds of the members of the board of directors of the district. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on such bonds and shall establish rates for such facilities at a sufficient level to provide for the operation of such facilities and for the bond payments.

Source: Laws 1969, c. 9, § 26, p. 116; Laws 1971, LB 534, § 1; Laws 1972, LB 540, § 2; Laws 1994, LB 480, § 8; Laws 1998, LB 896, § 6; Laws 1999, LB 436, § 4.

2-3226.01 River-flow enhancement bonds; authorized; natural resources districts; powers and duties.

(1) In order to implement its duties and obligations under the Nebraska Ground Water Management and Protection Act and in addition to other powers authorized by law, the board of a district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin may issue negotiable bonds and refunding bonds of the district and entitled river-flow enhancement bonds, with terms determined appropriate by the board, payable by (a) funds granted to such district by the state or federal government for one or more qualified projects, (b) the occupation tax authorized by section 2-3226.05, or (c) the levy authorized by section 2-3225. The district may issue the bonds or refunding bonds directly, or such bonds may be issued by any joint

entity as defined in section 13-803 whose member public agencies consist only of qualified natural resources districts or by any joint public agency as defined in section 13-2503 whose participating public agencies consist only of qualified natural resources districts, in connection with any joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of its member natural resources districts. For the payment of such bonds or refunding bonds, the district may pledge one or more permitted payment sources.

(2) Within forty-five days after receipt of a written request by the Natural Resources Committee of the Legislature, the qualified natural resources districts shall submit a written report to the committee containing an explanation of existing or planned activities for river-flow enhancement, the revenue source for implementing such activities, and a description of the estimated benefit or benefits to the district or districts.

(3) Beginning on April 1, 2008, if a district uses the proceeds of a bond issued pursuant to this section for the purposes described in subdivision (1) of section 2-3226.04 or the state uses funds for those same purposes, such district shall restrict the use of ground water from water wells used on acres certified for both ground water use and surface water use to no greater than the total ground water allocation previously permitted by district rule or regulation less any surface water purchased, leased, or otherwise acquired for implementation of the project entered into by the district.

Source: Laws 2007, LB 701, § 6.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

2-3226.02 River-flow enhancement bonds; termination of authority; effect on existing bonds and refunding bonds.

The authority to issue bonds for qualified projects granted in section 2-3226.01 terminates on January 1, 2023, except that (1) any bonds already issued and outstanding for qualified projects as of such date are permitted to remain outstanding and the district shall retain all powers of taxation provided for in section 2-3226.01 to provide for the payment of principal and interest on such bonds and (2) refunding bonds may continue to be issued and outstanding as of January 1, 2023, including extension of principal maturities if determined appropriate.

Source: Laws 2007, LB701, § 7.

2-3226.03 River-flow enhancement bonds; board issuing bonds; powers; terms and conditions.

The board of a district issuing bonds pursuant to section 2-3226.01 may agree to pay fees to fiscal agents in connection with the placement of bonds of the district. Such bonds shall be subject to the same terms and conditions as provided by section 2-3254.07 for improvement project area bonds and such other terms and conditions as the board determines appropriate.

Source: Laws 2007, LB701, § 8.

2-3226.04 River-flow enhancement bonds; use of proceeds.

The proceeds of bonds issued pursuant to section 2-3226.01 shall only be used to pay or refinance the costs of (1) acquisition by purchase or lease of water rights in accordance with Chapter 46, article 6, pertaining to ground water, and Chapter 46, article 2, pertaining to surface water, including storage water rights with respect to a river or any of its tributaries, (2) acquisition by purchase or lease or the administration and management, pursuant to mutual agreement, of canals and other works, including reservoirs, constructed for irrigation from a river or any of its tributaries, (3) vegetation management, including, but not limited to, the removal of invasive species in or near a river or any of its tributaries, and (4) the augmentation of river flows consistent with the authority granted under Chapter 2, article 32.

Source: Laws 2007, LB 701, § 9.

2-3226.05 River-flow enhancement bonds; occupation tax authorized; collection; accounting; lien; foreclosure.

(1) The district may levy an occupation tax upon the activity of irrigation of agricultural lands within such district on an annual basis, not to exceed ten dollars per irrigated acre, for the purpose of repaying principal and interest on any bonds or refunding bonds issued pursuant to section 2-3226.01 for one or more projects under section 2-3226.04.

(2) Acres classified by the county assessor as irrigated shall be subject to such district's occupation tax unless, on or before July 1, 2007, and on or before March 1 in each subsequent year, the record owner certifies to the district the nonirrigation status of such acres.

(3) Any such occupation tax shall remain in effect so long as the district has bonds outstanding which have been issued stating such occupation tax as an available source for payment.

(4) Such occupation taxes shall be certified to, collected by, and accounted for by the county treasurer at the same time as general real estate taxes, and such occupation taxes shall be and remain a perpetual lien against such real estate until paid. Such occupation taxes shall become delinquent at the same time as general real property taxes.

(5) Such lien shall be inferior only to general taxes levied by political subdivisions of the state. When such occupation taxes have become delinquent and the real property on which the irrigation took place has not been offered at any tax sale, the district may proceed in district court in the county in which the real estate is situated to foreclose in its own name the lien in the same manner and with like effect as a foreclosure of a real estate mortgage, except that sections 77-1903 to 77-1917 shall govern when applicable.

Source: Laws 2007, LB701, § 10.

2-3227 Districts; funds; investment.

Each district may invest any surplus money in the district treasury, including such money as may be in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district as provided in sections 77-2341, 77-2365.01, and 77-2366.

The functions and duties authorized by this section shall be performed under such rules and regulations as shall be prescribed by the board.

Source: Laws 1969, c. 9, § 27, p. 117; Laws 1972, LB 206, § 3; Laws 1989, LB 33, § 1; Laws 1992, LB 757, § 1; Laws 1994, LB 480, § 9; Laws 1999, LB 81, § 1; Laws 2001, LB 362, § 2.

2-3228 Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.

(1) Each district shall have the power and authority to:

(a) Receive and accept donations, gifts, grants, bequests, appropriations, or other contributions in money, services, materials, or otherwise from the United States or any of its agencies, from the state or any of its agencies or political subdivisions, or from any person as defined in section 49-801 and use or expend all such contributions in carrying on its operations;

(b) Establish advisory groups by appointing persons within the district, pay necessary and proper expenses of such groups as the board shall determine, and dissolve such groups;

(c) Employ such persons as are necessary to carry out its authorized purposes and, in addition to other compensation provided, establish and fund a pension plan designed and intended for the benefit of all permanent full-time employees of the district. Any recognized method of funding a pension plan may be employed. Employee contributions shall be required to fund at least fifty percent of the benefits, and past service benefits may be included. The district shall pay all costs of any such past service benefits, which may be retroactive to July 1, 1972, and the plan may be integrated with old age and survivors' insurance, generally known as social security. A uniform pension plan, including the method for jointly funding such plan, shall be established for all districts in the state. A district may elect not to participate in such a plan but shall not establish an independent plan;

(d) Purchase liability, property damage, workers' compensation, and other types of insurance as in the judgment of the board are necessary to protect the assets of the district;

(e) Borrow money to carry out its authorized purposes;

(f) Adopt and promulgate rules and regulations to carry out its authorized purposes; and

(g) Invite the local governing body of any municipality or county to designate a representative to advise and counsel with the board on programs and policies that may affect the property, water supply, or other interests of such municipality or county.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the Nebraska Association of Resources Districts as organized under the Interlocal Cooperation Act shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code 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 association 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 association 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 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 1969, c. 9, § 28, p. 118; Laws 1975, LB 404, § 5; Laws 1983, LB 36, § 4; Laws 1985, LB 387, § 1; Laws 1991, LB 15, § 2; Laws 1994, LB 480, § 10; Laws 1998, LB 1191, § 2; Laws 1999, LB 436, § 5; Laws 1999, LB 795, § 1; Laws 2000, LB 891, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

2-3229 Districts; purposes.

The purposes of natural resources districts shall be to develop and execute, through the exercise of powers and authorities granted by law, plans, facilities, works, and programs relating to (1) erosion prevention and control, (2) prevention of damages from flood water and sediment, (3) flood prevention and control, (4) soil conservation, (5) water supply for any beneficial uses, (6) development, management, utilization, and conservation of ground water and surface water, (7) pollution control, (8) solid waste disposal and sanitary drainage, (9) drainage improvement and channel rectification, (10) development and management of fish and wildlife habitat, (11) development and management of recreational and park facilities, and (12) forestry and range management.

As to development and management of fish and wildlife habitat and development and management of recreational and park facilities, such plans, facilities, works, and programs shall be in conformance with any outdoor recreation plan for Nebraska and any fish and wildlife plan for Nebraska as developed by the Game and Parks Commission.

Source: Laws 1969, c. 9, § 29, p. 118; Laws 1972, LB 543, § 11; Laws 1981, LB 326, § 9; Laws 1982, LB 565, § 1; Laws 1992, LB 573, § 8.

Standing is not implied in, incident to, or indispensably essential to any express powers or declared objects and purposes of a natural resources district. Metropolitan Utilities Dist. v. Twin Platte NRD, 250 Neb. 442, 550 N.W.2d 907 (1996).

2-3230 Districts; facilities and works; powers.

Each district shall have the power and authority to construct and maintain works and establish and maintain facilities across or along any public street, alley, road, or highway and in, upon, or over any public lands which are now, or may hereafter become, the property of the State of Nebraska, and to construct works and establish and maintain facilities across any stream of water or watercourse; *Provided*, that the district shall promptly restore any such street, highway, or other property to its former state of usefulness as nearly as may be possible, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof. In the use of streets, the district shall be subject to the reasonable rules and regulations of the county, city, or village where such streets lie concerning excavation and the refilling of excavation, the relaying of pavements, and the protection of the public during periods of construction. The district shall not be required to pay any license or permit fees, or file any bonds, but may be required to pay reasonable inspection fees.

Source: Laws 1969, c. 9, § 30, p. 120.

2-3230.01 Natural resources districts; construction; approval of other special-purpose district affected.

A natural resources district having within, or partially within its boundary, the irrigation service area of an operational irrigation district, reclamation district, or public power and irrigation district, shall, prior to construction of any project within such irrigation service area that would have a direct effect upon the conveyance, distribution, use, recovery, reuse and drainage of water, obtain approval of such project by the governing board of the irrigation district, reclamation district or public power and irrigation district whose irrigation service area is so affected.

Source: Laws 1971, LB 626, § 3.

2-3231 Districts; contracts; powers.

Each district shall have the power and authority to:

(1) Contract for the construction, preservation, operation, and maintenance of tunnels, reservoirs, regulating or reregulating basins, diversion works and canals, dams, drains, drainage systems, or other projects for a purpose mentioned in section 2-3229, and necessary works incident thereto, and to hold the federal government or any agency thereof free from liability arising from any construction;

(2) Contract with the United States for a water supply and water distribution and drainage systems under any Act of Congress providing for or permitting such contract;

(3) Acquire by purchase, lease, or otherwise mutually arrange to administer and manage any project works undertaken by the United States or any of its agencies, or by this state or any of its agencies; except that this section shall not apply to any project being administered or managed by any public power district, public power and irrigation district, or metropolitan utilities district; and

(4) Act as agent of the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, maintenance, or management of any project within its boundaries.

Source: Laws 1969, c. 9, § 31, p. 120; Laws 2007, LB701, § 12.

2-3232 Districts; studies, investigations, surveys, and demonstrations; powers.

Each district shall have the power and authority to:

(1) Make studies, investigations, or surveys and do research as may be necessary to carry out its authorized purposes, enter upon any land, after notifying the owner or occupier, for the purpose of conducting such studies, investigations, surveys, and research, and publish and disseminate the results. Entry upon any property pursuant to this section shall not be considered trespass, and damages are not recoverable on that account alone. In case of any actual or demonstrable damage to premises, the district shall pay the owner of the premises the amount of the damages. Upon failure of the landowner and the district to agree upon the amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided in section 76-705. To avoid duplication of effort, any such studies, investigations, surveys, research, or dissemination shall be in cooperation and coordination with the programs of the University of Nebraska, or any department thereof, and any other appropriate state agencies; and

(2) Conduct demonstration projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owners of such land or the necessary rights and interest in such lands, in order to demonstrate by example the means, methods, and measures by which soil and water resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled. Demonstration projects shall be coordinated with the programs of the Agricultural Research Division of the University of Nebraska Institute of Agriculture and Natural Resources.

Source: Laws 1969, c. 9, § 32, p. 121; Laws 1991, LB 663, § 32; Laws 1994, LB 480, § 11; Laws 1999, LB 436, § 6.

2-3233 Districts; water rights, waterworks, and property; acquisition; disposal.

Each district shall have the power and authority to acquire and dispose of water rights in accordance with Chapter 46, article 2, to acquire by grant, purchase, bequest, devise, or lease and to hold and use waterworks, personal

property, and interests in or title to real property, and to sell, lease, encumber, or otherwise dispose of such waterworks and property. Each district shall also have the power and authority to acquire, construct, own, operate, control, maintain, and use any and all such works and facilities, both within and without the district, necessary to carry out its authorized purposes and furnish water service for domestic, irrigation, power, manufacturing, and other beneficial purposes.

Source: Laws 1969, c. 9, § 33, p. 122; Laws 1994, LB 480, § 12; Laws 1998, LB 896, § 7; Laws 1999, LB 436, § 7.

A water right applicant has no transferable property right in a mere application to divert water. In re Applications A-15145, A-15146, A-15147, and A-15148, 230 Neb. 580, 433 N.W.2d 161 (1988).

2-3234 Districts; eminent domain; powers.

Each district shall have the power and authority to exercise the power of eminent domain when necessary to carry out its authorized purposes within the limits of the district or outside its boundaries. Exercise of eminent domain shall be governed by the provisions of sections 76-704 to 76-724, except that whenever any district seeks to acquire the right to interfere with the use of any water being used for power purposes in accordance with sections 46-204, 70-668, 70-669, and 70-672 and is unable to agree with the user of such water upon the compensation to be paid for such interference, the procedure to condemn property shall be followed in the manner set forth in sections 76-704 to 76-724 and no other property shall be included in such condemnation. No district shall contract for delivery of water to persons within the corporate limits of any village, city, or metropolitan utilities district, nor in competition therewith outside such corporate limits, except by consent of and written agreement with the governing body of such political subdivision. A village, city, or metropolitan utilities district may negotiate and, if necessary, exercise the power of eminent domain for the acquisition of water supply facilities of the district which are within its boundaries.

Source: Laws 1969, c. 9, § 34, p. 122; Laws 1972, LB 543, § 12; Laws 1994, LB 480, § 13; Laws 1998, LB 896, § 8; Laws 1999, LB 436, § 8.

2-3234.01 Districts; grant easements.

A district may grant easements across real estate under its ownership for purposes which are in the public interest and do not adversely affect the primary purpose for which such real estate is owned by the district.

Source: Laws 1984, LB 861, § 14.

2-3235 Districts; cooperation; agreements; authorized; contributions; materials and services to landowners; terms.

(1) Each district shall have the power and authority to cooperate with or to enter into agreements with and, within the limits of appropriations available, to furnish financial or other aid to any cooperator, any agency, governmental or otherwise, or any owner or occupier of lands within the district for the carrying out of projects for benefit of the district as authorized by law, subject to such conditions as the board may deem necessary.

(2) As a condition to the extending of any benefits to or the performance of work upon any lands not owned or controlled by this state or any of its

agencies, the directors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require landowners to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(3) Each district may make available, on such terms as it shall prescribe, to landowners within the district specialized equipment, materials, and services which are not readily available from other sources and which will assist such landowners to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion. Whenever reasonably possible, purchases or contracts for such equipment shall be made from retail establishments.

Source: Laws 1969, c. 9, § 35, p. 123; Laws 1991, LB 15, § 3; Laws 1994, LB 480, § 14; Laws 1999, LB 436, § 9; Laws 2000, LB 891, § 2.

2-3236 Districts; appointment as fiscal agent of United States; powers.

Each district shall have the power and authority to accept appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of money for and on behalf of the United States in connection with any federal project, whereupon the district shall have full power to do any and all things required by the federal statutes in connection therewith, and all things required by the rules and regulations established by any department of the federal government in regard thereto.

Source: Laws 1969, c. 9, § 36, p. 123.

2-3237 Districts; weather modification programs; authorized.

A natural resources district may establish weather modification programs. A district may enter into agreements with companies, service organizations, municipalities, political subdivisions, public or private postsecondary educational institutions, or state or federal agencies to establish or participate in such programs.

Source: Laws 1998, LB 1161, § 11.

2-3238 Districts; develop, store, and transport water; water service; powers; limitation.

Each district shall have the power and authority to develop, store and transport water, and to provide, contract for, and furnish water service for domestic purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and to fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor. No district shall contract for delivery of water for irrigation uses within any area served by any irrigation district, public power and irrigation district, or reclamation district, except by consent of and written agreement with such irrigation district, public power and irrigation district, or reclamation district.

Source: Laws 1969, c. 9, § 38, p. 125.

2-3239 Districts; assessment of benefits; powers.

Each district shall have the power and authority to list in separate ownership the lands within the district which are susceptible of irrigation from the district sources, to enter into contracts to furnish water service to all such lands, and to levy assessments against the lands within the district to which water service is furnished on the basis of the value per acre-foot of water service furnished to the lands within the district; *Provided*, the board may divide the district into units and fix a different value per acre-foot of water in the respective units, and in such case shall assess the lands within each unit upon the same basis of value per acre-foot of water service furnished to lands within such unit.

Source: Laws 1969, c. 9, § 39, p. 125.

2-3240 Districts; certain activities; laws, rules, and regulations applicable.

In matters pertaining to applications for appropriation and use of surface water, construction of dams, drainage and channel rectification projects, and installation of ground water wells, districts shall comply with Chapter 46, articles 2, 6, and 7, and the applicable rules and regulations of the department.

Source: Laws 1969, c. 9, § 40, p. 126; Laws 2000, LB 900, § 57; Laws 2006, LB 1226, § 5.

2-3241 Districts; additional powers.

Each district shall have the power and authority to provide technical and other assistance as may be necessary or desirable in rural areas to abate the lowering of water quality in the state caused by sedimentation, effluent from feedlots, and runoff from cropland areas containing agricultural chemicals. Such assistance shall be coordinated with the programs and the stream quality standards as established by the Department of Environmental Quality.

Source: Laws 1969, c. 9, § 41, p. 126; Laws 1972, LB 1045, § 2; Laws 1972, LB 543, § 13; Laws 1993, LB 3, § 3.

2-3242 Districts; water projects; powers.

Each district shall have the power and authority to (1) build or construct, operate and maintain, any reservoir, dike or levee to prevent overflow of water, (2) drain any cropland subject to overflow by water, or drain wet land when desirable to make reasonable use of such land whether such condition is caused by surface water or ground water, or drain any land which will be improved by drainage, (3) locate and construct, straighten, widen, deepen, or alter and maintain any ditch, drain, stream, or watercourse, (4) riprap or otherwise protect the bank of any stream or ditch, and (5) construct, enlarge, extend, improve, or maintain any stream of drainage or system of control of surface water.

Source: Laws 1969, c. 9, § 42, p. 126.

2-3243 Districts; lands owned or controlled by state; preventive and control measures; powers.

Each district shall have the power and authority to carry out preventive and control measures within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and other measures as may be determined feasible on lands owned or controlled by this state or any of its agencies, with the cooperation of the

agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owners of such lands or the necessary rights or interests in such lands.

Source: Laws 1969, c. 9, § 43, p. 127.

2-3244 Repealed. Laws 1986, LB 474, § 16.

2-3245 Repealed. Laws 1986, LB 474, § 16.

2-3246 Repealed. Laws 1986, LB 474, § 16.

2-3247 Repealed. Laws 1986, LB 474, § 16.

2-3248 Repealed. Laws 1986, LB 474, § 16.

2-3249 Repealed. Laws 1986, LB 474, § 16.

2-3250 Repealed. Laws 1986, LB 474, § 16.

2-3251 Repealed. Laws 1972, LB 543, § 18.

2-3252 Districts; improvement project areas; powers; project funding.

(1) Projects or portions of projects which the board determines to be of general benefit to the district shall be carried out with any available funds of the district, including proceeds from the district's tax levy pursuant to section 2-3225. Projects or portions of projects which the board determines to be of special benefit to a certain area within the district may be established and maintained pursuant to subsection (2) of this section.

(2) Each district may establish improvement project areas within the district for the purpose of carrying out projects authorized by law which result in special benefits to lands and property within such improvement project areas. Improvement project areas may include land within an adjoining district with the written consent of the board of directors of the adjoining district. When only a portion of a project results in special benefits to an area, an improvement project area may be established to finance and maintain such portion of the project, and the district shall finance and maintain the other portions of the project pursuant to subsection (1) of this section. Such improvement project areas may be established, existing improvement project area boundaries may be altered, and the projects may be authorized after a hearing by the board, upon its own motion or by petitions, in the manner provided for by sections 2-3253 to 2-3255. The cost of any construction, capital improvements, or operation and maintenance involved in such special benefit portions of a project shall be recovered by the board by special assessment as provided in sections 2-3252 to 2-3254, 2-3254.04, and 2-3254.06. Any other costs related to such special benefit portion of a project may also be recovered by similar assessments. The board shall determine the amount of such special assessments and the period of time over which such special assessments shall be paid. When such projects result in the provision of continuing services such as the supply of revenue-producing water for any beneficial use, the persons receiving such special services shall be assessed for the cost of the service received in the manner provided in subsection (2) of section 2-3254. The reimbursable cost of the special benefit portions of such projects authorized in accordance with this section and as determined by the board of directors shall be assessed against

the land within the improvement project area on the basis of benefits received in the manner provided in subsection (3) of section 2-3254 and section 2-3254.03. When a special-purpose district is merged with a natural resources district as provided by sections 2-3207 to 2-3212, the board may, without complying with the procedures outlined in sections 2-3252 to 2-3254.07, establish an improvement project area to carry out the functions of such special-purpose district and may adopt as its own any fee or assessment schedule or schedules previously adopted pursuant to law by such special-purpose district and in force and effect at the time of such merger. Any fees or assessments which are due or which become due under such adopted schedule or schedules shall be collected by the district in the manner provided by sections 2-3254 and 2-3254.03.

(3) Projects of a predominantly general benefit to a district with only an incidental special benefit, as determined by the board, may be developed and executed using any available funds of the district, including those from the tax levied pursuant to section 2-3225, without the establishment of an improvement project area or the levying of assessments or other charges.

Source: Laws 1969, c. 9, § 52, p. 130; Laws 1973, LB 206, § 4; Laws 1981, LB 388, § 1; Laws 1990, LB 969, § 1; Laws 2001, LB 136, § 1.

The determination of the feasibility of a general benefit project by the board of directors of a natural resources district, and the adoption and implementation of such a project, is a legislative function and is not within the scope of judicial review where the specific statutory requirements for such action have been met. Fisher & Trouble Creek v. Lower Platte No. Nat. Resources Dist., 212 Neb. 196, 322 N.W.2d 403 (1982).

2-3252.01 Repealed. Laws 1978, LB 783, § 7.

2-3253 Improvement project areas; petition; contents; hearing.

(1) A hearing on a proposed improvement project area, on altering the boundaries of an existing improvement project area, or on adopting a proposed project may be initiated by petition of landowners. All petitions filed with the board of the natural resources district must contain:

(a) A statement of the problem involved;

(b) A presentation of the project proposed;

(c) A description of the area to be affected by the project; and

(d) A request for a hearing.

(2) If there are twenty or less landowners in the improvement project area, then the signatures of at least one-fourth must be on the petition. If there are more than twenty, then the signature of ten landowners shall be sufficient. Any petition regarding a project which would provide a revenue-producing continuing service shall contain so many signatures of landowners as shall in the board's discretion indicate enough interest to generate sufficient revenue to recover any reimbursable costs should a project be authorized.

Source: Laws 1969, c. 9, § 53, p. 131; Laws 1973, LB 206, § 5; Laws 2001, LB 136, § 2.

2-3254 Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.

(1) The board shall hold a hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the

establishment of or altering the boundaries of an existing improvement project area and the undertaking of such a project, upon the question of the appropriate boundaries describing affected land, upon the propriety of the petition, and upon all relevant questions regarding such inquiries. When a hearing has been initiated by petition, such hearing shall be held within one hundred twenty days of the filing of such petition. Notice of such hearing shall be published prior thereto once each week for three consecutive weeks in a legal newspaper published or of general circulation in the district. Landowners within the limits of the territory described in the petition and all other interested parties, including any appropriate agencies of state or federal government, shall have the right to be heard. If the board finds, after consultation with such appropriate agencies of state and federal government and after the hearing, that the project conforms with all applicable law and with the district's goals, criteria, and policies, it shall enter its findings in the board's official records and shall, with the aid of such engineers, surveyors, and other assistants as it may have chosen, establish an improvement project area or alter the boundaries of an existing improvement project area, proceed to make detailed plans and cost estimates, determine the total benefits, and carry out the project as provided in subsections (2) and (3) of this section. If the board finds that the project does not so conform, the findings shall be entered in the board's records and copies of such findings shall be furnished to the petitioners and the commission.

(2) When any such special project would result in the provision of revenue-producing continuing services, the board shall, prior to commencement of construction of such project, determine, by circulation of petitions or by some other appropriate method, if such project can be reasonably expected to generate sufficient revenue to recover the reimbursable costs thereof. If it is determined that the project cannot be reasonably expected to generate sufficient revenue, the project and all work in connection therewith shall be suspended. If it is determined that the project can be reasonably expected to generate sufficient revenue, the board shall divide the total benefits of the project as provided in sections 2-3252 to 2-3254. If the proposed project involves the supply of water for any beneficial use, all plans and specifications for the project shall be filed with the secretary of the district and the Director of Natural Resources, except that if such project involves a public water system as defined in section 71-5301, the filing of the information shall be with the Department of Health and Human Services rather than the Director of Natural Resources. No construction of any such special project shall begin until the plans and specifications for such improvement have been approved by the Director of Natural Resources and the Department of Health and Human Services, if applicable, except that if such special project involves a public water system as defined in section 71-5301, only the Department of Health and Human Services shall be required to review such plans and specifications and approve the same if in compliance with the Nebraska Safe Drinking Water Act and departmental rules and regulations adopted and promulgated under the act. All prescribed conditions having been complied with, each landowner within the improvement project area shall, within any limits otherwise prescribed by law, subscribe to a number of benefit units in proportion to the extent he or she desires to participate in the benefits of the special project. As long as the capacity of the district's facilities permit, participating landowners may subscribe to additional units, within any limits otherwise prescribed by law, upon payment of a unit fee for each such unit. The unit fees made and

charged pursuant to this section shall be levied and fixed by rules and regulations of the district. The service provided may be withheld during the time such charges levied upon such parcel of land are delinquent and unpaid. Such charges shall be cumulative, and the service provided by the project may be withheld until all delinquent charges for the operation and maintenance of such works of improvement are paid for past years as well as for the current year. All such charges, due and delinquent according to the rules and regulations of such district and unpaid on June 1 after becoming due and delinquent, may be certified by the governing authority of such district to the county clerk of such county in which are situated the lands against which such charges have been levied, and when so certified such charges shall be entered upon the tax list and spread upon the tax roll the same as other special assessment taxes are levied and assessed upon real estate, shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes are levied.

(3) When the special project would not result in the provision of revenue-producing continuing services, the board shall apportion the benefits thereof accruing to the several tracts of land within the district which will be benefited thereby, on a system of units. The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received. Nothing contained in this section shall prevent the district from establishing separate areas within the improvement project area so as to permit future allocation of costs for particular portions of the work to specific subareas. This subarea method of allocation shall not be used in any improvement project area which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in this section.

(4) A notice shall be inserted for at least one week in a newspaper published or of general circulation in the improvement project area stating the time when and the place where the directors shall meet for the purpose of hearing all parties interested in the apportionment of benefits by reason of the improvement, at which time and place such parties may appear in person or by counsel or may file written objections thereto. The directors shall then proceed to hear and consider the same and shall make the apportionments fair and just according to benefits received from the improvement. The directors, having completed the apportionment of benefits, shall make a detailed report of the same and file such report with the county clerk. The board of directors shall include in such report a statement of the actual expenses incurred by the district to that time which relate to the proposed project and the actual cost per benefit unit thereof. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper published or of general circulation in the improvement project area, a notice that the report required in this subsection has been filed and notice shall also be sent to each party appearing to have a direct legal interest in such apportionment, which notice shall include the description of the lands in which each party notified appears to have such interest, the units of benefit assigned to such lands, the amount of actual costs assessable to date to such lands, and the estimated total costs of the project assessable to such lands upon completion thereof, as provided by sections 25-520.01 to 25-520.03. If the owners of record

title representing more than fifty percent of the estimated total assessments file with the board within thirty days of the final publication of such notice written objections to the project proposed, such project and work in connection therewith shall be suspended, such project shall not be done in such project area, and all expenses relating to such project incurred by and accrued to the district may, at the direction of the board of directors, be assessed upon the lands which were to have been benefited by the completion of such improvement project in accordance with the apportionment of benefits determined and procedures established in this section. Upon completing the establishment of an improvement project area or altering the boundaries of an existing improvement project area as provided in this subsection and upon determining the reimbursable cost of the project and the period of time over which such cost shall be assessed, the board of directors shall determine the amount of money necessary to raise each year by special assessment within such improvement project area and apportion the same in dollars and cents to each tract benefited according to the apportionment of benefits as determined by this section. The board of directors shall also, from time to time as it deems necessary, order an additional assessment upon the lands and property benefited by the project, using the original apportionment of benefits as a basis to ascertain the assessment to each tract of land benefited, to carry out a reasonable program of operation and maintenance upon the construction or capital improvements involved in such project. The chairperson and secretary shall thereupon return lists of such tracts with the amounts chargeable to each of the county clerks of each county in which assessed lands are located, who shall place the same on duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer at the same time as general real estate taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid. All provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to such special assessments.

Source: Laws 1969, c. 9, § 54, p. 131; Laws 1972, LB 543, § 14; Laws 1973, LB 206, § 6; Laws 1981, LB 326, § 10; Laws 1994, LB 480, § 15; Laws 1996, LB 1044, § 39; Laws 1999, LB 436, § 10; Laws 2000, LB 900, § 58; Laws 2001, LB 136, § 3; Laws 2001, LB 667, § 1; Laws 2007, LB296, § 18.

Cross References

Nebraska Safe Drinking Water Act, see section 71-5313.

2-3254.01 Improvement project; determination of special benefits; effect.

When determining the apportionment of benefits under section 2-3254, the board shall also make a determination as to what portion of the project will result in special benefits to lands and property and such determination, if not appealed as provided in section 2-3255, shall be conclusive as establishing the authority of the district to levy special assessments and issue bonds and warrants for such project.

Source: Laws 1981, LB 388, § 2.

2-3254.02 Improvement project; bonds; issued; when.

When a project which would not result in the provision of revenue-producing continuing services has been completed, the district shall have the power to

issue its negotiable bonds entitled improvement project area bonds for the purpose of paying the cost of the special benefit portion of the project. Such bonds shall be payable from money in the sinking fund established in section 2-3254.05, and be issued under the conditions in section 2-3254.07.

Source: Laws 1981, LB 388, § 3.

2-3254.03 Improvement project; financed with bonds; requirements; warrants issued; when.

(1) Prior to awarding contracts for work in connection with any project the board proposes to finance in whole or in part by improvement project area bonds issued pursuant to section 2-3254.02, there shall be placed on file with the board an engineer's estimate of the total cost of such project. After any award of a contract for any such project, there shall be placed on file with the board a revised engineer's estimate of the total cost of that part of such project for which an award has been made. Such revised estimate shall be based upon the prices provided for in such contract. The revised estimate shall specifically state the estimated total cost of that part of the project for which awards have been made and which relates to that portion of the project which will result in special benefits to an area.

(2) For the purpose of making partial payments as the work progresses, warrants may be issued by the district. Such warrants shall not be issued in an amount which exceeds the engineer's revised estimate for that part of the project for which awards have been made and which relates to that portion of the project which will result in special benefits to an area. Such warrants shall become due and payable not later than five years from the date of their issuance and shall draw interest at a rate fixed by the board and stated in such warrants from the date of presentation for registration and payment. The warrants shall be redeemed and paid from the proceeds of special assessments, from the sale of bonds issued and sold as provided for in section 2-3254.02, or from other available funds of the district, including proceeds from the tax levied pursuant to section 2-3225. The district may agree to pay annual or semiannual interest on all warrants issued by the district, and may issue warrants to pay such interest or issue warrants in return for cash to pay such interest. If determined appropriate by the board, the district may pay fees to fiscal agents in connection with the placement of warrants or bonds issued by the district.

Source: Laws 1981, LB 388, § 4.

2-3254.04 Improvement project areas; issuance of bonds; special assessment levy; hearing; notice; delinquent; interest.

Before issuing any improvement project area bonds pursuant to section 2-3254.02, special assessments shall be levied by resolution of the board for the improvement project area. Such levy of special assessments shall be made after the holding of a hearing by the board for which notice shall be published at least once a week for three weeks in a newspaper of general circulation in the improvement project area. Such notice shall state the time and place for such meeting and that such meeting shall be held for the purpose of hearing all parties interested in the levying of assessments for special benefits by reason of the improvements. All special assessments shall become due within fifty days after the date of levy and may be paid within that time without interest. If not

paid within the fifty days, they shall bear interest therefrom at the rate established by the board. Such assessment shall become delinquent in equal annual installments over a period of years which the board may determine at the time of making the levy. Delinquent installments shall bear interest until paid at the rate established by the board. If three or more installments shall become delinquent, the board may declare all of the remaining installments to be delinquent and such installments shall bear interest at the rate established by the board for delinquent installments and may be collected in the same manner as other delinquent installments.

Source: Laws 1981, LB 388, § 5; Laws 2001, LB 136, § 4.

2-3254.05 Improvement project; special assessment proceeds; sinking fund; use.

The proceeds of all special assessments for an improvement project area shall constitute a sinking fund for the purposes of paying the cost of the special benefit portion of the project and for paying warrants and bonds issued pursuant to sections 2-3252 and 2-3254.01 to 2-3254.07 and shall, together with the interest payable upon such special assessments, be set aside and used to pay such costs, bonds, and warrants. Any money remaining in the sinking fund after fully discharging such costs, bonds, and warrants may be applied by the board for operation and maintenance expenses relating to such project or may be transferred to the general fund of the district. In any resolution authorizing the issuance of bonds or warrants, the board may provide that general funds of the district, including the proceeds from such district's tax levied pursuant to section 2-3225, shall be transferred and paid into the sinking fund to provide for the prompt payment of principal and interest on any bonds and warrants of the district which are to be paid from such sinking fund, as they become due.

Source: Laws 1981, LB 388, § 6.

2-3254.06 Improvement project; special assessments; lien; delinquency; foreclosure; sale final; when.

(1) The natural resources district shall have a lien upon the real estate within its boundaries for all special assessments for improvement project areas which are due. Such lien shall be inferior only to general taxes levied by political subdivisions of the state. When such special assessments have become delinquent and the real property against which they are assessed has not been offered at any tax sale, the district may proceed in the district court in the county in which the real estate is situated to foreclose in its own name upon the lien in the same manner and with like effect as a foreclosure of a real estate mortgage, except that sections 77-1903 to 77-1917, shall govern in every case when applicable.

(2) Final confirmation of sale in such foreclosure proceedings and the issuance of a deed of sale to the district, or its assignee, cannot be had until two years have expired from the date of the sale held by the sheriff and until personal notice has been served on the occupants of the real property after such two-year period. The remedy granted in this section to a natural resources district for the collection of delinquent special assessments shall be cumulative and in addition to other existing methods.

Source: Laws 1981, LB 388, § 7.

2-3254.07 Improvement project; issuance of warrants or bonds; conditions.

The following conditions shall apply when the board issues warrants or improvement project area bonds to fund the special benefit portion of a project:

(1) Neither the members of the board nor any person executing the warrants or bonds shall be liable personally thereon by reason of their issuance;

(2) The warrants or bonds shall be a debt of the district only and shall state this on their face;

(3) Warrants and bonds of the district are declared to be issued for an essential public and governmental purpose and to be public instruments, and together with interest and income thereon, shall be exempt from all taxes;

(4) Bonds shall be authorized by a majority vote of the board which shall determine the manner and place of their execution. The bonds may be issued in one or more series and shall bear such a date, be payable upon demand or mature at such a time, bear interest at such a rate, be in such a denomination, be in such form, be payable at such a place, and be subject to redemption prior to maturity upon such a term and with such notice, as the board may direct; and

(5) Bonds and warrants issued pursuant to sections 2-3252 and 2-3254.01 to 2-3254.07 may be sold in any manner and for such price as the board of directors may determine.

Source: Laws 1981, LB 388, § 8.

2-3255 Improvement projects; apportionment of benefits; appeal.

From any order or decision of the board of directors of the natural resources district, an appeal may be taken to the district court by any person aggrieved by filing an undertaking in the sum of two hundred dollars with such sureties as may be approved by the clerk of the district court. Such undertaking shall be conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against him in the district court. Such undertaking shall be executed to the board of directors of the natural resources district and may be sued on in the name of the obligee. Where the project area is confined to the limits of one county, the appeal shall be taken to the district court of that county. When such project includes lands in two or more counties, the appeal shall be taken to the district court of the county in which the largest portion of the land which is claimed to be affected adversely by the order or decision appealed from lies. The appeal must be taken within thirty days after such decision or order has been entered by the secretary of the board of directors.

Source: Laws 1969, c. 9, § 55, p. 133.

2-3256 Structural works; supervision by licensed engineer; when.

All design or construction by a district of structural works costing more than eighty-six thousand dollars shall be under the supervision of a licensed engineer except as otherwise provided in the Engineers and Architects Regulation Act. The Board of Engineers and Architects shall adjust the dollar amount in this section every fifth year commencing July 1, 2009. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment

date. The amount shall be rounded to the next highest one-thousand-dollar amount.

Source: Laws 1969, c. 9, § 56, p. 133; Laws 1978, LB 420, § 1; Laws 1997, LB 622, § 56; Laws 1999, LB 253, § 1; Laws 2004, LB 599, § 1.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

2-3257 Structural works; design; submit to department; approve or disapprove.

Detailed plans for the design of certain structural works by a district shall be submitted to the department as outlined in the Safety of Dams and Reservoirs Act and section 46-256. The department shall review the plans and shall approve or disapprove such plans within thirty days after submission. No construction work shall be started until the department has approved such plans.

Source: Laws 1969, c. 9, § 57, p. 133; Laws 2000, LB 900, § 59; Laws 2005, LB 335, § 71.

Cross References

Safety of Dams and Reservoirs Act, see section 46-1601.

2-3258 Repealed. Laws 1987, LB 1, § 16.

2-3259 Transferred to section 2-3212.01.

2-3260 Repealed. Laws 1985, LB 18, § 1.

2-3261 Repealed. Laws 1977, LB 510, § 10.

2-3262 Repealed. Laws 1994, LB 480, § 31.

2-3263 Transferred to section 2-1586.

2-3264 Transferred to section 2-1587.

2-3265 Transferred to section 2-1588.

2-3266 Transferred to section 2-1589.

2-3267 Transferred to section 2-1590.

2-3268 Transferred to section 2-1591.

2-3269 Transferred to section 2-1592.

2-3270 Transferred to section 2-1593.

2-3271 Transferred to section 2-1594.

2-3272 Transferred to section 2-1595.

2-3273 Transferred to section 2-1596.

2-3274 Transferred to section 2-1597.

2-3275 Transferred to section 2-1598.

2-3276 Districts; master plan; prepare and adopt; contents; review; filed.

By August 1, 1979, each natural resources district shall prepare and adopt a master plan to include but not be limited to a statement of goals and objectives for each of the purposes stated in section 2-3229. The master plan shall be reviewed and updated as often as deemed necessary by the district, but in no event less often than once each ten years. A copy of the master plan as adopted and all revisions and updates thereto shall be filed with the department.

Source: Laws 1978, LB 783, § 2; Laws 2000, LB 900, § 60.

2-3277 Districts; long-range implementation plan; prepare and adopt; contents; review; filing; department; develop guidelines.

Each district shall also prepare and adopt a long-range implementation plan which shall summarize planned district activities and include projections of financial, personnel, and land rights needs of the district for at least the next five years and the specific needs assessment upon which the current budget is based. Such long-range implementation plan shall be reviewed and updated annually. A copy of the long-range implementation plan and all revisions and updates thereto as adopted shall be filed with the department, the Governor's Policy Research Office, and the Game and Parks Commission on or before October 1 of each year. The department shall develop and make available to the districts suggested guidelines regarding the format and general content of such long-range implementation plans.

Source: Laws 1978, LB 783, § 3; Laws 1979, LB 412, § 3; Laws 2000, LB 900, § 61.

2-3278 Districts; individual project plans; file; coordinate plans.

Each district shall also prepare and adopt any individual project plans as it deems necessary to carry out projects approved by the district. Project plans as developed involving state regulations or financing shall be filed with the appropriate agency. A project plan for any project shall also be filed with any of the agencies named in section 2-3277, if a timely request in writing is made by such agency. Each district shall consult with and coordinate its plans with those of other local implementation agencies.

Source: Laws 1978, LB 783, § 4.

2-3279 Districts; plans; period for review and comment; alteration of plans.

All plans submitted by a district under sections 2-3276 to 2-3278, except those filed in compliance with state requirements or for the purpose of state financial assistance, shall be accorded a thirty-day period for review and comment. Failure to reply within thirty days shall be conclusive that the plans have been endorsed by the reviewing agency. All comments on plans shall be reviewed by the district and alterations of the plans may be made as the district deems appropriate. If any state agency comments indicate a lack of conformance with the goals, criteria, and policies of any outdoor recreation plan, any fish and wildlife plan, or indicate a conflict with state policies or plans approved by the Legislature, such plans shall be altered as deemed necessary by the district prior to proceeding with implementation.

Source: Laws 1978, LB 783, § 5; Laws 1981, LB 326, § 12.

2-3280 State funds; allocated or disbursed; when.

No state funds shall be allocated or disbursed to a district unless that district has submitted its master plan in accordance with sections 2-3229 and 2-3276 to 2-3280 and until the disbursing agency has determined that such funds are for plans, facilities, works, and programs which are in conformance with the plans of the agency.

Source: Laws 1978, LB 783, § 6.

2-3281 Court action; district, officer, or employee; party litigant; no bond required.

No bond for cost, appeal, supersedeas, injunction, or attachment shall be required of any natural resources district or any officer, board, agent, or employee of any such district in any proceeding or court action in which the natural resources district or its officer, board, agent, or employee is a party litigant in its or his or her official capacity.

Source: Laws 1980, LB 884, § 1.

2-3282 Transferred to section 2-1599.

2-3283 Transferred to section 2-15,100.

2-3284 Transferred to section 2-15,101.

2-3285 Transferred to section 2-15,102.

2-3286 Transferred to section 2-15,103.

2-3287 Transferred to section 2-15,104.

2-3288 Transferred to section 2-15,105.

2-3289 Transferred to section 2-15,106.

2-3290 District; land; use for recreational purposes; fees.

Except as otherwise provided in section 2-3290.01, a district which owns land or has a lease or an easement permitting the use of land for public recreational purposes may adopt and promulgate rules and regulations governing the use of such land as provided in sections 2-3292 to 2-32,100. For purposes of sections 2-3234.01 and 2-3290 to 2-32,101, unless the context otherwise requires, recreation area means land owned by the district or over which a district has a lease or an easement permitting the use thereof for public recreational purposes which the board authorizes to be used for such purposes.

In addition to the authority provided in section 2-3292 to establish and collect fees, a district may establish and collect permit fees for public access to such land.

Source: Laws 1984, LB 861, § 2; Laws 1996, LB 1241, § 1; Laws 2006, LB 1113, § 15.

2-3290.01 Water project; public use; public access; district; duties; conditions.

(1) A district shall permit public use of those portions of a water project located on lands owned by the district and on land over which the district has a

lease or an easement permitting use thereof for public recreational purposes. All recreational users of such portions of a water project shall abide by the applicable rules and regulations adopted and promulgated by the board.

(2) The district shall provide public access for recreational use at designated access points at any water project. Recreational users, whether public or private, shall abide by all applicable rules and regulations for use of the water project adopted and promulgated by the district or the political subdivision in which the water project is located. Public recreational users may only access the water project through such designated access points. Nothing in this subsection shall require public access when the portion of the project cost paid by the natural resources district with public funds does not exceed twenty percent of the total cost of the project.

(3) For purposes of this section water project means a project with cooperators or others, as authorized in section 2-3235, that results in construction of a reservoir or other body of water having a permanent pool suitable for recreational purposes greater than one hundred fifty surface acres, the construction of which commenced after July 14, 2006. Water project shall not mean soil conservation projects, wetlands projects, or other district projects with cooperators or others that do not have a recreational purpose.

Source: Laws 2006, LB 1113, § 14.

2-3291 District; recreation area; emergency permission and revocation; procedure.

The rules and regulations adopted and promulgated by a district to permit, prohibit, or otherwise govern activities in a recreation area as provided in sections 2-3292 to 2-32,100 may set out the circumstances under which the manager of the district may give permission for an activity in emergency situations or may, by the posting of appropriate signs, temporarily revoke permission for an activity or temporarily or permanently close a recreation area when revocation or closing is in the interest of public health, safety, or welfare or is for the protection or preservation of property. If the manager is unable, because of absence, to give or revoke permission as authorized in this section, or the manager's position is vacant, such authority shall vest in the chairperson of the board. If for the same reasons, the chairperson of the board is unable to give or revoke permission as authorized in this section, such authority shall vest in a district representative designated by a majority vote of the board, and such action shall be recorded in the board minutes.

Source: Laws 1984, LB 861, § 3.

2-3292 District; recreation area; designation of camping and other areas; violation; penalty.

(1) A district may designate camping areas in a recreation area, permit camping in a camping area, and prescribe such conditions as are reasonable and proper governing public use of a camping area, including, but not limited to, access to the camping area, area capacity, sanitation, opening and closing hours, public safety, fires, establishment and collection of fees where appropriate, protection of property, and zoning of activities. A district may also designate picnicking, hiking, backpacking, and other noncamping areas. The conditions for use of all such designated areas shall be posted on appropriate signs at the recreation area.

(2) Any person who camps, picnics, hikes, backpacks, or engages in any other unauthorized activity in a recreation area on land not designated as a camping, picnicking, hiking, backpacking, or similar area by the district or fails to observe the posted conditions governing use of such area shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 4.

2-3293 District; recreation area; regulate use of fire; violation; penalty.

(1) A district may regulate the use of any type of fire, including the smoking of tobacco in any form, and provide for the size, location, and conditions under which a fire may be established in a recreation area. A district may regulate the possession or use in a recreation area of any type of fireworks not prohibited by law.

(2) Any person who lights any type of fire, uses any fireworks, smokes tobacco in any form, or leaves unattended and unextinguished any fire of any type in any location in a recreation area when not permitted by a district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 5.

2-3294 District; recreation area; regulate pets and other animals; violation; penalty.

(1) A district may permit pets, domestic animals, and poultry to be brought upon, possessed, grazed, maintained, or run at large in all or any portion of a recreation area.

(2) Any person who brings upon, possesses, grazes, maintains, or allows to run at large any pet, domestic animal, or poultry in a recreation area when not permitted by the district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 6.

2-3295 District; recreation area; permit hunting, fishing, trapping, weapons; violation; penalty.

(1) A district may on a temporary or permanent basis permit hunting, fishing, trapping or other forms of fur harvesting, or the public use of firearms, bow and arrow, or any other projectile weapons or devices in all or any portion of a recreation area.

(2) Any person who hunts, fishes, traps, harvests fur, or uses firearms, bow and arrow, or any other projectile weapon or device in a recreation area when not permitted by the district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 7.

2-3296 District; recreation area; permit water-related activities; violation; penalty.

(1) Except as otherwise provided in section 2-3290.01, a district may permit and regulate swimming, bathing, boating, wading, waterskiing, the use of any floatation device, or any other water-related recreational activity in all or any portion of a recreation area and may provide for special conditions to apply to specific swimming, bathing, boating, wading, or waterskiing areas. Any special

conditions shall be posted on appropriate signs in the areas to which they apply.

(2) Any person who swims, bathes, boats, wades, water-skis, uses any floatation device, or engages in any other water-related recreational activity in a recreation area when not permitted by a district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 8; Laws 2006, LB 1113, § 16.

2-3297 District; recreation area; regulate real and personal property; violation; penalty.

(1) A district may provide for the protection, use, or removal of any public real or personal property in a recreation area and may regulate or prohibit the construction or installation of any privately owned structure in a recreation area. Except as otherwise provided in section 2-3290.01, a district may close all or any portion of a recreation area to any form of public use or access with the erection of appropriate signs, without the adoption and promulgation of formal written rules and regulations.

(2) Any person who, without the permission of the district, damages, destroys, uses, or removes any public real or personal property in a recreation area, constructs or installs any privately owned structure in a recreation area, or enters or remains upon all or any portion of a recreation area when appropriate signs or public notices prohibiting such activity have been erected or displayed shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 9; Laws 2006, LB 1113, § 17.

2-3298 Recreation area; abandoned vehicle; penalty.

Any person who abandons any motor vehicle, trailer, or other conveyance in a recreation area shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 10.

2-3299 District; recreation area; permit sales; violation; penalty.

(1) A district may permit the sale, trade, or vending of any goods, products, or commodities of any type in a recreation area.

(2) Any person who sells, trades, or vends any goods, products, or commodities of any type in a recreation area when not permitted by the district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 11.

2-32,100 District; recreation area; regulate vehicle traffic; violation; penalty.

A district may adopt and promulgate rules and regulations governing vehicle traffic in a recreation area as provided in the Nebraska Rules of the Road. Any person who violates any such rule or regulation shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 12; Laws 1993, LB 370, § 1.

Cross References

Nebraska Rules of the Road, see section 60-601.

2-32,101 District; recreation area; enforcement; procedures.

Any law enforcement officer, including, but not limited to, any Game and Parks Commission conservation officer, local police officer, member of the Nebraska State Patrol, or sheriff or deputy sheriff, is authorized to enforce the provisions of sections 2-3292 to 2-32,100 and any rules and regulations adopted and promulgated pursuant to such sections. A district shall not employ law enforcement personnel and shall be prohibited from expending any funds for such purpose. Each district shall provide a copy of its rules and regulations to the appropriate law enforcement officer. Any law enforcement officer may arrest and detain any person committing a violation of the rules and regulations in a recreation area or committing any misdemeanor or felony as provided by the laws of this state.

Source: Laws 1984, LB 861, § 13; Laws 1998, LB 922, § 391.

2-32,102 Natural resources; agreements with other states; authorized.

The State of Nebraska may enter into agreements for the purpose of providing interstate cooperation and coordination in matters relating to natural resources with two or more of the following states: South Dakota, North Dakota, Montana, Wyoming, and Colorado. These states have cultural, economic, social, agricultural, and natural resources similarities as evidenced by such states' (1) past affiliations in interstate organizations such as the Old West Regional Commission and the Missouri River Basin Commission and (2) identity as reclamation states in the Upper and Lower Regions of the United States Bureau of Reclamation.

Source: Laws 1985, LB 705, § 1.

2-32,103 Missouri Basin Natural Resources Council; authorized.

For purposes of fostering interstate cooperation and coordination between the states listed in section 2-32,102 on matters relating to natural resources, when two or more of such states agree to participate in any agreement pursuant to section 2-32,102, Nebraska may participate in the formation of a Missouri Basin Natural Resources Council, which is hereby authorized.

Source: Laws 1985, LB 705, § 2.

2-32,104 Council; member states; costs; how shared.

Each state participating in the Missouri Basin Natural Resources Council shall pay an equal and proportionate share of money to (1) establish the council, (2) provide for the council's operations and overhead, (3) cover the expense of the member states' participating representatives who are not elected officials or state employees whose expenses are otherwise covered by the states, and (4) carry out the council's purposes.

Source: Laws 1985, LB 705, § 3.

2-32,105 Council; membership.

The Missouri Basin Natural Resources Council shall consist of the following members:

(1) One senator appointed in the manner prescribed by the senate of such state, except that two senators may be appointed by the Governor of the State of Nebraska from the Unicameral Legislature of the State of Nebraska;

(2) One member of the house of representatives appointed in the manner prescribed by the house of representatives of such state;

(3) The director or head of the principal state agency that coordinates and regulates matters relating to natural resources in each state;

(4) The director or head of the principal state agency that conducts geological and ground water research, investigations, and monitoring in each state; and

(5) One member appointed by the Governor of each state who shall serve at the pleasure of the Governor.

Source: Laws 1985, LB 705, § 4.

2-32,106 Council; duties.

The duties of the Missouri Basin Natural Resources Council shall be to:

(1) Collect and disseminate information on natural resources including studies, research, and policies between the states;

(2) Engender cooperation among and between the states on matters and issues relating to natural resources;

(3) Promote greater understanding and public awareness of the issues relating to natural resources in the states; and

(4) Make recommendations to the governors and legislatures of the states on matters relating to natural resources of mutual interest and concern in and between the states.

Source: Laws 1985, LB 705, § 5.

2-32,107 Council; powers.

The Missouri Basin Natural Resources Council may establish offices, employ the necessary staff, sponsor activities and programs, and conduct such meetings as the council deems advisable.

Source: Laws 1985, LB 705, § 6.

2-32,108 Council; funding authorized; Governor; duty.

For purposes of sections 2-32,102 to 2-32,108 there is hereby authorized an initial amount of fifty thousand dollars for the State of Nebraska to enter into agreements with the states listed in section 2-32,102 and to carry out the purpose and intent of sections 2-32,102 to 2-32,108 if such sum is matched by at least two other states listed in section 2-32,102. It is the intent of the Legislature that the funds authorized by this section shall be appropriated to the Governor, who shall be responsible for the implementation of sections 2-32,102 to 2-32,108.

Source: Laws 1985, LB 705, § 7.

2-32,109 Flood control improvement corridor; board; adopt or amend map.

The board, upon its own motion or upon a petition filed with the district by at least five owners of land within the district and after a public hearing, may adopt or amend flood control improvement corridor maps which show the watercourses as defined in section 31-202 within the district or the reaches of watercourses which the district in the future may determine to improve with levees or other flood control improvements. The maps shall show the corridors

of land on either side of the centerlines of the watercourses which the board determines should be reserved for the future construction, operation, or maintenance of flood control improvements and shall show the approximate location of the corridors on each parcel of land traversed.

Source: Laws 1994, LB 480, § 16.

2-32,110 Flood control improvement corridor; hearing on adoption or amendment of map; notice.

At least ten days prior to the district's public hearing on the adoption or amendment of any flood control improvement corridor map, the district shall publish, in a newspaper of general circulation within the district, a notice of the public hearing together with a diagram showing the general location and width of each flood control improvement corridor which is proposed to be adopted or amended. The notice shall identify the place within the district where the detailed flood control improvement corridor maps which are proposed to be adopted or amended are available for public inspection. At least fifteen days prior to the public hearing, the district shall send such notice of public hearing and copies of the flood control improvement corridor map by certified mail to the owner of each parcel of land traversed by the corridor at the address shown for such owner on the county tax records.

Source: Laws 1994, LB 480, § 17.

2-32,111 Flood control improvement corridor; map; filing, recording, and indexing required.

The district shall file a copy of each adopted or amended flood control improvement corridor map, together with a copy of the board resolution adopting or amending such map and containing the legal descriptions of all parcels of land traversed, with the county, city, or village officer responsible for the receipt of requests for the issuance of building permits for each county, city, and village traversed by the flood control improvement corridors depicted upon the map. The district shall also record each adopted or amended flood control improvement corridor map and each board resolution adopting or amending such map with the register of deeds of each county traversed by such corridors. A notice of the existence of the map and board resolution shall be indexed against all parcels of land included in whole or in part on such map and, in addition, shall indicate to the landowner where the map may be reviewed.

Source: Laws 1994, LB 480, § 18.

2-32,112 Flood control improvement corridor; building permit; issuance; procedure.

A building permit shall be required for all structures within an adopted flood control improvement corridor if the actual cost of the structure will exceed one thousand dollars. Upon the filing of a request for a building permit for a structure on a parcel of land located within a flood control improvement corridor, the officer responsible for issuance of building permits shall give the district notice of the filing of the request for a building permit. The officer shall not issue a permit for a period of sixty days from the date of mailing such notice to the district unless the district waives the time period in writing.

Within the sixty-day period, the district may file with the officer and send by certified mail to the landowner a statement of the district's intent to negotiate

with the owner of the land involved. Upon the filing and mailing of such a statement of intent, the district shall be allowed six months for negotiations with the landowner. At the end of the six-month period, if the landowner has not withdrawn the application for a permit, the permit shall be issued if it meets all other applicable codes, ordinances, and laws.

Source: Laws 1994, LB 480, § 19.

2-32,113 Flood control improvement corridor; acquisition of rights-of-way; sections; how construed.

Nothing in sections 2-32,109 to 2-32,112 shall be deemed a condition precedent to the acquisition of rights-of-way by purchase or by eminent domain.

Source: Laws 1994, LB 480, § 20.

2-32,114 Flood control improvement corridor; building permit requirement; applicability of sections.

Sections 2-32,109 to 2-32,112 shall only apply in counties, cities, or villages which have a requirement that a building permit be obtained prior to construction of a structure whether the requirement is adopted before, on, or after July 16, 1994.

Source: Laws 1994, LB 480, § 21.

2-32,115 Immediate temporary stay imposed by natural resources district; department; powers and duties.

(1) Whenever a natural resources district imposes an immediate temporary stay for one hundred eighty days in accordance with subsection (2) of section 46-707, the department may place an immediate temporary stay without prior notice or hearing on the issuance of new surface water natural-flow appropriations for one hundred eighty days in the area, river basin, subbasin, or reach of the same area included in the natural resources district's temporary stay, except that the department shall not place a temporary stay on new surface water natural-flow appropriations that are necessary to alleviate an emergency situation involving the provision of water for human consumption or public health or safety.

(2) The department shall hold at least one public hearing on the matter within the affected area within the period of the one-hundred-eighty-day temporary stay, with the notice of hearing given as provided in section 46-743, prior to making a determination as to imposing a stay or conditions in accordance with section 46-234 and subsection (12) of section 46-714. The department may hold the public hearing in conjunction with the natural resources district's hearing.

(3) Within forty-five days after a hearing pursuant to this section, the department shall decide whether to exempt from the immediate temporary stay the issuance of appropriations for which applications were pending prior to the declaration commencing the stay but for which the application was not approved prior to such date, to continue the stay, or to allow the issuance of new surface water appropriations.

Source: Laws 2007, LB701, § 16.

ARTICLE 33
SOYBEAN DEVELOPMENT

Section

2-3301 Repealed. Laws 1995, LB 434, § 13.

2-3302 Repealed. Laws 1995, LB 434, § 13.

2-3303 Repealed. Laws 1995, LB 434, § 13.

2-3304 Repealed. Laws 1995, LB 434, § 13.

2-3305 Repealed. Laws 1995, LB 434, § 13.

2-3306 Repealed. Laws 1995, LB 434, § 13.

2-3307 Repealed. Laws 1995, LB 434, § 13.

2-3308 Repealed. Laws 1995, LB 434, § 13.

2-3309 Repealed. Laws 1995, LB 434, § 13.

2-3310 Repealed. Laws 1995, LB 434, § 13.

2-3311 Repealed. Laws 1995, LB 434, § 13.

2-3312 Repealed. Laws 1981, LB 11, § 38.

2-3313 Repealed. Laws 1981, LB 11, § 38.

2-3314 Repealed. Laws 1981, LB 11, § 38.

2-3315 Repealed. Laws 1995, LB 434, § 13.

2-3316 Repealed. Laws 1995, LB 434, § 13.

2-3317 Repealed. Laws 1995, LB 434, § 13.

2-3318 Repealed. Laws 1995, LB 434, § 13.

2-3319 Repealed. Laws 1995, LB 434, § 13.

2-3320 Repealed. Laws 1995, LB 434, § 13.

2-3321 Repealed. Laws 1995, LB 434, § 13.

2-3322 Repealed. Laws 1995, LB 434, § 13.

2-3323 Repealed. Laws 1995, LB 434, § 13.

2-3324 Repealed. Laws 1995, LB 434, § 13.

2-3325 Legislative findings.

The Legislature finds that:

(1) The federal government has enacted the Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., which provides for the establishment of a national program of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand existing domestic and foreign markets and uses for soybeans and soybean products;

(2) To carry out the program, assessments are made on the first marketing of soybeans. The federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., permits a qualified state soybean board to collect such assessments from producers. A qualified state soybean board may be a state agency or an entity governed by soybean producers;

(3) In 1975 the Nebraska Legislature enacted the Nebraska Soybean Resources Act which created the Soybean Development, Utilization, and Marketing Board to develop, carry out, and participate in programs of research, education, market development, and promotion of the soybean industry. The board is an agency of the state and carries out the duties of a qualified state soybean board for Nebraska, including collecting assessments as described in subdivision (2) of this section and depositing the qualified state soybean board's portion of such assessments in the Soybean Development, Utilization, and Marketing Fund;

(4) A state may have only one qualified state soybean board under the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq.;

(5) There would be many advantages in using a private nonprofit corporation rather than a state agency to carry out the purposes of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., including expediting business matters, eliminating duplication in accounting and auditing procedures, simplifying the appropriations process, and

streamlining the disbursement of funds. The advantages provided to the public by operating as a state agency can be obtained by a private nonprofit corporation. A private nonprofit corporation can include in its bylaws procedures for open meetings, public notice of corporate programs and decisions, access to records, and a means by which a producer of soybeans has the opportunity to offer his or her ideas and suggestions relative to corporate policy;

(6) There are adequate protections provided by the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., and the rules and regulations promulgated under the act to ensure that the assessments made are used for the purposes of the act. These provisions apply to the qualified state soybean board regardless of whether the board is a state agency or a private nonprofit corporation;

(7) All money in the Soybean Development, Utilization, and Marketing Fund comes from assessments on the marketing of soybeans and none of the money comes from tax funds;

(8) All equipment, furniture, and other property of the Soybean Development, Utilization, and Marketing Board was purchased with money from the fund and not with tax funds; and

(9) Continuity to the soybean industry development program in Nebraska is important, and if changes in the program occur at the federal level, the Legislature can respond with appropriate legislation.

Source: Laws 1995, LB 434, § 1.

2-3326 Legislative intent.

(1) It is the intent of the Legislature to encourage the formation of a private nonprofit corporation which meets the criteria of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., as a qualified state soybean board to continue Nebraska's soybean industry development program and to take over from the Soybean Development, Utilization, and Marketing Board the duties of the qualified state soybean board under the federal act.

(2) It is the intent of the Legislature that a smooth transition of Nebraska's soybean development program from the Soybean Development, Utilization, and Marketing Board to the private nonprofit corporation be made.

Source: Laws 1995, LB 434, § 2.

2-3327 Transition to private nonprofit corporation; Soybean Development, Utilization, and Marketing Board; duties.

(1) The private nonprofit corporation described in section 2-3326 seeking designation as a qualified state soybean board pursuant to the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., shall have initial articles of incorporation and bylaws which include provisions providing that:

(a) The members of the Soybean Development, Utilization, and Marketing Board serving immediately prior to October 1, 1995, become the initial directors of the corporation and shall serve until their terms would have expired pursuant to the Nebraska Soybean Resources Act;

(b) Except for the election of an at-large member who shall be elected by the board, elections of subsequent members of the board of directors of the

corporation shall be by districts to provide adequate representation of producers and such elections will be conducted by the Cooperative Extension Service of the University of Nebraska pursuant to a contract with the corporation, which contract provides for use of absentee ballots in the election;

(c) Any employee of the Soybean Development, Utilization, and Marketing Board immediately prior to October 1, 1995, becomes, at the option of the employee, an employee of the corporation on October 1, 1995;

(d) The financial records of the corporation are audited annually by a certified public accountant in accordance with any requirements of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., and any regulations under such act;

(e) The duties of the corporation are the duties provided for a qualified state soybean board under the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., or any substantially similar successor federal act which provides for an assessment on the marketing of soybeans for purposes similar to the purposes provided in the federal Soybean Promotion, Research, and Consumer Information Act of 1990;

(f) The corporation assumes all existing and future liabilities of the Soybean Development, Utilization, and Marketing Board;

(g) The expenditure of any funds paid or transferred to the corporation will be used in a manner consistent with the original purposes of the Nebraska Soybean Resources Act;

(h) The corporation submits quarterly reports to the Auditor of Public Accounts detailing the expenditures of funds received or transferred to it from the state until all the funds are expended; and

(i) Any amendment to the articles and bylaws of the corporation shall not become effective until approved by a two-thirds vote of the directors of the private nonprofit corporation.

(2) The Soybean Development, Utilization, and Marketing Board shall:

(a) Utilize the existing appropriation to the Soybean Development, Utilization, and Marketing Fund to carry out its duties under the Nebraska Soybean Resources Act through September 30, 1995, and may contract with the private nonprofit corporation for transitional programs and services in addition to the contracts authorized under section 2-3311;

(b) Contract for the transfer of furniture, equipment, and other property from the board to the corporation; and

(c) Transfer all books, files, and records from the board to the corporation.

Source: Laws 1995, LB 434, § 3.

2-3328 Private nonprofit corporation; transfer of program; conditions; Director of Agriculture; duties.

(1) If a private nonprofit corporation as described in section 2-3326 (a) is formed, (b) submits to the Director of Agriculture on or before August 1, 1995, copies of its articles of incorporation and bylaws which the director determines comply with subsection (1) of section 2-3327, (c) provides to the director written documentation showing that the corporation has been certified by the United Soybean Board as a qualified state soybean board, and (d) provides to the Director of Administrative Services a contractual guarantee that the corpo-

ration accepts and agrees to pay out of any funds available to it all existing and future liabilities of the Soybean Development, Utilization, and Marketing Board which have not been extinguished prior to October 1, 1995, including unpaid bills and claims for goods and services, claims for refunds of fees and assessments, accrued salaries and benefits, unemployment compensation claims, and claims relating to wrongful action, and upon compliance with sections 2-3326 to 2-3328, the transfer of Nebraska's soybean industry development program from the Soybean Development, Utilization, and Marketing Board to the private nonprofit corporation shall be arranged.

(2) The Director of Agriculture shall complete the review of the articles and bylaws not later than September 1, 1995. Upon determining that the articles and bylaws contain the items required by section 2-3327, the director shall so notify the corporation in writing and shall send a copy of the articles and bylaws to the Soybean Development, Utilization, and Marketing Board.

Source: Laws 1995, LB 434, § 4; Laws 2000, LB 692, § 1.

2-3329 Repealed. Laws 2000, LB 692, § 13.

2-3330 Private nonprofit corporation; designation.

On October 1, 1995, if all provisions of sections 2-3326 to 2-3328 have been complied with, the private nonprofit corporation shall become the qualified state soybean board for Nebraska for the purposes of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq.

Source: Laws 1995, LB 434, § 6.

2-3331 State Treasurer; transfer of funds.

The State Treasurer shall transfer any funds remaining in or accruing to the Soybean Development, Utilization, and Marketing Fund on or after October 1, 1995, to the private nonprofit corporation. Such transfers shall be in payment of any contract between the Soybean Development, Utilization, and Marketing Board and the corporation which provides for the corporation to carry out the responsibilities and programs of the board under the Nebraska Soybean Resources Act. The State Treasurer shall make such transfers only if sections 2-3326 to 2-3328 have been complied with.

Source: Laws 1995, LB 434, § 7; Laws 2000, LB 692, § 2.

ARTICLE 34

POULTRY AND EGG RESOURCES

Section

Section
2-3411. Director; annual report; contents; public record.
2-3412. Director; power to exempt purchasers; when; eggs exempt from act.
2-3413. Nebraska Poultry and Egg Development, Utilization, and Marketing Fund; created; administration; department; accept funds.
2-3414. Hearing before Legislature's Committee on Agriculture; when; purpose.
2-3415. Committee; research or development; limitation on authority.
2-3416. Violations; penalties.

2-3401 Act, how cited.

Sections 2-3401 to 2-3416 shall be known and may be cited as the Nebraska Poultry and Egg Resources Act.

Source: Laws 1976, LB 514, § 1.

2-3402 Division of Poultry and Egg Development, Utilization, and Marketing; created.

There is hereby established a Division of Poultry and Egg Development, Utilization, and Marketing in the Department of Agriculture.

Source: Laws 1976, LB 514, § 2.

2-3403 Terms, defined.

For purposes of the Nebraska Poultry and Egg Resources Act, unless the context otherwise requires:

(1) Department shall mean the Department of Agriculture;

(2) Director shall mean the Director of Agriculture;

(3) Committee shall mean the advisory committee created by section 2-3404;

(4) Nebraska Poultry Industries, Inc. shall mean a body corporate formed under the provisions of the Nonprofit Corporation Act, the articles of incorporation of which were received by the Secretary of State and filed for record on January 13, 1970, and recorded as film roll number 35, Miscellaneous Incorporations at page 2206. Its purpose and objective is to promote, improve, and protect all branches of the poultry and egg industry and to coordinate all the activities of its member divisions of the poultry industry and to act as their agent in promoting such activities favorably to the poultry industry as a whole for the entire State of Nebraska;

(5) Person shall mean any individual, firm, group of individuals, partnership, limited liability company, corporation, unincorporated association, cooperative, or other entity, public or private;

(6) Egg producer shall mean any person engaged in the production of commercial eggs who owns or contracts for the care of layer-type chickens;

(7) Turkey producer shall mean a person who owns or contracts for the care of turkeys sold through commercial channels;

(8) First purchaser shall mean any person who receives or otherwise acquires poultry or eggs from a producer and processes, prepares for marketing, or markets such poultry or eggs, including the poultry or eggs of his or her own production, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the producer when the actual or constructive possession of such poultry or eggs is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(9) Poultry shall mean domestic chickens and turkeys;

(10) Commercial eggs shall mean, in the case of eggs produced in this state, eggs from domesticated chickens that are sold for human consumption either in shell egg form or for further processing and, in the case of eggs produced outside of this state, graded eggs sold to retailers, wholesalers, distributors, or food purveyors;

(11) Egg products shall mean commercial products produced, in whole or in part, from shell eggs;

(12) Market development shall mean research and educational programs which are directed toward (a) better and more efficient production, marketing, and utilization of poultry, eggs, and the products thereof produced for resale, (b) better methods, to include, but not be limited to, public relations and other promotion techniques, for the maintenance of present markets and for the development of new or larger domestic or foreign markets and for the sale of poultry, eggs, and the products thereof, and (c) the prevention, modification, or elimination of trade barriers which obstruct the free flow of poultry, eggs, and the products thereof to market;

(13) Commercial channels shall mean the sale of poultry, eggs, or the products thereof for any use when sold to any commercial buyer, dealer, processor, or cooperative or to any person who resells any poultry, eggs, or the products thereof;

(14) Case shall mean a unit of thirty dozen eggs;

(15) Breaker shall mean a person engaged in the further processing of commercial eggs;

(16) Sale shall include any pledge or mortgage of poultry, eggs, or the products thereof to any person;

(17) Retailer shall mean a person who sells eggs or offers eggs for sale directly to consumers;

(18) Wholesaler or distributor shall mean a person who sells eggs to retailers, food purveyors, other wholesalers, or other distributors; and

(19) Food purveyor shall mean a person who operates a restaurant, cafeteria, hotel, hospital, nursing home, boarding house, school, government institution, or other place where eggs are served in the shell or broken out for immediate consumption.

Source: Laws 1976, LB 514, § 3; Laws 1984, LB 991, § 1; Laws 1993, LB 121, § 71.

2-3404 Nebraska Poultry and Egg Development, Utilization, and Marketing Committee; members.

(1) With the exception of the ex officio members, the duly elected directors of Nebraska Poultry Industries, Inc. shall serve as an advisory committee to be known as the Nebraska Poultry and Egg Development, Utilization, and Marketing Committee who shall advise the director on matters relevant to the poultry and egg industry.

(2) The ex officio members shall be designated by the committee. Ex officio members may include, but not be limited to:

(a) The director;

(b) Vice chancellor, University of Nebraska Institute of Agriculture and Natural Resources;

(c) Chairperson, Department of Animal Sciences, University of Nebraska;

(d) Extension Poultry Specialist, Department of Animal Sciences, University of Nebraska;

(e) General Manager, Nebraska Poultry Industries, Inc.; and

(f) A representative of a consumer organization.

Source: Laws 1976, LB 514, § 4; Laws 1990, LB 856, § 1.

2-3405 Committee; members; compensation.

Members of the committee shall receive no salary, but shall be paid a per diem of twenty-five dollars for each day they are actually and necessarily engaged in the transaction of business, together with their actual and necessary expenses incurred while on official business.

Source: Laws 1976, LB 514, § 5.

2-3406 Committee; chairman; meetings.

The President of Nebraska Poultry Industries, Inc. shall be chairman of the committee. The committee shall meet at least once every three months and at such other times as called by the chairman, the director, or by any three members of the committee.

Source: Laws 1976, LB 514, § 6.

2-3407 Department; powers.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the poultry and egg industry and the economy of the areas producing poultry and eggs. The department shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such policy and purpose, such department, only upon the approval of a majority of the committee, may:

(1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of poultry, eggs, and the products thereof;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, regional, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Poultry and Egg Resources Act and to enter into such agreements as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the act;

(5) Conduct, in addition, any other program that would enhance the image of poultry, eggs, and the products thereof. Such programs may include, but not be limited to, consumer education, research, information, advertising, promotion, and market development of poultry, eggs, and the products thereof;

(6) Make refunds for overpayment of fees according to rules and regulations adopted by the department;

(7) Appoint the head of the Division of Poultry and Egg Development, Utilization, and Marketing and assistants as may be necessary to carry out the intent and purposes of the act;

(8) Develop a biennial budget with fiscal year estimates of requirements to conduct the affairs of the division;

(9) Establish annually the fees to be collected; and

(10) Establish an administrative office, suitable for the furtherance of the intent and purposes of the act, with Nebraska Poultry Industries, Inc.

Source: Laws 1976, LB 514, § 7; Laws 1986, LB 258, § 6; Laws 1991, LB 358, § 3.

2-3408 Commercially sold eggs and turkeys; fee; how computed and assessed.

(1) There shall be paid to the director a fee of not to exceed five cents per case upon all commercial eggs sold through commercial channels to carry out the intent and purposes of sections 2-3401 to 2-3416. The fee for commercial eggs produced in this state shall be paid by the egg producer who owns the eggs and shall be collected and remitted to the director by the first purchaser. The fee for commercial eggs produced outside of this state and sold in this state to retailers, wholesalers, distributors, or food purveyors shall be paid to the director by the person importing such eggs into the state. Under the provisions of sections 2-3401 to 2-3416, no eggs shall be subject to the fee more than once.

(2) There shall be paid to the director a fee of not to exceed three cents per turkey grown in the State of Nebraska and sold through commercial channels. The fee shall be paid by the turkey producer and shall be collected by the first purchaser. Under the provisions of sections 2-3401 to 2-3416, no turkeys shall be subject to the fee more than once.

(3) The director may, subject to the approval of a majority of the members of the advisory committee, whenever he or she determines that the fees provided by this section are yielding more than is required to carry out the intent and purposes of sections 2-3401 to 2-3416, reduce such fees for such period as the director shall deem justified. In the event that the director, after reducing such fees, finds that sufficient revenue is not being produced by such reduced fees, he or she may restore in full or in part such fees to such rates as will in his or her judgment produce sufficient revenue to carry out the intent and purposes of sections 2-3401 to 2-3416.

Source: Laws 1976, LB 514, § 8; Laws 1984, LB 991, § 2.

2-3409 Fees; deducted; when.

The fee, provided for by the provisions of section 2-3408, shall be deducted, as provided by sections 2-3401 to 2-3416, whether such poultry and eggs are stored in this state or any other state. Any fees remitted to the director may be refunded by the director upon the written application of any producer for a refund of the amount deducted by the first purchaser. The application for refund shall be submitted to the director within sixty days from the date of assessment of fees and shall have attached thereto proof of the fee deduction claim by the applicant.

Source: Laws 1976, LB 514, § 9.

2-3410 First purchaser; deduct fees; maintain records; public inspection; statement.

(1) The first purchaser, at the time of settlement, shall deduct the poultry and egg fees as provided in section 2-3408 and shall maintain records as specified in the rules and regulations promulgated under sections 2-3401 to 2-3416. Such records shall be open for inspection and audit by authorized representatives of the department during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the department a statement of the number of poultry or cases of eggs purchased in Nebraska in accordance with the rules and regulations promulgated under sections 2-3401 to 2-3416. At the time the statement is filed, the purchaser shall pay and remit to the department the fees as provided for in section 2-3408.

Source: Laws 1976, LB 514, § 10.

2-3411 Director; annual report; contents; public record.

The director shall make an annual report, at least thirty days prior to January 1 of each year, showing all income and expenses and any other facts relevant to sections 2-3401 to 2-3416. The report shall be available to the public.

Source: Laws 1976, LB 514, § 11.

2-3412 Director; power to exempt purchasers; when; eggs exempt from act.

(1) The director may exempt from the provisions of section 2-3408 and subsection (2) of section 2-3410 first purchasers whose annual average weekly volume is less than twenty-five thirty-dozen cases per week whenever the administrative cost of collecting and processing the fees received from such sources exceeds the amount of income derived therefrom.

(2) Eggs utilized for the production of baby chicks shall be exempt from sections 2-3401 to 2-3416.

Source: Laws 1976, LB 514, § 12; Laws 1977, LB 183, § 1.

2-3413 Nebraska Poultry and Egg Development, Utilization, and Marketing Fund; created; administration; department; accept funds.

(1) The State Treasurer is hereby directed to establish in the treasury of the State of Nebraska a fund to be known as the Nebraska Poultry and Egg Development, Utilization, and Marketing Fund, to which shall be credited all fees collected by the department pursuant to the Nebraska Poultry and Egg Resources Act. After appropriation, the Director of Administrative Services shall, upon receipt of proper vouchers approved by the director, issue warrants on such fund including refund payments authorized by section 2-3409 and the State Treasurer shall pay the warrants out of the money credited to such fund. 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 department may accept grants, contributions, or other funds from any private or federal, state, or other public source to be used to administer the

Nebraska Poultry and Egg Resources Act and to conduct programs under such act.

Source: Laws 1976, LB 514, § 13; Laws 1984, LB 991, § 3; Laws 1995, LB 7, § 17.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-3414 Hearing before Legislature's Committee on Agriculture; when; purpose.

The director shall request a hearing by the Legislature's Committee on Agriculture when petitioned by either fifteen percent of the egg or turkey producers or any number of producers representing thirty percent of the eggs or turkeys upon which fees are being collected to determine whether or not there is need to amend or repeal sections 2-3401 to 2-3416.

Source: Laws 1976, LB 514, § 14.

2-3415 Committee; research or development; limitation on authority.

The Poultry and Egg Development, Utilization, and Marketing Committee shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other proper local, state, regional, or national organizations, public or private, in carrying out the purposes of sections 2-3401 to 2-3416.

Source: Laws 1976, LB 514, § 15.

2-3416 Violations; penalties.

Any person violating any of the provisions of sections 2-3401 to 2-3416 shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 514, § 16; Laws 1977, LB 41, § 2.

ARTICLE 35

GRADED EGGS

Section

Section
2-3517. Repealed. Laws 2003, LB 250, § 29.
2-3518. Shell eggs; possession; presumption.
2-3519. Shell eggs; sampling; procedures; seizure; ordered off sale; when; hearing.
2-3520. Annual license fee; inspection fee, amount; how determined; license renewal; applicability of section.
2-3521. Graded Egg Fund; created; use; investment.
2-3522. Rules and regulations.
2-3523. Licenses; disciplinary action; hearing.
2-3524. Violation; penalty; enforcement.
2-3525. Act, how cited.

2-3501 Legislative intent; public policy.

It is hereby declared to be the public policy of the State of Nebraska that consumers of shell eggs in this state be assured of the quality and quantity of shell eggs purchased. In furtherance of this policy, the Legislature hereby declares it to be its intent that shell eggs purchased by consumers in this state shall be quality graded and weight classified in accordance with procedures established under the Nebraska Graded Egg Act, which procedures shall, insofar as practicable, be consistent with those adopted by the United States Department of Agriculture under the Egg Products Inspection Act, 21 U.S.C. 1031 et seq., and the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 et seq.

Source: Laws 1977, LB 268, § 1; Laws 1988, LB 871, § 6.

2-3502 Terms, defined.

As used in the Nebraska Graded Egg Act, unless the context otherwise requires:

(1) Consumer shall mean any person who buys shell eggs for his or her own consumption and not for resale;

(2) Department shall mean the Department of Agriculture;

(3) Director shall mean the Director of Agriculture;

(4) Egg handler shall mean any person who engages in any business in commerce which involves buying or selling any shell eggs or processing any shell egg products. Egg handler shall include, but not be limited to, persons who assemble, collect, break, process, grade, package, or wholesale shell eggs;

(5) Exterior condition of a shell egg shall mean the cleanliness and shape of the shell of the egg and whether the shell is whole or is broken or cracked;

(6) Food purveyors shall mean all restaurants, cafeterias, institutions, hotels, and other establishments where shell eggs are offered for sale to consumers for immediate consumption, either in the shell or in processed form;

(7) Graded eggs shall mean shell eggs which have been graded as to quality and classified as to weight according to the Nebraska Graded Egg Act and the rules and regulations adopted and promulgated under such act;

(8) Interior condition of a shell egg shall mean the condition of the yolk, the white, and the air cell of the shell egg;

(9) Producer shall mean any person engaged in the production of shell eggs in the State of Nebraska;

(10) Retailer shall mean any person who sells shell eggs to the consumer;

(11) Sell shall include offer, expose, or have in possession for sale, exchange, barter, or trade;

(12) Shell eggs shall mean eggs of the domesticated chicken; and

(13) Shell egg packer shall mean any person engaged in the sorting of eggs from sources other than or in addition to his or her own production, into their various qualities, either mechanically or by other means.

Source: Laws 1977, LB 268, § 2; Laws 1988, LB 871, § 7.

2-3503 Shell eggs; quality grades; rules and regulations.

(1) Quality grades of shell eggs shall be designated as follows:

(a) Fresh Fancy Quality or Grade AA;

(b) Grade A;

(c) Grade B;

(d) Grade C;

(e) Dirty;

(f) Check;

(g) Loss;

(h) Inedible; and

(i) Such other quality grades as the department shall adopt and promulgate by rule or regulation. Additional quality grades may be adopted only if such grades are adopted in the regulations promulgated by the United States Department of Agriculture under the Egg Products Inspection Act.

(2) The quality grade of shell eggs shall be determined by examination of the interior and exterior condition of each individual shell egg.

(3) The department shall have the authority to adopt and promulgate rules and regulations establishing the following:

(a) Interior and exterior quality standards for each quality grade of shell eggs;

(b) Acceptable procedures and conditions for grading shell eggs; and

(c) Packing tolerances for each quality grade of shell eggs.

Source: Laws 1977, LB 268, § 3; Laws 1988, LB 871, § 8.

2-3504 Shell eggs; weight classifications; minimum weights; rules and regulations.

(1) Weight classifications of shell eggs shall be designated as follows:

(a) Jumbo;

(b) Extra Large;

(c) Large;

(d) Medium;

(e) Small;

(f) Pee Wee; and

(g) Such other weight classifications as the department shall adopt and promulgate by rule or regulation. Additional weight classifications may be adopted only if such weights are adopted in the regulations promulgated by the United States Department of Agriculture under the Egg Products Inspection Act.

(2) The department shall have the authority to adopt and promulgate rules and regulations to establish minimum weights for each weight classification with respect to:

(a) Individual shell eggs;

(b) Lots of one dozen shell eggs;

(c) Lots of thirty dozen shell eggs; and

(d) Lots of shell eggs greater than thirty dozen.

Source: Laws 1977, LB 268, § 4; Laws 1988, LB 871, § 9.

2-3505 Shell eggs; maximum temperature permitted; humidity.

After being received at the point of first purchase, all shell eggs for human consumption shall be held at a temperature not higher than forty-five degrees Fahrenheit (seven degrees Celsius), with a relative humidity of approximately seventy percent.

Source: Laws 1977, LB 268, § 5; Laws 1992, LB 366, § 1.

2-3506 Graded eggs; designation of size and quality; unlawful acts.

It shall be unlawful to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, or sell graded eggs in bulk or in containers and subcontainers unless each container or subcontainer of such eggs is marked with the full, correct, and unabbreviated designation of size and quality of the eggs therein in accordance with the standards prescribed in the Nebraska Graded Egg Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 1977, LB 268, § 6; Laws 1988, LB 871, § 10.

2-3507 Shell eggs; sale without designation of quality grade and weight classification; unlawful.

It shall be unlawful to sell any carton or container of shell eggs to the consumer that does not have imprinted on each carton or container in letters not less than three-eighths inch in height the quality grade and weight classification designations established pursuant to the Nebraska Graded Egg Act.

Source: Laws 1977, LB 268, § 7.

2-3508 Shell eggs; labeling requirements.

It shall be unlawful to sell any carton or container of shell eggs to the consumer that does not have imprinted on each carton or container, in a conspicuous manner, (1) the name of the distributor or packer and (2) the official code number identifying the packer of the eggs used by plants under federal supervision, the state identification number assigned under the federal Egg Products Inspection Act, 21 U.S.C. 1031 et seq., or a code number assigned by the director under the Nebraska Graded Egg Act. Applications for code numbers to be assigned by the director may be made to the department upon forms provided for that purpose.

Source: Laws 1977, LB 268, § 8; Laws 1997, LB 199, § 1.

2-3509 Shell eggs; sale without designation of date packed; unlawful.

It shall be unlawful to sell shell eggs in any carton or container which fails to show the date of the year on which the eggs were packed.

Source: Laws 1977, LB 268, § 9.

2-3510 Shell eggs; sale without invoice; unlawful.

It shall be unlawful to sell shell eggs to a retailer or food purveyor without furnishing an invoice showing the quality grade and weight classification designations established pursuant to the Nebraska Graded Egg Act.

Source: Laws 1977, LB 268, § 10.

2-3511 Graded eggs; advertising; unlawful acts.

It shall be unlawful to advertise by sign, placard, or otherwise, the price at which graded eggs are offered for sale without denoting the quality grade and weight classification designations established pursuant to the Nebraska Graded Egg Act.

Source: Laws 1977, LB 268, § 11.

2-3512 Shell eggs; sale below quality Grade B; unlawful; exception; applicability of section.

(1) It shall be unlawful to sell shell eggs below the quality grade of Grade B at retail or to food purveyors except as provided in the packing tolerances for Grade B eggs established under the rules and regulations of the department.

(2) This section does not apply to any person exempt from comparable provisions of the federal Egg Products Inspection Act and 7 C.F.R. 57.100.

Source: Laws 1977, LB 268, § 12; Laws 2003, LB 250, § 1.

2-3513 Shell eggs; sale below quality Grade A; unlawful; when.

It shall be unlawful to sell shell eggs below the quality grade of Grade A advertised as fresh eggs, ranch eggs, or farm eggs, or to represent the same to be fresh.

Source: Laws 1977, LB 268, § 13.

2-3514 Shell eggs; place in unsanitary container; unlawful.

It shall be unlawful to place shell eggs in unsanitary containers. Containers shall be considered sanitary if they are structurally sound and free of putrid odors, visible mold, evidence of insect and rodent infestation, and adhering egg and fecal matter.

Source: Laws 1977, LB 268, § 14; Laws 1988, LB 871, § 11.

2-3515 Shell eggs; sale without license; unlawful.

It shall be unlawful to sell shell eggs without the license required by the Nebraska Graded Egg Act.

Source: Laws 1977, LB 268, § 15.

2-3516 Failure to pay inspection fee; unlawful.

It shall be unlawful to fail to pay the inspection fees established by the Nebraska Graded Egg Act.

Source: Laws 1977, LB 268, § 16.

2-3517 Repealed. Laws 2003, LB 250, § 29.

2-3518 Shell eggs; possession; presumption.

It shall be presumed from the fact of possession by any person engaged in the sale of shell eggs that such eggs are for sale for consumption by humans as food.

Source: Laws 1977, LB 268, § 18.

2-3519 Shell eggs; sampling; procedures; seizure; ordered off sale; when; hearing.

(1) The department shall adopt and promulgate rules and regulations to prescribe methods of selecting samples of lots or containers of shell eggs which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled. Any sample so taken shall be prima facie evidence, in any court in this state, of the true condition of the entire lot in the examination of which such sample was taken. Insofar as practicable, the methods of sampling prescribed in the rules and regulations shall be the same as those prescribed by the United States Department of Agriculture under the Egg Products Inspection Act.

(2) The department, through its agents, may enter any premises within the state where shell eggs are held, during ordinary business hours, and may inspect representative samples of such eggs and containers for the purpose of determining whether or not any provision of the Nebraska Graded Egg Act has been violated.

(3) Any agent of the department may, while enforcing the Nebraska Graded Egg Act, seize and hold for evidence any shell eggs held to be in violation of any provisions of the act.

(4) Any shell eggs found by agents of the department to be in violation of the Nebraska Graded Egg Act may be ordered off sale by the department. Further disposition of such eggs shall only be in accordance with the written or oral permission of the department, except that the department shall release all shell eggs ordered off sale which have been brought into conformity with the act.

(5) Any person affected by action taken by the department under subsection (3) or (4) of this section shall be advised that such person may request in writing, within ten days of such action, a hearing before the director or his or her designated representative on such action. The department shall proceed to hearing within seventy-two hours after receiving the written request. If no written request for hearing is filed within the ten days, the department's action shall be sustained.

Source: Laws 1977, LB 268, § 19; Laws 1988, LB 871, § 13.

2-3520 Annual license fee; inspection fee, amount; how determined; license renewal; applicability of section.

There shall be paid to the department an annual license fee of two dollars and fifty cents and an inspection fee based on volume, as follows:

(1) Retailers:

(a) Not more than ten thirty-dozen cases annual average per week, the sum of five dollars;

(b) More than ten thirty-dozen cases but not more than twenty-five such cases annual average per week, the sum of seven dollars and fifty cents; and

(c) More than twenty-five thirty-dozen cases annual average per week, the sum of ten dollars; and

(2) Egg handlers:

(a) Not more than ten thirty-dozen cases annual average per week, the sum of five dollars;

(b) More than ten thirty-dozen cases but not more than two hundred such cases annual average per week, the sum of twenty-five dollars;

(c) More than two hundred thirty-dozen cases but not more than five hundred such cases annual average per week, the sum of fifty dollars;

(d) More than five hundred thirty-dozen cases but not more than one thousand such cases annual average per week, the sum of seventy-five dollars;

(e) More than one thousand thirty-dozen cases but not more than fifteen hundred such cases annual average per week, the sum of one hundred dollars;

(f) More than fifteen hundred thirty-dozen cases but not more than two thousand such cases annual average per week, the sum of one hundred twenty-five dollars;

(g) More than two thousand thirty-dozen cases but not more than twenty-five hundred such cases annual average per week, the sum of one hundred fifty dollars; and

(h) More than twenty-five hundred thirty-dozen cases annual average per week, the sum of two hundred dollars.

Application for a license shall be made to the department on forms prescribed and furnished by the department. Licenses shall expire on July 31 of the year following issuance and shall be renewed on or before August 1 of each year. The license fee and the inspection fee shall be paid at the time of the initial application for a license and at the time of each succeeding application for renewal.

The inspection fee shall be based upon the annual average per week volume during the preceding twelve-month period ending June 30. If no annual average per week volume is available from the preceding twelve-month period, the inspection fee shall be based upon the estimated per week volume for the upcoming year.

This section does not apply to a producer with production from a flock of three thousand hens or less or to an egg handler required to have a license under the Nebraska Graded Egg Act but whose primary food-related business activity is not egg handling.

Source: Laws 1977, LB 268, § 20; Laws 1981, LB 487, § 49; Laws 1988, LB 871, § 14; Laws 2003, LB 250, § 2.

2-3521 Graded Egg Fund; created; use; investment.

The proceeds of license and inspection fees shall be remitted to the State Treasurer for credit to the Graded Egg Fund which is hereby created. Such

fund shall be used by the department to aid in defraying the expenses of administering the Nebraska Graded Egg Act. 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 1977, LB 268, § 21; Laws 1988, LB 871, § 15; Laws 1995, LB 7, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-3522 Rules and regulations.

The department shall have the authority to adopt and promulgate all necessary and reasonable rules and regulations to fully carry out the intent and purposes of the Nebraska Graded Egg Act. When applicable, and insofar as practicable, such rules and regulations shall be consistent with those adopted by the United States Department of Agriculture, Agricultural Marketing Service, under the Egg Products Inspection Act.

Source: Laws 1977, LB 268, § 22; Laws 1988, LB 871, § 16.

2-3523 Licenses; disciplinary action; hearing.

Licenses issued by the department pursuant to section 2-3520 may be deferred, suspended, or revoked by the director, following public hearing pursuant to the Administrative Procedure Act, for violation of the Nebraska Graded Egg Act or the rules and regulations adopted and promulgated under such act.

Source: Laws 1977, LB 268, § 23; Laws 1988, LB 871, § 17.

Cross References

Administrative Procedure Act, see section 84-920.

2-3524 Violation; penalty; enforcement.

(1) Any person violating the Nebraska Graded Egg Act shall be guilty of a Class IV misdemeanor.

(2) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (3) of this section without delay.

(3) In order to insure compliance with the Nebraska Graded Egg Act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Source: Laws 1977, LB 268, § 24; Laws 1988, LB 871, § 18.

2-3525 Act, how cited.

Sections 2-3501 to 2-3525 shall be known and may be cited as the Nebraska Graded Egg Act.

Source: Laws 1977, LB 268, § 25.

ARTICLE 36
CORN DEVELOPMENT

Section

2-3601 Act, how cited.

Sections 2-3601 to 2-3635 shall be known and may be cited as the Nebraska Corn Resources Act.

Source: Laws 1978, LB 639, § 1; Laws 1996, LB 1336, § 1.

2-3602 Intent and purpose of act.

It is declared to be in the interest of the public welfare of the state that the producers of corn be permitted and encouraged to develop, carry out, and participate in programs of research, education, market development, and promotion. It is the purpose of sections 2-3601 to 2-3635 to provide the

authorization and to prescribe the necessary procedures whereby corn producers in this state may finance programs to achieve the activities expressed in sections 2-3601 to 2-3635.

Source: Laws 1978, LB 639, § 2.

2-3603 Definitions, where found.

For purposes of the Nebraska Corn Resources Act, unless the context otherwise requires, the definitions found in sections 2-3604 to 2-3610 shall be used.

Source: Laws 1978, LB 639, § 3; Laws 1996, LB 1336, § 2.

2-3604 Board, defined.

Board shall mean the Corn Development, Utilization, and Marketing Board.

Source: Laws 1978, LB 639, § 4.

2-3605 Grower, defined.

Grower shall mean any landowner personally engaged in growing corn, a tenant of the landowner personally engaged in growing corn, and both the owner and tenant jointly and shall include a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, and arrangement.

Source: Laws 1978, LB 639, § 5; Laws 1993, LB 121, § 72.

2-3606 First purchaser, defined.

First purchaser shall mean any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property in or to corn from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, when the actual or constructive possession of such corn is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.

Source: Laws 1978, LB 639, § 6; Laws 1993, LB 121, § 73.

2-3607 Commercial channels, defined.

Commercial channels shall mean the sale of corn for any use, to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any corn or product produced from corn.

Source: Laws 1978, LB 639, § 7.

2-3608 Delivered or delivery, defined.

Delivered or delivery shall mean receiving corn for any use, except for storage, and includes receiving corn for consumption, for utilization, or as a result of sale in the State of Nebraska.

Source: Laws 1996, LB 1336, § 3.

2-3609 Sale, defined.

Sale shall include any pledge or mortgage of corn after harvest to any person, public or private.

Source: Laws 1978, LB 639, § 9.

2-3610 Corn, defined.

Corn shall not include popcorn or sweet corn.

Source: Laws 1978, LB 639, § 10.

2-3611 Board; members.

The board shall be composed of nine members who (1) are citizens of Nebraska, (2) are at least twenty-one years of age, (3) have been actually engaged in growing corn in this state for a period of at least five years, and (4) derive a substantial portion of their income from growing corn.

The Director of Agriculture, the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources, and the president of the Nebraska Corn Growers Association shall be ex officio members of the board but shall have no vote in board matters.

Source: Laws 1978, LB 639, § 11.

2-3612 Board; vacancy; how filled.

Except for the position of the at-large member, whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy from the district in which the vacancy exists. If the vacant position is that of the at-large member, the appointment to fill such vacancy shall be made at large by the board.

Source: Laws 1978, LB 639, § 12; Laws 1992, LB 971, § 1.

2-3613 Repealed. Laws 1992, LB 971, § 2.

2-3614 Board; appointment of members; procedure.

Members of the board shall be appointed by the Governor on a nonpartisan basis. Candidates for appointment by the Governor to the initial board may place their names on a candidacy list for the respective district by filing a petition signed by at least fifty growers of such district with the Governor. Candidates for appointment to subsequent boards or to fill a vacancy in either a district or at-large membership position shall file such petitions with the existing board. Qualified individuals residing within their district shall be eligible for nomination as candidates from such district.

Source: Laws 1978, LB 639, § 14; Laws 1996, LB 1336, § 4.

2-3615 Board; membership districts.

One member shall be appointed from each of the following districts:

(a) District 1. The counties of Butler, Saunders, Douglas, Sarpy, Seward, Lancaster, Cass, Otoe, Saline, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;

(b) District 2. The counties of Adams, Clay, Fillmore, Franklin, Webster, Nuckolls, and Thayer;

(c) District 3. The counties of Merrick, Polk, Hamilton, and York;

(d) District 4. The counties of Knox, Cedar, Dixon, Dakota, Pierce, Wayne, Thurston, Madison, Stanton, Cuming, Burt, Colfax, Dodge, and Washington;

(e) District 5. The counties of Sherman, Howard, Dawson, Buffalo, and Hall;

(f) District 6. The counties of Hayes, Frontier, Gosper, Phelps, Kearney, Hitchcock, Red Willow, Furnas, and Harlan;

(g) District 7. The counties of Boyd, Holt, Antelope, Garfield, Wheeler, Boone, Platte, Valley, Greeley, and Nance; and

(h) District 8. The counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, Deuel, Cherry, Keya Paha, Brown, Rock, Grant, Hooker, Thomas, Blaine, Loup, Arthur, McPherson, Logan, Custer, Keith, Lincoln, Perkins, Chase, and Dundy.

Source: Laws 1978, LB 639, § 15.

2-3616 Board; meeting; appoint member.

Within thirty days after the appointment of the initial board, such board shall conduct its first regular meeting. At this meeting, the board shall appoint the ninth member to the board. Such appointment shall be made at large and the appointee shall meet the same qualifications as the other members on the board.

Source: Laws 1978, LB 639, § 16.

2-3617 Board; members; terms.

(1) The initial term of office for members of the appointed board shall be as follows: Three district members shall be appointed for one year; three district members shall be appointed for two years; and two district members shall be appointed for three years. The term of the member appointed at large shall be three years.

(2) Upon completion of the initial term, the term of office for members of the board shall be for three years.

Source: Laws 1978, LB 639, § 17.

2-3618 Board; elect officers.

The board shall elect from its members a chairperson and such other officers as may be necessary.

Source: Laws 1978, LB 639, § 18.

2-3619 Board; compensation; expenses.

The voting members of the board, while engaged in the performance of their official duties, shall receive compensation at the rate of twenty-five dollars per day while so serving, including travel time. In addition, members of the board shall receive reimbursement for actual and necessary expenses on the same basis and subject to the same conditions as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1978, LB 639, § 19; Laws 1981, LB 204, § 11.

2-3620 Board; removal of member; grounds.

A member of the board shall be removable by the Governor for cause. He shall first be given a copy of written charges against him and also an opportunity to be heard publicly. In addition to all other causes, a member ceasing to (1) be a resident of the state, (2) live in the district from which he was appointed, or (3) be actually engaged in growing corn in the state shall be deemed sufficient cause for removal from office.

Source: Laws 1978, LB 639, § 20.

2-3621 Board; meetings.

The board shall meet at least once every three months and at such other times as called by the chairperson or by any four members of the board.

Source: Laws 1978, LB 639, § 21.

2-3622 Board; duties and responsibilities.

The duties and responsibilities of the board shall be prescribed in the authority for the corn program and to the extent applicable shall include the following:

(1) To develop and direct any corn development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the corn commodity program;

(3) To adopt and promulgate such rules and regulations as are necessary to enforce the Nebraska Corn Resources Act in accordance with the Administrative Procedure Act;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the corn commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(6) To establish a means whereby any grower of corn has the opportunity at least annually to offer his or her ideas and suggestions relative to board policy for the upcoming year;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(8) To bond the treasurer and such other persons necessary to insure adequate protection of funds;

(9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the board, and to keep these records open to examination by any grower-participant during normal business hours;

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation; and

(11) To make refunds for overpayment of fees according to rules and regulations adopted and promulgated by the board.

Source: Laws 1978, LB 639, § 22; Laws 1983, LB 505, § 5; Laws 1985, LB 60, § 2; Laws 1986, LB 1230, § 18.

Cross References

Administrative Procedure Act, see section 84-920.

2-3623 Sale of corn; fee; when paid.

There is hereby levied a fee of not to exceed four-tenths of a cent per bushel upon all corn sold through commercial channels in Nebraska or delivered in Nebraska. The fee shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the Nebraska Corn Resources Act, no corn shall be subject to the fee more than once.

Source: Laws 1978, LB 639, § 23; Laws 1983, LB 505, § 6; Laws 1987, LB 610, § 2; Laws 1996, LB 1336, § 5.

2-3624 Repealed. Laws 1981, LB 11, § 38.

2-3625 Repealed. Laws 1981, LB 11, § 38.

2-3626 Repealed. Laws 1981, LB 11, § 38.

2-3627 Fees; adjusted by board; when.

Until December 31, 1978, the fee levied pursuant to section 2-3623 shall not exceed one-tenth of one cent per bushel. Beginning January 1, 1979, the board may, whenever it shall determine that the fees provided by section 2-3623 are yielding more than is required to carry out the intent and purposes of sections 2-3601 to 2-3635, reduce such fees for such period as it shall deem justified, but not less than one year. If the board, after reducing such fees finds that sufficient revenue is not being produced by such reduced fees, it may restore in full or in part such fees not to exceed four-tenths of a cent per bushel.

Source: Laws 1978, LB 639, § 27.

2-3628 Pledge or mortgage; corn used as security; fee; refund; procedure.

In the case of a pledge or mortgage of corn as security for a loan under the federal price support program or other government agricultural loan programs, the fee shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan plus thirty days after the collection of a fee for corn that is mortgaged as security for a loan under the federal price support program or other government agricultural loan programs, the grower decides to purchase the corn and use it as feed, the grower shall be entitled to a refund of the checkoff fee previously paid. The refund shall be payable by the board upon the grower's written application to the board for a refund of the amount deducted. Each application for a refund by a grower shall have attached thereto proof of the tax deducted.

Source: Laws 1978, LB 639, § 28; Laws 1996, LB 1336, § 6.

2-3629 Fee; when assessed.

The fee, provided for by section 2-3623, shall be deducted, as provided by sections 2-3601 to 2-3635, whether such corn is stored in this state or any other state.

Source: Laws 1978, LB 639, § 29.

2-3630 Fee; when not applicable.

The fee imposed by section 2-3623 shall not apply to the sale of corn to the federal government for the ultimate use of consumption by the people of the United States when the State of Nebraska is prohibited from imposing such fee by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1978, LB 639, § 30.

2-3631 Purchaser deduct fee; maintain records; public information; quarterly statement.

(1) The purchaser, at the time of settlement, shall deduct the corn fee and shall maintain the necessary record of the fee for each purchase of corn on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the purchaser shall provide the following information:

(a) Name and address of the grower and seller;

(b) The date of the purchase;

(c) The number of bushels of corn sold; and

(d) The amount of fees collected on each purchase.

Such records shall be open for inspection during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the board by the last day of each January, April, July, and October, on forms prescribed by the board, a statement of the number of bushels of corn purchased in Nebraska. At the time the statement is filed, the purchaser shall pay and remit to the board the fee as provided for in section 2-3623.

Source: Laws 1978, LB 639, § 31.

2-3632 Board; annual report; contents; public information.

The board shall make and publish an annual report on or before January 1 of each year, which report shall set forth in detail the income received from the corn assessment for the previous year and shall include:

(1) The expenditure of all funds by the board during the previous year for the administration of sections 2-3601 to 2-3635;

(2) The action taken by the board on all contracts requiring the expenditure of funds by the board;

(3) Copies of all such contracts;

(4) Detailed explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of corn, the direct expense associated with each program, and copies of such programs if in writing; and

(5) The name and address of each member of the board and a copy of all rules and regulations promulgated by the board.

Such report shall be available to the public upon request.

Source: Laws 1978, LB 639, § 32.

2-3633 Nebraska Corn Development, Utilization, and Marketing Fund; created; purpose; investment.

The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Corn Development, Utilization, and Marketing Fund, to which fund shall be credited, for the uses and purposes of the Nebraska Corn Resources Act and its enforcement, all taxes collected by the board pursuant to the act. Such fund shall be expended solely for the administration of the act. 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 1978, LB 639, § 33; Laws 1995, LB 7, § 19.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-3634 Board; cooperate with University of Nebraska and other organizations; purpose.

The board shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other proper local, state, or national organizations, public or private, in carrying out the purposes of sections 2-3601 to 2-3635.

Source: Laws 1978, LB 639, § 34.

2-3635 Violations; penalty.

Any person violating any of the provisions of sections 2-3601 to 2-3635 shall be guilty of a Class III misdemeanor.

Source: Laws 1978, LB 639, § 35.

ARTICLE 37

DRY BEAN RESOURCES

Section
2-3701. Repealed. Laws 1980, LB 633, § 10.
2-3702. Repealed. Laws 1980, LB 633, § 10.
2-3703. Repealed. Laws 1980, LB 633, § 10.
2-3704. Repealed. Laws 1980, LB 633, § 10.
2-3705. Repealed. Laws 1980, LB 633, § 10.
2-3706. Repealed. Laws 1980, LB 633, § 10.
2-3707. Repealed. Laws 1980, LB 633, § 10.
2-3708. Repealed. Laws 1980, LB 633, § 10.
2-3709. Repealed. Laws 1980, LB 633, § 10.
2-3710. Repealed. Laws 1980, LB 633, § 10.
2-3711. Repealed. Laws 1980, LB 633, § 10.
2-3712. Repealed. Laws 1980, LB 633, § 10.
2-3713. Repealed. Laws 1980, LB 633, § 10.
2-3714. Repealed. Laws 1980, LB 633, § 10.
2-3715. Repealed. Laws 1980, LB 633, § 10.

Section
2-3716. Repealed. Laws 1980, LB 633, § 10.
2-3717. Repealed. Laws 1980, LB 633, § 10.
2-3718. Repealed. Laws 1980, LB 633, § 10.
2-3719. Repealed. Laws 1980, LB 633, § 10.
2-3720. Repealed. Laws 1980, LB 633, § 10.
2-3721. Repealed. Laws 1980, LB 633, § 10.
2-3722. Repealed. Laws 1980, LB 633, § 10.
2-3723. Repealed. Laws 1980, LB 633, § 10.
2-3724. Repealed. Laws 1980, LB 633, § 10.
2-3725. Repealed. Laws 1980, LB 633, § 10.
2-3726. Repealed. Laws 1980, LB 633, § 10.
2-3727. Repealed. Laws 1980, LB 633, § 10.
2-3728. Repealed. Laws 1980, LB 633, § 10.
2-3729. Repealed. Laws 1980, LB 633, § 10.
2-3730. Repealed. Laws 1980, LB 633, § 10.
2-3731. Repealed. Laws 1980, LB 633, § 10.
2-3732. Repealed. Laws 1980, LB 633, § 10.
2-3733. Repealed. Laws 1980, LB 633, § 10.
2-3734. Repealed. Laws 1980, LB 633, § 10.
2-3735. Act, how cited.
2-3736. Purpose of act.
2-3737. Definitions, where found.
2-3738. Commercial channels, defined.
2-3739. Commission, defined.
2-3740. Dry bean, defined.
2-3741. First purchaser, defined.
2-3742. Grower, defined.
2-3743. Processor, defined.
2-3744. Sale, defined.
2-3745. Dry Bean Commission; created; members; qualifications.
2-3746. Commission; grower districts; appointment of processor members.
2-3747. Commission; appointment of members; initial meeting.
2-3748. Commission; members; terms.
2-3749. Commission; vacancy.
2-3750. Commission; member; removal.
2-3751. Commission; officers; meetings; expenses.
2-3752. Commission; employees.
2-3753. Commission; powers and duties.
2-3754. Commission; prohibited acts.
2-3755. Dry beans; fee; adjustment; payment.
2-3756. Pledge or mortgage under federal program; deduction of fee.
2-3757. Fee; collection.
2-3758. Fee; when prohibited.
2-3759. First purchaser; deduct fee; maintain records; inspection and audit; contract for collection of fee; quarterly statement; confidentiality.
2-3760. Refund; procedure.
2-3761. Commission; contracts authorized.
2-3762. Commission; annual report; contents.
2-3763. Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.
2-3764. Commission; cooperate with University of Nebraska and other organizations; purpose.
2-3765. Violations; penalty.

2-3701 Repealed. Laws 1980, LB 633, § 10.

2-3702 Repealed. Laws 1980, LB 633, § 10.

2-3703 Repealed. Laws 1980, LB 633, § 10.

2-3704 Repealed. Laws 1980, LB 633, § 10.

2-3705 Repealed. Laws 1980, LB 633, § 10.

2-3706 Repealed. Laws 1980, LB 633, § 10.

2-3707 Repealed. Laws 1980, LB 633, § 10.

2-3708 Repealed. Laws 1980, LB 633, § 10.

2-3709 Repealed. Laws 1980, LB 633, § 10.

2-3710 Repealed. Laws 1980, LB 633, § 10.

2-3711 Repealed. Laws 1980, LB 633, § 10.

2-3712 Repealed. Laws 1980, LB 633, § 10.

2-3713 Repealed. Laws 1980, LB 633, § 10.

2-3714 Repealed. Laws 1980, LB 633, § 10.

2-3715 Repealed. Laws 1980, LB 633, § 10.

2-3716 Repealed. Laws 1980, LB 633, § 10.

2-3717 Repealed. Laws 1980, LB 633, § 10.

2-3718 Repealed. Laws 1980, LB 633, § 10.

2-3719 Repealed. Laws 1980, LB 633, § 10.

2-3720 Repealed. Laws 1980, LB 633, § 10.

2-3721 Repealed. Laws 1980, LB 633, § 10.

2-3722 Repealed. Laws 1980, LB 633, § 10.

2-3723 Repealed. Laws 1980, LB 633, § 10.

2-3724 Repealed. Laws 1980, LB 633, § 10.

2-3725 Repealed. Laws 1980, LB 633, § 10.

2-3726 Repealed. Laws 1980, LB 633, § 10.

2-3727 Repealed. Laws 1980, LB 633, § 10.

2-3728 Repealed. Laws 1980, LB 633, § 10.

2-3729 Repealed. Laws 1980, LB 633, § 10.

2-3730 Repealed. Laws 1980, LB 633, § 10.

2-3731 Repealed. Laws 1980, LB 633, § 10.

2-3732 Repealed. Laws 1980, LB 633, § 10.

2-3733 Repealed. Laws 1980, LB 633, § 10.

2-3734 Repealed. Laws 1980, LB 633, § 10.

2-3735 Act, how cited.

Sections 2-3735 to 2-3765 shall be known and may be cited as the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 1.

2-3736 Purpose of act.

The Legislature finds and declares that it is in the public welfare of the State of Nebraska that growers and processors of dry beans be permitted and encouraged to develop, carry out, and participate in programs of research, education, and promotion of dry beans and bean products. It is the purpose of the Dry Bean Resources Act to provide the authorization and the necessary procedures by which dry bean growers and processors in this state may finance programs to achieve the purposes expressed in this section.

Source: Laws 1987, LB 145, § 2.

2-3737 Definitions, where found.

For purposes of the Dry Bean Resources Act, unless the context otherwise requires, the definitions found in sections 2-3738 to 2-3744 shall be used.

Source: Laws 1987, LB 145, § 3.

2-3738 Commercial channels, defined.

Commercial channels shall mean the sale of dry beans for any use to any commercial buyer, dealer, processor, or cooperative or to any person who resells such dry beans or any product produced from such dry beans.

Source: Laws 1987, LB 145, § 4.

2-3739 Commission, defined.

Commission shall mean the Dry Bean Commission.

Source: Laws 1987, LB 145, § 5.

2-3740 Dry bean, defined.

Dry bean shall mean any dry edible bean.

Source: Laws 1987, LB 145, § 6.

2-3741 First purchaser, defined.

First purchaser shall mean any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring dry beans from a grower and shall include, but not be limited to, a mortgagee, pledgee, lienor, or other person having a claim against the grower when the actual or constructive possession of such dry beans is taken as part payment or in satisfaction of the mortgage, pledge, lien, or claim.

Source: Laws 1987, LB 145, § 7; Laws 1993, LB 121, § 74.

2-3742 Grower, defined.

Grower shall mean any landowner personally engaged in growing dry beans, a tenant of a landowner personally engaged in growing dry beans, or both the owner and tenant jointly and shall include, but not be limited to, any person,

partnership, limited liability company, association, corporation, cooperative, trust, or sharecropper or any other business unit, device, or arrangement.

Source: Laws 1987, LB 145, § 8; Laws 1993, LB 121, § 75.

2-3743 Processor, defined.

Processor shall mean any person or business or a representative thereof who receives, stores, ships, or otherwise handles dry beans.

Source: Laws 1987, LB 145, § 9.

2-3744 Sale, defined.

Sale shall include, but not be limited to, any pledge or mortgage of dry beans after harvest to any person.

Source: Laws 1987, LB 145, § 10.

2-3745 Dry Bean Commission; created; members; qualifications.

There is hereby created the Dry Bean Commission which shall be composed of nine members, two of whom shall be selected by the commission and seven of whom shall be appointed by the Governor. Six members shall be growers who (1) are citizens of Nebraska, (2) are at least twenty-one years of age, (3) have actually been engaged in growing dry beans in this state for at least three years, and (4) derive a substantial portion of their income from growing dry beans. Three members shall be dry bean processors who have been in business in Nebraska for at least three years, and the Director of the University of Nebraska Panhandle Research and Extension Center shall be an ex officio member but shall have no vote in commission matters.

Source: Laws 1987, LB 145, § 11; Laws 2003, LB 219, § 1.

2-3746 Commission; grower districts; appointment of processor members.

(1) One grower shall be appointed from each of the following four districts:

(a) District 1 which shall consist of the counties of Sioux, Dawes, Sheridan, and Box Butte;

(b) District 2 which shall consist of the county of Scotts Bluff;

(c) District 3 which shall consist of the counties of Banner, Morrill, Kimball, Cheyenne, Garden, and Deuel; and

(d) District 4 which shall consist of the remaining counties in which dry bean production occurs in the state.

(2) The processor members of the commission shall be appointed by the Governor. Insofar as possible, the geographic locations of such appointed members shall be representative of the Nebraska dry bean industry. Any processor may place his or her name on a candidacy list for appointment as an initial member of the commission by written notice to the Governor and for subsequent appointments by written notice to the commission.

Source: Laws 1987, LB 145, § 12.

2-3747 Commission; appointment of members; initial meeting.

(1) Within sixty days after March 31, 1987, the seven members specified in section 2-3746 shall be appointed by the Governor. Within thirty days after the

appointment of the initial commission, the commission shall conduct its first regular meeting. At the first regular meeting the commission shall select and appoint two members to the commission. Such appointments shall be growers appointed at large with one member representing districts 1 and 2 and one member representing districts 3 and 4.

(2) Members shall be appointed on a nonpartisan basis. Any grower candidate may place his or her name on a candidacy list for appointment as an initial member of the commission for the district in which he or she resides by filing a petition signed by at least twenty-five resident bean growers of such district with the Nebraska Dry Bean Growers Association and for subsequent appointments by filing such petitions and notices with the commission. The Governor shall make appointments from the district candidacy list unless there are no names on such list.

Source: Laws 1987, LB 145, § 13.

2-3748 Commission; members; terms.

(1) The initial term of office for members of the commission shall be as follows: Two district members and one processor shall be appointed for one year; one district member, one processor, and one member at large selected by the commission shall be appointed for two years; and one district member, one processor, and one member at large selected by the commission shall be appointed for three years.

(2) Except for the persons appointed to the initial commission, the term of a member shall be three years. No member shall serve more than three consecutive three-year terms.

Source: Laws 1987, LB 145, § 14; Laws 2003, LB 219, § 2.

2-3749 Commission; vacancy.

Whenever a vacancy occurs on the commission for any reason, the Governor shall appoint a person with the same qualifications as the initial appointee unless the vacant position is that of a member at large, in which case the appointment to fill such vacancy shall be made by the commission.

Source: Laws 1987, LB 145, § 15.

2-3750 Commission; member; removal.

A member of the commission shall be removed for ceasing to (1) be a resident of the state, (2) live in the district from which he or she was appointed, (3) in the case of a grower member, be actually engaged in the growing of dry beans in the state, or (4) in the case of a processor member, be actually engaged in the processing or shipping of dry beans in the state.

Source: Laws 1987, LB 145, § 16.

2-3751 Commission; officers; meetings; expenses.

The commission shall elect from its members a chairperson and such other officers as may be necessary. The commission shall meet at least once every three months and at such other times as called by the chairperson or by any three members of the commission. The members shall receive no compensation for their services, but appointed members shall receive reimbursement for

actual, necessary, and reasonable expenses incurred in the discharge of their official duties as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1987, LB 145, § 17.

2-3752 Commission; employees.

The commission may appoint and fix the salary of such support staff and employees, who shall serve at the pleasure of the commission, as may be required for the proper discharge of the functions of the commission.

Source: Laws 1987, LB 145, § 18.

2-3753 Commission; powers and duties.

The commission shall have the following powers and duties:

(1) To adopt and devise a dry bean program consisting of research, education, advertising, publicity, and promotion to increase total consumption of dry beans on a state, national, and international basis;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the dry bean program;

(3) To adopt and promulgate reasonable rules and regulations necessary to carry out the dry bean program;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the dry bean program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the dry bean program;

(6) To establish a means whereby the grower and processor of dry beans has the opportunity at least annually to offer his or her ideas and suggestions relative to commission policy for the coming year;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(8) To bond such persons as may be necessary in order to insure adequate protection of funds;

(9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the commission and to keep such records open to examination by any grower or processor participant during normal business hours;

(10) To prohibit any funds collected by the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation;

(11) To establish an administrative office at such place in the state as may be suitable for the proper discharge of the functions of the commission; and

(12) To adopt and promulgate rules and regulations to carry out the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 19.

2-3754 Commission; prohibited acts.

The commission shall not:

(1) Engage in marketing of dry beans or any activity which would result in the formation of a marketing order;

(2) Be a party to a procedure which includes price setting or production quotas; and

(3) Purchase, construct, or otherwise obtain title to its own administrative office but shall be limited to leasing state or commercial office space.

Source: Laws 1987, LB 145, § 20.

2-3755 Dry beans; fee; adjustment; payment.

Beginning August 1, 1987, there shall be paid to the commission a fee of six cents per hundredweight upon all dry beans grown in the state during 1987 and thereafter and sold through commercial channels. Beginning January 1, 1989, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the Dry Bean Resources Act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed ten cents per hundredweight. Two-thirds of the fee levied under this section shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. The first purchaser shall pay the remaining one-third of the fee. No dry beans shall be subject to the fee more than once.

Source: Laws 1987, LB 145, § 21.

2-3756 Pledge or mortgage under federal program; deduction of fee.

In the case of a pledge or mortgage of dry beans as security for a loan under the federal price support program, the fee shall be deducted from the proceeds of such loan at the time the loan is made.

Source: Laws 1987, LB 145, § 22.

2-3757 Fee; collection.

The fee provided for by section 2-3755 shall be deducted, as provided by the Dry Bean Resources Act, whether such dry beans are stored or marketed in this state or any other state. The commission may enter into reciprocal agreements with other states for the collection of such fee.

Source: Laws 1987, LB 145, § 23.

2-3758 Fee; when prohibited.

The fee imposed by section 2-3755 shall not apply to the sale of dry beans to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such fee by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1987, LB 145, § 24.

2-3759 First purchaser; deduct fee; maintain records; inspection and audit; contract for collection of fee; quarterly statement; confidentiality.

(1) The first purchaser at the time of settlement shall deduct the dry bean fee and shall maintain the necessary record of the fee for each purchase of dry beans on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the first purchaser shall

provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of hundredweight of dry beans sold; and (d) the amount of fees collected on each purchase. Such records shall be open for inspection and audit during the normal business hours observed by the purchaser. The inspection and audit shall be conducted by qualified and independent representatives authorized by the commission.

(2) The commission shall contract with an independent agency or organization to collect the fee. The first purchaser shall render and have on file with such independent collection agency by the last day of each January, April, July, and October, on forms prescribed by the commission, a statement of the number of hundredweight of dry beans purchased in Nebraska for the preceding three months. The independent collection agency shall keep first purchaser statements confidential and report only the total of all statements to the commission for the preceding three months. Purchaser records and other such statements shall be confidential and shall not be released to any person or agency, except that the Attorney General shall have access to such statements during a bona fide investigation. At the time the statement is filed, the purchaser shall pay and remit to the independent collection agency the fee as provided for in section 2-3755 for the dry beans purchased in the preceding three months.

Source: Laws 1987, LB 145, § 25.

2-3760 Refund; procedure.

A grower who has sold dry beans and has had an assessment deducted from the sale price may by written application to the commission secure a refund of the amount deducted. The commission shall notify first purchasers of grower refunds at the end of each quarter, at which time the first purchaser may request a refund. First purchaser refunds shall only be on those beans that growers receive a refund on. The grower shall have thirty days from the date of sale to request a refund. The refund shall be payable by the commission upon application within ninety days after receipt of the refund request. Each application for refund by a grower shall have attached thereto proof of the assessment deducted.

Source: Laws 1987, LB 145, § 26.

2-3761 Commission; contracts authorized.

The commission may contract with the proper local, state, or national organizations, public or private, in carrying out the purposes of the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 27.

2-3762 Commission; annual report; contents.

The commission shall make and publish an annual report at least thirty days prior to January 1 of each year which shall set forth in detail the income received from the dry bean assessment for the previous year and shall include:

(1) The expenditure of all funds by the commission during the previous year for the administration of the Dry Bean Resources Act;

(2) The action taken by the commission on all contracts requiring the expenditure of funds by the commission;

(3) Copies of all such contracts;

(4) Detailed explanation of all programs relating to the discovery, promotion, and development of bean products and industries for the utilization of dry beans, the direct expense associated with each program, and copies of such programs if in writing; and

(5) The name and address of each member of the commission and a copy of all rules and regulations adopted and promulgated by the commission.

The report shall be available to the public upon request and a summary of such report shall be sent to each grower and first purchaser subject to the checkoff.

Source: Laws 1987, LB 145, § 28.

2-3763 Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.

The State Treasurer shall establish in the treasury of the State of Nebraska a fund to be known as the Dry Bean Development, Utilization, Promotion, and Education Fund, to which fund shall be credited funds collected by the commission pursuant to the Dry Bean Resources Act. The fund shall be expended for the administration of such act. 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 1987, LB 145, § 29; Laws 1995, LB 7, § 20.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-3764 Commission; cooperate with University of Nebraska and other organizations; purpose.

The commission shall not set up research or development units or agencies of its own but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other local, state, or national organizations, public or private, in carrying out the purposes of the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 30.

2-3765 Violations; penalty.

Any person violating the Dry Bean Resources Act shall be guilty of a Class III misdemeanor.

Source: Laws 1987, LB 145, § 31.

ARTICLE 38

MARKETING, DEVELOPMENT, AND PROMOTION OF AGRICULTURAL PRODUCTS

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

Section
2-3801. Act, how cited.
2-3802. Legislative findings.

Section
2-3803. Definitions, where found.
2-3804. Agricultural product or commodity, defined.
2-3804.01. Aquaculture, defined.
2-3805. Department, defined.
2-3806. Director, defined.
2-3807. Marketing, defined.
2-3808. Department; marketing activities; powers and duties.
2-3809. Act, how construed.
2-3810. Department; contracts; limitations.
2-3811. Repealed. Laws 1981, LB 545, § 52.
2-3812. Nebraska Agricultural Products Marketing Cash Fund; created; use; investment.

(b) GRAIN STANDARDS

2-3813. Terms, defined.
2-3814. Department; grain inspections; special certificate; fee; powers; Nebraska Origin and Premium Quality Grain Cash Fund; created; use; investment.

(c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

2-3815. Agriculture promotion and development program; established; purposes; employment of specialists; advisory committee.
2-3816. Repealed. Laws 1993, LB 364, § 26.
2-3817. Repealed. Laws 1993, LB 364, § 26.
2-3818. Repealed. Laws 1993, LB 364, § 26.
2-3819. Repealed. Laws 1993, LB 364, § 26.
2-3820. Repealed. Laws 1993, LB 364, § 26.
2-3821. Repealed. Laws 1993, LB 364, § 26.
2-3822. Repealed. Laws 1993, LB 364, § 26.
2-3823. Repealed. Laws 1993, LB 364, § 26.

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

2-3801 Act, how cited.

Sections 2-3801 to 2-3812 shall be known and may be cited as the Nebraska Agricultural Products Marketing Act.

Source: Laws 1979, LB 538, § 1; Laws 1987, LB 561, § 2.

2-3802 Legislative findings.

The Legislature hereby finds that the general welfare of the people of Nebraska will significantly benefit from the conduct of programs designed and intended to enhance the effective marketing of Nebraska's many agricultural commodities.

The Legislature further finds that the meaningful realization of such benefits will result through the administration of programs and policies conceived, desired, and formulated by and for those persons who produce, process, or distribute such commodities as an integral part of their livelihood. It is necessary that the programs conducted by and for the various segments of the agricultural industry be efficiently coordinated, so that the marketing efforts expended on behalf of each commodity will complement the marketing programs in the state.

Source: Laws 1979, LB 538, § 2.

2-3803 Definitions, where found.

For purposes of the Nebraska Agricultural Products Marketing Act, unless the context otherwise requires, the definitions found in sections 2-3804 to 2-3807 shall be used.

Source: Laws 1979, LB 538, § 3; Laws 1988, LB 807, § 3.

2-3804 Agricultural product or commodity, defined.

Agricultural product or commodity shall include all products resulting from the conduct of farming or ranching activities, dairying, beekeeping, aquaculture, poultry or egg production, or comparable activities, and any byproducts resulting from such activities.

Source: Laws 1979, LB 538, § 4; Laws 1987, LB 561, § 3.

2-3804.01 Aquaculture, defined.

Aquaculture shall mean the agricultural practice of controlled propagation and cultivation of aquatic plants or animals for commercial purposes. Unless the context otherwise requires, the term agriculture shall be construed to include aquaculture.

Source: Laws 1987, LB 561, § 4.

2-3805 Department, defined.

Department shall mean the Department of Agriculture.

Source: Laws 1979, LB 538, § 5.

2-3806 Director, defined.

Director shall mean the Director of Agriculture or his or her designee.

Source: Laws 1979, LB 538, § 6.

2-3807 Marketing, defined.

Marketing shall include any and all activities intended to directly or indirectly facilitate the sale, exchange, or other distribution of a product or commodity in an economic, efficient, and profitable manner, including research, market development, publicity, promotion, education, product utilization, and comparable activities.

Source: Laws 1979, LB 538, § 7.

2-3808 Department; marketing activities; powers and duties.

To achieve the purposes of the Nebraska Agricultural Products Marketing Act, the department may perform the following marketing activities:

(1) Coordinating the various marketing programs and policies of each of the state's agricultural commodities so that they will complement one another;

(2) Assisting the producers, processors, and distributors of agricultural products and commodities in conducting and administering marketing programs and policies conceived, desired, and formulated by and for such persons;

(3) Conducting activities designed to locate and study trade barriers adversely affecting the marketing of Nebraska agricultural products and conducting activities aimed at eliminating or mitigating any such barriers;

(4) Collecting and disseminating information relevant and beneficial to the economical, efficient, and profitable marketing of agricultural products by the Nebraska producers, processors, and distributors thereof;

(5) Assisting in matching up potential buyers and sellers of agricultural products produced in Nebraska;

(6) Cooperating with other local, state, or national agricultural marketing entities, public or private, in carrying out the act and entering into such contracts as may be necessary;

(7) Adopting and promulgating such reasonable rules and regulations as are necessary to effectively carry out the intent of the act;

(8) Accepting funds or fees from any source, including federal, state, public, or private, to be used in carrying out the act;

(9) Expending funds for purposes of carrying out the act; and

(10) Conducting any other programs for the development, utilization, and marketing of agricultural products grown or produced in the state.

Source: Laws 1979, LB 538, § 8; Laws 1988, LB 807, § 4.

2-3809 Act, how construed.

The Nebraska Agricultural Products Marketing Act shall not be construed:

(1) As altering the provisions of any other act or acts dealing with the marketing of agricultural products or as detracting from the authorities provided for in any such acts;

(2) As empowering the department to require cooperative marketing efforts of persons or groups within any segment of the agriculture industry, but shall be construed only to authorize such cooperative marketing efforts; or

(3) As empowering the department to purchase or otherwise obtain agricultural products or commodities for the purpose of resale.

Source: Laws 1979, LB 538, § 9; Laws 1988, LB 807, § 5.

2-3810 Department; contracts; limitations.

The department in entering into contracts authorized under the Nebraska Agricultural Products Marketing Act shall not be authorized to set up marketing units or agencies of its own. Only contracts necessary to the furtherance of the intent and purposes of the act shall be entered into.

Source: Laws 1979, LB 538, § 10; Laws 1988, LB 807, § 6.

2-3811 Repealed. Laws 1981, LB 545, § 52.

2-3812 Nebraska Agricultural Products Marketing Cash Fund; created; use; investment.

There is hereby created the Nebraska Agricultural Products Marketing Cash Fund. The fund shall consist of money appropriated by the Legislature which is received as gifts or grants or collected as fees or charges from any source, including federal, state, public, and private. The fund shall be utilized for the purpose of carrying out the Nebraska Agricultural Products Marketing Act. Any money in such 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 1982, LB 942, § 1; Laws 1988, LB 807, § 7; Laws 1995, LB 7, § 21.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

(b) GRAIN STANDARDS

2-3813 Terms, defined.

For purposes of sections 2-3813 and 2-3814, unless the context otherwise requires:

(1) Grain shall mean wheat, corn, soybeans, and sorghum grains;

(2) Quality factors shall mean:

(a) Heat-damaged kernels which include kernels that have been discolored or damaged by high heat from respiring grain;

(b) Total-damaged kernels which represent the percentage, by weight, of kernels damaged by weather, disease, insects, molds, and moisture and includes heat damage;

(c) Foreign material which is all matter other than the grain being examined which remains in a sample after removal of dockage and shrunken and broken kernels;

(d) Shrunken and broken kernels which are kernels, kernel pieces, and other matter that pass through a sixty-four thousandths by three-eighths inch oblong-hole sieve;

(e) Total defects which are the sum of heat-damaged kernels, shrunken and broken kernels, and foreign material;

(f) Wheat of other classes which is any class that is mixed with the predominant class;

(g) Dockage, though not a grading factor, which appears on the certificate if it exceeds forty-nine hundredths of one percent. Dockage shall be rounded down to the nearest one-half percent. Dockage shall include chaff, dust, and items removed from a sample by an initial screening with a dockage tester; and

(h) Grade which is determined by analyzing the physical and biological factors present in the sample. Limits for the grading factors shall be established for each numerical grade. Numerical grades shall range from number 1, highest, to sample grade, lowest. Factors that exceed the established limits shall lower the numerical grade. Higher test weights shall be acceptable; and

(3) Department shall mean the Department of Agriculture.

Source: Laws 1986, LB 1007, § 1.

2-3814 Department; grain inspections; special certificate; fee; powers; Nebraska Origin and Premium Quality Grain Cash Fund; created; use; investment.

(1) In order to assist Nebraska grain producers and the state's grain industry in competing for a larger share of the international grain trade against the more stringent grain standards of other exporting nations, the department

shall, upon request, provide inspection of grain shipments assembled by farmers and grain dealers who are arranging or attempting to arrange grain sales with foreign buyers. As a means of expediting such sales and to insure the quality of grain shipments for export originating in Nebraska, the department shall provide grain inspections. Such inspections shall include a certificate stating the quality factors present in the grain shipments destined for export points. A special certificate shall be designed by the department for shipments that substantially exceed grade and quality factors required under current United States grain standards. Such special certificate shall be designated as Nebraska Origin and Premium Quality Grain and shall be issued only on grain shipments containing levels of grade and quality factors totaling not more than fifty percent of the maximum allowable limits of total defects and other quality factors as required by current United States Grade Number One.

(2) The department shall assess and collect a fee for the inspections made. The fee shall be in an amount equal to the costs of the inspections.

(3) The department may:

(a) Contract for services which are necessary to carry out its duties under sections 2-3813 and 2-3814;

(b) Accept funds or fees from any source, including, but not limited to, federal, state, public, and private, to be used in carrying out such sections;

(c) Expend funds for purposes of carrying out such sections; and

(d) Enter upon public or private land for the purpose of inspecting such grain.

(4) The department may adopt and promulgate rules and regulations to aid in implementing such sections. The rules and regulations may include, but shall not be limited to, provisions governing: (a) Assignment of responsibilities; (b) the charges and fees to be assessed; (c) setting the grades; and (d) methods for determining quality factors.

(5) There is hereby created the Nebraska Origin and Premium Quality Grain Cash Fund. The fund shall consist of money appropriated by the Legislature which is received as gifts or grants or collected as fees from any source, including, but not limited to, federal, state, public, and private. The fund shall be utilized for the purpose of carrying out sections 2-3813 and 2-3814. Any money in such 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 1986, LB 1007, § 2; Laws 1995, LB 7, § 22.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

(c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

2-3815 Agriculture promotion and development program; established; purposes; employment of specialists; advisory committee.

The Department of Agriculture shall establish an agriculture promotion and development program. The department shall employ a program director and one specialist in research techniques and market development. Both individuals shall report directly to the Director of Agriculture.

The University of Nebraska Institute of Agriculture and Natural Resources shall employ a poultry pathologist.

The program shall concentrate on the identification and development of opportunities to enhance profitability in agriculture and to stimulate agriculture-related economic development. Program activities may include, but not be limited to, (1) promotion and market development, (2) value-added processing of alternative and traditional commodities, (3) agricultural diversification, including poultry development and aquaculture, (4) agricultural cooperatives, and (5) alternative crops.

In order to carry out the purposes of this section, the program director may, if he or she deems necessary, convene an advisory committee to assist the program director in developing and implementing program activities. Representatives from the Nebraska Food Processing Center, the Cooperative Extension Service of the University of Nebraska, the commodity boards, the Department of Economic Development, the United States Department of Agriculture grant programs, and the private sector may serve on such committee at the request of the program director. If an advisory committee is convened, committee members shall not receive any reimbursement for expenses.

The Department of Agriculture shall serve as the facilitator, coordinator, and catalyst for developments through and with the Nebraska Food Processing Center, the Cooperative Extension Service of the University of Nebraska, the commodity boards, the Department of Economic Development, other state agencies, the United States Department of Agriculture grant programs, and the private sector. It is the intent of the Legislature that the department foster close working relationships between production agriculture and existing programs for the purposes of agricultural development and promotion. The department may enter into such contracts as may be necessary to carry out the purposes of this section.

For purposes of this section, unless the context otherwise requires, private sector shall include, but not be limited to, representatives of food industry associations, lenders, or venture capital groups.

Source: Laws 1987, LB 561, § 1; R.S.1943, (1987), § 2-2516.

2-3816 Repealed. Laws 1993, LB 364, § 26.

2-3817 Repealed. Laws 1993, LB 364, § 26.

2-3818 Repealed. Laws 1993, LB 364, § 26.

2-3819 Repealed. Laws 1993, LB 364, § 26.

2-3820 Repealed. Laws 1993, LB 364, § 26.

2-3821 Repealed. Laws 1993, LB 364, § 26.

2-3822 Repealed. Laws 1993, LB 364, § 26.

2-3823 Repealed. Laws 1993, LB 364, § 26.

ARTICLE 39

MILK

(a) NEBRASKA PASTEURIZED MILK LAW

Section
2-3901. Transferred to section 2-3965.
2-3902. Transferred to section 2-3967.
2-3902.01. Repealed. Laws 1997, LB 201, § 7.
2-3903. Transferred to section 2-3969.
2-3904. Transferred to section 2-3970.
2-3905. Repealed. Laws 2007, LB 111, § 31.
2-3906. Transferred to section 2-3971.
2-3907. Transferred to section 2-3972.
2-3908. Transferred to section 2-3973.
2-3909. Transferred to section 2-3974.
2-3910. Transferred to section 2-3975.
2-3911. Transferred to section 2-3976.
2-3912. Repealed. Laws 1997, LB 201, § 7.

(b) NEBRASKA MANUFACTURING MILK ACT

2-3913. Transferred to section 2-3978.
2-3914. Transferred to section 2-3966.
2-3915. Transferred to section 2-3979.
2-3916. Transferred to section 2-3980.
2-3917. Transferred to section 2-3981.
2-3917.01. Transferred to section 2-3982.
2-3917.02. Repealed. Laws 2007, LB 111, § 31.
2-3918. Repealed. Laws 2007, LB 111, § 31.
2-3919. Transferred to section 2-3983.
2-3920. Transferred to section 2-3984.
2-3921. Transferred to section 2-3985.
2-3922. Transferred to section 2-3986.
2-3923. Transferred to section 2-3987.
2-3924. Transferred to section 2-3988.
2-3925. Transferred to section 2-3989.
2-3926. Repealed. Laws 2007, LB 111, § 31.
2-3927. Repealed. Laws 2007, LB 111, § 31.
2-3928. Repealed. Laws 2007, LB 111, § 31.
2-3929. Repealed. Laws 2007, LB 111, § 31.
2-3930. Repealed. Laws 2007, LB 111, § 31.
2-3931. Repealed. Laws 2007, LB 111, § 31.
2-3932. Repealed. Laws 2007, LB 111, § 31.
2-3933. Repealed. Laws 1986, LB 900, § 38.
2-3934. Repealed. Laws 2007, LB 111, § 31.
2-3935. Transferred to section 2-3990.
2-3936. Repealed. Laws 2007, LB 111, § 31.
2-3937. Transferred to section 2-3991.
2-3937.01. Repealed. Laws 2007, LB 111, § 31.
2-3938. Repealed. Laws 2007, LB 111, § 31.
2-3939. Repealed. Laws 2007, LB 111, § 31.
2-3940. Repealed. Laws 2007, LB 111, § 31.
2-3941. Repealed. Laws 2007, LB 111, § 31.
2-3942. Transferred to section 2-3992.
2-3943. Repealed. Laws 2007, LB 111, § 31.
2-3944. Repealed. Laws 2007, LB 111, § 31.
2-3945. Repealed. Laws 2007, LB 111, § 31.
2-3946. Repealed. Laws 2007, LB 111, § 31.
2-3947. Transferred to section 2-3917.02.

Section

(c) DAIRY INDUSTRY DEVELOPMENT ACT

(d) NEBRASKA MILK ACT

(a) NEBRASKA PASTEURIZED MILK LAW

2-3901 Transferred to section 2-3965.

2-3902 Transferred to section 2-3967.

2-3902.01 Repealed. Laws 1997, LB 201, § 7.

2-3903 Transferred to section 2-3969.

2-3904 Transferred to section 2-3970.

2-3905 Repealed. Laws 2007, LB 111, § 31.

2-3906 Transferred to section 2-3971.

2-3907 Transferred to section 2-3972.

2-3908 Transferred to section 2-3973.

2-3909 Transferred to section 2-3974.

2-3910 Transferred to section 2-3975.

2-3911 Transferred to section 2-3976.

2-3912 Repealed. Laws 1997, LB 201, § 7.

(b) NEBRASKA MANUFACTURING MILK ACT

2-3913 Transferred to section 2-3978.

2-3914 Transferred to section 2-3966.

2-3915 Transferred to section 2-3979.

2-3916 Transferred to section 2-3980.

2-3917 Transferred to section 2-3981.

2-3917.01 Transferred to section 2-3982.

2-3917.02 Repealed. Laws 2007, LB 111, § 31.

2-3918 Repealed. Laws 2007, LB 111, § 31.

2-3919 Transferred to section 2-3983.

2-3920 Transferred to section 2-3984.

2-3921 Transferred to section 2-3985.

2-3922 Transferred to section 2-3986.

2-3923 Transferred to section 2-3987.

2-3924 Transferred to section 2-3988.

2-3925 Transferred to section 2-3989.

2-3926 Repealed. Laws 2007, LB 111, § 31.

2-3927 Repealed. Laws 2007, LB 111, § 31.

2-3928 Repealed. Laws 2007, LB 111, § 31.

2-3929 Repealed. Laws 2007, LB 111, § 31.

2-3930 Repealed. Laws 2007, LB 111, § 31.

2-3931 Repealed. Laws 2007, LB 111, § 31.

2-3932 Repealed. Laws 2007, LB 111, § 31.

2-3933 Repealed. Laws 1986, LB 900, § 38.

2-3934 Repealed. Laws 2007, LB 111, § 31.

2-3935 Transferred to section 2-3990.

2-3936 Repealed. Laws 2007, LB 111, § 31.

2-3937 Transferred to section 2-3991.

2-3937.01 Repealed. Laws 2007, LB 111, § 31.

2-3938 Repealed. Laws 2007, LB 111, § 31.

2-3939 Repealed. Laws 2007, LB 111, § 31.

2-3940 Repealed. Laws 2007, LB 111, § 31.

2-3941 Repealed. Laws 2007, LB 111, § 31.

2-3942 Transferred to section 2-3992.

2-3943 Repealed. Laws 2007, LB 111, § 31.

2-3944 Repealed. Laws 2007, LB 111, § 31.

2-3945 Repealed. Laws 2007, LB 111, § 31.

2-3946 Repealed. Laws 2007, LB 111, § 31.

2-3947 Transferred to section 2-3917.02.

(c) DAIRY INDUSTRY DEVELOPMENT ACT

2-3948 Act, how cited.

Sections 2-3948 to 2-3963 shall be known and may be cited as the Dairy Industry Development Act.

Source: Laws 1992, LB 275, § 1; Laws 2001, LB 194, § 1; Laws 2004, LB 836, § 1.

2-3949 Terms, defined.

For purposes of the Dairy Industry Development Act:

(1) Board shall mean the Nebraska Dairy Industry Development Board;

(2) Commercial use shall mean sale for retail consumption or sale for resale, for manufacture for resale, or for processing for resale;

(3) First purchaser of milk shall mean a person who buys milk from a producer and resells to another person the milk or products manufactured or processed from the milk;

(4) Milk shall mean any class of cow's milk produced in the State of Nebraska;

(5) Milk production unit shall mean any producer licensed by the Department of Agriculture;

(6) Producer shall mean any person engaged in the production of milk for commercial use;

(7) Producer-processor shall mean a producer who processes and markets the producer's own milk; and

(8) Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153, as amended. Such program shall: (a) Conduct activities as defined in 7 C.F.R. 1150.114, 1150.115, and 1150.116 intended to increase consumption of milk and dairy products generally; (b) except for programs operated under the laws of the United States or any state, have been active and ongoing before November 29, 1983; (c) be financed primarily by producers, either individually or through cooperative associations; (d) not use any private brand or trade name in advertising and promotion of dairy products unless the National Dairy Promotion and Research Board established pursuant to 7 C.F.R. 1150.131 and the United States Secretary of Agriculture concur that such requirement should not apply; (e) certify to the United States Secretary of Agriculture that any request from a producer for a refund under the program will be honored by forwarding that portion of such refund equal to the amount of credit that otherwise would be applicable to the program pursuant to 7 C.F.R. 1150.152(c) to either the National Dairy Promotion and Research Board or a qualified program designated by the producer; and (f) not use program funds for the purpose of influencing governmental policy or action.

Source: Laws 1992, LB 275, § 2.

2-3950 Legislative findings.

The Legislature declares it to be in the public interest that producers in Nebraska be permitted and encouraged to maintain and expand domestic sales of milk and dairy products, develop new products and new markets, improve methods and practices relating to marketing or processing of milk and dairy products, and inform and educate consumers of sound nutritional principles including the role of milk in a balanced diet. It is the purpose of the Dairy Industry Development Act to provide the authorization and to prescribe the necessary procedures by which the dairy industry in Nebraska may finance programs to achieve the purposes expressed in this section. The Nebraska Dairy Industry Development Board shall be the agency of the State of Nebraska for such purpose.

Source: Laws 1992, LB 275, § 3.

2-3951 Nebraska Dairy Industry Development Board; created; members; qualifications.

The Nebraska Dairy Industry Development Board is hereby created. Members of the board shall (1) be residents of Nebraska, (2) be at least twenty-one years of age, (3) have been actually engaged in the production of milk in this state for at least five years, and (4) derive a substantial portion of their income from the production of milk in Nebraska.

Source: Laws 1992, LB 275, § 4; Laws 2004, LB 836, § 2.

2-3951.01 Board members; appointment; terms; officers; expenses.

(1) Members of the board shall, as nearly as possible, be representative of the nominees submitted by all first purchasers of milk and combinations of first purchasers and individual producer-processors in the state as provided in section 2-3951.02 and, to the extent practicable, result in equitable representation of the various interests of milk producers both in terms of the manner in which milk is marketed and geographic distribution of milk production units in the state. By the appointment of additional members or by reducing members by not filling a vacancy caused by a member's term expiring, the Governor shall maintain the membership of the board to approximate one member for each forty milk production units or major portion thereof.

(2) The terms of the members of the board shall be three years, except that the terms of the initial and additional members of the board shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. Once duly appointed and qualified, no member's term shall be shortened or terminated by any subsequent certification by the Department of Agriculture of milk production units from which a first purchaser of milk purchases milk.

(3) The Director of Agriculture or his or her designee and a designee of the Nebraska Dairy Industry Association or its successor may participate in the activities of the board as ex officio members.

(4) Members of the board shall elect from among the members a chairperson, a vice-chairperson, and such other officers as they deem necessary and appropriate.

(5) Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2004, LB 836, § 3.

2-3951.02 Board members; nomination and appointment.

New members of the board shall be nominated and appointed as follows:

(1) Each first purchaser of milk which purchases milk from at least twenty-one milk producers may submit to the Governor the names of up to two nominees for each forty milk production units, or major portion thereof, from which the first purchaser purchases milk. The Governor shall appoint one member for each forty production units, or major portion thereof, from nominees submitted pursuant to this subdivision; and

(2) All other first purchasers of milk and individual producer-processors who are not included among milk production units claimed by a first purchaser of milk entitled to submit nominees under subdivision (1) of this section shall be combined as a group for the purpose of submitting nominees, and each first purchaser and individual producer-processor of the group may nominate up to

two nominees. The Governor shall appoint two nominees from nominees submitted pursuant to this subdivision.

Source: Laws 2004, LB 836, § 4.

2-3951.03 Board members; vacancies.

(1) A vacancy on the board exists in the event of the death, incapacity, removal, or resignation of any member; when a member ceases to be a resident of Nebraska; when a member ceases to be a producer in Nebraska; or when the member's term expires. Members whose terms have expired shall continue to serve until their successors are appointed and qualified, except that if such a vacancy will not be filled, as determined by the Governor under section 2-3951.01, the member shall not serve after the expiration of his or her term.

(2) For purposes of filling vacancies on the board, the Governor shall appoint one member from up to two nominees submitted by the first purchasers of milk or group represented by the vacating member. In the event of a vacancy, the board shall certify to the first purchasers of milk or group represented by the vacating member that such a vacancy exists and shall request nominations to fill the vacancy for the remainder of the unexpired term or for a new term, as the case may be.

Source: Laws 2004, LB 836, § 5.

2-3951.04 Board members; nominations; notification; procedure.

(1) When nominations for board members are required, written notification shall be given to each producer represented or to be represented by such member. The first purchaser or purchasers of milk shall notify each producer from whom the first purchaser buys milk that each producer may submit written nominations. If the group represented is a combination of first purchasers of milk and individual producer-processors, the individual producer-processors shall receive notification from the Department of Agriculture.

(2) Nominations shall be in writing and shall contain an acknowledgment and consent by the producer being nominated. The nomination shall be returned by the producer to the first purchaser of milk or to the department from whom the producer received notification within fifteen days after the receipt of the notification. For nominations to replace a member whose term is to expire or for a new member, the producers shall receive notification between August 1 and August 15 preceding the expiration of the term of the member or the beginning of the term of a new member. For all other vacancies, the producers shall receive notification within thirty days after the member vacates his or her position on the board.

(3) The first purchasers of milk and the department shall submit nominations to the Governor by September 30, in the case of term expiration or new member, or forty-five days after the member vacates his or her position for all other vacancies. The Governor shall make the appointments within thirty days after receipt of the nominations.

(4) All nominees shall meet the qualifications provided in section 2-3951.

(5) The Governor may choose the members of the board from the nominees submitted or may reject all nominees. If the Governor rejects all nominees,

names of nominees shall again be provided to the Governor as provided in this section until the vacancies are filled.

Source: Laws 2004, LB 836, § 6.

2-3952 Repealed. Laws 2004, LB 836, § 8.

2-3952.01 Repealed. Laws 2004, LB 836, § 8.

2-3953 Repealed. Laws 2004, LB 836, § 8.

2-3954 Repealed. Laws 2004, LB 836, § 8.

2-3955 Board; meetings; minutes.

(1) The board shall meet at least once every six months at a time and place fixed by the board. Special meetings may be called by the chairperson and shall be called by the chairperson upon request of at least twenty-five percent of the members of the board. Written notice of the time and place of all meetings shall be mailed in advance to each member of the board. A majority of members of the board shall constitute a quorum for the transaction of business. The affirmative vote of a majority of all members of the board shall be necessary for the adoption of rules and regulations.

(2) The board shall at each regular meeting review all expenditures made since its last regular meeting.

(3) The board shall keep minutes of its meetings and other books and records which shall clearly reflect all of the acts and transactions of the board. Such records shall be open to examination during normal business hours.

Source: Laws 1992, LB 275, § 8.

2-3956 Board; administration; limitation on expenses.

The board may contract for the necessary office space, furniture, stationery, printing, and personnel services useful or necessary for the administration of the Dairy Industry Development Act. The total administrative costs and expenses of the board shall not exceed five percent of the annual assessments collected in accordance with section 2-3958.

Source: Laws 1992, LB 275, § 9.

2-3957 Board; powers and duties.

The board shall:

(1) Arrange or contract for administrative and audit services which are necessary for the proper operation of the Dairy Industry Development Act;

(2) Procure and evaluate data and information necessary for the appropriate distribution of funds collected;

(3) Direct the distribution of funds collected;

(4) Prepare and approve a yearly budget;

(5) Adopt and promulgate rules and regulations to carry out the act;

(6) Establish a means by which all producers are informed annually on board members, policy, expenditures, and programs for the preceding year;

(7) Authorize the expenditure of funds to conduct activities provided for by the act;

(8) Bond such persons as necessary to ensure adequate protection of funds;

(9) Make refunds to other qualified programs in other states and disburse as directed by producers pursuant to subdivision (8)(e) of section 2-3949;

(10) Require that all books and records which clearly reflect all the transactions of its funded qualified programs be made available for audit by the board;

(11) Initiate appropriate enforcement of the act and the rules, regulations, and orders promulgated under the act;

(12) Accept remittances or credits and apply for and accept advances, grants, contributions, and any other forms of assistance from the federal government, the state, or any public or private source for administering the act and execute contracts or agreements in connection therewith;

(13) When necessary, appoint committees and advisory committees, the membership of which reflects the different funding regions of the United States and of the State of Nebraska in which milk is produced and delegate to such committees the authority reasonably necessary to administer the act under the direction of the board and within the policies determined by the board; and

(14) Exercise all incidental powers useful or necessary to carry out the act.

Source: Laws 1992, LB 275, § 10.

2-3958 Mandatory assessment; board; duties.

(1) There shall be paid to the board a mandatory assessment of ten cents per hundredweight on all milk produced in the State of Nebraska for commercial use.

(2) The board may audit financial and other records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

(3) For purposes of the act, when milk is sold to an out-of-state purchaser, the sale shall be deemed to have occurred in Nebraska if the milk was otherwise produced within Nebraska immediately prior to such sale and such sale is the first purchase of the milk for commercial use.

(4) For purposes of the act, when milk is produced out-of-state but sold to a first purchaser of milk in Nebraska, the assessment provided for in this section may be assessed and retained in Nebraska only if the producer consents.

Source: Laws 1992, LB 275, § 11.

2-3959 Assessment; payment; procedures.

The assessment prescribed in section 2-3958 shall be paid by producers at the time of first sale or delivery of milk for commercial use and shall be collected by the first purchaser of milk except as provided in this section. The first purchaser of milk shall remit the assessment to the board when the first purchaser of milk issues the milk payroll to producers. When milk is sold by producers to nonresident first purchasers of milk, the nonresident first purchaser of milk shall remit the assessments to the board. Producer-processors shall remit the assessments to the board. All assessments shall be remitted to the board not later than the last day of the month following the month in which the milk was commercially used, and a report shall be filed by the person responsible for remitting the assessment at the time that the assessment is remitted. The

board shall make proper refunds to producers pursuant to subdivision (8)(e) of section 2-3949 at least quarterly. The board shall promulgate rules and regulations concerning the payment, remittance, refunding, and reporting of assessments. All money collected by the board shall be remitted to the State Treasurer for credit to the Nebraska Dairy Industry Development Fund.

Source: Laws 1992, LB 275, § 12.

2-3960 Nebraska Dairy Industry Development Fund; created; use; investment.

The Nebraska Dairy Industry Development Fund is hereby created. Money in the fund shall be used for the administration of the Dairy Industry Development Act, including advertising and promotion, market research, nutrition and product research and development, and nutrition and educational programs. 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 1992, LB 275, § 13; Laws 1994, LB 1066, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-3961 Use of funds; limitations.

The board shall not set up programs or agencies of its own but shall fund active, ongoing, qualified programs as stated in section 114 of the Dairy Production Stabilization Act of 1983, Public Law 98-180, as amended, and the regulations promulgated pursuant thereto. Funds may be used by qualified programs to jointly sponsor projects with any private or public organization to meet the objectives of the Dairy Industry Development Act.

Source: Laws 1992, LB 275, § 14.

2-3962 Board; report; contents.

The board shall prepare a report on or before October 1 of each year setting forth the income received from the assessments collected in accordance with section 2-3958 for the preceding fiscal year, and the report shall include:

(1) The expenditure of funds by the board during the year for the administration of the Dairy Industry Development Act;

(2) A brief description of all contracts requiring the expenditure of funds by the board;

(3) The action taken by the board on all such contracts;

(4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

(5) The name and address of each member of the board; and

(6) A brief description of the rules, regulations, and orders adopted and promulgated by the board.

Such report shall be available to the public upon request.

Source: Laws 1992, LB 275, § 15.

2-3963 Violations; penalties; unpaid assessment; late payment fee.

(1) Any person violating any of the provisions of the Dairy Industry Development Act shall be guilty of a Class III misdemeanor.

(2) Any unpaid assessment shall be increased one and one-half percent each month beginning with the day following the date such assessment was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid.

(3) For purposes of this section, any assessment that was determined at a date later than prescribed by section 2-3959 because of the failure to submit a report to the board when due shall be considered to have been payable on the date it would have been due if the report had been timely filed. The timeliness of a payment to the board shall be based on the applicable postmarked date or the date actually received by the board, whichever is earlier. Any assessments and late payment fees may be recovered by action commenced by the board.

(4) The remedies provided in this section shall be in addition to and not exclusive of other remedies that may be available by law or in equity.

Source: Laws 1992, LB 275, § 16.

2-3964 Repealed. Laws 2004, LB 836, § 8.

(d) NEBRASKA MILK ACT

2-3965 Act, how cited; provisions adopted by reference; copies.

(1) Sections 2-3965 to 2-3992 and the publications adopted by reference in subsections (2) and (3) of this section shall be known and may be cited as the Nebraska Milk Act.

(2) The Legislature adopts by reference the following official documents of the National Conference on Interstate Milk Shipments as published by the United States Department of Health and Human Services, United States Public Health Service/Food and Drug Administration:

(a) Grade A Pasteurized Milk Ordinance, 2005 Revision, as delineated in subsection (3) of this section;

(b) Methods of Making Sanitation Ratings of Milk Supplies, 2005 Revision;

(c) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2005 Revision; and

(d) Evaluation of Milk Laboratories, 2005 Revision.

(3) All provisions of the Grade A Pasteurized Milk Ordinance, 2005 Revision, including footnotes relating to requirements for cottage cheese, and the appendixes with which the ordinance requires mandatory compliance are adopted with the following exceptions:

(a) Section 9 of the ordinance is replaced by section 2-3969;

(b) Section 15 of the ordinance is replaced by section 2-3970;

(c) Section 16 of the ordinance is replaced by section 2-3974;

(d) Section 17 of the ordinance is not adopted; and

(e) Section 3 of the ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) The department may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Milk Act; and

(ii) Decisions of the department may be appealed and such appeals shall be in accordance with the Administrative Procedure Act.

(4) Copies of the Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and Department of Agriculture.

Source: Laws 1980, LB 632, § 1; Laws 1986, LB 900, § 1; Laws 1990, LB 856, § 2; Laws 1992, LB 366, § 2; Laws 1997, LB 201, § 1; Laws 2001, LB 198, § 1; R.S.Supp.,2006, § 2-3901; Laws 2007, LB111, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

2-3966 Terms, defined.

For purposes of the Nebraska Milk Act, unless the context otherwise requires:

(1) 3-A sanitary standards means the standards for dairy equipment formulated by the 3-A sanitary standards committees representing the International Association of Milk, Food and Environmental Sanitarians, the United States Department of Health and Human Services, and the Dairy Industry Committee and published by the International Association of Milk, Food and Environmental Sanitarians in effect on July 1, 2001;

(2) Acceptable milk means milk that qualifies under sections 2-3979 to 2-3982 as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk, ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk by-product;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(6) Department means the Department of Agriculture;

(7) Director means the Director of Agriculture or his or her duly authorized agent or designee;

(8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(9) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(10) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

(11) Reject milk means milk that does not qualify under sections 2-3979 to 2-3982.

Source: Laws 1969, c. 5, § 3, p. 69; R.S.1943, (1976), § 81-263.89; Laws 1980, LB 632, § 14; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 12; Laws 1988, LB 871, § 19; Laws 1990, LB 856, § 6; Laws 1993, LB 121, § 77; Laws 1993, LB 268, § 1; Laws 2001, LB 198, § 7; R.S.Supp.,2006, § 2-3914; Laws 2007, LB111, § 2.

2-3967 Activities regulated.

The Nebraska Milk Act shall be used for the regulation of: (1) The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products; (2) the inspection of dairy herds, dairy farms, milk plants, plants fabricating single-service articles, transfer stations, receiving stations, milk haulers, and milk distributors; and (3) the issuance, suspension, and revocation of permits.

Source: Laws 1980, LB 632, § 2; Laws 1986, LB 900, § 2; Laws 1990, LB 856, § 3; Laws 1997, LB 201, § 2; Laws 2001, LB 198, § 2; R.S.Supp.,2006, § 2-3902; Laws 2007, LB111, § 3.

2-3968 Grade A milk producer permit; manufacturing grade milk producer permit; label restrictions.

(1) A milk producer shall receive a Grade A milk producer permit if the milk produced is in conformance with all requirements of the Nebraska Milk Act for Grade A milk or milk products.

(2) A milk producer shall receive a manufacturing grade milk producer permit if the milk produced is in conformance with all requirements of the Nebraska Milk Act for manufacturing grade milk or dairy products.

(3) Dairy products made from milk for manufacturing purposes shall not be labeled with the Grade A designation.

Source: Laws 2007, LB111, § 4.

2-3969 Sale of milk and milk products; conditions.

(1) Except as provided in subsections (2) and (3) of this section, only milk and milk products from approved sources with an appropriate permit issued by the department or a similar regulatory authority of another state shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments.

(2) In an emergency, the sale of pasteurized milk and milk products which have not been graded or the grade of which is unknown may be authorized by the regulatory agency, in which case such milk and milk products shall be labeled as ungraded.

(3) Milk and cream produced by farmers exclusively for sale at the farm directly to customers for consumption and not for resale shall be exempt from the Nebraska Milk Act.

(4) If the permit of a Grade A milk producer is suspended for sanitary or milk quality violations, the producer may market milk, for manufacturing purposes only, for an interim period not to exceed sixty days with the approval of the department, if the milk meets the criteria of manufacturing grade milk.

Source: Laws 1980, LB 632, § 3; Laws 1986, LB 900, § 3; Laws 1997, LB 201, § 3; R.S.1943, (1997), § 2-3903; Laws 2007, LB111, § 5.

2-3970 Act; administration and enforcement.

The Nebraska Milk Act shall be administered and enforced by the department.

Source: Laws 1980, LB 632, § 4; Laws 1986, LB 900, § 4; R.S.1943, (1997), § 2-3904; Laws 2007, LB111, § 6.

2-3971 Permit fees; inspection fees; other fees; rate.

(1) Until July 31, 2008, as a condition precedent to the issuance of a permit issued pursuant to the Nebraska Milk Act, on or before August 1 of each year, the following described annual permit fees shall be paid to the department:

Milk Plant $100.00

Receiving Station 100.00

Plant Fabricating Single-Service Articles .. 100.00

Milk Distributor 75.00

Transfer Station..... 50.00

Milk Tank Truck Cleaning Facility.....50.00

Milk Transportation Company 25.00

Milk Hauler 25.00

Milk Producer..... No Fee

Milk Tank Truck .....No Fee

(2) If the applicant is an individual, the application for a permit shall include the applicant's social security number.

(3) Until September 30, 2007, all raw milk produced on farms or pasteurized in plants holding permits issued under the act shall be subject to the payment of inspection fees as prescribed in subsections (4) through (7) of this section. All fees shall be paid on or before the fifteenth of the month for milk produced or processed during the preceding month. Inspection fees for milk pasteurized outside of Nebraska shall be paid by the person shipping such raw milk outside the state. Inspection fees for milk pasteurized within Nebraska shall be paid by the plant pasteurizing such raw milk.

(4) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the act and pasteurized at a Grade A plant holding a permit issued under such law shall be three cents per hundredweight of raw milk pasteurized.

(5) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the act and pasteurized at a manufacturing milk plant shall be two and one-half cents per hundredweight of raw milk pasteurized in Nebraska, or per hundredweight of raw milk shipped from Nebraska, as appropriate.

(6) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the act and pasteurized at a plant located outside of Nebraska shall be two and one-half cents per hundredweight of raw milk shipped from Nebraska.

(7) The inspection fee on raw milk produced on a Grade A farm not holding a permit issued under the act and pasteurized at a Grade A plant holding a permit issued under such law shall be three-fourths of one cent per hundredweight of raw milk pasteurized.

(8)(a) Beginning August 1, 2008, as a condition precedent to the issuance of a permit pursuant to the Nebraska Milk Act, the annual permit fees shall be paid to the department on or before August 1 of each year as follows:

(i) Milk Plant processing 100,000 or less pounds per month...$100.00;

(ii) Milk Plant processing 100,001 to 2,000,000 pounds per month...$500.00;

(iii) Milk Plant processing more than 2,000,000 pounds per month...$1,000.00;

(iv) Receiving Station.....$200.00;

(v) Plant Fabricating Single-Service Articles..$300.00;

(vi) Milk Distributor.....$150.00;

(vii) Transfer Station.....$100.00;

(viii) Milk Tank Truck Cleaning Facility.....$100.00;

(ix) Bulk Milk Hauler/Sampler.....$25.00;

(x) Field Representative.....$25.00; and

(xi) Milk Producer.....No Fee.

(b) Beginning August 1, 2008, and on or before each August 1 thereafter a Milk Transportation Company shall pay twenty-five dollars for each truck in service on July 1 of the current year, but in no case shall the fee be less than one hundred dollars.

(9)(a) Beginning October 1, 2007, all milk or components of milk produced or processed in Nebraska and milk or components of milk shipped in for processing shall be subject to the payment of inspection fees as provided in this subsection.

(b) There shall be three categories of inspection fees as follows:

(i) The inspection fee for raw milk purchased directly off the farm by first purchasers shall have a maximum inspection fee of two and five-tenths cents per hundredweight for raw milk and shall be paid by first purchasers;

(ii) The inspection fee for milk processed by a milk plant shall be seventy-five percent of the fee paid by first purchasers and shall be paid by the milk plant; and

(iii) The inspection fee for components of milk processed shall be fifty percent of the fee paid by first purchasers and shall be paid by the milk plant.

(c) All fees shall be paid on or before the fifteenth of the month for milk or components of milk produced or processed during the preceding month.

(d) The director may raise or lower the inspection fees each year, but the fees shall not exceed the maximum fees set out in subdivision (b) of this subsection. The director shall determine the fees based on the estimated annual revenue and fiscal year-end fund balance determined as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of the program cash fund appropriations allocated for the Nebraska Milk Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of the program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between categories to maintain the percentages set forth in subdivision (b) of this subsection.

(10) If any person required to have a permit pursuant to the act has been operating prior to applying for a permit, an additional fee of one hundred dollars shall be paid upon application.

Source: Laws 1980, LB 632, § 6; Laws 1986, LB 900, § 6; Laws 1992, LB 366, § 4; Laws 1997, LB 752, § 58; Laws 2001, LB 198, § 3; R.S.Supp.,2006, § 2-3906; Laws 2007, LB111, § 7.

2-3972 Adulteration or misbranding; stop-sale, stop-use, or removal order; issuance; hearing.

Whenever a regulatory agency finds milk or milk products being manufactured, processed, transported, distributed, offered for sale, or sold, in violation of the adulteration or misbranding provisions of the Nebraska Milk Act, it shall have the authority to issue and enforce a written or printed stop-sale, stop-use, or removal order to the person in charge of such milk or milk product only if the issuance of such an order is necessary for the protection of the public health, safety, or welfare. Such an order shall specifically describe the nature of the violation found and the precise action necessary to bring the milk or milk products into compliance with the applicable provisions of the act. Such an order shall clearly advise the person in charge of the milk or milk products that he or she may request an immediate hearing before the director or his or her designee on the matter. The issuance of orders under this section shall be limited to instances in which no alternative course of action would sufficiently protect the public health, safety, or welfare.

Source: Laws 1980, LB 632, § 7; Laws 2001, LB 198, § 4; R.S.Supp.,2006, § 2-3907; Laws 2007, LB111, § 8.

2-3973 Department; rules and regulations.

The department may adopt and promulgate reasonable rules and regulations to carry out the Nebraska Milk Act.

Source: Laws 1980, LB 632, § 8; Laws 1986, LB 900, § 7; Laws 2001, LB 198, § 5; R.S.Supp.,2006, § 2-3908; Laws 2007, LB111, § 9.

2-3974 Violation; restraining order or injunction; prohibited acts; penalty; county attorney; duties.

(1) The department may apply for a restraining order or a temporary or permanent injunction against any person violating or threatening to violate the Nebraska Milk Act or the rules and regulations adopted and promulgated pursuant to the act in order to insure compliance with the provisions thereof. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief

may be granted notwithstanding the existence of other remedies at law and shall be granted without bond.

(2) Any person violating the act or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director in the performance of his or her duties in connection with the enforcement of the act or the rules and regulations adopted and promulgated by the department is guilty of a Class V misdemeanor.

(3) It shall be the duty of the county attorney of the county in which violations of the act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay.

Source: Laws 1980, LB 632, § 9; Laws 1986, LB 900, § 8; R.S.1943, (1997), § 2-3909; Laws 2007, LB111, § 10.

2-3975 Director; surveys of milksheds; make and publish results.

The director shall make and publish the results of periodic surveys of milksheds to determine the degree of compliance with the sanitary requirements for the production, processing, handling, distribution, sampling, and hauling of milk and milk products as provided in the Nebraska Milk Act. The director shall have the power to adopt and promulgate reasonable rules and regulations in accordance with the procedure defined in the Administrative Procedure Act for the interpretation and enforcement of this section. Such a survey or rating of a milkshed shall follow the procedures prescribed by the United States Department of Health and Human Services in its documents entitled Methods of Making Sanitation Ratings of Milk Supplies, 2005 Revision, and Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers, 2005 Revision.

Source: Laws 1980, LB 632, § 10; Laws 1986, LB 900, § 9; Laws 1990, LB 856, § 4; Laws 1995, LB 406, § 1; Laws 1997, LB 201, § 4; Laws 2001, LB 198, § 6; R.S.Supp.,2006, § 2-3910; Laws 2007, LB111, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

2-3976 Pure Milk Cash Fund; created; use; investment.

All fees paid to the department in accordance with the Nebraska Milk Act shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund, which fund is hereby created. All money credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any money in the Manufacturing Milk Cash Fund on September 1, 2007, shall be transferred to the Pure Milk Cash Fund on such date.

Source: Laws 1980, LB 632, § 11; Laws 1986, LB 900, § 10; Laws 1995, LB 7, § 23; R.S.1943, (1997), § 2-3911; Laws 2007, LB111, § 12.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-3977 Field representative; powers; field representative permit; applicant; qualifications.

(1) Beginning August 1, 2008, milk plants or any entity purchasing raw milk from producers holding a permit under the Nebraska Milk Act may employ, contract with, or otherwise provide for the services of a competent and qualified field representative who may:

(a) Inform new producers about the requirements of dairy farm sanitation and assist dairy producers with milk quality problems;

(b) Collect and submit samples at the request of the department; and

(c) Advise the department of any circumstances that could be of public health significance.

(2) An applicant for a field representative permit shall be trained in the sanitation practices for the sampling, care of samples, and milk hauling requirements of the Nebraska Milk Act. Prior to obtaining a field representative permit, the applicant shall take and pass an examination approved by the department and shall pay the permit fee set forth in section 2-3971. The permit shall expire on July 31 of the year following issuance.

Source: Laws 2007, LB111, § 13.

2-3978 Public policy.

It is hereby recognized and declared as a matter of legislative determination that in the field of human nutrition, safe, clean, wholesome milk is indispensable to the health and welfare of the citizens of the State of Nebraska; that milk is a perishable commodity susceptible to contamination and adulteration; that the production and distribution of an adequate supply of clean, safe, and wholesome milk are significant to sound health; and that minimum standards are declared to be necessary for the production and distribution of milk and milk products.

Source: Laws 1969, c. 5, § 2, p. 69; R.S.1943, (1976), § 81-263.88; Laws 1980, LB 632, § 13; R.S.1943, (1997), § 2-3913; Laws 2007, LB111, § 14.

2-3979 Classification of raw milk.

The classification of raw milk for manufacturing purposes shall be based on sight and odor and quality control tests for somatic cells, bacterial content, sediment content, and drug residues. Classification shall be either acceptable, probational, or reject.

Source: Laws 1969, c. 5, § 4, p. 72; R.S.1943, (1976), § 81-263.90; Laws 1980, LB 632, § 15; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 13; Laws 1993, LB 268, § 2; Laws 2001, LB 198, § 8; R.S.Supp.,2006, § 2-3915; Laws 2007, LB111, § 15.

2-3980 Flavor and odor of acceptable raw milk for manufacturing purposes.

The odor of acceptable raw milk for manufacturing purposes shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors

that would adversely affect the finished product, and it shall not show any abnormal condition, including, but not limited to, curdled, ropy, bloody, or mastitic condition, as indicated by sight or odor.

Source: Laws 1969, c. 5, § 5, p. 72; R.S.1943, (1976), § 81-263.91; Laws 1980, LB 632, § 16; R.S.1943, (1997), § 2-3916; Laws 2007, LB111, § 16.

2-3981 Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards.

(1) All dairy plants using milk for manufacturing purposes shall run the quality tests set out in this section in a state-certified laboratory and report the results to the department upon request. The test methods shall be those stated in laboratory procedures.

(2) Milk for manufacturing purposes shall be classified for bacterial content by the standard plate count or plate loop count. Bacterial count limits of individual producer milk shall not exceed five hundred thousand per milliliter.

(3) Bacterial counts for milk for manufacturing purposes shall be run at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Whenever any two out of four consecutive bacterial counts exceed five hundred thousand per milliliter, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in subdivision (1) of this section. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive bacterial count, the producer's milk shall be rejected until subsequent testing indicates a bacterial count of five hundred thousand per milliliter or less.

(4) All standards and procedures of the Grade A Pasteurized Milk Ordinance, 2005 Revision, relating to somatic cells shall apply to milk for manufacturing purposes.

(5) The industry shall test all producer's milk and bulk milk pickup tankers for drug residues in accordance with Appendix N, Drug Residue Testing and Farm Surveillance, of the Grade A Pasteurized Milk Ordinance, 2005 Revision.

Source: Laws 1980, LB 632, § 17; Laws 1986, LB 900, § 14; Laws 1988, LB 871, § 20; Laws 1993, LB 268, § 3; Laws 1997, LB 201, § 5; Laws 2001, LB 198, § 9; R.S.Supp.,2006, § 2-3917; Laws 2007, LB111, § 17.

2-3982 Classification for sediment content; sediment standards; determination; effect.

(1) Milk for manufacturing purposes shall be classified for sediment content, regardless of the results of the appearance and odor examination described in section 2-3980, according to sediment standards as follows:

(a) No. 1: Acceptable, not to exceed fifty-hundredths milligrams or its equivalent;

(b) No. 2: Acceptable, not to exceed one and fifty-hundredths milligrams or its equivalent;

(c) No. 3: Probational, not over ten days, not to exceed two and fifty-hundredths milligrams or its equivalent; and

(d) No. 4: Reject, over two and fifty-hundredths milligrams or its equivalent.

(2) Methods for determining the sediment content of the milk of individual producers shall be the methods described in 7 C.F.R. 58.134, as such section existed on July 1, 2006.

(3) Sediment testing shall be performed at least four times every six months at irregular intervals as designated by the director.

(4) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. A producer's milk that is classified as No. 3 may be accepted for a period not to exceed ten calendar days. If at the end of ten days the producer's milk does not meet acceptable sediment classification No. 1 or No. 2, it shall be rejected from the market. If the sediment disc is classified as No. 4, the milk shall be rejected and no further shipments accepted unless the milk meets the requirements of No. 3 or better.

Source: Laws 1986, LB 900, § 15; Laws 1993, LB 268, § 4; Laws 2001, LB 198, § 10; R.S.Supp.,2006, § 2-3917.01; Laws 2007, LB111, § 18.

2-3983 Milking facility requirements.

A milking facility producing milk for manufacturing purposes of adequate size and arrangement shall be provided to permit normal sanitary milking operations. Such milking facility shall be physically separated by solid partitions or doors from other parts of the barn or building which do not meet the requirements of this section. A milking facility shall meet the following requirements:

(1) Sufficient space shall be provided for each dairy animal during the milking operation. If housed in the same area, the individual dairy animal should be able to lie down comfortably without being substantially in the gutter or alley. There shall not be overcrowding of the dairy animals;

(2) Maternity pens and calf, kid, and lamb pens, if provided, shall be properly maintained and cleaned regularly;

(3) Walls and ceilings shall be of solid and tight construction and in good repair;

(4) Only dairy animals shall be permitted in any part of the milking facility;

(5) The floors and gutters of the milking facility shall be constructed of concrete or other impervious material, graded to drain, and in good repair;

(6) The milking facility shall be well lighted and well ventilated to accommodate day or night milking;

(7) The milking facility shall be kept clean with walls and ceilings kept free of filth, cobwebs, and manure. The floor shall be scraped or washed after each milking and the manure stored to prevent access by dairy animals;

(8) Only articles directly related to the normal milking operation may be stored in the milking facility; and

(9) Feed storage rooms and silo areas shall be partitioned from the milking facility.

Source: Laws 1969, c. 5, § 9, p. 75; R.S.1943, (1976), § 81-263.95; Laws 1980, LB 632, § 19; Laws 1986, LB 900, § 17; Laws 1993, LB 268, § 5; R.S.1943, (1997), § 2-3919; Laws 2007, LB111, § 19.

2-3984 Yard or loafing area requirements.

The yard or loafing area of a facility producing milk for manufacturing purposes shall be of ample size to prevent overcrowding, shall be drained to prevent forming of water pools, and shall be kept clean. Manure piles shall not be accessible to the dairy animals. Swine shall not be allowed in the yard or loafing area.

Source: Laws 1969, c. 5, § 10, p. 75; R.S.1943, (1976), § 81-263.96; Laws 1980, LB 632, § 20; Laws 1993, LB 268, § 6; R.S.1943, (1997), § 2-3920; Laws 2007, LB111, § 20.

2-3985 Udders; teats of dairy animals; milk stools; antikickers; surcingles; drugs; requirements.

All facilities producing milk for manufacturing purposes shall meet the following requirements:

(1) The udders and teats of all dairy animals shall be washed or wiped immediately before milking with a clean damp cloth or paper towel moistened with a sanitizing solution and wiped dry or by any other sanitary method. The milker's clothing shall be clean and his or her hands clean and dry. Dairy animals treated with drugs shall be milked last and the milk excluded from the supply for such period of time as is necessary to have the milk free from drug residues;

(2) Milk stools, antikickers, and surcingles shall be kept clean and properly stored. Dusty hay shall not be fed in the milking facility immediately before milking. Strong flavored feeds should not be fed before milking; and

(3) Drugs shall be stored in such manner that they cannot contaminate the milk or dairy products or milk contact areas. Unapproved or improperly labeled drugs shall not be used to treat dairy animals and shall not be stored in the barn or milking facility. Drugs intended for the treatment of nonlactating dairy animals shall be segregated from drugs used for lactating dairy animals. All drugs shall be properly labeled to include:

(a) The name and address of the manufacturer or distributor for drugs or veterinary practitioners dispensing the product for prescription and extra-labeling-use drugs;

(b) The established name of the active ingredient, or if formulated from more than one ingredient, the established name of each ingredient;

(c) Directions for use, including the class or species or identification of the animals, and the dosage, frequency, route of administration, and duration of therapy;

(d) Any cautionary statements; and

(e) The specified withdrawal or discard time for meat, milk, eggs, or any food which might be derived from the treated animal.

Source: Laws 1969, c. 5, § 11, p. 75; R.S.1943, (1976), § 81-263.97; Laws 1980, LB 632, § 21; Laws 1989, LB 38, § 3; Laws 1993, LB 268, § 7; R.S.1943, (1997), § 2-3921; Laws 2007, LB111, § 21.

2-3986 Milk in farm bulk tanks; cooled; temperature.

Milk for manufacturing purposes in farm bulk tanks shall be cooled to forty degrees Fahrenheit or lower within two hours after milking and maintained at fifty degrees Fahrenheit or lower until transferred to the transport tank. Milk offered for sale for manufacturing purposes shall be in a farm bulk tank that meets all 3-A sanitary standards.

Source: Laws 1969, c. 5, § 12, p. 75; R.S.1943, (1976), § 81-263.98; Laws 1980, LB 632, § 22; Laws 1986, LB 900, § 18; Laws 1993, LB 268, § 8; R.S.1943, (1997), § 2-3922; Laws 2007, LB111, § 22.

2-3987 Milkhouse or milkroom; sanitation requirements.

A milkhouse or milkroom at a facility producing milk for manufacturing purposes shall be conveniently located and properly constructed, lighted, and ventilated for handling and cooling milk in farm bulk tanks. The milkhouse or milkroom shall meet the following requirements:

(1) Adequate natural or artificial lighting shall be provided for conducting milkhouse or milkroom operations. Light fixtures shall not be installed directly above farm bulk milk tanks in areas where milk is drained or in areas where equipment is washed or stored. A minimum of thirty footcandles of light intensity shall be provided where the equipment is washed. All artificial lighting shall be from permanent fixtures;

(2) Adequate ventilation shall be provided to prevent odors and condensation on walls and ceilings;

(3) The milkhouse or milkroom shall be used for no other purpose;

(4) Adequate facilities for washing and storing milking equipment shall be provided in the milkhouse or milkroom. Only C-I-P equipment shall be stored in the milking area or milking parlor. Hot and cold running water under pressure shall be provided in the milkhouse or milkroom;

(5) If the milkhouse or milkroom is part of the milking facility or other building, it shall be partitioned and sealed to prevent the entrance of dust, flies, or other contamination. Walls, floors, and ceilings shall be kept clean and in good repair;

(6) Feed concentrates, if stored in the building, shall be kept in a tightly covered box or bin;

(7) The floor of the building shall be of concrete or other impervious material and graded to provide drainage;

(8) All doors in the milkhouse or milkroom shall be self-closing. Outer screen doors shall open outward and be maintained in good repair;

(9) No animals shall be allowed in the milkhouse or milkroom;

(10) A farm bulk tank shall be properly located in the milkhouse or milkroom for access to all areas for cleaning and servicing. It shall not be located over a floor drain or under a ventilator or a light fixture;

(11) A suitable hoseport opening shall be provided in the milkhouse or milkroom for hose connections and the hoseport shall be fitted with a tight-fitting door which shall be kept closed except when the port is in use. An easily cleanable surface shall be constructed under the hoseport adjacent to the outside wall large enough to protect the milkhose from contamination;

(12) The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading. It shall not pass through any livestock holding area;

(13) All windows, if designed to be opened, shall be adequately screened;

(14) Surroundings shall be neat, clean, and free of harborage and pooled water; and

(15) Handwashing facilities shall be provided which shall include soap, single-service towels, running water under pressure, a sink, and a covered refuse container.

Source: Laws 1969, c. 5, § 13, p. 75; R.S.1943, (1976), § 81-263.99; Laws 1980, LB 632, § 23; Laws 1981, LB 333, § 2; Laws 1986, LB 900, § 19; Laws 1989, LB 38, § 4; Laws 1993, LB 268, § 9; R.S.1943, (1997), § 2-3923; Laws 2007, LB111, § 23.

2-3988 Milk utensils; sanitation requirements.

At a facility producing milk for manufacturing purposes, utensils, milk cans, milking machines, including pipeline systems, and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. New or replacement can lids shall be umbrella type. All new utensils, new farm bulk tanks, and equipment shall meet 3-A sanitary standards and comply with applicable rules and regulations of the department.

Source: Laws 1969, c. 5, § 14, p. 76; R.S.1943, (1976), § 81-263.100; Laws 1980, LB 632, § 24; Laws 1986, LB 900, § 20; Laws 1993, LB 268, § 10; Laws 2001, LB 198, § 11; R.S.Supp.,2006, § 2-3924; Laws 2007, LB111, § 24.

2-3989 Water supply requirements; testing.

The water supply at a facility producing milk for manufacturing purposes shall be safe, clean, and ample for the cleaning of dairy utensils and equipment. The water supply shall meet the bacteriological standards established by the Department of Health and Human Services at all times. Water samples shall be taken, analyzed, and found to be in compliance with the requirements of the Nebraska Milk Act prior to the issuance of a permit to the producer and whenever any major change to the well or water source occurs. Wells or water sources which do not meet the construction standards of the Department of Health and Human Services shall be tested annually, and wells or water sources which do meet the construction standards of the Department of Health and Human Services shall be tested every three years. Whenever major alterations or repairs occur or a well or water source repeatedly recontaminates, the water supply shall be unacceptable until such time as the construction standards are met and an acceptable supply is demonstrated. On and after October 1, 1989, all new producers issued permits under the Nebraska Milk Act shall be required to meet the construction standards established by the Department of Health and Human Services for private water supplies.

Source: Laws 1969, c. 5, § 15, p. 76; R.S.1943, (1976), § 81-263.101; Laws 1980, LB 632, § 25; Laws 1986, LB 900, § 21; Laws

1989, LB 38, § 5; Laws 1993, LB 268, § 11; Laws 1996, LB 1044, § 40; R.S.1943, (1997), § 2-3925; Laws 2007, LB111, § 25; Laws 2007, LB296, § 19.

2-3990 Cream for buttermaking; pasteurization.

Cream for buttermaking shall be pasteurized at a temperature of not less than one hundred sixty-five degrees Fahrenheit and held continuously in a vat at such temperature for not less than thirty minutes, or at a temperature of not less than one hundred eighty-five degrees Fahrenheit for not less than fifteen seconds, or any other temperature and holding time approved by the director that will assure pasteurization and comparable keeping-quality characteristics.

Source: Laws 1969, c. 5, § 24, p. 84; R.S.1943, (1976), § 81-263.110; Laws 1980, LB 632, § 35; Laws 1986, LB 900, § 26; Laws 1993, LB 268, § 18; R.S.1943, (1997), § 2-3935; Laws 2007, LB111, § 26.

2-3991 Dairy products; packaging; containers; labeling.

Dairy products shall be packaged in commercially acceptable containers or packaging material that will protect the quality of the contents in regular channels of trade. Prior to use packaging materials shall be protected against dust, mold, and other possible contamination.

Commercial bulk shipping containers for dairy products shall be legibly marked with the name of the product, net weight or content, name and address of processor, manufacturer, or distributor, and plant code number. Consumer-packaged products shall be legibly marked with the name of the product, net weight or content, plant code number, and name and address of the packer or distributor.

Source: Laws 1969, c. 5, § 28, p. 86; R.S.1943, (1976), § 81-263.114; Laws 1980, LB 632, § 37; Laws 1993, LB 268, § 19; R.S.1943, (1997), § 2-3937; Laws 2007, LB111, § 27.

2-3992 Director; access to facilities, books, and records; inspections authorized.

(1) The director or his or her duly authorized agent shall have access during regular business hours to any milking facility or dairy plant for which a permit is held in which milk is used or stored for use in the manufacture, processing, packaging, or storage of milk or milk products or to enter any vehicle being used to transport or hold such milk or milk products for the purpose of inspection and to secure specimens or samples of any milk or milk product after paying or offering to pay for such sample or specimen. The director may analyze and inspect samples of raw milk and dairy products.

(2) The director or his or her duly authorized agent shall have access during regular business hours to the books and records of any permitholder under the Nebraska Milk Act when such access is necessary to properly administer and enforce such act.

Source: Laws 1969, c. 5, § 33, p. 89; R.S.1943, (1976), § 81-263.119; Laws 1980, LB 632, § 42; Laws 1986, LB 900, § 31; Laws 1993, LB 268, § 24; R.S.1943, (1997), § 2-3942; Laws 2007, LB111, § 28.

ARTICLE 40
GRAIN SORGHUM DEVELOPMENT

Section

2-4001 Act, how cited.

Sections 2-4001 to 2-4020 shall be known and may be cited as the Grain Sorghum Resources Act.

Source: Laws 1981, LB 11, § 1.

2-4002 Terms, defined.

For purposes of the Grain Sorghum Resources Act, unless the context otherwise requires:

(1) Board means the Grain Sorghum Development, Utilization, and Marketing Board;

(2) Commercial channels means the sale of grain sorghum for any use to any commercial buyer, dealer, processor, or cooperative or to any person, public or private, who resells any grain sorghum or product produced from grain sorghum;

(3) Delivered or delivery means receiving grain sorghum for any use, except for storage, and includes receiving grain sorghum for consumption, for utilization, or as a result of a sale in the State of Nebraska;

(4) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property rights in or to grain sorghum from a grower and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower when the actual or constructive possession of such grain sorghum is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(5) Grower means any landowner personally engaged in growing grain sorghum, a tenant of the landowner personally engaged in growing grain sorghum, and both the owner and tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, or arrangement; and

(6) Sale includes any pledge or mortgage of grain sorghum after harvest to any person, public or private.

Source: Laws 1981, LB 11, § 2; Laws 1993, LB 121, § 78; Laws 1997, LB 11, § 1.

2-4003 Intent and purpose of act.

It is declared to be in the interest of the public welfare that the producers of grain sorghum be permitted and encouraged to develop, carry out, and participate in programs of research, education, market development, and promotion. It is the purpose of sections 2-4001 to 2-4020 to provide the authorization and to prescribe the necessary procedures whereby grain sorghum producers in this state may finance programs to achieve the purposes expressed in this section.

Source: Laws 1981, LB 11, § 3.

2-4004 Board; members; vacancy; how filled.

(1) The board shall be composed of seven members who (a) are citizens of Nebraska, (b) are at least twenty-one years of age, (c) have been actually engaged in growing grain sorghum in this state for a period of at least five years, and (d) derive a substantial portion of their income from growing grain sorghum. The Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources shall be ex officio members of the board but shall have no vote in board matters.

(2) Whenever a vacancy occurs on the board for any reason, the remaining board members shall appoint an individual to fill such vacancy from the district in which the vacancy exists. If the vacant position is that of the at-large member, the appointment to fill such vacancy shall be made at large.

Source: Laws 1981, LB 11, § 4.

2-4005 Board; appointment by Governor; procedure.

(1) Within sixty days after May 19, 1981, six members shall be appointed by the Governor to the initial board. Members shall be appointed from districts as provided in sections 2-4001 to 2-4020.

(2) Members shall be appointed by the Governor on a nonpartisan basis. Candidates for appointment to the initial board may place their names on a candidacy list for the respective district by filing a petition signed by at least fifty residents of such district with the Director of Agriculture. Candidates for appointment to subsequent boards shall file such petitions with the existing board. Qualified individuals residing within their district shall be eligible for nomination as candidates from such district and only resident-growers of such district may sign petitions for such candidates.

Source: Laws 1981, LB 11, § 5.

2-4006 Board; membership districts; meeting; appoint member; elect officers.

(1) One member shall be appointed from each of the following districts:

(a) District 1: The counties of Gage, Johnson, Nemaha, Pawnee, and Richardson;

(b) District 2: The counties of Lancaster, Cass, and Otoe;

(c) District 3: The counties of Nuckolls, Thayer, Jefferson, and Saline;

(d) District 4: The counties of Clay, Fillmore, Hamilton, York, and Seward;

(e) District 5: The counties of Buffalo, Hall, Merrick, Polk, Butler, Saunders, Sarpy, Douglas, Platte, Colfax, Dodge, Washington, Burt, Cuming, Stanton, Madison, Boone, Nance, Howard, Greeley, Sherman, Valley, Custer, Blaine, Loup, Garfield, Wheeler, Antelope, Pierce, Wayne, Thurston, Dakota, Dixon, Cedar, Knox, Holt, Boyd, Rock, Brown, and Keya Paha; and

(f) District 6: The counties of Dawson, Dundy, Hitchcock, Red Willow, Furnas, Harlan, Franklin, Webster, Adams, Kearney, Phelps, Gosper, Frontier, Hayes, Chase, Perkins, Keith, Lincoln, Arthur, McPherson, Logan, Grant, Hooker, Thomas, Cherry, Kimball, Cheyenne, Deuel, Scotts Bluff, Banner, Morrill, Garden, Sioux, Box Butte, Sheridan, and Dawes.

(2) Within thirty days after the appointment of the initial board, such board shall conduct its first regular meeting. At this meeting, the board shall appoint the seventh member to the board. Such appointment shall be made at large and the appointee shall meet the same qualifications as the other members on the board.

(3) The board shall elect from its members a chairperson, treasurer, and such other officers as may be necessary. The term of office for members of the board shall be for three years, except that the term of the members of the board first taking office shall be for one, two, or three years as determined by lot.

Source: Laws 1981, LB 11, § 6.

2-4007 Board members; appointment procedures; Director of Agriculture and board; duties.

(1) The Director of Agriculture shall be responsible for the procedures involved in appointing the initial board. The director shall prescribe all necessary forms for registering candidacy and adopt rules and regulations to carry out his or her responsibility under this section.

(2) The board shall be responsible for the administration of all subsequent appointments and may adopt rules and regulations to carry out such responsibility.

Source: Laws 1981, LB 11, § 7.

2-4008 Board; voting members; expenses.

All voting members of the board shall be entitled to actual and necessary expenses, as provided for in sections 81-1174 to 81-1177 for state employees, while attending meetings of the board, or while engaged in the performance of official responsibilities as determined by the board.

Source: Laws 1981, LB 11, § 8.

2-4009 Board; removal of member; grounds.

A member of the board shall be removable for ceasing to (1) be a resident of the state, (2) live in the district from which appointed, or (3) be actually engaged in growing grain sorghum in the state.

Source: Laws 1981, LB 11, § 9.

2-4010 Board; meetings.

The board shall meet at least once every three months and at such other times as called by the chairperson or by any three members of the board.

Source: Laws 1981, LB 11, § 10.

2-4011 Board; duties and responsibilities.

The duties and responsibilities of the board shall be to implement and carry out the grain sorghum program and to the extent applicable shall include the following:

(1) To develop and direct any grain sorghum development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the grain sorghum commodity program;

(3) To adopt and promulgate reasonable rules and regulations;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the grain sorghum commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(6) To establish a means whereby any grower of grain sorghum has the opportunity at least annually to offer his or her ideas and suggestions relative to board policy for the coming year;

(7) To authorize the expenditure of funds and contracting for expenditures to conduct proper activities of the program;

(8) To bond the treasurer and such other persons necessary to insure adequate protection of funds;

(9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the board and to keep these records open to examination by any grower-participant during normal business hours;

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation; and

(11) To make refunds for overpayments of fees according to rules and regulations which may be adopted and promulgated by the board pursuant to this section.

Source: Laws 1981, LB 11, § 11; Laws 1983, LB 535, § 1; Laws 1983, LB 505, § 7; Laws 1986, LB 1016, § 4; Laws 1986, LB 1230, § 19.

2-4012 Sale of grain sorghum; fee; adjustment.

(1) After August 31, 1981, there shall be paid to the board a fee of not to exceed one cent per hundredweight upon all grain sorghum sold through commercial channels in the State of Nebraska or delivered in the State of Nebraska. The fee shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the provisions of the Grain Sorghum Resources Act, no grain sorghum shall be subject to the fee more than once.

(2) The board may, whenever it shall determine that the fees provided by this section are yielding more than is required to carry out the intent and purposes of the Grain Sorghum Resources Act, reduce such fees for such period as it shall deem justified, but not less than one year. If the board, after reducing such fees, finds that sufficient revenue is not being produced by such reduced fees, it may restore in full or in part such fees not to exceed the amount authorized by subsection (1) of this section.

Source: Laws 1981, LB 11, § 12; Laws 1983, LB 535, § 2; Laws 1983, LB 505, § 8; Laws 1987, LB 610, § 3; Laws 1997, LB 11, § 2.

2-4013 Pledge or mortgage; grain sorghum used as security; fee; refund; procedure.

In the case of a pledge or mortgage of grain sorghum as security for a loan under the federal price support program, the fee shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan, plus thirty days after the collection of a fee for grain sorghum that is mortgaged as security for a loan under the federal price support program or other government agricultural loan programs, the grower decides to purchase the grain sorghum and use it as feed, the grower shall be entitled to a refund of the checkoff fee previously paid. The refund shall be payable by the board upon the grower's written application to the board for a refund of the amount deducted. Each application for a refund by a grower shall have attached thereto proof of the tax deducted.

Source: Laws 1981, LB 11, § 13; Laws 1997, LB 11, § 3.

2-4014 Fee; when assessed.

The fee, provided for by section 2-4012, shall be deducted, as provided by sections 2-4001 to 2-4020, whether such grain sorghum is stored in this state or any other state.

Source: Laws 1981, LB 11, § 14.

2-4015 Fee; when not applicable.

The fee imposed by section 2-4012 shall not apply to the sale of grain sorghum to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such fee by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1981, LB 11, § 15.

2-4016 Purchaser; deduct fee; maintain records; public inspection; quarterly statement.

(1) The purchaser, at the time of settlement, shall deduct the grain sorghum fee and shall maintain the necessary record of the fee for each purchase of grain sorghum on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the purchaser shall provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of hundredweights of grain sorghum sold; and (d) the amount of fees collected on each purchase. Such records shall be open for inspection during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the board by the last day of each January, April, July, and October, on forms prescribed by the board, a statement of the number of hundredweights of grain sorghum purchased in Nebraska during the preceding quarter. At the time the statement is filed, the purchaser shall pay and remit to the board the fee as provided for in section 2-4012.

Source: Laws 1981, LB 11, § 16; Laws 1983, LB 535, § 3.

2-4017 Board; annual report; contents.

The board shall make and publish an annual report on or before January 1 of each year, which report shall set forth in detail the income received from the grain sorghum assessment for the previous year and shall include:

(1) The expenditure of all funds by the board during the previous year for the administration of sections 2-4001 to 2-4020;

(2) The action taken by the board on all contracts requiring the expenditure of funds by the board;

(3) Copies of all such contracts;

(4) A detailed explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of grain sorghum, the direct expense associated with each program, and copies of such programs if in writing; and

(5) The name and address of each member of the board and a copy of all rules and regulations promulgated by the board.

Such report shall be available to the public upon request.

Source: Laws 1981, LB 11, § 17.

2-4018 Grain Sorghum Development, Utilization, and Marketing Fund; created; purpose; investment.

The State Treasurer shall establish in the state treasury a fund to be known as the Grain Sorghum Development, Utilization, and Marketing Fund, to which fund shall be credited all fees collected by the board pursuant to the Grain Sorghum Resources Act. Such fund shall be expended solely for the administration of the act. 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 1981, LB 11, § 18; Laws 1995, LB 7, § 24.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-4019 Board; cooperate with University of Nebraska and other organizations; purpose.

The board shall not set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources, and other proper local, state, or national organizations, public or private, in carrying out the purposes of sections 2-4001 to 2-4020.

Source: Laws 1981, LB 11, § 19.

2-4020 Violations; penalty.

Any person violating any of the provisions of sections 2-4001 to 2-4020 shall be guilty of a Class III misdemeanor.

Source: Laws 1981, LB 11, § 20.

ARTICLE 41

AGRICULTURAL DEVELOPMENT CORPORATION

Section
2-4101. Repealed. Laws 1983, LB 626, § 79.
2-4102. Repealed. Laws 1983, LB 626, § 79.
2-4103. Repealed. Laws 1983, LB 626, § 79.
2-4104. Repealed. Laws 1983, LB 626, § 79.
2-4105. Repealed. Laws 1983, LB 626, § 79.
2-4106. Repealed. Laws 1983, LB 626, § 79.
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2-4155 Repealed. Laws 1983, LB 626, § 79.

2-4156 Repealed. Laws 1983, LB 626, § 79.

ARTICLE 42
CONSERVATION CORPORATION

Section

2-4201 Act, how cited.

Sections 2-4201 to 2-4246 shall be known and may be cited as the Conservation Corporation Act.

Source: Laws 1981, LB 385, § 1.

2-4202 Legislative policy.

It is hereby declared to be the policy of the Legislature to provide for the conservation and protection of the natural resources of this state through control and prevention of soil erosion, reduction of sediment damage, control of flood waters, enhancement of domestic water supply, improvement of water quality, and collection and containment of water. Within this state, the landowners involved in farm and ranch operations and the political subdivisions must be provided with financial assistance to encourage conservation of the state's water and related land resources. Without such conservation incentives, the control, containment, and utilization of our water resources and the productivity of our soil will be greatly threatened.

Assistance provided to landowners under the Conservation Corporation Act will enhance farm and ranch operations, one of the chief industries of this state, by protecting or enhancing agricultural productivity and will protect, preserve, and promote the source of food supplies to the citizens of this state. Assistance provided to political subdivisions under the Conservation Corporation Act will promote the general welfare of the citizens of such political subdivisions and further promote the productivity of business enterprises and the general health, welfare, and safety. The necessity for the Conservation Corporation Act to protect the health, safety, and general welfare of all people of this state is hereby declared as a matter of legislative determination.

Source: Laws 1981, LB 385, § 2; Laws 1983, LB 20, § 1; Laws 1985, LB 387, § 2.

2-4203 Nebraska Conservation Corporation; purpose.

The purpose of the Nebraska Conservation Corporation created in section 2-4205 shall be to provide conservation assistance to Nebraska landowners involved in farm and ranch operations in the form of low-cost conservation loans to facilitate the implementation of land treatment and water conservation practices and to assist the political subdivisions of the State of Nebraska by financing arrangements in connection with natural resource development practices.

Source: Laws 1981, LB 385, § 3; Laws 1983, LB 20, § 2; Laws 1985, LB 387, § 3.

2-4204 Terms, defined.

As used in the Conservation Corporation Act, unless the context otherwise requires:

(1) Conservation practice shall mean any work of improvement to farm and ranch land made by a landowner to protect or enhance agricultural productivity by controlling soil erosion or reducing sediment damage;

(2) Conservation loan shall mean a loan made by the corporation or a lender to a landowner to assist the landowner in the implementation of land treatment and water conservation practices;

(3) Corporation shall mean the Nebraska Conservation Corporation created by section 2-4205;

(4) Bond shall mean any bonds, notes, debentures, interim certificates, bond anticipation notes, or other evidences of financial indebtedness issued by the corporation;

(5) Landowner shall mean any resident of the state, any partnership of which eighty percent or more of the partnership interest is owned by residents of the state, any limited liability company of which eighty percent or more of the membership is owned by residents of the state, or any corporation of which more than eighty percent of the shares are owned by residents of the state, which resident, partnership, limited liability company, or corporation owns real estate in Nebraska which is utilized in the production of crops or raising of livestock;

(6) Mortgage shall mean a mortgage deed, deed of trust, or other instrument securing a conservation loan and constituting a lien on the real property or on the leasehold interest under a lease having a remaining term, at the time such mortgage is acquired, of not less than a term for repayment of the conservation loan secured by such mortgage, which is improved by conservation practices;

(7) Insurer shall mean an agency, department, administration, or instrumentality, corporate or otherwise, of or in any government agency in general, any private insurance company, or any other public or private agency which insures or guarantees payment of debt service on loans or bonds;

(8) Lender or lending institution shall mean any bank, trust company, savings and loan association, mortgage banker, insurance company, federal agency, or other financial institutions authorized to transact business in the State of Nebraska;

(9) Loan shall mean an interest-bearing obligation evidencing the money borrowed from the corporation;

(10) Board of directors shall mean the Board of Directors of the Nebraska Association of Resources Districts as organized under the Interlocal Cooperation Act which shall serve as the board of directors for the corporation. Such board shall consist of one representative director from each natural resources district in Nebraska. Selection and terms of office of such board of directors shall be governed by the interlocal cooperation agreement and by the articles and bylaws of such organization;

(11) Administrator shall mean the person appointed by the board of directors pursuant to section 2-4208;

(12) Natural resource development practice shall mean any work or program of improvement undertaken by a political subdivision, within its authorized powers, relating to soil erosion prevention and control; prevention and control of damage from storm water, flood water, and sediment; soil conservation; water supply for beneficial uses; management and conservation of ground water and surface water; pollution control; sanitary and solid waste disposal; drainage improvement and channel rectification; development and management of fish and wildlife habitat; development and management of recreational and park facilities; and forestry and range management;

(13) Natural resource development loan shall mean a loan made by the corporation to a political subdivision to assist the political subdivision with any natural resource development practice; and

(14) Political subdivision shall mean any natural resources district, drainage district, rural water district, irrigation district, public power and irrigation district, county, city, or village of the State of Nebraska.

Source: Laws 1981, LB 385, § 4; Laws 1983, LB 20, § 3; Laws 1985, LB 387, § 4; Laws 1993, LB 121, § 79.

Cross References

Interlocal Cooperation Act, see section 13-801.

2-4205 Nebraska Conservation Corporation; created; board of directors; officers.

There is hereby created a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions to be known as the Nebraska Conservation Corporation. The board of directors shall administer the corporation. The board shall have the authority to determine the administrative structure and procedure of the corporation. The board shall select a chairperson and a secretary-treasurer from among its members. Selection and terms of office for the chairperson and secretary-treasurer shall be governed by the interlocal cooperation agreement and the articles and bylaws of the Nebraska Association of Resources Districts.

Source: Laws 1981, LB 385, § 5.

2-4206 Board of directors; quorum; action; executive committee.

The powers of the corporation shall be vested in the board of directors. Thirteen members of the board shall constitute a quorum for the transaction of business. The affirmative vote of at least thirteen members shall be necessary for any action to be taken by the board pursuant to the Conservation Corporation Act. The board of directors in a bylaw or other written procedure shall establish an executive committee composed of the administrator and three members of the board of directors, one of whom shall be a director from a natural resources district in which is located a city of the primary class or a city of the metropolitan class, for purposes of conducting hearings and reviewing and approving applications for conservation loans and natural resource development loans.

Source: Laws 1981, LB 385, § 6; Laws 1985, LB 387, § 5.

2-4207 Meetings.

Meetings of the members of the corporation shall be held at the call of the administrator or whenever any thirteen members so request.

Source: Laws 1981, LB 385, § 7.

2-4208 Administrator; appointment; duties; members; expenses.

The board of directors shall appoint an administrator who shall be an employee of the corporation, but not a member of the board, and who shall serve at the pleasure of the board and receive such compensation and benefits as shall be fixed by the board. The administrator shall administer, manage, and direct the affairs and the activities of the corporation in accordance with policies and under the control and direction of the board. The administrator shall approve all accounts for salaries, allowable expenses of the corporation or of any employee or consultant thereof, and expenses incidental to the operation

of the corporation. He or she shall perform such duties as may be directed by the members in carrying out sections 2-4201 to 2-4246. Members of the board of directors and any employees of the corporation shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees. All employees of the corporation shall be administratively responsible to the administrator.

Source: Laws 1981, LB 385, § 8.

2-4209 Administrator; meetings; records; seal; certified copies; effect.

The administrator shall attend the meetings of the board of directors of the corporation, shall keep a record of the proceedings of the corporation, and shall maintain and be custodian of all books, documents, and papers filed with the corporation, the minutes book or journal of the corporation, and its official seal. He or she may cause copies to be made of all minutes and other records and documents of the corporation and may give certificates under seal of the corporation to the effect that such copies are true copies and all persons dealing with the corporation may rely upon such certificates.

Source: Laws 1981, LB 385, § 9; Laws 1985, LB 387, § 6.

2-4210 Personnel; contract for services.

The corporation with advice of the administrator may employ legal counsel, technical experts, and such other officers, agents, and employees, permanent or temporary, as it deems necessary to carry out the efficient operation of the corporation, and shall determine their qualifications, duties, compensation, and terms of office. The board may delegate to one or more agents or employees of the corporation such administrative duties as it deems proper. The corporation may contract for any service deemed necessary for its beneficial purposes.

Source: Laws 1981, LB 385, § 10.

2-4211 Member or employee; conflict of interest; disclosure; officer or employee of state; membership on or service to corporation; how treated.

Any board member or employee of the corporation who has, will have, or later acquires an interest, direct or indirect, in any transaction with the corporation shall immediately disclose the nature and extent of such interest in writing to the corporation as soon as he or she has knowledge of such actual or prospective interest. Such disclosure shall be entered upon the minutes of the corporation. Upon such disclosure, such member or employee shall not participate in any action by the corporation authorizing such transactions.

Notwithstanding the provisions of any other law, no officer or employee of this state shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of office as a director of the corporation or by reason of providing services to such corporation. The fact that a member of the board of directors is a director of a natural resources district which is to receive a natural resource development loan or which may participate with the corporation in identifying and approving owners of real estate in such natural resources district who qualify for assistance from the corporation shall not be deemed an interest, direct or indirect, that would

disqualify such board member from participating in transactions affecting such natural resources district or such landowners.

Source: Laws 1981, LB 385, § 11; Laws 1983, LB 20, § 4; Laws 1985, LB 387, § 7.

2-4212 Members; administrator; surety bond.

Before the transaction of any business under sections 2-4201 to 2-4246, each member of the board of directors and the administrator shall execute a surety bond in the penal sum of fifty thousand dollars. To the extent any member of the board of directors or the administrator of the corporation is already covered by a bond required by state law, such member or the administrator need not obtain another bond so long as the bond required by the state law is in at least the penal sum specified in this section and covers the activities for the corporation by the member or administrator. In lieu of such bond, the administrator may execute a blanket surety bond covering each member and the administrator. Each surety bond shall be conditioned upon the faithful performance of the duties of the member or administrator, and shall be issued by a surety company authorized to transact business in this state as surety. At all times after the issuance of any surety bond, each member and the administrator shall maintain such surety bonds in full force and effect. All costs of the surety bonds shall be borne by the corporation.

Source: Laws 1981, LB 385, § 12.

2-4213 Powers; enumerated.

The corporation is hereby granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes, including, but not limited to, the following:

(1) To have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(2) To adopt, amend, and repeal bylaws, rules, and regulations, consistent with the Conservation Corporation Act, to regulate its affairs and carry into effect the powers and purposes of the corporation and conduct its business;

(3) To sue and be sued in its own name;

(4) To have an official seal and alter it at will;

(5) To maintain an office at such place or places within the state as it may designate;

(6) To make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under the Conservation Corporation Act;

(7) To contract with any additional contractor, engineer, attorney, inspector, and financial expert, and such advisors, consultants, and agents, other than the corporation staff, as may be necessary in its judgment, and to fix their compensation;

(8) To procure insurance against any loss in connection with its property and other assets, including mortgages, conservation loans, and natural resource development loans, in such amounts and from such insurers as it may deem advisable;

(9) To borrow money;

(10) To issue bonds as provided by the Conservation Corporation Act;

(11) To procure insurance or guarantees from any insurer for payment of any bonds issued by the corporation, including the power to pay premiums on any such insurance;

(12) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the Conservation Corporation Act subject to the conditions upon which the grants or contributions are made, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States of America, or the State of Nebraska or subdivisions thereof, for any purposes consistent with the Conservation Corporation Act;

(13) To enter into agreements with any department, agency, or instrumentality of the United States of America or the State of Nebraska or subdivisions thereof, including political subdivisions, and with lending institutions for the purpose of planning, regulating, and providing for the financing and refinancing of any conservation practice for a landowner or for any natural resource development practice of a political subdivision undertaken with the assistance of the corporation under the Conservation Corporation Act;

(14) To enter into contracts or agreements with lending institutions for the servicing and processing of mortgages, conservation loans, and natural resource development loans pursuant to the Conservation Corporation Act;

(15) To provide technical assistance to local public bodies and to profit and nonprofit entities in the development of conservation practices for landowners and natural resource development practices for political subdivisions, based on current soil and conservation guidelines, and distribute data and information concerning the conservation and natural resource needs of landowners and political subdivisions within the State of Nebraska;

(16) To the extent permitted under its contract with the holders of bonds of the corporation, to consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, mortgage, conservation loan, natural resource development loan, loan commitment, contract, or agreement of any kind to which the corporation is a party; and

(17) To the extent permitted under its contract with the holders of bonds of the corporation, to enter into contracts with any lending institution containing provisions enabling it to reduce the carrying charges to landowners unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of the State of Nebraska, the reduction can be made without jeopardizing the economic stability of the farmland or range area being financed.

Source: Laws 1981, LB 385, § 13; Laws 1983, LB 20, § 5; Laws 1985, LB 387, § 8.

2-4214 Duties; enumerated.

The corporation shall have the following duties:

(1) To invest any funds not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States of America; obli-

gations issued by agencies of the United States of America; obligations of this state or of any political subdivision except obligations of sanitary and improvement districts organized under Chapter 31, article 7; certificates of deposit of banks whose deposits are insured by the Federal Deposit Insurance Corporation or collateralized by deposit of securities with the secretary-treasurer of the corporation, as, and to the extent not covered by insurance, with securities which are eligible for securing the deposits of the state or counties, school districts, cities, or villages of the state; certificates of deposit of capital stock financial institutions as provided by section 77-2366; certificates of deposit of qualifying mutual financial institutions as provided by section 77-2365.01; repurchase agreements which are fully secured by any of such securities or obligations which may be unsecured and unrated, including investment agreements, of any corporation, national bank, capital stock financial institution, qualifying mutual financial institution, bank holding company, insurance company, or trust company which has outstanding debt obligations which are rated by a nationally recognized rating agency in one of the three highest rating categories established by such rating agency; or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to subsection (1) of section 77-2341;

(2) To collect fees and charges the corporation determines to be reasonable in connection with its loans, advances, insurance commitments, and servicing;

(3) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agencies;

(4) To sell, assign, or otherwise dispose of at public or private sale, with or without public bidding, any mortgage or other obligations held by the corporation; and

(5) To do any act necessary or convenient to the exercise of the powers granted by the Conservation Corporation Act or reasonably implied from it.

Source: Laws 1981, LB 385, § 14; Laws 1985, LB 387, § 9; Laws 1989, LB 33, § 2; Laws 1989, LB 221, § 1; Laws 2001, LB 362, § 3.

2-4215 Coordinate activities with state and natural resources districts.

In exercising any powers granted by the Conservation Corporation Act, the corporation shall coordinate its activities with the land and water resources policies, programs, and planning efforts of the state, particularly the Department of Environmental Quality and the Department of Natural Resources, and with the several natural resources districts throughout the state.

Source: Laws 1981, LB 385, § 15; Laws 1993, LB 3, § 4; Laws 2000, LB 900, § 62.

2-4216 Loans to or deposits with lenders; conditions.

The corporation may make and undertake commitments to make loans to or deposits with lenders under terms and conditions requiring the lenders to make conservation loans to landowners or natural resource development loans to political subdivisions in an aggregate amount equal to the amount of the loan or deposit made by the corporation with the lenders. The conservation loans or natural resource development loans may be originated through and serviced by any lender authorized to transact business in the State of Nebraska. Any lender making conservation loans or natural resource development loans pursuant to

this section with funds borrowed from or deposited by the corporation may secure such loans in any manner such lender deems advisable.

Source: Laws 1981, LB 385, § 16; Laws 1983, LB 20, § 6; Laws 1985, LB 387, § 10.

2-4217 Investment in, purchase of, or assignment of loans; conditions.

The corporation may invest in, purchase, or make commitments to invest in or purchase, and take assignments or make commitments to take assignments of, conservation loans made to landowners for the construction or implementation of conservation practices by such landowners. No conservation loans shall be eligible for investment in, purchase, or assignment by the corporation if the conservation loan was made more than three years prior to the date of investment, purchase, or assignment by the corporation. A conservation loan invested in, purchased, or assigned by the corporation under this section may be secured by a mortgage or such other security device as the corporation deems necessary to secure the payment of principal and interest on such conservation loan.

The corporation may make, invest in, purchase, or make a commitment to make, invest in, or purchase natural resource development loans to any political subdivision. Such loans may be evidenced by any debt obligation which the political subdivision is authorized to issue in connection with any natural resource development practice and may be secured by such general or special revenue sources as the political subdivision is authorized to pledge or commit.

Source: Laws 1981, LB 385, § 17; Laws 1983, LB 20, § 7; Laws 1985, LB 387, § 11.

2-4218 Loans to lenders; requirements.

Prior to exercising any of the powers authorized in sections 2-4216 and 2-4217 in connection with any conservation loan, the corporation shall require the lender to certify and agree that:

(1) Any conservation loan made by the lender to the landowner under section 2-4216, or originated by the lender for sale or assignment to the corporation under section 2-4217, is, or if the same has not been made will at the time of making be, in all respects a prudent investment;

(2) The lender will, within a reasonable period of time after receipt of a loan amount or deposit from the corporation under section 2-4216, make conservation loans or purchase mortgages made to secure conservation loans in an aggregate amount equal to the amount of the loan or deposit made by the corporation to the lender or, if such lender has made a commitment to make conservation loans to landowners on the basis of a commitment from the corporation to purchase such conservation loans under section 2-4217, the lender will make such conservation loans and sell the same to the corporation within a reasonable period of time.

Source: Laws 1981, LB 385, § 18; Laws 1983, LB 20, § 8; Laws 1985, LB 387, § 12.

2-4219 Loans; optional requirements.

Prior to exercising any of the powers conferred by sections 2-4216 and 2-4217, the corporation may:

(1) Require that the conservation loan or natural resource development loan involved be insured by an insurer;

(2) Require any other type of security that it deems reasonable and necessary and which, in the case of a political subdivision, such political subdivision is authorized by law to grant; and

(3) Require appropriate evidence in the form of an opinion of counsel that any natural resource development loan is duly authorized and valid under the statutes governing the powers and procedures of such political subdivision.

Source: Laws 1981, LB 385, § 19; Laws 1983, LB 20, § 9; Laws 1985, LB 387, § 13.

2-4220 Rules and regulations; subject matter.

Prior to carrying out any of the powers granted under sections 2-4216 and 2-4217, the corporation shall adopt and promulgate rules and regulations governing its activities authorized under the Conservation Corporation Act, including rules and regulations relating to any or all of the following:

(1) The number and location of the conservation practices and natural resource development practices, including, to the extent reasonably possible, assurance that the conservation practices or natural resource development practices to be financed by an issue of bonds or series of issues will be adequate, as determined by the corporation, to be financed directly or indirectly by the lenders or by an issue of bonds of the corporation;

(2) Rates, fees, charges, and other terms and conditions of making, originating, or servicing conservation loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;

(3) The type and the amount of collateral or security to be provided to assure repayment of conservation loans or natural resource development loans or of deposits made to lenders under section 2-4216;

(4) The type of collateral, payment bond, performance bond, or other security to be provided by the lending institutions making conservation loans under section 2-4216 or originating and servicing conservation loans under section 2-4217;

(5) The nature and amount of fees to be charged by the corporation to provide for expenses and reserves of the corporation;

(6) Standards and requirements for the allocation of available money and the determination of the maturities, terms, conditions, and interest rates for conservation loans or natural resource development loans made, purchased, sold, assigned, or committed;

(7) Commitment requirements for conservation practices and financing for landowners by lending institutions involving money provided directly or indirectly by the lender; or

(8) Any other matters related to the duties or exercise of the corporation's powers or duties under the Conservation Corporation Act.

Source: Laws 1981, LB 385, § 20; Laws 1983, LB 20, § 10; Laws 1985, LB 387, § 14.

2-4221 Corporation; borrow money; issue bonds; purposes.

The corporation shall have the power to borrow money and to issue from time to time its bonds in such principal amounts as the corporation determines shall be necessary to provide sufficient funds to carry out its purposes as provided in sections 2-4201 to 2-4246, including:

(1) To carry out the powers provided in sections 2-4216 and 2-4217;

(2) The payment of interest on bonds of the corporation;

(3) The establishment of reserves to secure the bonds; and

(4) All other expenditures of the corporation incident to or necessary and convenient to carrying out its purposes and powers.

Source: Laws 1981, LB 385, § 21; Laws 1983, LB 20, § 11.

2-4222 Bond issuance; pay or refund bonds.

The corporation shall have the power to issue from time to time bonds to pay bonds, including the interest thereon and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds used partly to refund outstanding bonds and partly for any other of its corporate purposes. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded, or exchanged for the bonds to be refunded. The proceeds from the bonds may also be used for capitalized interest, legal and consulting fees, and issuance expenses.

Source: Laws 1981, LB 385, § 22.

2-4223 Bond issuance; general obligation; how paid and secured.

Except as may otherwise be expressly provided by the corporation, every issue of its bonds shall be a general obligation of the corporation payable solely out of any revenue or money of the corporation, subject only to any agreements with the holders of particular bonds pledging any particular money or revenue. The bonds may be additionally secured by a pledge of any grant or contribution from the federal government, state or local government, or any corporation, association, institution, or person or a pledge of any money, income, or revenue of the corporation from any source.

Source: Laws 1981, LB 385, § 23.

2-4224 Bond issuance; not obligation of state; statement required.

No bonds issued by the corporation under sections 2-4201 to 2-4246 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 solely as provided by section 2-4223. Each bond issued under sections 2-4201 to 2-4246 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 1981, LB 385, § 24.

2-4225 Acceptance of money; when.

The corporation shall have the authority to accept money from any county or any natural resources district, and any other funds, including private funds, solely for the purpose of reducing the interest on conservation loans or in

specific geographic areas wherein lies a designated critical need for conservation practices.

Source: Laws 1981, LB 385, § 25; Laws 1983, LB 20, § 12.

2-4226 Bonds; authorized; resolution; contents; sale; manner.

The bonds shall be authorized by resolution of the corporation, shall bear such date or dates, and shall mature at such time or times as such resolution may provide, except that no bond shall mature more than fifty years from the date of its issue, as the resolution shall provide. The bonds shall bear interest at such rates, or rate, 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, at such place or places, and be subject to such terms of redemption, including redemption prior to maturity, as such resolution may provide. Section 10-126 shall not apply to bonds issued by the corporation. Bonds of the corporation may be sold by the corporation at public or private sale and at such price or prices as the corporation shall determine. Such bonds shall be executed in the name and on behalf of the corporation and signed by the manual or facsimile signatures of the chairperson and secretary-treasurer with the seal of the corporation affixed thereto. Coupons attached to the bonds may bear facsimile or lithographic signatures of the chairperson and secretary-treasurer of the corporation.

Source: Laws 1981, LB 385, § 26; Laws 1985, LB 387, § 15.

2-4227 Bond issuance; resolution; provisions; part of contract with bondholders.

Any resolution authorizing the issuance of bonds may contain provisions, which shall be a part of the contract or contracts with the holders of such bonds, as to:

(1) Pledging all or any part of the revenue of the corporation to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(2) Pledging all or any part of the assets of the corporation, including conservation loans or natural resource development loans, to secure the principal of and the interest on such bonds, subject to such agreement with bondholders as may then exist;

(3) The use and disposition of the gross income from conservation loans or natural resource development loans owned by the corporation and payment of the principal of conservation loans or natural resource development loans owned by the corporation;

(4) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(5) Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds;

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(7) 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 may consent thereto, and the manner in which the consent may be given;

(8) Limitations on the amount of money to be expended by the corporation for operating expenses of the corporation;

(9) Vesting in a trustee or trustees such property, rights, powers, and duties in trust as the corporation may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee;

(10) Defining the acts or omissions to act which shall constitute a default and the obligations or duties of the corporation to the holders of the bonds, and providing for the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; but the rights and remedies shall not be inconsistent with the general laws of this state and other provisions of the Conservation Corporation Act; and

(11) Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.

Source: Laws 1981, LB 385, § 27; Laws 1983, LB 20, § 13; Laws 1985, LB 387, § 16.

2-4228 Pledge; effect; lien; recording not required.

Any pledge made by the corporation shall be valid and binding from the time when the pledge is made. The revenue, money, or properties so pledged and thereafter received by the corporation 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 corporation, 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 1981, LB 385, § 28.

2-4229 Corporation; purchase bonds of corporation; canceled; price.

The corporation, subject to such agreements with bondholders as may then exist, shall have power out of any funds available therefor to purchase bonds of the corporation, which shall thereupon be canceled, at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price then applicable plus accrued interest to the next interest payment thereon.

Source: Laws 1981, LB 385, § 29.

2-4230 Bonds; secured by trust indenture; expenses; how treated.

The bonds may be secured by a trust indenture by and between the corporation and a corporate trustee which may be any bank having the power of a trust company or any trust company within or without the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the corporation in relation to the exercise of its powers and the custody, safekeeping, and application of all money. The corporation may provide by the trust indenture for the payment of the proceeds of the bonds and revenue to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the corporation may determine. All expenses incurred in carrying out the trust indenture may be treated

as a part of the operating expenses of the corporation. If the bond shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

Source: Laws 1981, LB 385, § 30.

2-4231 Bonds; negotiable instruments.

Whether or not the bonds are in the form and character of negotiable instruments, such bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

Source: Laws 1981, LB 385, § 31.

2-4232 Bonds; signatures of prior officers or members; validity.

In the event that any of the officers or members of the board of directors shall cease to be members or officers of the corporation prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery.

Source: Laws 1981, LB 385, § 32.

2-4233 Person executing bonds; not subject to personal liability.

Neither the members of the board of directors of the corporation nor any other person executing the bonds issued under the Conservation Corporation Act shall be subject to personal liability or accountability by reason of the issuance thereof.

Source: Laws 1981, LB 385, § 33; Laws 1985, LB 387, § 17.

2-4234 Capital reserve fund; creation; expenditures.

The corporation may, if it deems the same desirable, create and establish a capital reserve fund for an issue of bonds or more than one issue of bonds. The corporation may create and establish one or more than one capital reserve fund. The capital reserve fund may be created and established from:

(1) Any proceeds of the sale of bonds, to the extent provided in the resolution of the corporation authorizing the issuance of such bonds;

(2) Money directed by the corporation to be transferred to such capital reserve fund; and

(3) Any other money which may be made available to the corporation for such fund from any other source or sources.

All money held in any capital reserve fund shall be used, as required, solely for the payment of the principal of bonds or of the sinking fund payments with respect to the bonds, the purchase or redemption of bonds, the payment of the interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

Source: Laws 1981, LB 385, § 34.

2-4235 Capital reserve fund; withdrawals; when; income or interest earned; use.

Money in any capital reserve fund, if such fund is created, shall not be withdrawn therefrom at any time in an amount that would reduce the level of

money in such fund to less than the applicable capital reserve fund requirement, as such requirement is defined in the trust indenture creating the same, except for the purposes of paying the principal and the redemption price of or interest on the bonds and the sinking fund payment with respect to the bonds, as the same become due, and for the payment of which other money of the corporation is not available. Any income or interest earned by the investment of money held in any such capital reserve fund may be transferred by the corporation to other funds or accounts of the corporation to the extent that the transfer does not reduce the amount of such capital reserve fund to below the capital reserve fund requirement applicable thereto.

Source: Laws 1981, LB 385, § 35; Laws 1983, LB 20, § 14.

2-4236 Bond issuance; capital reserve fund; applicability.

The corporation may provide by resolution that it shall not issue bonds under a resolution at any time if upon issuance the amount in the capital reserve fund which will secure the bonds shall be less than the applicable capital reserve fund requirement, unless the corporation at the time of issuance of the bonds shall deposit in such capital reserve fund from the proceeds of the bonds to be issued, or other sources, an amount which, together with the amount then in such capital reserve fund, shall not be less than the applicable capital reserve fund requirement.

Source: Laws 1981, LB 385, § 36.

2-4237 Capital reserve fund; value; how computed.

In computing the amount of the capital reserve fund for the purposes of sections 2-4201 to 2-4246, securities in which all or a portion of the fund shall be invested shall be valued at a par, cost, or by such other method of valuation as the corporation may provide by resolution.

Source: Laws 1981, LB 385, § 37.

2-4238 Creation of other funds.

The corporation may also create and establish any other funds as may be necessary or desirable for its purposes.

Source: Laws 1981, LB 385, § 38.

2-4239 Money; deposits; secured; expenditures.

All money of the corporation, except as otherwise authorized or provided in sections 2-4201 to 2-4246, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state or in the national banking associations. The money in such accounts shall be paid out on checks signed by the administrator or other officers or employees of the corporation as the corporation shall authorize. All deposits of money shall, if required by the corporation, be secured in such a manner as the corporation determines to be prudent, and all banks or trust companies are authorized to give security for the deposits.

Source: Laws 1981, LB 385, § 39.

2-4240 Contract with bondholders; purposes; money; how secured.

Notwithstanding the provisions of section 2-4239, the corporation shall have the power to contract with the holders of any of its bonds as to the custody, collection, security, investment, and payment of any money of the corporation and of any money held in trust or otherwise for the payment of bonds, and to carry out such contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the corporation, and all banks and trust companies are authorized to give security for the deposits.

Source: Laws 1981, LB 385, § 40.

2-4241 Bondholders; pledge of the state.

The state does hereby pledge to and agree with the holder of any bonds issued under sections 2-4201 to 2-4246 that the state will not limit or alter the rights vested in the corporation to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights or remedies of the holders until the bonds, together with the interest thereon, with interest or any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.

Source: Laws 1981, LB 385, § 41.

2-4242 Expenses; how paid; liability of state prohibited.

All expenses incurred by the corporation in carrying out the Conservation Corporation Act shall be payable solely from funds provided under such act, and nothing in such act shall be construed to authorize the corporation to incur debts, indebtedness, or liability on behalf of or payable by this state.

Source: Laws 1981, LB 385, § 42; Laws 1985, LB 387, § 18.

2-4243 Property, income, and bonds; exempt from taxation; dissolution; assets; how treated.

All property acquired or held by the corporation under the Conservation Corporation Act is declared to be public property. The property to the extent used for a public purpose, all the income therefrom, bonds issued under the act, interest payable thereon, and income derived therefrom, shall at all times be exempt from all taxes imposed by this state or any county, any city, or any other political subdivision of this state. The corporation may, in the resolution authorizing the issuance of any series of bonds, elect to have the income on such bonds be subject to personal income taxation imposed by this state. If the corporation is dissolved after all indebtedness and other obligations of the corporation are discharged, its remaining assets shall inure to the benefit of the State of Nebraska.

Source: Laws 1981, LB 385, § 43; Laws 2001, LB 173, § 1.

2-4244 Bonds; legal investment; considered securities.

The bonds issued by and under the authority of sections 2-4201 to 2-4246 by the corporation are declared to be legal investments in which all public officers or public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations, and other

persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of this state, may invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and received by all public officials and bodies of this state or any agency or political subdivision of this state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of this state is now or may be later authorized by law.

Source: Laws 1981, LB 385, § 44.

2-4245 Annual report; contents; audit.

The corporation shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the Clerk of the Legislature. Each member of the Legislature shall receive a copy of such report by making a request for it to the administrator of the corporation. Each report shall set forth a complete operating and financial statement for the corporation during the fiscal year it covers. An independent certified public accountant shall at least once in each year audit the books and accounts of the corporation.

Source: Laws 1981, LB 385, § 45.

2-4246 Sections, how construed.

Nothing in sections 2-4201 to 2-4246 is or shall be construed as a restriction or limitation upon any power which the corporation might otherwise have under any other law of this state, and sections 2-4201 to 2-4246 is cumulative to such powers. Sections 2-4201 to 2-4246 do and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws. Issuance of bonds under the provisions of sections 2-4201 to 2-4246 need not comply with the requirements of any other state laws applicable to the issuance of bonds, notes, and other obligations. No proceedings, notice, or approval shall be required for the issuance of any bonds or any instrument or the security thereof, except as provided in sections 2-4201 to 2-4246. All conservation practices for which funds are advanced, loaned, or otherwise provided by the corporation under sections 2-4201 to 2-4246 must be in compliance with any land-use, zoning, and other laws of this state applicable to the land upon which such conservation practices are to be constructed or implemented.

Source: Laws 1981, LB 385, § 46.

ARTICLE 43

AGRICULTURAL LIMING MATERIALS

Section
2-4301. Act, how cited.
2-4302. Definitions, where found.
2-4303. Agricultural liming material, defined.

Section

2-4301 Act, how cited.

Sections 2-4301 to 2-4327 shall be known and may be cited as the Agricultural Liming Materials Act.

Source: Laws 1981, LB 396, § 1; Laws 1988, LB 871, § 26.

2-4302 Definitions, where found.

As used in the Agricultural Liming Materials Act, unless the context otherwise requires, the definitions in sections 2-4303 to 2-4318.01 shall apply.

Source: Laws 1981, LB 396, § 2; Laws 1983, LB 539, § 1.

2-4303 Agricultural liming material, defined.

Agricultural liming material shall mean material which is distributed for agricultural purposes whose calcium and magnesium compounds are capable of neutralizing soil acidity, including limestone, burnt lime, hydrated lime, marl, an industrial byproduct, and agricultural lime slurry.

Source: Laws 1981, LB 396, § 3; Laws 1983, LB 539, § 2.

2-4304 Limestone, defined.

Limestone shall mean a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

Source: Laws 1981, LB 396, § 4.

2-4305 Burnt lime, defined.

Burnt lime shall mean a material made from limestone which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

Source: Laws 1981, LB 396, § 5.

2-4306 Hydrated lime, defined.

Hydrated lime shall mean a material made from burnt lime which consists of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide or magnesium hydroxide.

Source: Laws 1981, LB 396, § 6.

2-4307 Marl, defined.

Marl shall mean a granular or loosely consolidated earthy material composed largely of seashell fragments and calcium carbonate.

Source: Laws 1981, LB 396, § 7.

2-4308 Industrial byproduct, defined.

Industrial byproduct shall mean any industrial waste or byproduct containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

Source: Laws 1981, LB 396, § 8.

2-4309 Brand, defined.

Brand shall mean the term, designation, trademark, product name, or other specific designation under which individual agricultural liming material is offered for sale.

Source: Laws 1981, LB 396, § 9.

2-4310 Fineness, defined.

Fineness shall mean the percentage by weight of the material which will pass standard sieves of specified sizes to be determined by the director pursuant to section 2-4319.

Source: Laws 1981, LB 396, § 10; Laws 1983, LB 539, § 3.

2-4311 Ton, defined.

Ton shall mean a net weight of two thousand pounds avoirdupois.

Source: Laws 1981, LB 396, § 11.

2-4312 Bulk, defined.

Bulk shall mean in a nonpackaged form.

Source: Laws 1981, LB 396, § 12.

2-4313 Label, defined.

Label shall mean any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

Source: Laws 1981, LB 396, § 13.

2-4314 Calcium carbonate equivalent, defined.

Calcium carbonate equivalent shall mean the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate. The weight of water contained by the liming material shall be included when calculating the calcium carbonate equivalent.

Source: Laws 1981, LB 396, § 14.

2-4315 Weight, defined.

Weight shall mean the weight of undried material as offered for sale.

Source: Laws 1981, LB 396, § 15.

2-4316 Agricultural lime slurry, defined.

Agricultural lime slurry shall mean pulverized limestone suspended in water and which may contain up to two percent by weight of appropriate clay and surfactant to maintain the liming material in suspension.

Source: Laws 1981, LB 396, § 16.

2-4317 Department, defined.

Department shall mean the Department of Agriculture.

Source: Laws 1981, LB 396, § 17.

2-4318 Director, defined.

Director shall mean the Director of Agriculture.

Source: Laws 1981, LB 396, § 18.

2-4318.01 Manufacturer, distributor, retailer; defined.

(1) Manufacturer shall mean a person who quarries, crushes, or grinds agricultural liming materials.

(2) Distributor shall mean one who sells agricultural liming material to any but the ultimate consumer.

(3) Retailer shall mean one who sells agricultural liming material to the ultimate consumer.

(4) Any person can be either a manufacturer, distributor, or seller, or any combination thereof, depending upon the function performed by such person in any given transaction.

Source: Laws 1983, LB 539, § 4.

2-4319 Rules and regulations.

The department shall adopt, promulgate, and enforce such rules and regulations as may be necessary to carry out the provisions of the Agricultural Liming Materials Act pursuant to the Administrative Procedure Act. The director shall adopt and promulgate rules and regulations relating to fineness as defined in section 2-4310 and he or she shall refer in adopting such rules and regulations to specifications used by national testing and materials organizations.

Source: Laws 1981, LB 396, § 19; Laws 1983, LB 539, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

2-4320 Sale; label, statement, or delivery slip; information requirements.

(1) Agricultural liming materials sold, offered, or exposed for sale in this state by any manufacturer, distributor, or retailer shall have affixed to each package in a conspicuous manner on the outside of such package a plainly printed, stamped, or otherwise marked label, tag, or statement or, in the case of bulk sales, a delivery slip, setting forth the following information:

(a) The name and principal office address of the manufacturer or distributor;

(b) The brand or trade name of the material;

(c) The identification of the product as to the type of the agricultural liming material;

(d) The net weight of the agricultural liming material;

(e) The minimum effective calcium carbonate equivalent, which is a percentage of weight function of calcium carbonate equivalent and fineness as prescribed by the rules and regulations of the director; and

(f) The pounds of effective calcium carbonate per ton.

Additional information may also be listed on the package including the minimum percentage by weight of calcium carbonate and magnesium carbonate.

(2) No information or statement shall appear on any package, label, delivery slip, or advertising matter which is false or misleading to the purchaser as to the quality, analysis type, or composition of the agricultural liming material.

(3) In the case of any material which has been changed in any way as to render inaccurate or misleading any of the information required by subsection (1) of this section subsequent to its packaging, labeling, or loading and before its delivery to the consumer, a plainly marked notice of the change shall be affixed by the manufacturer, distributor, or retailer to the package or delivery slip to identify the kind and degree of such change in such package.

(4) At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statements required by subsections (1) and (3) of this section for each brand of material.

Source: Laws 1981, LB 396, § 20; Laws 1983, LB 539, § 6.

2-4321 Sale or offer for sale; restrictions.

(1) No agricultural liming material shall be sold or offered for sale in this state unless it complies with the Agricultural Liming Materials Act or the rules and regulations promulgated pursuant to the act.

(2) No agricultural liming material shall be sold or offered for sale in this state which contains toxic materials in quantities injurious to plants or animals.

Source: Laws 1981, LB 396, § 21.

2-4322 Registration; license; when required; application; license fee.

(1) Each separately identified agricultural liming material shall be registered before being distributed in this state. The person who first causes the distribution of the agricultural liming material into or within this state shall be responsible for compliance with the registration requirements of this section.

The application for registration shall be submitted to the department on forms furnished and approved by the department. Upon approval by the department a copy of the registration shall be furnished to the applicant. All registrations shall expire on December 31 of the same year. Agricultural lime slurry as defined in section 2-4316 shall be exempt from the registration requirements of this section.

A person shall not be required to register any brand of agricultural liming material which is already registered pursuant to the Agricultural Liming Materials Act by another person.

(2) Any out-of-state manufacturer, distributor, or retailer who has no distribution facility within this state shall obtain a registration for its principal out-of-state office if it markets or distributes agricultural liming materials in the State of Nebraska.

(3) Every manufacturer, distributor, or retailer of agricultural liming materials to be distributed in this state shall file with the department an application for a license on or before January 1 of each year or prior to manufacture, distribution, or sale of such liming materials. Upon acceptance of the application and proper fee, the department shall issue a license for the current year. The annual license fee shall be five dollars and the license shall expire on December 31 of the same year.

Source: Laws 1981, LB 396, § 22; Laws 1983, LB 539, § 7.

2-4323 Retailer licensee; annual statement; inspection; fee; department; composite report.

(1) Within thirty days following the expiration of each license, each retailer licensee shall submit on a form furnished and approved by the department an annual statement setting forth, by county name, the number of net tons of each agricultural liming material sold by him or her for use in this state during the previous twelve-month period. Such statement shall be accompanied by payment of an inspection fee at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be set at an amount to cover the expenses of the inspection provided in section 2-4325 and the costs of administering this section. The fee shall be paid by the retailer licensee and in the case of agricultural lime slurry, the fee shall be paid on the base lime material only.

(2) The department shall publish and make available, to each agricultural liming material registrant or licensee and to any other interested person upon his or her request, a composite report showing the tons of agricultural liming material sold in each county in this state. Such report shall in no way divulge the operation of any registrant or licensee.

Source: Laws 1981, LB 396, § 23; Laws 1983, LB 539, § 8.

2-4324 Fees; disbursement.

All fees paid to the department pursuant to the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. Any money in the Liming Materials Cash Fund on August 31, 2003, shall be transferred to the Fertilizers and Soil Conditioners Administrative Fund. All money credited or transferred to the fund shall be used by the department to aid in defraying expenses of adminis-

tering the Agricultural Liming Materials Act and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Source: Laws 1981, LB 396, § 24; Laws 2003, LB 157, § 3.

Cross References

Nebraska Commercial Fertilizer and Soil Conditioner Act, see section 81-2,162.22.

2-4325 Director; enforcement of act; inspections; testing; methods of analysis; results; distribution.

(1) To enforce the Agricultural Liming Materials Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which agricultural liming materials are manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution and production of agricultural liming materials, and other information necessary for the enforcement of the act;

(c) Obtain samples of agricultural liming materials. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such agricultural liming materials are in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the department as provided in the rules and regulations.

Source: Laws 1981, LB 396, § 25; Laws 1983, LB 539, § 9; Laws 1992, LB 366, § 6; Laws 1993, LB 267, § 1.

2-4326 Department; enforcement; orders.

The department may issue and enforce a written or printed stop-sale, stop-use, or removal order to the owner or custodian of any lot of agricultural liming material. The department may order the owner or custodian to hold

such material at a designated place when the department finds such material is being offered or exposed for sale by the owner or custodian in violation of the Agricultural Liming Materials Act or the rules and regulations adopted and promulgated by the department. Such material shall be released when the act or the rules and regulations have been complied with, such violations have otherwise been legally disposed of in writing, and all costs and expense incurred in connection with such material's holding have been paid. This section shall not apply if the owner or custodian is the ultimate consumer of the agricultural liming material and he or she has title to such materials.

Source: Laws 1981, LB 396, § 26; Laws 1983, LB 539, § 10; Laws 1988, LB 871, § 27.

2-4327 Violations; penalty; written warning.

Any person violating the Agricultural Liming Materials Act shall be guilty of a Class V misdemeanor upon the first conviction thereof, and a Class IV misdemeanor for each subsequent conviction thereof.

Nothing in the act shall be construed to require the director or his or her duly authorized agent to report a violation in order to prosecute or to institute seizure proceedings as a result of minor violations of the act when he or she believes that the public interest will best be served by a suitable written warning to the violator.

Source: Laws 1981, LB 396, § 27.

ARTICLE 44

NEBRASKA RIGHT TO FARM ACT

Section
2-4401. Act, how cited.
2-4402. Terms, defined.
2-4403. Farm; farm operation; public grain warehouse; public grain warehouse operation; not a nuisance; when.
2-4404. Applicability of other statutes.

2-4401 Act, how cited.

Sections 2-4401 to 2-4404 shall be known and may be cited as the Nebraska Right to Farm Act.

Source: Laws 1982, LB 668, § 1.

2-4402 Terms, defined.

As used in the Nebraska Right to Farm Act, unless the context otherwise requires:

(1) Farm or farm operation means any tract of land over ten acres in area used for or devoted to the commercial production of farm products;

(2) Farm product means those plants and animals useful to man and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing, fruits, vegetables, flowers, seeds, grasses, trees, fish, apiaries, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur; and

(3) Public grain warehouse or public grain warehouse operation means any grain elevator building or receptacle in which grain is held for longer than ten days and includes, but is not limited to, all buildings, elevators, and warehouses consisting of one or more warehouse sections within the confines of a city, township, county, or state that are considered a single delivery point with the capability to receive, load out, weigh, and store grain.

Source: Laws 1982, LB 668, § 2; Laws 1998, LB 1193, § 6.

2-4403 Farm; farm operation; public grain warehouse; public grain warehouse operation; not a nuisance; when.

A farm or farm operation or a public grain warehouse or public grain warehouse operation shall not be found to be a public or private nuisance if the farm or farm operation or public grain warehouse or public grain warehouse operation existed before a change in the land use or occupancy of land in and about the locality of such farm or farm operation or public grain warehouse or public grain warehouse operation and before such change in land use or occupancy of land the farm or farm operation or public grain warehouse or public grain warehouse operation would not have been a nuisance.

Source: Laws 1982, LB 668, § 3; Laws 1998, LB 1193, § 7.

This section, as amended by 1998 Neb. Laws, L.B. 1193, contains no language evidencing an intent that it should be applied retrospectively and thus operates prospectively only. Soukop v. ConAgra, Inc., 264 Neb. 1015, 653 N.W.2d 655 (2002).

The Nebraska Right to Farm Act applies only where there has been a change in land use or occupancy of land in and about the locality of such farm or farm operation, not where the change has taken place on the farm itself. Flansburgh v. Coffey, 220 Neb. 381, 370 N.W.2d 127 (1985).

2-4404 Applicability of other statutes.

Sections 2-4401 to 2-4404 shall not affect the application of state and federal statutes.

Source: Laws 1982, LB 668, § 4.

ARTICLE 45
WATER PROJECT BONDS

Section

2-4501.	Repealed.	Laws 1991, LB 772, § 8.
2-4502.	Repealed.	Laws 1991, LB 772, § 8.
2-4503.	Repealed.	Laws 1991, LB 772, § 8.
2-4504.	Repealed.	Laws 1991, LB 772, § 8.
2-4505.	Repealed.	Laws 1991, LB 772, § 8.
2-4506.	Repealed.	Laws 1991, LB 772, § 8.
2-4507.	Repealed.	Laws 1991, LB 772, § 8.
2-4508.	Repealed.	Laws 1991, LB 772, § 8.
2-4509.	Repealed.	Laws 1991, LB 772, § 8.
2-4510.	Repealed.	Laws 1991, LB 772, § 8.
2-4511.	Repealed.	Laws 1991, LB 772, § 8.
2-4512.	Repealed.	Laws 1991, LB 772, § 8.
2-4513.	Repealed.	Laws 1991, LB 772, § 8.
2-4514.	Repealed.	Laws 1991, LB 772, § 8.
2-4515.	Repealed.	Laws 1991, LB 772, § 8.
2-4516.	Repealed.	Laws 1991, LB 772, § 8.
2-4517.	Repealed.	Laws 1991, LB 772, § 8.
2-4518.	Repealed.	Laws 1991, LB 772, § 8.
2-4519.	Repealed.	Laws 1991, LB 772, § 8.
2-4520.	Repealed.	Laws 1991, LB 772, § 8.
2-4520.01.	Repealed.	Laws 1991, LB 772, § 8.

Section
2-4521. Repealed. Laws 1991, LB 772, § 8.
2-4522. Repealed. Laws 1991, LB 772, § 8.
2-4523. Repealed. Laws 1991, LB 772, § 8.
2-4524. Repealed. Laws 1991, LB 772, § 8.
2-4525. Repealed. Laws 1991, LB 772, § 8.
2-4526. Repealed. Laws 1991, LB 772, § 8.
2-4527. Repealed. Laws 1991, LB 772, § 8.
2-4528. Repealed. Laws 1991, LB 772, § 8.

2-4501 Repealed. Laws 1991, LB 772, § 8.

2-4502 Repealed. Laws 1991, LB 772, § 8.

2-4503 Repealed. Laws 1991, LB 772, § 8.

2-4504 Repealed. Laws 1991, LB 772, § 8.

2-4505 Repealed. Laws 1991, LB 772, § 8.

2-4506 Repealed. Laws 1991, LB 772, § 8.

2-4507 Repealed. Laws 1991, LB 772, § 8.

2-4508 Repealed. Laws 1991, LB 772, § 8.

2-4509 Repealed. Laws 1991, LB 772, § 8.

2-4510 Repealed. Laws 1991, LB 772, § 8.

2-4511 Repealed. Laws 1991, LB 772, § 8.

2-4512 Repealed. Laws 1991, LB 772, § 8.

2-4513 Repealed. Laws 1991, LB 772, § 8.

2-4514 Repealed. Laws 1991, LB 772, § 8.

2-4515 Repealed. Laws 1991, LB 772, § 8.

2-4516 Repealed. Laws 1991, LB 772, § 8.

2-4517 Repealed. Laws 1991, LB 772, § 8.

2-4518 Repealed. Laws 1991, LB 772, § 8.

2-4519 Repealed. Laws 1991, LB 772, § 8.

2-4520 Repealed. Laws 1991, LB 772, § 8.

2-4520.01 Repealed. Laws 1991, LB 772, § 8.

2-4521 Repealed. Laws 1991, LB 772, § 8.

2-4522 Repealed. Laws 1991, LB 772, § 8.

2-4523 Repealed. Laws 1991, LB 772, § 8.

2-4524 Repealed. Laws 1991, LB 772, § 8.

2-4525 Repealed. Laws 1991, LB 772, § 8.

2-4526 Repealed. Laws 1991, LB 772, § 8.

2-4527 Repealed. Laws 1991, LB 772, § 8.

2-4528 Repealed. Laws 1991, LB 772, § 8.

ARTICLE 46
EROSION AND SEDIMENT CONTROL

Section

2-4601 Act, how cited.

Sections 2-4601 to 2-4613 shall be known and may be cited as the Erosion and Sediment Control Act.

Source: Laws 1986, LB 474, § 1.

2-4602 Legislative findings.

The Legislature recognizes that erosion and sedimentation are serious problems throughout the state. Changes in farm and ranch enterprises, operations, and ownership, demands made upon farm and ranch enterprises which do not encourage sound resource utilization, rapid shifts in land use from agricultural and rural to nonagricultural and urban uses, construction of streets, highways, pipelines, recreation areas, schools and universities, public utilities and facilities, conversion of grasslands to croplands, and other land-disturbing activities have caused excessive wind erosion and water runoff and accelerated the process of soil erosion and sediment deposition. This has resulted in the pollution of the waters of the state and damage to domestic, agricultural, industrial, recreational, fish and wildlife, and other resources. It is declared to be the policy of the state to strengthen and extend the present erosion and sediment control activities and programs of the state for both rural and urban lands, to improve water quality, and to establish and implement, through the Director of Natural Resources and the Nebraska Natural Resources Commission, a statewide, comprehensive, and coordinated erosion and sediment control program to reduce damage from wind erosion and storm water runoff, to retard nonpoint pollution from sediment and related pollutants, and to conserve and protect land, air, and other resources of the state. This program shall be carried out by the natural resources districts in cooperation with the

counties, municipalities, and other local governments and political subdivisions of the state and other public and private entities.

Source: Laws 1986, LB 474, § 2.

2-4603 Terms, defined.

For purposes of the Erosion and Sediment Control Act, unless the context otherwise requires:

(1) Commission shall mean the Nebraska Natural Resources Commission;

(2) Conservation agreement shall mean an agreement between the owner or operator of a farm unit and the district in which the owner or operator agrees to implement a farm unit conservation plan or, with the approval of the district within which the farm unit is located, a portion of a farm unit conservation plan. The agreement shall include a schedule for implementation and may be conditioned on the district or other public entity furnishing technical, planning, or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan or a portion of the plan;

(3) Director shall mean the Director of Natural Resources;

(4) District shall mean a natural resources district;

(5) Erosion or sediment control practice shall mean:

(a) The construction or installation and maintenance of permanent structures or devices necessary to carry, to a suitable outlet away from any building site, any commercial or industrial development, or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil-loss limit and which does not carry or constitute sewage or industrial or other waste;

(b) The employment of temporary devices or structures, temporary seeding, fiber mats, plastic, straw, diversions, silt fences, sediment traps, or other measures adequate either to prevent erosion in excess of the applicable soil-loss limit or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any nonagricultural land-disturbing activity; or

(c) The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, or highway or the construction or installation thereon of permanent structures or devices or other measures adequate to prevent erosion of the right-of-way in excess of the applicable soil-loss limit;

(6) Farm unit conservation plan shall mean a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the district within which the farm unit is located based upon the determined conservation needs for the farm unit and identifying the soil and water conservation practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil-loss limit. The plan may also, if practicable, identify alternative practices by which such objective may be attained;

(7) Nonagricultural land-disturbing activity shall mean a land change, including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land, which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state but shall not include the following:

(a) Activities related directly to the production of agricultural, horticultural, or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;

(b) Installation of aboveground public utility lines and connections, fenceposts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;

(c) Emergency work to protect life or property; and

(d) Activities related to the construction of housing, industrial, and commercial developments on sites under two acres in size;

(8) Person shall mean any individual, partnership, limited liability company, firm, association, joint venture, public or private corporation, trust, estate, commission, board, institution, utility, cooperative, municipality or other political subdivision of this state, interstate body, or other legal entity;

(9) Soil and water conservation practice shall mean a practice which serves to prevent erosion of soil by wind or water in excess of the applicable soil-loss limit from land used only for agricultural, horticultural, or silvicultural purposes. Soil and water conservation practice shall include, but not be limited to:

(a) Permanent soil and water conservation practice, including the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, and other permanent soil and water practices approved by the district; and

(b) Temporary soil and water conservation practice, including the planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and other cultural practices approved by the district; and

(10) Soil-loss limit shall mean the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is determined to be acceptable in accordance with the Erosion and Sediment Control Act.

Source: Laws 1986, LB 474, § 3; Laws 1988, LB 594, § 1; Laws 1993, LB 121, § 80; Laws 1994, LB 480, § 22.

2-4604 State program; director; duties; program contents; approval; revisions.

(1) The director shall, in cooperation with the commission, the Department of Environmental Quality, and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program designed to reduce soil erosion in this state to tolerable levels. The program, which shall be reasonable and attainable, shall include:

(a) The soil-loss limits for the various types of soils in the state;

(b) State goals and a state strategy for reducing soil losses on all lands in the state to an amount no more than the applicable soil-loss limit;

(c) Guidelines for establishing priorities for implementation of the program at the state and local levels;

(d) Types of assistance to be provided by the state to districts, cities, and counties in the implementation of the state and local erosion and sediment control programs; and

(e) Such other elements as the director deems appropriate in accordance with the objectives of the Erosion and Sediment Control Act, including any recommendations for further legislative or administrative action.

(2) The state erosion and sediment control program shall be subject to the approval of the commission. It shall be presented to the Governor and the Legislature no later than January 1, 1987. Before approving the final program, the director and the commission shall conduct at least four public hearings or meetings to receive information from interested persons in different parts of the state.

(3) The state erosion and sediment control program may be revised by the director and the commission at any time, except that such revisions shall be made according to the procedures required for approval of the original program.

Source: Laws 1986, LB 474, § 4; Laws 1993, LB 3, § 5.

2-4605 District program; contents; review.

(1) Each district shall, with the approval of the director and on or before July 1, 1987, adopt a district program for implementation of the state erosion and sediment control program. Each district's program shall include the:

(a) Soil-loss limits for the various types of soils in the district. The soil-loss limits shall be adopted and promulgated as rules and regulations and may be more but not less stringent than those adopted by the director. It is the intent of the Legislature that no land within the state be assigned a soil-loss limit that cannot reasonably be applied to such land;

(b) Recommended erosion or sediment control practices and soil and water conservation practices which are suitable for controlling erosion and sedimentation within the district; and

(c) Programs, procedures, and methods the district plans to adopt and employ to implement the state erosion and sediment control program. Each district may subsequently amend or modify the program as necessary, subject to the approval of the director.

(2) The director with the advice and recommendation of the commission shall review each district's program and all amendments thereto and shall approve the program or amendments if the director determines that the district's program is reasonable, attainable, and in conformance with the state erosion and sediment control program.

Source: Laws 1986, LB 474, § 5; Laws 1988, LB 594, § 2.

2-4606 Municipal or county rules and regulations; authorized; conformance with state program; enforcement; failure to conform, effect.

Any municipality or county may adopt and promulgate rules and regulations governing erosion and sediment control within their respective jurisdictions. Any such municipal or county rules and regulations shall be in substantial conformance with the state erosion and sediment control program. If a municipality or county adopts and promulgates rules and regulations, it shall enforce such rules and regulations within the regulatory jurisdiction of such municipality or county. Whenever the rules and regulations of any municipality or county are deemed by the director not to be in substantial conformance with the state erosion and sediment control program, the municipality or county may either

amend such rules and regulations to conform, adopt rules and regulations which are in conformance, or defer responsibility to adopt, administer, and enforce such rules and regulations to the appropriate district.

Source: Laws 1986, LB 474, § 6.

2-4607 District; adoption or revision of rules and regulations; procedure; availability.

Before adopting or revising its rules and regulations, each district shall, after publishing notice once each week for three consecutive weeks in a newspaper or newspapers having general circulation within the district, conduct a public hearing on the proposed rules and regulations or changes. The rules and regulations of the district shall be made available for public inspection at the principal office of the district.

Source: Laws 1986, LB 474, § 7.

2-4608 Excessive soil erosion; complaint; inspection; remedial action; failure to comply.

(1) Except to the extent jurisdiction has been assumed by a municipality or county in accordance with section 2-4606, the district may inspect or cause to be inspected any land within the district upon receipt of a written and signed complaint which alleges that soil erosion is occurring in excess of the applicable soil-loss limit. Complaints shall be filed on a form provided by the director. Complaints may be filed by any owner or operator of land being damaged by sediment, by any state agency or political subdivision whose roads or other public facilities are being damaged by sediment, by any state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality, or by a staff member or other agent of the district authorized by the board of directors to file such complaints. Inspections following receipt of a written and signed complaint may be made only after notice to the owner and, if appropriate, the operator of the land involved, and such person shall be given an opportunity to accompany the inspector.

(2) The owner, the operator if appropriate, and the district may agree to a plan and schedule for eliminating excessive erosion on and sedimentation from the land involved. Any such agreement may be enforced in district court in the same manner as an administrative order issued pursuant to the Erosion and Sediment Control Act. If no agreement is reached, the findings of the inspection shall be presented to the district board of directors and the owner and, if appropriate, the operator of the land shall be given a reasonable opportunity to be heard at a meeting of the board or, if requested, at a public hearing. If the district finds that the alleged sediment damage is occurring and that excess soil erosion is occurring on the land inspected, it shall issue an administrative order to the owner of record and, if appropriate, to the operator describing the land and stating as nearly as possible the extent to which the soil erosion exceeds the applicable soil-loss limit. When the complained-of erosion is the result of agricultural, horticultural, or silvicultural activities, the district shall direct the owner and, if appropriate, the operator to bring the land into conformance with the applicable soil-loss limit. When the complained-of erosion is the result of a nonagricultural land-disturbing activity, the district may authorize the owner and, if appropriate, the operator to either bring such land into conformance

with the soil-loss limit or to prevent sediment resulting from excessive erosion from leaving such land.

(3) The district may specify, as applicable, alternative soil and water conservation practices or erosion or sediment control practices which the owner and, if appropriate, the operator may use to comply with the administrative order. A copy of the administrative order shall be delivered by either personal service or certified or registered mail to each person to whom it is directed and shall:

(a) In the case of erosion occurring on the site of any nonagricultural land-disturbing activity, state a reasonable time after service or mailing of the order when the work necessary to establish or maintain erosion or sediment control practices shall be commenced and the time, not more than forty-five days after service or mailing of the order, when the work shall be satisfactorily completed;

(b) In all other cases, state the time, not more than six months after service or mailing of the order, the work needed to establish or maintain the necessary soil and water conservation practices or permanent erosion control practices shall be commenced and the time, not more than one year after the service or mailing of the order, the work shall be satisfactorily completed, unless the requirements of the order are superseded by section 2-4610; and

(c) State any reasonable requirements regarding the operation, utilization, and maintenance of the practices to be installed, constructed, or applied.

(4) Upon failure to comply with the order, the owner or, if appropriate, the operator shall be deemed in violation of the Erosion and Sediment Control Act and subject to further actions as provided by such act.

Source: Laws 1986, LB 474, § 8; Laws 1988, LB 594, § 3; Laws 1994, LB 480, § 23.

A landowner, who was required to implement conservation measures on his land, did not have standing to sue a city in an inverse condemnation action where the city filed a complaint under this section but the natural resources district was responsible for prosecuting the complaint. Strom v. City of Oakland, 255 Neb. 210, 583 N.W.2d 311 (1998).

2-4609 Filing of complaint; effect.

The filing of a complaint shall not preclude the complainant from pursuing any other remedy available to the complainant under the Erosion and Sediment Control Act, other law, or equity.

Source: Laws 1986, LB 474, § 9.

2-4610 Conformance with farm unit conservation plan or soil-loss limit; effect; lack of cost-sharing assistance; effect; cost-sharing assistance; availability.

(1) Any person owning or operating private agricultural, horticultural, or silvicultural lands who has a farm unit conservation plan approved by the district and is implementing and maintaining the plan in strict compliance with a conservation agreement or any person whose normal agricultural, horticultural, and silvicultural practices are in conformance with the applicable soil-loss limit shall, for purposes of such land, be deemed to be in compliance with the requirements of the Erosion and Sediment Control Act and any approved erosion and sediment control program.

(2) If there is not available to any owner or operator at least ninety percent cost-sharing assistance for the installation of permanent soil and water conservation practices which are required in an approved farm unit conservation plan

or are required to conform agricultural, horticultural, and silvicultural practices to the applicable soil-loss limit, any such owner or operator shall not be required to install such practices pursuant to the Erosion and Sediment Control Act until such cost-sharing assistance is made available, except that such owner or operator may agree to a cost-share rate of less than ninety percent. To be enforceable, any agreement providing for cost-sharing assistance at a rate of less than ninety percent shall include notice that the owner or operator may choose not to sign such agreement and that such choice will preserve the right to not less than ninety percent cost-sharing assistance before any permanent soil and water conservation practices can be required by the district. The owner or operator may be required to utilize temporary soil and water conservation practices in the interim to minimize soil erosion and sediment damage.

(3) To prevent excessive erosion and sediment from leaving the land due to any nonagricultural land-disturbing activity, cost-sharing assistance may be available from any district. Such assistance may be used for any erosion or sediment control practice.

Source: Laws 1986, LB 474, § 10; Laws 1988, LB 594, § 4; Laws 1994, LB 480, § 24.

2-4611 Administrative order; appeal.

Any owner or operator served with an administrative order of a district may, within thirty days after service of the administrative order, appeal to the district court in the county in which a majority of the land is located. The appeal shall be de novo and shall be conducted in accordance with section 2-4613.

Source: Laws 1986, LB 474, § 11.

2-4612 Order for immediate compliance; when authorized.

The district shall petition the district court for a court order requiring immediate compliance with the administrative order previously issued by the district if:

(1) The work necessary to comply with the administrative order is not commenced on or before the date specified in such order or in any supplementary orders subsequently issued unless, in the judgment of the district, the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person to whom such order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time;

(2) The work is not being performed with due diligence or is not satisfactorily completed by the date specified in the administrative order or the practices are not being operated, utilized, or maintained as required;

(3) The work is not of a type or quality specified by the district and, when completed, it will not or does not reduce soil erosion from such land below the soil-loss limit or, to the extent excessive erosion is permitted by the district for a nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from such excessive erosion from leaving the land involved; or

(4) The person to whom the administrative order is directed advises the district that he or she does not intend to commence or complete such work.

Source: Laws 1986, LB 474, § 12; Laws 1988, LB 594, § 5.

2-4613 District court action; procedures; order; appeal; failure to comply with order; effect.

In the district court action, the burden of proof shall be upon the district to show that soil erosion is occurring in excess of the applicable soil-loss limit and that the landowner or operator has not established or maintained soil and water conservation practices or erosion or sediment control practices in compliance with the district's erosion and sediment control program. Upon receiving satisfactory proof, the court shall issue an order directing the owner or operator to comply with the administrative order previously issued by the district. The court may modify the administrative order if deemed necessary. Notice of the court order shall be given by either personal service or certified or registered mail to each person to whom the order is directed, who may, within thirty days from the date of the court order, appeal to the Court of Appeals. Any person who fails to comply with the court order issued within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and punished accordingly.

Source: Laws 1986, LB 474, § 13; Laws 1991, LB 732, § 10.

ARTICLE 47

AGRICULTURAL REVITALIZATION AUTHORITY

Section
2-4701. Repealed. Laws 1996, LB 966, § 4.
2-4702. Repealed. Laws 1996, LB 966, § 4.
2-4703. Repealed. Laws 1996, LB 966, § 4.
2-4704. Repealed. Laws 1996, LB 966, § 4.
2-4705. Repealed. Laws 1996, LB 966, § 4.
2-4706. Repealed. Laws 1996, LB 966, § 4.
2-4707. Repealed. Laws 1996, LB 966, § 4.
2-4708. Repealed. Laws 1996, LB 966, § 4.
2-4709. Repealed. Laws 1996, LB 966, § 4.
2-4710. Repealed. Laws 1996, LB 966, § 4.
2-4711. Repealed. Laws 1996, LB 966, § 4.
2-4712. Repealed. Laws 1996, LB 966, § 4.
2-4713. Repealed. Laws 1996, LB 966, § 4.
2-4714. Repealed. Laws 1996, LB 966, § 4.
2-4715. Repealed. Laws 1996, LB 966, § 4.
2-4716. Repealed. Laws 1996, LB 966, § 4.
2-4717. Repealed. Laws 1996, LB 966, § 4.
2-4718. Repealed. Laws 1996, LB 966, § 4.
2-4719. Repealed. Laws 1996, LB 966, § 4.
2-4720. Repealed. Laws 1996, LB 966, § 4.
2-4721. Repealed. Laws 1996, LB 966, § 4.
2-4722. Repealed. Laws 1996, LB 966, § 4.
2-4723. Repealed. Laws 1996, LB 966, § 4.
2-4724. Repealed. Laws 1996, LB 966, § 4.
2-4725. Repealed. Laws 1996, LB 966, § 4.
2-4726. Repealed. Laws 1996, LB 966, § 4.
2-4727. Repealed. Laws 1996, LB 966, § 4.
2-4728. Repealed. Laws 1996, LB 966, § 4.
2-4729. Repealed. Laws 1996, LB 966, § 4.
2-4730. Repealed. Laws 1996, LB 966, § 4.
2-4731. Repealed. Laws 1996, LB 966, § 4.
2-4732. Repealed. Laws 1996, LB 966, § 4.
2-4733. Repealed. Laws 1996, LB 966, § 4.
2-4734. Repealed. Laws 1996, LB 966, § 4.
2-4735. Repealed. Laws 1996, LB 966, § 4.

Section
2-4736. Repealed. Laws 1996, LB 966, § 4.
2-4737. Repealed. Laws 1996, LB 966, § 4.
2-4738. Repealed. Laws 1996, LB 966, § 4.
2-4739. Repealed. Laws 1996, LB 966, § 4.
2-4740. Repealed. Laws 1996, LB 966, § 4.
2-4741. Repealed. Laws 1996, LB 966, § 4.
2-4742. Repealed. Laws 1996, LB 966, § 4.
2-4743. Repealed. Laws 1996, LB 966, § 4.
2-4744. Repealed. Laws 1996, LB 966, § 4.
2-4745. Repealed. Laws 1996, LB 966, § 4.
2-4746. Repealed. Laws 1996, LB 966, § 4.
2-4747. Repealed. Laws 1996, LB 966, § 4.
2-4748. Repealed. Laws 1996, LB 966, § 4.

2-4701 Repealed. Laws 1996, LB 966, § 4.

2-4702 Repealed. Laws 1996, LB 966, § 4.

2-4703 Repealed. Laws 1996, LB 966, § 4.

2-4704 Repealed. Laws 1996, LB 966, § 4.

2-4705 Repealed. Laws 1996, LB 966, § 4.

2-4706 Repealed. Laws 1996, LB 966, § 4.

2-4707 Repealed. Laws 1996, LB 966, § 4.

2-4708 Repealed. Laws 1996, LB 966, § 4.

2-4709 Repealed. Laws 1996, LB 966, § 4.

2-4710 Repealed. Laws 1996, LB 966, § 4.

2-4711 Repealed. Laws 1996, LB 966, § 4.

2-4712 Repealed. Laws 1996, LB 966, § 4.

2-4713 Repealed. Laws 1996, LB 966, § 4.

2-4714 Repealed. Laws 1996, LB 966, § 4.

2-4715 Repealed. Laws 1996, LB 966, § 4.

2-4716 Repealed. Laws 1996, LB 966, § 4.

2-4717 Repealed. Laws 1996, LB 966, § 4.

2-4718 Repealed. Laws 1996, LB 966, § 4.

2-4719 Repealed. Laws 1996, LB 966, § 4.

2-4720 Repealed. Laws 1996, LB 966, § 4.

2-4721 Repealed. Laws 1996, LB 966, § 4.

2-4722 Repealed. Laws 1996, LB 966, § 4.

2-4723 Repealed. Laws 1996, LB 966, § 4.

2-4724 Repealed. Laws 1996, LB 966, § 4.

2-4725 Repealed. Laws 1996, LB 966, § 4.

2-4726 Repealed. Laws 1996, LB 966, § 4.

2-4727 Repealed. Laws 1996, LB 966, § 4.

2-4728 Repealed. Laws 1996, LB 966, § 4.

2-4729 Repealed. Laws 1996, LB 966, § 4.

2-4730 Repealed. Laws 1996, LB 966, § 4.

2-4731 Repealed. Laws 1996, LB 966, § 4.

2-4732 Repealed. Laws 1996, LB 966, § 4.

2-4733 Repealed. Laws 1996, LB 966, § 4.

2-4734 Repealed. Laws 1996, LB 966, § 4.

2-4735 Repealed. Laws 1996, LB 966, § 4.

2-4736 Repealed. Laws 1996, LB 966, § 4.

2-4737 Repealed. Laws 1996, LB 966, § 4.

2-4738 Repealed. Laws 1996, LB 966, § 4.

2-4739 Repealed. Laws 1996, LB 966, § 4.

2-4740 Repealed. Laws 1996, LB 966, § 4.

2-4741 Repealed. Laws 1996, LB 966, § 4.

2-4742 Repealed. Laws 1996, LB 966, § 4.

2-4743 Repealed. Laws 1996, LB 966, § 4.

2-4744 Repealed. Laws 1996, LB 966, § 4.

2-4745 Repealed. Laws 1996, LB 966, § 4.

2-4746 Repealed. Laws 1996, LB 966, § 4.

2-4747 Repealed. Laws 1996, LB 966, § 4.

2-4748 Repealed. Laws 1996, LB 966, § 4.

ARTICLE 48
FARM MEDIATION

Section

2-4801 Act, how cited.

Sections 2-4801 to 2-4816 shall be known and may be cited as the Farm Mediation Act.

Source: Laws 1988, LB 664, § 1.
Termination date June 30, 2009.

2-4802 Terms, defined.

As used in the Farm Mediation Act, unless the context otherwise requires:

(1) Administrator means the Department of Agriculture or any other appropriate state agency designated by the Governor;

(2) Borrower means an individual, limited liability company, corporation, trust, cooperative, joint venture, or other entity entitled to contract who is engaged in farming or ranching, who derives more than fifty percent of his or her gross income from farming or ranching, and who holds an agricultural loan;

(3) Creditor means any individual, organization, cooperative, partnership, limited liability company, trust, or state or federally chartered corporation to whom an agricultural loan is owed;

(4) Farm mediation service means an entity with which the administrator contracts to conduct mediation and related services pursuant to the act;

(5) Mediation means a process by which the parties present, discuss, and explore practical and realistic alternatives to the resolution of a dispute; and

(6) Mediator means anyone responsible for and engaged in the performance of mediation pursuant to the act.

Source: Laws 1988, LB 664, § 2; Laws 1993, LB 121, § 81; Laws 1997, LB 200, § 1.
Termination date June 30, 2009.

2-4803 Administrator; duties.

The administrator shall serve as the farm mediation program coordinator and shall be responsible for placing into effect and implementing the Farm Mediation Act.

Source: Laws 1988, LB 664, § 3.
Termination date June 30, 2009.

2-4804 Financial, legal, and farm mediation services; contracts to provide.

(1) Borrowers involved in mediation under the Farm Mediation Act shall be offered assistance, at no cost to borrowers, in the analysis of their business and personal financial situation. The administrator shall contract with one or more

eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if he or she has staff trained and experienced in farm and ranch financial analysis, is familiar with the unique aspects of production agriculture, is able to work effectively with borrowers and creditors, and demonstrates an ability to assist each borrower in developing alternatives and to evaluate such alternatives for potential viability.

(2) The administrator shall provide any available information regarding legal assistance programs for borrowers and may contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if such assistance is provided by attorneys who are qualified in agricultural credit problems of borrowers.

(3) The administrator shall contract with one or more eligible persons to provide farm mediation services pursuant to the Farm Mediation Act. A person shall be eligible to contract to provide farm mediation services if he or she is qualified or provides agricultural mediation training of mediators to a level of expertise specified by the administrator and ensures that all mediation sessions are confidential.

(4) Any person contracting with the administrator to provide services pursuant to this section shall demonstrate an ability to perform high quality service for the least cost within the time limits established by the administrator.

(5) The contract or contracts entered into pursuant to this section may be terminated by either party upon written notice. Any person awarded a contract shall be designated as the contractor for the service area of the state set forth in such contract for the duration of the contract.

Source: Laws 1988, LB 664, § 4; Laws 1997, LB 200, § 2.
Termination date June 30, 2009.

2-4805 Farm mediation service; advise borrower of assistance programs.

After receiving a mediation request, the farm mediation service shall advise the borrower that financial and legal preparation assistance may be available. The farm mediation service shall provide any other available information regarding assistance programs to farmers.

Source: Laws 1988, LB 664, § 5.
Termination date June 30, 2009.

2-4806 Fees.

The administrator shall adopt and promulgate rules and regulations setting appropriate fee guidelines for the services provided under the Farm Mediation Act, which fees shall not exceed actual costs and shall be borne equally by all parties, and setting forth any procedures or requirements necessary to implement the act. The rules and regulations shall provide that the fees shall be collected by the farm mediation service and retained by the farm mediation service to offset its costs and that the farm mediation service may require payment of the fees or a portion thereof prior to a mediation meeting. The administrator may adopt and promulgate rules and regulations that allow a separate fee schedule for mediation services that are not eligible for partial or full federal reimbursement.

Source: Laws 1988, LB 664, § 6; Laws 2007, LB108, § 1.
Termination date June 30, 2009.

2-4807 Creditor; provide notification of availability of mediation; when.

(1) At least thirty days prior to the initiation of a proceeding on an agricultural debt in excess of forty thousand dollars, a creditor, except as provided in subsection (2) or (3) of this section, shall provide written notice directly to the borrower of the availability of mediation and the address and telephone number of the farm mediation service in the service area of the borrower.

(2) Subsection (1) of this section shall not apply to creditors subject to the federal Agricultural Credit Act of 1987 if such act and the rules and regulations adopted and promulgated thereunder require otherwise.

(3) Subsection (1) of this section shall not apply if a court of competent jurisdiction determines that the time delay required would cause the creditor to suffer irreparable harm because there are reasonable grounds to believe the borrower may dissipate or divert collateral.

Source: Laws 1988, LB 664, § 7.
Termination date June 30, 2009.

2-4808 Mediation; request; participants.

(1) Any borrower or creditor may request mediation of any indebtedness incurred in relation to an agricultural loan by applying to the farm mediation service. Any party involved in an adverse decision from a United States Department of Agriculture agency may request mediation by applying to the farm mediation service. The farm mediation service may also accept disputes regarding division fences, including disputes referred by a court pursuant to section 34-112.02.

(2) The farm mediation service shall notify all the parties and, upon their consent, schedule a meeting with a mediator. The parties shall not be required to attend any mediation meetings under this section, and failure to attend any mediation meetings or to participate in mediation under this section shall not affect the rights of any party in any manner. Participation in mediation under this section shall not be a prerequisite or a bar to the institution of or prosecution of legal proceedings by any party.

Source: Laws 1988, LB 664, § 8; Laws 1997, LB 200, § 3; Laws 2007, LB108, § 2.
Termination date June 30, 2009.

2-4809 Initial mediation meeting.

After receiving a mediation request under section 2-4808, the farm mediation service shall send a mediation meeting notice to all the consenting parties setting a time and place for an initial mediation meeting between the parties and a mediator associated with the farm mediation service. Adequate preparation by all parties shall be advised by the farm mediation service prior to the mediation meeting. An initial mediation meeting shall be held within forty days after receiving the mediation request or as otherwise agreed by the parties.

Source: Laws 1988, LB 664, § 9; Laws 1997, LB 200, § 4.
Termination date June 30, 2009.

2-4810 Mediation period; duration; continuation.

The farm mediation service shall conduct and conclude a mediation meeting during the mediation period which extends for sixty days after the farm

mediation service receives the mediation request. If all parties consent, mediation may continue after the end of the mediation period. If any party elects not to participate in mediation, the farm mediation service shall so notify all parties.

Source: Laws 1988, LB 664, § 10.
Termination date June 30, 2009.

2-4811 Agreement; mediator; powers; enforcement.

If an agreement is reached between the parties, the mediator may (1) draft a written mediation agreement encompassing the agreement, (2) have it signed by the parties, and (3) file the agreement with the farm mediation service. Any party to the mediation agreement may enforce the agreement as a legal contract.

Source: Laws 1988, LB 664, § 11; Laws 1997, LB 200, § 5.
Termination date June 30, 2009.

2-4812 Mediator; duties; confidentiality required.

(1) At the initial mediation meeting and any subsequent meetings, the mediator associated with the farm mediation service shall:

(a) Listen to every party desiring to be heard;

(b) Attempt to mediate between the parties;

(c) Allow for exploration of legitimate and fair interests of the parties; and

(d) Advise the parties as to the existence of any available assistance programs including financial preparation and legal assistance.

(2) All documents and data regarding the finances of borrowers and creditors or the involvement of parties in an adverse decision from a United States Department of Agriculture agency which are created, collected, and maintained by the farm mediation service shall not be public records and shall be held in strict confidence by the farm mediation service and all parties to the mediation. If all parties consent to disclosure, such information may be disclosed pursuant to the terms of the consent.

(3) No mediation shall commence until the mediator makes a statement to the effect of language contained in subsection (2) of this section. At the end of a mediation session, the mediator shall obtain a signed statement by all parties to the mediation agreeing to abide by the requirements of this section.

Source: Laws 1988, LB 664, § 12; Laws 1997, LB 200, § 6.
Termination date June 30, 2009.

2-4813 Administrator; farm mediation service; promote services.

The administrator and the farm mediation service shall make an extensive effort to educate borrowers and creditors and other eligible participants on the mediation process; financial, legal, and federal agricultural program issues; and the availability of farm mediation services.

Source: Laws 1988, LB 664, § 13; Laws 1997, LB 200, § 7.
Termination date June 30, 2009.

2-4814 Applicability of act.

Except as otherwise provided in the Farm Mediation Act, nothing in the act shall be applicable to or shall affect any legal proceedings filed by any party in mediation.

Source: Laws 1988, LB 664, § 14; Laws 1997, LB 200, § 8.
Termination date June 30, 2009.

2-4815 Farm mediation service; maintain statistical records.

The farm mediation service shall maintain complete statistical records of program participation and costs and make them available upon request.

Source: Laws 1988, LB 664, § 15.
Termination date June 30, 2009.

2-4816 Act, termination.

The Farm Mediation Act shall terminate on June 30, 2009, unless extended by action of the Legislature.

Source: Laws 1988, LB 664, § 16; Laws 1991, LB 357, § 1; Laws 1994, LB 934, § 1; Laws 1997, LB 200, § 9; Laws 2002, LB 912, § 1.
Termination date June 30, 2009.

ARTICLE 49

CLIMATE ASSESSMENT

Section
2-4901. Climate Assessment Response Committee; created; members; expenses; meetings.
2-4902. Climate Assessment Response Committee; duties.

2-4901 Climate Assessment Response Committee; created; members; expenses; meetings.

(1) The Climate Assessment Response Committee is hereby created. The office of the Governor shall be the lead agency and shall oversee the committee and its activities. The committee shall be composed of representatives appointed by the Governor with the approval of a majority of the Legislature from livestock producers, crop producers, and the Nebraska Emergency Management Agency, Conservation and Survey Division and Cooperative Extension Service of the University of Nebraska, Department of Agriculture, Department of Health and Human Services, Department of Natural Resources, and Governor's Policy Research Office. Representatives from the federal Farm Service Agency and Federal Crop Insurance Corporation may also serve on the committee at the invitation of the Governor. The Governor may appoint the chairperson of the Committee on Agriculture of the Legislature and the chairperson of the Committee on Natural Resources of the Legislature and any other state agency representatives or invite any other federal agencies to name representatives as he or she deems necessary. The Governor shall appoint one of the Climate Assessment Response Committee members to serve as the chairperson of the committee. Committee members shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The committee shall meet at least twice each year and shall meet more frequently (a) at the call of the chairperson, (b) upon request of a majority of the committee members, and (c) during periods of drought or other severe climate situations.

(3) The chairperson may establish subcommittees and may invite representatives of agencies other than those with members on the committee to serve on such subcommittees.

(4) Any funds for the activities of the committee and for other climate-related expenditures may be appropriated directly to the office of the Governor for contracting with other agencies or persons for tasks approved by the committee.

Source: Laws 1992, LB 274, § 1; Laws 1996, LB 43, § 1; Laws 1996, LB 1044, § 43; Laws 1999, LB 403, § 5; Laws 2000, LB 900, § 63; Laws 2007, LB296, § 22.

2-4902 Climate Assessment Response Committee; duties.

The Climate Assessment Response Committee shall:

(1) Provide timely and systematic data collection, analysis, and dissemination of information about drought and other severe climate occurrences to the Governor and to other interested persons;

(2) Provide the Governor and other interested persons with information and advice relevant to requests for federal disaster declarations and to the use of funds and other types of assistance available to the state because of such declarations;

(3) Establish criteria for startup and shutdown of various assessment and response activities by state and federal agencies during drought and other climate-related emergencies;

(4) Provide an organizational structure that assures information flow and defines the duties and responsibilities of all agencies during times of drought and climate-related emergencies;

(5) Maintain a current inventory of state and federal agency responsibilities in assessing and responding to drought and other climate-related emergencies;

(6) Provide a mechanism for the improvement of methods of assessing impacts of drought on agriculture and industry;

(7) Provide such other coordination and communication among federal and state agencies as is deemed appropriate by such committee; and

(8) Perform such other climate-related assessment and response functions as are desired by the Governor.

Source: Laws 1992, LB 274, § 2.

ARTICLE 50

AQUACULTURE

Section
2-5001. Legislative findings.
2-5002. Terms, defined.
2-5003. Nebraska Aquaculture Board; created; members; terms; expenses.
2-5004. Repealed. Laws 1994, LB 1165, § 22.
2-5005. Board; proposed legislation.
2-5006. Board; duties.

2-5001 Legislative findings.

The Legislature finds that it is in the interest of the people of the state that the practice of aquaculture be encouraged in order to promote agricultural diversi-

fication, augment food supplies, expand employment opportunities, promote economic activity, increase stocks of fish and other aquatic life, protect and better use and manage the natural resources of the state, and provide other benefits to the state.

Source: Laws 1993, LB 830, § 1.

2-5002 Terms, defined.

For purposes of sections 2-5002 to 2-5006:

(1) Aquaculture shall have the definition found in section 2-3804.01;

(2) Aquaculture facility shall mean any facility, structure, lake, pond, tank, or tanker truck used for the purpose of propagating, selling, brokering, trading, or transporting live fish or viable gametes;

(3) Aquaculturist shall mean any individual, partnership, limited liability company, or corporation, other than an employee of a state or federal hatchery, involved in producing, transporting, or marketing cultured aquatic stock or products thereof;

(4) Aquatic disease shall mean any departure from a normal state of health of aquatic organisms caused by disease agents;

(5) Aquatic organism shall mean an individual member of any species of fish, mollusk, crustacean, aquatic reptile, aquatic amphibian, aquatic insect, or other aquatic invertebrate. Aquatic organism shall include the viable gametes, eggs or sperm, of an aquatic organism;

(6) Board shall mean the Nebraska Aquaculture Board;

(7) Commercial aquaculturist shall mean an aquaculturist engaged in the business of growing, selling, brokering, or processing live or viable aquatic organisms for commercial purposes;

(8) Commission shall mean the Game and Parks Commission;

(9) Cultured aquatic stock shall mean aquatic organisms raised from privately owned stocks and aquatic organisms lawfully acquired and held in private ownership until they become intermingled with wild aquatic organisms;

(10) Department shall mean the Department of Agriculture; and

(11) Director shall mean the Director of Agriculture.

Source: Laws 1993, LB 830, § 2; Laws 1994, LB 884, § 9; Laws 1994, LB 1165, § 1.

2-5003 Nebraska Aquaculture Board; created; members; terms; expenses.

There is hereby created the Nebraska Aquaculture Board. The board shall consist of (1) the aquaculturist employed by the Cooperative Extension Service pursuant to section 85-1,104.01, (2) one employee of the commission who is familiar with aquatic disease, appointed by the secretary of the commission, (3) one employee of the department appointed by the director, (4) three aquaculturists, appointed by the Governor, and (5) a representative of an industry or product which is related to or used in aquaculture, appointed by the Governor. The board shall elect from its members a chairperson. The terms of the members of the board shall be three years, except that the terms of the initial aquaculturist members of the board shall be staggered so that one member is appointed for a term of one year, one for a term of two years, and one for a term of three years, as determined by the Governor. Members appointed under

subdivisions (4) and (5) of this section shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1993, LB 830, § 3; Laws 1994, LB 1165, § 2; Laws 1999, LB 405, § 1.

2-5004 Repealed. Laws 1994, LB 1165, § 22.

2-5005 Board; proposed legislation.

The board may consider and recommend to the Legislature appropriate legislation, including, but not limited to, legislation concerning the following:

(1) Fees to fund all direct and indirect costs of the administration and enforcement of the legislation;

(2) Standards applicable to products of cultured aquatic stock offered for sale;

(3) The establishment of standards for and certification of private aquaculture facilities which may include, but need not be limited to, standards for commercial aquaculturists with respect to sanitation, financial stability, disease control, and the movement of aquaculture products offered for sale;

(4) Procedures regarding granting, denying, suspending, or revoking an aquaculture facility permit and appeals processes relating thereto;

(5) Procedures and responsibilities for quarantine of aquaculture facilities upon the determination that a situation exists which threatens imminent danger to existing wild aquatic populations or to human health and safety and that no more reasonable means exist to control the situation including, but not limited to, controlling unwanted aquatic species and procedures for controlling aquatic infectious diseases that may affect wild aquatic or cultured aquatic stock;

(6) Procedures for contracting services of any specialist in this state or in any other state or with any other government agency, through intergovernmental agreement, contract, or memorandum of understanding, to implement and enforce the legislation;

(7) Penalties for violations of the aquaculture plan developed by the board;

(8) The evaluation and consideration of which terms of the aquaculture industry need further definition as well as an evaluation of the impact of such legislation;

(9) Barriers to entry in the business of aquaculture and ways to reduce or eliminate such barriers which may include an evaluation of tax exemptions and education; and

(10) The interrelationship between the department in promotion of and the commission in the regulation of cultured aquatic stock.

Source: Laws 1993, LB 830, § 5; Laws 1994, LB 1165, § 3.

2-5006 Board; duties.

The board shall:

(1) Advise the commission, the department, and the University of Nebraska Institute of Agriculture and Natural Resources on current and future regulations and issues which may enhance the development of the aquaculture industry;

(2) Conduct public meetings for the purpose of addressing current issues affecting aquaculture, as well as obtaining feedback from the commercial aquaculturists;

(3) Join in consultation with the commission and department on all matters pertaining to commercial aquaculturists and aquaculture, including the importation of nonindigenous species into Nebraska for commercial use; and

(4) Review any orders of the commission for the quarantine or destruction of aquatic organisms which are affected with prohibited pathogens. The board may make recommendations to the commission regarding such orders.

Source: Laws 1994, LB 1165, § 4.

ARTICLE 51
BUFFER STRIP ACT

Section

2-5101 Act, how cited.

Sections 2-5101 to 2-5111 shall be known and may be cited as the Buffer Strip Act.

Source: Laws 1998, LB 1126, § 1.

2-5102 Legislative findings.

The Legislature finds and declares that:

(1) Buffer strips help to reduce the levels of sediment, crop nutrient, pesticides, and other chemicals introduced into surface water resources; and

(2) Both wildlife and people benefit as a result of improved water quality.

Source: Laws 1998, LB 1126, § 2.

2-5103 Terms, defined.

For purposes of the Buffer Strip Act:

(1) Buffer strip means a strip of vegetation used to intercept or trap field sediment, organics, pesticides, and other potential pollutants before they reach surface water;

(2) Department means the Department of Agriculture;

(3) District means a natural resources district; and

(4) Person means any individual, partnership, firm, corporation, company, society, or association, the state or any department, agency, or subdivision thereof, or any other public or private entity.

Source: Laws 1998, LB 1126, § 3; Laws 2000, LB 1135, § 1.

2-5104 Repealed. Laws 2000, LB 1135, § 34.

2-5105 Repealed. Laws 2000, LB 1135, § 34.

2-5106 Buffer Strip Incentive Fund; created; use; investment.

The Buffer Strip Incentive Fund is created. Proceeds raised from fees imposed for the registration of pesticides and earmarked for the fund pursuant to section 2-2634, proceeds raised from federal grants earmarked for the fund, and any proceeds raised from public or private donations made to the fund shall be remitted to the State Treasurer for credit to the fund. The fund shall be administered by the department to maintain the buffer strip program and for expenses directly related to the program, including necessary expenses of the department in carrying out its duties and responsibilities under the Buffer Strip Act. The annual cost of administering the buffer strip program shall not exceed ten percent of the total annual proceeds credited to the fund. Such administrative costs shall include funds allocated by the department to the districts for their administrative costs. 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 1998, LB 1126, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-5107 Buffer strip; creation; application for reimbursement; procedure; district; duties.

(1) Any person who desires to create a buffer strip adjacent to surface water on his or her property may submit an application for buffer strip reimbursement to the district. The application shall include the location of the proposed buffer strip and the total number of acres to be included in the proposed buffer strip. If the person will receive any money from any other source for use of the land proposed for the buffer strip, the application shall include the identity of the source or sources, the amount of money to be received, and the length of time the money will be received.

(2) All applications for buffer strip reimbursement under the Buffer Strip Act shall be submitted by a date established by rules and regulations adopted and promulgated pursuant to section 2-5111.

(3) Upon receipt of an application for buffer strip reimbursement, the district shall review the application for compliance with the requirements set forth in the rules and regulations adopted and promulgated pursuant to section 2-5111.

(4) If the district determines that the application is not in compliance with the requirements established by the department, the district shall inform the applicant of the deficiencies in the plan and, if feasible, recommend an alternate plan which complies with the rules and regulations of the department. The applicant may then submit a new application consistent with the recommendation of the district.

(5) If the district determines that the application is in compliance with the standards established by the department, the district shall forward the application to the department. The application shall include a written evaluation of the

applicant's compliance with the requirements set forth in rules and regulations adopted and promulgated pursuant to section 2-5111.

Source: Laws 1998, LB 1126, § 7.

2-5108 Buffer strip reimbursement; department; duties.

(1) Upon receipt of the application for buffer strip reimbursement, the department shall review the application for compliance with the rules and regulations adopted and promulgated pursuant to section 2-5111.

(2) If the department determines that the application is not in compliance with the rules and regulations adopted and promulgated pursuant to section 2-5111, the department shall inform the district of the deficiencies. The district shall then inform the applicant of the deficiencies and allow the applicant to submit a new application.

(3) The department shall determine which applications are in compliance with the rules and regulations adopted and promulgated under section 2-5111 and shall compile a list of all such applications according to the factors set forth in the rules and regulations. From such prioritized list, and based upon the amount of funds available, the department shall notify the districts which applications are approved. Funds approved by the department for buffer strip reimbursement shall only be for buffer strips created after January 1, 1996. The total amount of funds available for all new and existing agreements shall not exceed the projected available cash balance of the Buffer Strip Incentive Fund for the entire term of the agreements.

Source: Laws 1998, LB 1126, § 8.

2-5109 Contractual agreement; terms; payments; renewal.

(1) Upon approval of an application by the district and the department, the district shall enter into a contractual agreement with the applicant for the land included in the buffer strip. The agreement shall include a provision that the applicant shall maintain the buffer strip in accordance with the approved plan during the term of the rental agreement. The agreement may also include a provision that the applicant shall not apply specified fertilizers on buffered fields between designated dates. Failure to maintain the buffer strip in accordance with the plan shall be cause for all future payments under the agreement to be forfeited and shall be cause for the recovery by the department of any payments previously made. Upon submission of a copy of the agreement to the department, it shall authorize the State Treasurer to transfer funds to the district from the Buffer Strip Incentive Fund in an amount equal to the total amount of funds due for the agreement in that district that year. Such transfer shall be made as soon as funds are available.

(2) If the applicant does not receive reimbursement from any other source for the land included in the buffer strip, the district shall pay the applicant annually an amount not to exceed one hundred fifty dollars per acre or fraction thereof included in the buffer strip.

(3) If the applicant receives reimbursement from any other source for the land included in the buffer strip, the district shall pay the applicant annually an amount not to exceed one hundred fifty dollars per acre included in the buffer strip, minus the amount of the other reimbursement.

(4) The actual amount of any payment made to an applicant under subsection (2) or (3) of this section shall be determined by the district using the sliding scale provided in rules and regulations adopted and promulgated pursuant to section 2-5111. Such amount shall be included as part of the application submitted to the department.

(5) Contractual agreements pursuant to this section shall be for a minimum term of five years and a maximum term of ten years.

(6) Following the expiration of any contractual agreement pursuant to this section, the applicant may apply to renew the agreement. Any application for renewal of an agreement shall be made in accordance with sections 2-5107 to 2-5109 and shall be considered with any new applications.

Source: Laws 1998, LB 1126, § 9.

2-5110 Contractual agreements; compliance; effect.

Each district shall take reasonable steps to ensure that contractual agreements pursuant to section 2-5109 are complied with by the applicant. The department shall adequately reimburse the districts for the costs of such purposes. If the applicant does not comply with the terms of the agreement, the district shall discontinue any payments to the applicant.

Source: Laws 1998, LB 1126, § 10.

2-5111 Rules and regulations; department; powers and duties.

The department shall adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Buffer Strip Act. The rules and regulations shall include, but not be limited to, rules and regulations providing for:

(1) Types of vegetation suitable for buffer strips;

(2) Appropriate width of buffer strips;

(3) Types of surface water appropriate for protection by buffer strips;

(4) Soil types and classifications appropriate for protection by buffer strips;

(5) A sliding scale, based on land value and potential environmental benefit, to determine the amount to be paid as payment under the act for the buffer strip;

(6) An index to rank those applications that meet the technical requirements of the act to determine priority of funding. Such index shall, at a minimum, identify the factors that will be considered in scoring an application and assign a numerical value for each of those factors. In addition to those items listed in subdivisions (1) to (5) of this section, such factors shall also include an evaluation of each application for the water quality benefits from reduced soil erosion and runoff, the on-farm benefits of reduced soil erosion, and the cost per acre of an application. Priority may be given to those applications which create buffer strips at the lowest possible cost, assuming environmental protection benefits are equal in other respects;

(7) The minimum requirements necessary for any contractual agreement entered into between a district and applicant;

(8) A project map of the buffer strip program created by the Buffer Strip Act showing the location of buffer strips in each watershed; and

(9) Any other rule and regulation deemed appropriate for implementation of the Buffer Strip Act.

Source: Laws 1998, LB 1126, § 11.

ARTICLE 52
AGRICULTURAL STRUCTURE ASSESSMENT TASK FORCE

Section
2-5201. Repealed. Laws 2004, LB 940, § 4.

2-5201 Repealed. Laws 2004, LB 940, § 4.

ARTICLE 53
CARBON SEQUESTRATION

Section
2-5301. Legislative intent.
2-5302. Carbon Sequestration Advisory Committee; expenses.
2-5303. Carbon Sequestration Advisory Committee; duties.
2-5304. Report; contents.
2-5305. Director of Natural Resources; powers and duties.
2-5306. Carbon Sequestration Assessment Cash Fund; created; use; investment.

2-5301 Legislative intent.

Increasing levels of carbon dioxide and other greenhouse gases in the atmosphere has led to growing interest in national and international forums for implementing measures to slow and reverse the buildup of such atmospheric constituents. Such measures may potentially include the establishment of systems of trading in credits for adoption of practices, technologies, or other measures which decrease net emissions of carbon dioxide and other greenhouse gases.

Improved agricultural production methods, soil conservation practices, and other methods of stewardship of soil resources have great potential to increase carbon sequestration on agricultural lands and help offset carbon dioxide emissions from other sectors of the economy. It is in the interest of agricultural producers and the public in general that the Director of Natural Resources document and quantify carbon sequestration and greenhouse emissions reductions associated with agricultural practices, management systems, and land uses occurring on cropland and rangeland in Nebraska. It is the intent of the Legislature that efforts to quantify and verify carbon sequestration on agricultural land will enhance the ability of the state's agricultural landowners to participate in any system of carbon or greenhouse emissions marketing or trading.

Source: Laws 2000, LB 957, § 1.

2-5302 Carbon Sequestration Advisory Committee; expenses.

(1) The Carbon Sequestration Advisory Committee is created. The committee shall consist of the following members appointed by the Governor:

(a) The Director of Agriculture or his or her designee;

(b) The Director of Natural Resources or his or her designee;

(c) The Director of Environmental Quality or his or her designee;

(d) One member representing the Natural Resources Conservation Service of the United States Department of Agriculture;

(e) One member representing the University of Nebraska Institute of Agriculture and Natural Resources;

(f) One member representing the Nebraska Energy Office;

(g) One member representing an entity which generates electrical energy;

(h) Two members who are producers of field crops at least one of whom actively employs a minimum tillage management system in his or her farming operation;

(i) Two members who are producers of livestock at least one of whom is actively involved in range management;

(j) One member with expertise in greenhouse emissions marketing or trading;

(k) One member representing natural resources districts; and

(l) One member representing the ethanol industry.

(2) Members of the committee shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The Director of Natural Resources shall assist the committee with administrative and operational support. The Nebraska Natural Resources Commission may advise the committee in the performance of its duties under sections 2-5301 to 2-5306.

Source: Laws 2000, LB 957, § 2.

2-5303 Carbon Sequestration Advisory Committee; duties.

The Carbon Sequestration Advisory Committee shall:

(1) Advise and assist the Director of Natural Resources in preparing the reports pursuant to sections 2-5304 and 2-5305 and in conducting the assessment pursuant to section 2-5305;

(2) Recommend policies or programs to enhance the ability of Nebraska agricultural landowners to participate in systems of carbon trading. Such recommendations shall include potential policies or programs designed to optimize economic benefits to agricultural producers participating in carbon trading transactions. Such policies or programs may include, but are not limited to, identifying existing or the potential of creating nonprofit organizations or other public or private entities capable of serving as assemblers of carbon credits or as intermediaries on behalf of producers in carbon trading systems;

(3) Encourage the production of educational and advisory materials regarding carbon sequestration on agricultural lands and participation in systems of carbon or greenhouse emissions trading; and

(4) Identify and recommend areas of research needed to better understand and quantify the processes of carbon sequestration on agricultural lands.

Source: Laws 2000, LB 957, § 3.

2-5304 Report; contents.

On or before December 1, 2001, the Director of Natural Resources, in consultation with the Carbon Sequestration Advisory Committee, shall prepare a report to the Legislature. The report shall include, but not be limited to:

(1) The potential for, and potential forms of, greenhouse emissions regulation;

(2) The potential for development of a system or systems of carbon emissions trading or markets for carbon sequestered on agricultural land;

(3) Agricultural practices, management systems, or land uses which increase stored soil carbon and minimize carbon dioxide or other greenhouse emissions associated with agricultural production;

(4) Methods for measuring and modeling net carbon sequestration and greenhouse emissions reduction associated with various agricultural practices, management systems, or land uses occurring on agricultural land;

(5) Areas of scientific uncertainty with respect to quantifying and understanding greenhouse emission reductions or soil carbon sequestration associated with agricultural activities; and

(6) Any recommendations of the Carbon Sequestration Advisory Committee developed pursuant to section 2-5303.

Source: Laws 2000, LB 957, § 4.

2-5305 Director of Natural Resources; powers and duties.

(1) The Director of Natural Resources shall, in consultation with the Carbon Sequestration Advisory Committee, assess agricultural lands in the State of Nebraska for past carbon sequestration and future carbon sequestration potential. The assessment shall seek to quantify carbon sequestration associated with various agricultural practices, management systems, and land uses occurring on agricultural lands in this state. On or before January 1, 2002, the director shall publish a report of the findings. The director may, from time to time, update such findings as advancements in understanding of the processes of carbon sequestration and new data become available.

(2) The assessment shall be conducted in a manner that shall provide a means for owners of agricultural land to estimate past and future net carbon sequestration resulting from agricultural practices, conservation measures, management systems, and land uses occurring on their property. The Director of Natural Resources may contract and cooperate with the Natural Resources Conservation Service of the United States Department of Agriculture to conduct assessment activities provided for in this section.

(3) The director may apply for and accept grants, gifts, or other sources of public and private funds to carry out the purposes of sections 2-5301 to 2-5306.

Source: Laws 2000, LB 957, § 5.

2-5306 Carbon Sequestration Assessment Cash Fund; created; use; investment.

The Carbon Sequestration Assessment Cash Fund is created. The fund shall be used to carry out sections 2-5301 to 2-5306. The State Treasurer shall credit to the fund any money appropriated to the fund by the Legislature and any money received as gifts, grants, or other contributions from public or private sources obtained for the purposes of sections 2-5301 to 2-5306. 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 2000, LB 957, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 54

AGRICULTURAL OPPORTUNITIES AND VALUE-ADDED PARTNERSHIPS ACT

Section
2-5401. Repealed. Laws 2005, LB 90, § 21.
2-5402. Repealed. Laws 2005, LB 90, § 21.
2-5403. Repealed. Laws 2005, LB 90, § 21.
2-5404. Repealed. Laws 2005, LB 90, § 21.
2-5405. Repealed. Laws 2005, LB 90, § 21.
2-5406. Repealed. Laws 2005, LB 90, § 21.
2-5407. Repealed. Laws 2005, LB 90, § 21.
2-5408. Repealed. Laws 2005, LB 90, § 21.
2-5409. Repealed. Laws 2005, LB 90, § 21.
2-5410. Repealed. Laws 2005, LB 90, § 21.
2-5411. Repealed. Laws 2005, LB 90, § 21.
2-5412. Repealed. Laws 2005, LB 90, § 21.
2-5413. Act, how cited.
2-5414. Legislative findings.
2-5415. Terms, defined.
2-5416. Purposes of act.
2-5417. Grants; how awarded.
2-5418. Grants; eligible recipients.
2-5419. Grants; use.
2-5420. Application process.
2-5421. Misuse of grant; enforcement.
2-5422. Reports.
2-5423. Rules and regulations.
2-5424. Agricultural Opportunities and Value-Added Partnerships Cash Fund; created; use; investment.

2-5401 Repealed. Laws 2005, LB 90, § 21.

2-5402 Repealed. Laws 2005, LB 90, § 21.

2-5403 Repealed. Laws 2005, LB 90, § 21.

2-5404 Repealed. Laws 2005, LB 90, § 21.

2-5405 Repealed. Laws 2005, LB 90, § 21.

2-5406 Repealed. Laws 2005, LB 90, § 21.

2-5407 Repealed. Laws 2005, LB 90, § 21.

2-5408 Repealed. Laws 2005, LB 90, § 21.

2-5409 Repealed. Laws 2005, LB 90, § 21.

2-5410 Repealed. Laws 2005, LB 90, § 21.

2-5411 Repealed. Laws 2005, LB 90, § 21.

2-5412 Repealed. Laws 2005, LB 90, § 21.

2-5413 Act, how cited.

Sections 2-5413 to 2-5424 shall be known and may be cited as the Agricultural Opportunities and Value-Added Partnerships Act. The act terminates on January 1, 2011.

Source: Laws 2005, LB 90, § 4.
Termination date January 1, 2011.

2-5414 Legislative findings.

(1) The Legislature finds that:

(a) There is a serious economic crisis in the agricultural and rural sectors of Nebraska's economy;

(b) There is a need in such sectors to develop strategies and programs to create genuine economic opportunities that enable people to improve their incomes, avoid poverty, build assets, and develop their capacity to contribute to the betterment of their communities;

(c) Strong communities enable local residents to be more self-sufficient, which contributes to the overall strength and well-being of Nebraska; and

(d) Adding value to agricultural products offers farmers and ranchers the potential to obtain a larger share of food dollars.

(2) The Legislature further finds that there is a need to:

(a) Support self-employment and small-scale entrepreneurship in both agricultural and nonagricultural activities;

(b) Enhance income and opportunities for farming and ranching operations to stem the decline in the number of such operations;

(c) Develop strategies and programs to increase the farming and ranching operations' share of the food-system profit;

(d) Build the capacity of farming and ranching operations and small rural businesses to benefit from the development of electronic commerce; and

(e) Strengthen value-added enterprises by promoting strategic partnerships and networks through multigroup cooperation.

Source: Laws 2005, LB 90, § 5.
Termination date January 1, 2011.

2-5415 Terms, defined.

For purposes of the Agricultural Opportunities and Value-Added Partnerships Act:

(1) Farming or ranching operation means the active use, management, and operation of real and personal property for the production of crops or raising of livestock;

(2) Project means any agricultural or value-added agricultural product activity in the areas specified in section 2-5419 designed to promote the purposes specified in section 2-5416. Project does not mean, and grant funds shall not be used for, any activity primarily designed to contribute to a single business,

enterprise, or individual or designed to subsidize an existing farming or ranching operation;

(3) Specialty crop means fruits, vegetables, tree nuts, dried fruits, and nursery crops, including floriculture; and

(4) Value-added means increasing the net worth of food or nonfood agricultural products by processing, alternative production and handling methods, collective marketing, or other innovative practices.

Source: Laws 2005, LB 90, § 6; Laws 2007, LB69, § 1.
Termination date January 1, 2011.

2-5416 Purposes of act.

The purposes of the Agricultural Opportunities and Value-Added Partnerships Act are to:

(1) Support small enterprise formation in the agricultural sector of Nebraska's rural economy, including innovative cooperative efforts for value-added enterprises;

(2) Support the development of agricultural communities and economic opportunity through innovative partnerships among farming and ranching operations, rural communities, and businesses for the development of value-added agricultural products;

(3) Encourage collaboration between farming and ranching operations and between farming and ranching operations and communities, government, and businesses as well as between communities and regions;

(4) Strengthen the value-added production industry by promoting strategic partnerships and networks through multigroup cooperation for the creation of employment opportunities in the value-added agriculture industry;

(5) Enhance the income and opportunity for farming and ranching operations in Nebraska in order to stem the decline in their numbers;

(6) Increase the farming and ranching operations' share of the food-system profit;

(7) Enhance opportunities for farming and ranching operations to participate in electronic commerce and new and emerging markets that strengthen rural economic opportunities; and

(8) Encourage the production and marketing of specialty crops in Nebraska and to support the creation and development of agricultural enterprises and businesses that produce and market specialty crops in Nebraska.

Source: Laws 2005, LB 90, § 7; Laws 2007, LB69, § 2.
Termination date January 1, 2011.

2-5417 Grants; how awarded.

(1) The Department of Agriculture and the Department of Economic Development shall establish a competitive grant process to provide grants for projects under the Agricultural Opportunities and Value-Added Partnerships Act to eligible entities. The Department of Economic Development shall administer the act. Grants may be made for up to seventy-five thousand dollars annually to eligible entities under section 2-5418 that directly address one or more of the purposes specified in section 2-5416 in the areas specified in section 2-5419 and which meet the requirements of this section and section 2-5420.

(2) Priority for the awarding of grants within the parameters of this section shall be given to projects that make the greatest contribution in increasing the number and quality of self-employment opportunities for farming or ranching operations. Grants shall also be awarded to pilot cooperative efforts for the promotion of value-added products. Projects may be recommended for recognition by the Governor.

(3) A recipient of a grant shall not receive more than one grant in any one calendar year for the same project.

(4) Grants shall be awarded on a one-year basis but may be renewed on an annual basis for no more than three years. The Department of Agriculture and the Department of Economic Development shall develop an annual performance review process and a program for grant renewal of approved projects determined to have continued necessary statewide application and success.

(5) Grant funds shall not be used to replace other funding for the administrative support of the recipient or the administrative support of the project or for administrative costs relating to the planning of the project or for any activity primarily designed to contribute to a single business, enterprise, or individual.

Source: Laws 2005, LB 90, § 8.
Termination date January 1, 2011.

2-5418 Grants; eligible recipients.

Eligible entities for grants under the Agricultural Opportunities and Value-Added Partnerships Act include communities, counties, agencies, educational institutions, economic development providers, nonprofit corporations, agricultural cooperatives, agricultural associations, agricultural marketing associations or entities, resource conservation organizations, development districts, and farming or ranching operations that meet the purposes specified in section 2-5416.

Source: Laws 2005, LB 90, § 9; Laws 2007, LB69, § 3.
Termination date January 1, 2011.

2-5419 Grants; use.

(1) Grants under the Agricultural Opportunities and Value-Added Partnerships Act shall be used to support projects in the following areas:

(a) Research;

(b) Education and training;

(c) Market development;

(d) Nonadministrative business planning assistance, feasibility and market studies, capitalization plans, and technical assistance;

(e) Development of cooperatives;

(f) Community and multicommunity initiatives;

(g) Creation, retention, and transfer of value-added agricultural business initiatives in rural communities;

(h) Efforts to obtain startup or working capital or other capital expenditures necessary for the development of the project;

(i) Community-based, farmer-owned, or rancher-owned value-added initiatives; and

(j) Other activities that are deemed necessary to fulfill the purposes specified in section 2-5416.

(2) Such projects shall demonstrate the ability to provide private new enterprise formation or expanded incomes and economic opportunities for existing enterprises.

Source: Laws 2005, LB 90, § 10.
Termination date January 1, 2011.

2-5420 Application process.

To be eligible for a grant under the Agricultural Opportunities and Value-Added Partnerships Act, an applicant shall:

(1) Document a matching amount in money or in-kind contributions or a combination of both equal to twenty-five percent of the grant funds requested;

(2) Specify measurable goals and expected outcomes for the project for which the grant funds are requested; and

(3) Specify an evaluation and impact assessment process or procedure for the project for which the grant funds are requested.

Source: Laws 2005, LB 90, § 11.
Termination date January 1, 2011.

2-5421 Misuse of grant; enforcement.

If the Department of Economic Development determines the recipient of a grant has failed to fulfill the requirements of the grant, has used fraud to obtain or use the grant funds, or has in any other way failed to comply with the Agricultural Opportunities and Value-Added Partnerships Act or the rules and regulations adopted and promulgated pursuant to the act, the recipient shall repay a portion or all of the grant funds awarded. A recipient of grant funds shall not utilize or divert grant funds to any purpose or expenditure not specified or contemplated in the application or terms of the award of the grant without the prior approval of the department. The department may use any appropriate civil and criminal remedies available to enforce this section.

Source: Laws 2005, LB 90, § 12.
Termination date January 1, 2011.

2-5422 Reports.

The Department of Economic Development shall submit an annual report to the Governor and the Legislature on or before January 1 listing the recipients and grant amounts for grants made under the Agricultural Opportunities and Value-Added Partnerships Act in the previous year, the documented and measurable impacts of the grants, and an evaluation of the performance of the grant program based on the measurable goals and expected outcomes of the recipients of such grants. Copies of the program performance evaluation shall be made available through print and electronic media.

Source: Laws 2005, LB 90, § 13.
Termination date January 1, 2011.

2-5423 Rules and regulations.

The Department of Agriculture and the Department of Economic Development shall form a committee made up of staff from each agency to adopt and promulgate rules and regulations to carry out the Agricultural Opportunities and Value-Added Partnerships Act. Projects funded by grants under the act shall be coordinated with other organizations or institutions working on similar projects in the state. The Department of Economic Development shall be the agency responsible for carrying out the act.

Source: Laws 2005, LB 90, § 14.
Termination date January 1, 2011.

2-5424 Agricultural Opportunities and Value-Added Partnerships Cash Fund; created; use; investment.

The Agricultural Opportunities and Value-Added Partnerships Cash Fund is created. The fund shall be used by the Department of Economic Development for grants awarded pursuant to the Agricultural Opportunities and Value-Added Partnerships Act. Money credited to the fund shall include any monetary gifts, grants, donations, proceeds from contracts for services, and reimbursement of expenses. The department shall seek money from sources such as, but not limited to, federal funds, commodity checkoff funds, private donations, and private grants. All such funds shall be credited to the Agricultural Opportunities and Value-Added Partnerships Cash Fund. No funds shall be received or accepted for the Agricultural Opportunities and Value-Added Partnerships Cash Fund that are designated for the purpose or the benefit of a single business, enterprise, or individual. 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 2005, LB 90, § 15.
Termination date January 1, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 55
AGRICULTURAL SUPPLIERS LEASE PROTECTION ACT

Section

2-5501 Act, how cited.

Sections 2-5501 to 2-5508 shall be known and may be cited as the Agricultural Suppliers Lease Protection Act.

Source: Laws 2002, LB 435, § 1.

2-5502 Legislative findings.

The Legislature finds that agricultural production in this state is highly dependent upon businesses providing inputs for agricultural producers and markets for agricultural commodities which have historically located on lands owned and served by railroads. It is vital to the continued prosperity of agriculture that such businesses maintain reasonable access to rail service and maintain reasonable terms of tenancy upon land owned by railroads or their successors in interest. The Legislature also finds that agribusiness leaseholders' substantial investments in structures and improvements unique to their rail location, as well as dependency on rail access, place them at a disadvantage in negotiating lease renewals. The Legislature further finds that given the substantial investment in structures and improvements made by agribusiness leaseholders, it is equitable that such agribusiness leaseholders have a right of first refusal to purchase the land they lease, should it be offered for sale. The purpose of the Agricultural Suppliers Lease Protection Act is to establish a system for fair resolution of lease disputes that may arise between railroad property owners or their successors and agribusiness tenants and to guard against unreasonable lease renewal terms or unjust lease termination.

Source: Laws 2002, LB 435, § 2.

2-5503 Terms, defined.

For purposes of the Agricultural Suppliers Lease Protection Act:

(1) Agricultural tenant means any public warehouse licensee as defined in section 88-526, any livestock auction market as defined in section 54-1158, or any other persons primarily engaged in the sale or distribution of fertilizer or agricultural chemicals or farm implements, machinery, or equipment occupying railroad land owned or controlled by a railroad or its grantee or successor in interest;

(2) Fair market lease rate means the lease rate of comparable commercial properties adjusted according to accepted appraisal standards which may include, but are not necessarily limited to, lease terms, market conditions, location, physical characteristics, economic characteristics stipulated in the lease, and nonrealty components or, in the absence of comparability, the lease rate as determined by comparable rates of return realized on the lease of other commercial property in proximity to the lease site;

(3) Good faith means honesty in fact in the conduct of the transaction concerned;

(4) Lease means any agreement between a railroad and a tenant under the terms of which a tenant occupies the surface of railroad land;

(5) Railroad land means any land acquired by a railroad in strips for right-of-way and any parcel or tract acquired by a railroad adjacent to its right-of-way to aid in the construction, maintenance, and accommodation of its railway and which is occupied pursuant to a lease by a tenant who owns substantial improvements thereon;

(6) Substantial improvements means buildings or other structures or fixtures to structures that are permanent in nature and includes equipment that is affixed to real property or structures; and

(7) Successor in interest includes any agent, successor, assignee, trustee, receiver, or other person acquiring interests or rights in railroad land, includ-

ing, but not limited to, the owner or holder of any servient estate or right of reversion relating to railroad land.

Source: Laws 2002, LB 435, § 3.

2-5504 Railroad land; lease renewal; conditions; controversy; department; duties.

(1) Except when an owner of railroad land has received a bona fide third-party offer to lease the property that the owner desires to accept, at the expiration of an existing lease, the agricultural tenant shall be given the opportunity to renew the lease at fair market lease rate. If a bona fide third-party offer has been made to lease the property that the owner desires to accept, then the agricultural tenant shall be given first opportunity for a period of thirty days after receipt of written notice of such third-party offer to renew the lease at a rate that is substantially equal in value to the third-party offer.

(2) All controversies regarding application and reasonableness of lease terms and conditions or fair market lease rate arising between a railroad or its successor in interest and an agricultural tenant who is the owner, lessee, or licensee of a substantial improvement situated on railroad land owned or controlled by the railroad or its successor in interest shall be resolved by negotiation or by Department of Agriculture action.

(3) The parties shall first negotiate in good faith to resolve any controversy. If any such controversy is not resolved within sixty days after notification is given to an agricultural tenant by a railroad or its successor in interest that it wishes to (a) renew a lease upon new terms, (b) terminate a lease, (c) not renew a lease upon the expiration of a current lease, or (d) change the terms of an existing lease, then either party may file a complaint with the department setting forth facts upon which such complaint is based.

(4) The department, after reasonable notice to the parties, shall hear and determine all matters in controversy and make such order as the facts of the controversy warrant. In conducting its hearing, the department shall have those powers granted to it under the Administrative Procedure Act. Any person shall have the right to appeal from such order in accordance with the act.

Source: Laws 2002, LB 435, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

2-5505 Railroad land; substantial improvements; offer to sell; agricultural tenant; rights; department; duties.

(1)(a) Except when an owner of railroad land has received a bona fide third-party offer to purchase the property that the owner desires to accept, if a railroad or its successor in interest wishes to sell or offer to sell property leased to an agricultural tenant upon which substantial improvements owned by the agricultural tenant are located, then, except when the sale or offer to sell is made to a purchaser who is a common carrier who intends to operate a railroad on railroad right-of-way adjacent to the leased property for the public benefit or a purchaser who intends to use the railroad land for interim trail use under the National Trails System Act, 16 U.S.C. 1243, as such act existed on July 20, 2002, the railroad or its successor in interest shall first extend to the

agricultural tenant a written offer to sell the railroad land to the agricultural tenant at fair market value.

(b) If a bona fide third-party offer that a railroad or its successor in interest desires to accept has been made to purchase property leased to an agricultural tenant upon which substantial improvements owned by the agricultural tenant are located, the railroad or its successor in interest shall first extend to the agricultural tenant a written offer to sell the railroad land at a price that is substantially equal in value to such third-party offer of purchase. If the agricultural tenant does not accept such written offer within thirty days after receipt of the offer, then the railroad or its successor in interest may sell the property to the third party, and such third party is not bound under this section.

(2) The agricultural tenant shall have thirty days after a written offer made to the agricultural tenant pursuant to subdivision (1)(a) of this section to give written notice of either (a) acceptance of the offer to sell and of the offerer's determination of fair market value or (b) acceptance of the offer to sell and rejection of the offerer's determination of fair market value in which case the parties shall negotiate the fair market value and, if the parties cannot agree, the agricultural tenant shall have sixty days after the agricultural tenant gives notice of rejection to file a complaint with the Department of Agriculture seeking determination of fair market value.

(3) The Department of Agriculture, after reasonable notice to the parties, shall hear and determine the fair market value of the land offered for sale and make such order as the facts of the controversy warrant. In conducting its hearing, the department shall have those powers granted it under the Administrative Procedure Act. Any person shall have the right to appeal from such order in accordance with the act.

(4) If the agricultural tenant fails to give timely notice or to file a timely complaint under subsection (2) of this section or fails to complete the purchase of the railroad land within sixty days after the fair market value has been accepted by the agricultural tenant or determined by the department, unless the delay in completing the purchase is attributable to the railroad or its successor in interest, the railroad or its successor in interest may sell or offer to sell the railroad land to any purchaser and such purchaser shall not be bound by this section. If the railroad land is sold to a purchaser which will use the railroad land for railroad operating purposes or for interim trail use as described in subdivision (1)(a) of this section, then the purchaser shall be bound by all of the provisions of the Agricultural Suppliers Lease Protection Act.

Source: Laws 2002, LB 435, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

2-5506 Department of Agriculture; employ appraiser; costs.

(1) The Department of Agriculture, in consultation with the parties, may employ the services of a certified general real property appraiser when determination of market value is a matter in controversy or relevant to the hearing and determination of the matter in controversy.

(2) All costs incurred by the department hearing and determining all matters in controversy pursuant to the Agricultural Suppliers Lease Protection Act shall be paid equally by the parties.

Source: Laws 2002, LB 435, § 6; Laws 2006, LB 778, § 2.

2-5507 Act; applicability; effect.

(1) The Agricultural Suppliers Lease Protection Act shall not apply to any valid lease entered into prior to July 20, 2002, or any renewal or extension thereof on the same terms and conditions, but the provisions of the act shall apply to and govern any renewal or extension of such lease on any different terms or conditions or any material modifications of any such lease effected on or after July 20, 2002.

(2) Any party having a right of first refusal or right of renewal under the Agricultural Suppliers Lease Protection Act shall be barred from making any subsequent claim to possession or title to the railroad land if it fails to bring an action asserting that it has been denied its right of first refusal or right of renewal in violation of the act within six months after the date of a lease or after the expiration of a lease or sale by the railroad to a party other than the agricultural tenant.

Source: Laws 2002, LB 435, § 7.

2-5508 Agricultural Suppliers Lease Protection Cash Fund; created; use; investment.

The Agricultural Suppliers Lease Protection Cash Fund is created. All funds collected by the Department of Agriculture under the Agricultural Suppliers Lease Protection Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used by the department to aid in defraying the expenses of administering the act. 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 2002, LB 435, § 8.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 56
GRAPES

Section
2-5601. Terms, defined.
2-5602. Excise tax; amount; payment.
2-5603. Excise tax; first purchaser; deduction; records; contents; statement; remitted to State Treasurer.
2-5604. Department of Agriculture; calculate costs; report.
2-5605. Violation; penalty.

2-5601 Terms, defined.

For purposes of sections 2-5601 to 2-5604:

(1) Commercial channels means the sale or delivery of grapes for any use, except grapes intended for ultimate consumption as table grapes, to any

commercial buyer, dealer, processor, or cooperative or to any person, public or private, who resells any grapes or product produced from grapes;

(2) Delivered or delivery means receiving grapes for utilization or as a result of sale in the State of Nebraska but excludes receiving grapes for storage;

(3) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property in or to grapes from a grower;

(4) Grower means any landowner personally engaged in growing grapes, a tenant of the landowner personally engaged in growing grapes, and both the owner and tenant jointly and includes a person, a partnership, a limited liability company, an association, a corporation, a cooperative, a trust, or any other business unit, device, or arrangement; and

(5) Table grapes means grapes intended for ultimate consumption as produce in fresh, unprocessed form and not intended for wine production, juice production, or drying.

Source: Laws 2007, LB441, § 2.

2-5602 Excise tax; amount; payment.

(1) Except as provided in subsection (2) of this section, an excise tax of one cent per pound is levied upon all grapes sold through commercial channels in Nebraska or delivered in Nebraska. The excise tax shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Grapes shall not be subject to the excise tax imposed by this section more than once.

(2) The excise tax imposed by this section shall not apply to the sale of grapes to the federal government for the ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such excise tax by the United States Constitution and the laws enacted pursuant thereto.

Source: Laws 2007, LB441, § 3.

2-5603 Excise tax; first purchaser; deduction; records; contents; statement; remitted to State Treasurer.

(1) The first purchaser, at the time of settlement, shall deduct the excise tax imposed by section 2-5602. The excise tax shall be deducted whether the grapes are stored in this state or any other state. The first purchaser shall maintain the necessary records of the excise tax for each purchase or delivery of grapes on the settlement form or check stub showing payment to the grower for each purchase or delivery. Such records maintained by the first purchaser shall provide the following information:

(a) The name and address of the grower and seller;

(b) The date of the purchase or delivery;

(c) The number of pounds of grapes purchased; and

(d) The amount of excise taxes collected on each purchase or delivery.

Such records shall be open for inspection during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the Department of Agriculture by the last day of January and July of each year, on forms

prescribed by the department, a statement of the number of pounds of grapes purchased in Nebraska. At the time the statement is filed, such first purchaser shall pay and remit to the department the excise tax imposed by section 2-5602.

(3) All excise taxes collected by the department pursuant to this section shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund. The department shall remit the excise tax collected to the State Treasurer within ten days after receipt.

Source: Laws 2007, LB441, § 4.

2-5604 Department of Agriculture; calculate costs; report.

For each fiscal year beginning with FY2007-08, the Department of Agriculture shall calculate its costs in collecting and enforcing the excise tax imposed by section 2-5602 and shall report such costs to the Department of Administrative Services within thirty days after the end of the calendar quarter. Sufficient funds to cover such costs shall be transferred from the Winery and Grape Producers Promotional Fund to the Management Services Expense Revolving Fund at the end of each calendar quarter. Funds shall be transferred upon the receipt by the Department of Administrative Services of a report of costs incurred by the Department of Agriculture for the previous calendar quarter.

Source: Laws 2007, LB441, § 5.

2-5605 Violation; penalty.

Any person violating sections 2-5601 to 2-5603 shall be guilty of a Class III misdemeanor.

Source: Laws 2007, LB441, § 6.

CHAPTER 3
AERONAUTICS

Article.
1. General Provisions. 3-101 to 3-158.
2. Airports and Landing Fields. 3-201 to 3-244.
3. Airport Zoning. 3-301 to 3-333.
4. Regulation of Structures. 3-401 to 3-409.
5. City Airport Authority. 3-501 to 3-514.
6. County Airport Authority. 3-601 to 3-622.
7. Joint Airport Authority. 3-701 to 3-716.
8. Nebraska State Airline Authority. 3-801 to 3-806.

Cross References

Records Management Act, see section 84-1220.
Taxation:
Air carriers, see sections 77-1244 to 77-1250.05.
Fuel, sales tax exemption, see section 77-2704.03.
Nonresident purchases of aircraft, sales tax, exemption, see section 77-2704.26.
Retailer of aircraft, use tax, see section 77-2706.01.

ARTICLE 1
GENERAL PROVISIONS

Section
3-101. Terms, defined.
3-102. Purpose of sections.
3-103. Department of Aeronautics; created; director; appointment; qualifications; duties; oath; bond or insurance; salary.
3-104. Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; compensation; duties.
3-105. Department; seal; rules and regulations; adopt; fiscal year.
3-106. Department; office; location; aircraft; purchase; use; employees.
3-107. Department; general supervision; state funds; expenditure; recovery.
3-108. Department; cooperate with federal government, political subdivisions, and others engaged in aeronautics; hearings; reports; contents.
3-109. Department; powers; rules and regulations; applicability to federal government.
3-110. Rules and regulations; conform to federal regulation.
3-111. Rules and regulations; where kept.
3-112. Department; airways system.
3-113. Department; engineering and technical services; availability.
3-114. Department; draft and recommend legislation; represent state in aeronautical matters.
3-115. Actions by or against department; intervention.
3-116. Enforcement; intergovernmental cooperation; employment of Department of Roads.
3-117. Director of Aeronautics; investigations; hearings; oaths; certify official acts; subpoenas; compel attendance of witnesses; violation; penalty.
3-118. Department; reports of investigations or hearings; evidence; how used.
3-119. Department; assist in acquisition, development, operation, or maintenance of airports.
3-120. Department; contracts; authorized.
3-121. Department; airway and airport; exclusive right prohibited.
3-122. Transferred to section 75-202.
3-123. Department; cooperate with federal government; comply with federal laws.
3-124. Department; acceptance of gifts of money, authorized; terms and conditions.

Section

3-101 Terms, defined.

(1) For the purpose of the laws of this state relating to aeronautics, the following words, terms, and phrases shall have the meanings given in this section, unless otherwise specifically defined or unless another intention clearly appears or the context otherwise requires.

(2) Aeronautics means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.

(3) Aircraft means any contrivance now known, hereafter invented, used, or designed for navigation of or flight in the air.

(4) Public aircraft means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(5) Civil aircraft means any aircraft other than a public aircraft.

(6) Airport means (a) any area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing, or repairing of aircraft or for receiving or discharging passengers or cargo, (b) all appurtenant areas used or suitable for airport buildings or other airport facilities, and (c) all appurtenant rights-of-way, whether heretofore or hereafter established.

(7) Department means the Department of Aeronautics, commission means the Nebraska Aeronautics Commission, commissioner means any member of the commission, director means the Director of Aeronautics, and state or this state means the State of Nebraska.

(8) Restricted landing area means any area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the commission.

(9) Air navigation facility means any facility, other than one owned or controlled by the federal government, used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area and any combination of any or all of such facilities.

(10) Air navigation means the operation or navigation of aircraft in the air space over this state or upon any airport or restricted landing area within this state.

(11) Operation of aircraft or operate aircraft means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control, in the capacity of owner, lessee, or otherwise, of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state.

(12) Airman means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him or her) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances and any individual who serves in the capacity of aircraft dispatcher or air traffic control-tower operator.

(13) Air instruction means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club.

(14) Aeronautics instructor means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his or her facilities an air school or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this state or any institution of higher learning duly accredited and approved for carrying on collegiate work while engaged in his or her duties as such instructor.

(15) Flying club means any person, other than an individual, who, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both.

(16) 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.

(17) State airway means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(18) Navigable air space means air space above the minimum altitudes of flight prescribed by the laws of this state or by the regulations of the department consistent therewith.

(19) Municipality means any county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(20) Airport protection privileges means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(21) Airport hazard means any structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off.

(22) The singular includes the plural and the plural the singular. The masculine gender includes the feminine.

(23) Location means the general vicinity to be served by a specific airport.

(24) Site means the specific land area to be used as an airport.

(25) Privately owned public use airport means any airport owned by a person which is primarily engaged in the business of providing necessary services and facilities for the operation of civil aircraft and which (a) has at least one paved runway, (b) is engaged in the retail sale of aviation gasoline or aviation jet fuel, and (c) possesses facilities for the sheltering, servicing, or repair of aircraft.

Source: Laws 1945, c. 5, § 1, p. 75; Laws 1976, LB 460, § 1; Laws 1993, LB 121, § 82; Laws 1995, LB 609, § 1.

Department of Aeronautics is created by this article. State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

3-102 Purpose of sections.

It is hereby declared that the purpose of sections 3-101 to 3-154 is to further the public interest and aeronautical progress by (1) providing for the protection and promotion of safety in aeronautics, (2) cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states, (3) revising existing statutes relative to the development and regulation of aeronautics so as to grant such powers to and impose such duties upon a state agency in order that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics, (4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others and (5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of federal agencies.

Source: Laws 1945, c. 5, § 2, p. 79.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Statute creating Department of Aeronautics was enacted for the promotion of safety and for cooperating in effecting uniformity of legislation in the several states consistent with federal regulations. In re Estate of Kinsey, 152 Neb. 95, 40 N.W.2d 526 (1949).

3-103 Department of Aeronautics; created; director; appointment; qualifications; duties; oath; bond or insurance; salary.

There is hereby created a department of government to be known as the Department of Aeronautics. The chief administrative officer of the department shall be the director, to be known as the Director of Aeronautics. The Director of Aeronautics shall be appointed by the Governor, subject to confirmation by the Legislature, with due regard to his or her fitness through aeronautical education and by knowledge of and recent practical experience in aeronautics. The director shall devote full time to the performance of his or her official duties and shall not have any pecuniary interest in, stock in, or bonds of any civil aeronautics enterprise. The director shall, before assuming the duties of the office, take and subscribe an oath, such as is required by state officers. The director shall be bonded or insured as required by section 11-201. The director shall receive such compensation as the Governor, with the approval of the commission, shall determine, subject to the provisions of the legislative appropriations bill.

Source: Laws 1945, c. 5, § 3(1), p. 80; Laws 1947, c. 16, § 1, p. 95; Laws 1978, LB 653, § 3; Laws 2004, LB 884, § 2.

Director of Aeronautics has no definite term and is removable at will by Governor. State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

3-104 Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; compensation; duties.

There is hereby created the Nebraska Aeronautics Commission which shall consist of five members, who shall be appointed by the Governor. The terms of office of the members of the commission initially appointed shall expire on March 1 of the years 1946, 1947, 1948, 1949, and 1950, as designated by the Governor in making the respective appointments. As the terms of members expire, the Governor shall, on or before March 1 of each year, appoint a member of the commission for a term of five years to succeed the member whose term expires. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term. All members of the commission shall be citizens and bona fide residents of the state and, in making such an appointment, the Governor shall take into consideration the interest or training of the appointee in some one or all branches of aviation. The commission shall, in December of each year, select a chairperson for the ensuing year. The Director of Aeronautics shall serve as secretary as set forth in section 3-127. Three members shall constitute a quorum and no action shall be taken by less than a majority of the commission.

The commission shall meet upon the written call of the chairperson, the director, or any two members of the commission. Regular meetings shall be held at the office of the department but, whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, it may hold meetings or proceedings at any other place designated by it. All meetings of the commission shall be open to the public. No member shall receive any salary for his or her service, but each shall be reimbursed for actual and necessary expenses incurred by him or her in the performance of his or her duties as provided in sections 81-1174 to 81-1177.

It shall be the duty of the commission to advise the Governor relative to the appointment of a director and it shall report to the Governor whenever it feels that the director is not properly fulfilling his or her duties. It shall further act in an advisory capacity to the director.

The commission shall have, in addition, the following specific duties: (1) To allocate state funds and approve the use of federal funds to be spent for the construction or maintenance of airports; (2) to designate the locations and approve sites of airports; (3) to arrange and authorize the purchase of aircraft upon behalf of the state; (4) to select and approve pilots to be employed by the state, if any; and (5) to assist the director in formulating the regulations and policies to be carried out by the department under the terms of the State Aeronautics Department Act. The commission may allocate state funds for the promotion of aviation as defined for the purpose of this section by the department by rule and regulation. The director may designate one or more members of the commission to represent the department in conferences with officials of the federal government, of other states, of other agencies or municipalities of this state, or of persons owning privately owned public use airports.

Source: Laws 1945, c. 5, § 3(2), p. 80; Laws 1976, LB 460, § 2; Laws 1981, LB 204, § 12; Laws 1995, LB 609, § 2; Laws 2004, LB 824, § 1.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

It is the duty of the Nebraska Aeronautics Commission to designate the locations and sites of airports in this state. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

3-105 Department; seal; rules and regulations; adopt; fiscal year.

The department shall, within thirty days after its creation, adopt a seal and make such rules and regulations for its administration, not inconsistent herewith, as it may deem expedient. It may, from time to time, amend such rules and regulations. The fiscal year of the department shall conform to the fiscal year of the state.

Source: Laws 1945, c. 5, § 4, p. 82; Laws 1955, c. 231, § 6, p. 719; Laws 1976, LB 460, § 3; Laws 1981, LB 545, § 3.

Cross References

For promulgation of administrative rules, see Chapter 84, article 9.

Department of Aeronautics has power to adopt rules and regulations in conformity, as nearly as may be, with federal regulations. In re Estate of Kinsey, 152 Neb. 95, 40 N.W.2d 526 (1949).

3-106 Department; office; location; aircraft; purchase; use; employees.

Suitable offices shall be provided for the department in the State Capitol. It may maintain offices at such other places in the state as it may designate and may incur the necessary expense for office furniture, stationery, printing and other incidental or necessary expenses for the enforcement of sections 3-101 to 3-154 and the general promotion of aeronautics within the state. The department may purchase aircraft for the use of the department. Such aircraft shall be subject at all times to the written orders of the Governor for use and service in any branch of the state government with the expense thereof to be paid by the department. It may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business.

Source: Laws 1945, c. 5, § 5, p. 82.

3-107 Department; general supervision; state funds; expenditure; recovery.

The department shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and other air navigation facilities. No state funds herein appropriated or made available for the acquisition, engineering, construction, improvement, or maintenance of airports shall be expended upon any project or for any work upon any such project which is not done under the supervision of the department. When any airport which has received state grant funds pursuant to the provisions of the State Aeronautics Department Act ceases to be an airport or a privately owned public use airport, the department shall, consistent with all other provisions of state and federal law, seek to recover so much of the state funds provided to the airport as it may and shall deposit any such funds so recovered into the Department of Aeronautics Cash Fund.

Source: Laws 1945, c. 5, § 6(1), p. 83; Laws 1995, LB 609, § 3.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

3-108 Department; cooperate with federal government, political subdivisions, and others engaged in aeronautics; hearings; reports; contents.

It shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics, and seek to coordinate the aeronautical activities of these bodies. To this end, the department is empowered to confer with or to hold joint hearings with any federal aeronautical agency in connection with any matter arising under sections 3-101 to 3-154, or relating to the sound development of aeronautics, and to avail itself of the cooperation, services, records, and facilities of such federal agencies, as fully as may be practicable, in the administration and enforcement of sections 3-101 to 3-154. It shall reciprocate by furnishing to the federal agencies its cooperation, services, records and facilities, insofar as may be practicable. It shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency institutes an investigation, and shall report to the appropriate federal agency all refusals to register federal licenses, certificates or permits and all revocations of certificates of registration, and the reasons therefor, and all penalties, of which it has knowledge, imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules, regulations or orders of the department.

Source: Laws 1945, c. 5, § 6(2), p. 83.

3-109 Department; powers; rules and regulations; applicability to federal government.

It may (1) perform such acts, (2) issue and amend such orders, (3) make, promulgate, and amend such reasonable general or special rules, regulations, and procedure, and (4) establish such minimum standards, consistent with the provisions of sections 3-101 to 3-154, as it shall deem necessary to carry out the provisions of sections 3-101 to 3-154 and to perform its duties hereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, using or traveling in aircraft, and of persons and property on land or water, and to develop and promote aeronautics in this state. No rule or regulation of the department shall apply to airports or other air navigation facilities owned or controlled by the federal government within this state.

Source: Laws 1945, c. 5, § 6(3), p. 83; Laws 1947, c. 9, § 1.

1947 amendment to this section was unconstitutional. State ex rel. State Railway Commission v. Ramsey, 151 Neb. 333, 37 N.W.2d 502 (1949).

3-110 Rules and regulations; conform to federal regulation.

All rules and regulations, prescribed by the department under the authority of sections 3-101 to 3-154, shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics, the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto.

Source: Laws 1945, c. 5, § 6(4), p. 84.

Power to adopt rules in conformity with federal regulations already in existence did not involve delegation of power by state to federal government. In re Estate of Kinsey, 152 Neb. 95, 40 N.W.2d 526 (1949).

3-111 Rules and regulations; where kept.

It shall keep on file with the Secretary of State and at the principal office of the department a copy of all its rules and regulations for public inspection.

Source: Laws 1945, c. 5, § 6(5), p. 84; Laws 1976, LB 460, § 4.

3-112 Department; airways system.

It may designate, design, establish, expand or modify a state airways system which will best serve the interests of the state. It may chart such airways system and arrange for the publication and distribution of such maps, charts, notices and bulletins, relating to such airways, as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned; *Provided*, that such facilities conform to federal safety standards.

Source: Laws 1945, c. 5, § 6(6), p. 84.

3-113 Department; engineering and technical services; availability.

The department may, insofar as is reasonably possible, offer its engineering or other technical services, without charge, to any municipality or to any person owning a privately owned public use airport desiring them in connection with the construction, maintenance, or operation or the proposed construction, maintenance, or operation of an airport or restricted landing area.

Source: Laws 1945, c. 5, § 6(7), p. 84; Laws 1995, LB 609, § 4.

3-114 Department; draft and recommend legislation; represent state in aeronautical matters.

It may draft and recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

Source: Laws 1945, c. 5, § 6(8), p. 85.

3-115 Actions by or against department; intervention.

It may participate as party plaintiff or defendant, or as intervenor on behalf of the state, or any municipality or citizen thereof, in any controversy having to do with any claimed encroachment by the federal government or any foreign state upon any state or individual rights pertaining to aeronautics.

Source: Laws 1945, c. 5, § 6(9), p. 85.

3-116 Enforcement; intergovernmental cooperation; employment of Department of Roads.

It shall be the duty of the department, the Director of Aeronautics, and every state, county, and municipal officer, charged with the enforcement of state and municipal laws, to enforce and assist in the enforcement of the State Aeronautics Department Act, all rules and regulations issued pursuant thereto, and all other laws of this state relating to aeronautics. In the aid of such enforcement, general police powers are hereby conferred upon the Director of Aeronautics, and such of the officers and employees of the department as may be designated by it, to exercise such powers. The department is further authorized, in the name of this state, to enforce the act and the rules and regulations issued pursuant thereto by injunction in the courts of this state. Municipalities and

persons owning privately owned public use airports are authorized to cooperate with the department in the development of aeronautics and aeronautical facilities in this state. The department may use the facilities and services of other agencies of the state to the utmost extent possible and such agencies are authorized and directed to make available such facilities and services. The department may also, with the approval of the Governor, contract with or employ the Department of Roads to maintain airports or perform necessary engineering service in carrying out the act.

Source: Laws 1945, c. 5, § 6(10), p. 85; Laws 1995, LB 609, § 5.

3-117 Director of Aeronautics; investigations; hearings; oaths; certify official acts; subpoenas; compel attendance of witnesses; violation; penalty.

The Director of Aeronautics, or any officer or employee of the department designated by it, shall have the power to hold investigations, inquiries, and hearings concerning matters covered by the provisions of sections 3-101 to 3-154 and orders, rules, and regulations of the department and concerning accidents in aeronautics within this state. All hearings so conducted shall be open to the public. The Director of Aeronautics, and every officer or employee of the department designated by it to hold any inquiry, investigation, or hearing, shall have power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses, and the production of papers, books and documents. In case of a failure to comply with any subpoena or order issued under the authority of sections 3-101 to 3-154, the department or its authorized representative may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

Source: Laws 1945, c. 5, § 6(11), p. 85.

3-118 Department; reports of investigations or hearings; evidence; how used.

In order to facilitate the making of investigations by the department, in the interest of public safety and the promotion of aeronautics, the public interest requires, and it is, therefor, provided, that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action or proceeding, growing out of any matter referred to in said investigation, hearing or report thereof, except in case of criminal or other proceedings instituted on behalf of the department or this state under the provisions of sections 3-101 to 3-154 and other laws of this state relating to aeronautics, nor shall any commissioner, the Director of Aeronautics, or any officer or employee of the department be required to testify to any facts ascertained in, or information gained by reason of, his official capacity, or be required to testify as an expert witness in any suit, action or proceeding involving any aircraft. Subject to the foregoing provisions, the department may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

Source: Laws 1945, c. 5, § 6(12), p. 86.

3-119 Department; assist in acquisition, development, operation, or maintenance of airports.

The department may render assistance in the acquisition, development, operation, or maintenance of privately owned public use airports or airports owned, controlled, or operated or to be owned, controlled, or operated by municipalities in this state out of appropriations made by the Legislature for that purpose.

Source: Laws 1945, c. 5, § 6(13), p. 87; Laws 1995, LB 609, § 6.

3-120 Department; contracts; authorized.

It may enter into any contracts necessary to the execution of the powers granted it by sections 3-101 to 3-154.

Source: Laws 1945, c. 5, § 6(14), p. 87.

3-121 Department; airway and airport; exclusive right prohibited.

It shall grant no exclusive right for the use of any airway, airport, restricted landing area or other air navigation facility under its jurisdiction. This section shall not prevent the making of leases in accordance with other provisions of sections 3-101 to 3-154.

Source: Laws 1945, c. 5, § 6(15), p. 87.

3-122 Transferred to section 75-202.

3-123 Department; cooperate with federal government; comply with federal laws.

The department is authorized to cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this state, and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal money upon such airports and other navigation facilities.

Source: Laws 1945, c. 5, § 7(1), p. 87.

3-124 Department; acceptance of gifts of money, authorized; terms and conditions.

The department is authorized to accept federal and other money, either public or private, for and on behalf of this state, any municipality, or any person owning a privately owned public use airport, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state, by such municipalities, or by any person owning a privately owned public use airport, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder. The department may act as agent of any municipality of this state or any person owning a privately owned public use airport, upon the request of such municipality or person, in accepting such money in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole

or in part by federal money, and such person or the governing body of any such municipality is authorized to designate the department as its agent for such purposes and to enter into an agreement with it prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with the State Aeronautics Department Act. Such money as is paid over by the United States Government shall be retained by the state or paid over to the municipalities or persons under such terms and conditions as may be imposed by the United States Government in making such grants.

Source: Laws 1945, c. 5, § 7(2), p. 87; Laws 1995, LB 609, § 7.

3-125 Department; contracts; laws governing.

All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the department, either as the agent of this state, as the agent of any municipality, or as the agent of any person owning a privately owned public use airport, shall be made pursuant to the laws of this state governing the making of like contracts. When the acquisition, construction, improvement, maintenance, and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal money, the department, as agent of the state, of any municipality, or of any person owning a privately owned public use airport, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

Source: Laws 1945, c. 5, § 7(3), p. 88; Laws 1995, LB 609, § 8.

3-125.01 Transferred to section 55-181.

3-126 Department of Aeronautics Cash Fund; created; use; investment.

The Department of Aeronautics Cash Fund is created. All money received by the department pursuant to the State Aeronautics Department Act shall be remitted to the State Treasurer for credit to the fund. The department is authorized, whether acting for this state, as the agent of any of its municipalities, or as the agent of any person owning a privately owned public use airport, or when requested by the United States Government or any agency or department thereof, to disburse such money. 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 1945, c. 5, § 7(4), p. 88; Laws 1965, c. 17, § 1, p. 150; Laws 1969, c. 584, § 32, p. 2360; Laws 1978, LB 637, § 1; Laws 1995, LB 7, § 25; Laws 1995, LB 609, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

3-127 Director of Aeronautics; administrative officer; serve as secretary; employees; appoint; duties.

The director shall (1) be the administrative officer of the department, (2) administer the provisions of sections 3-101 to 3-154 and the rules, regulations and orders established thereunder and all other laws of the state relative to

aeronautics, (3) attend and serve as secretary, but not vote at, all meetings of the commission, (4) appoint, subject to the provisions of section 3-104, such experts, field and office assistants, clerks and other employees as may be required and authorized for the proper discharge of the functions of the department and for whose services funds have been appropriated, (5) be in charge of the offices of the department and responsible for the preparation of reports and collection and dissemination of data and other public information relating to aeronautics and (6) execute all contracts entered into by the department which are legally authorized and for which funds are provided in any appropriation act.

Source: Laws 1945, c. 5, § 8, p. 89.

3-128 Department; regulation of airports.

In order to safeguard and promote the general public interest and safety, the safety of persons using or traveling in aircraft and of persons and property on the ground, and the interest of aeronautical progress requiring that airports, restricted landing areas, and air navigation facilities be suitable for the purposes for which they are designed and to carry out the purposes of the State Aeronautics Department Act, the department may: Recommend airport and restricted landing area sites; license airports, restricted landing areas, or other air navigation facilities; and provide for the renewal and revocation of such licenses in accordance with rules and regulations adopted and promulgated by the department.

Source: Laws 1945, c. 5, § 9(1), p. 89; Laws 1967, c. 12, § 1, p. 98; Laws 1972, LB 285, § 1; Laws 1973, LB 391, § 1; Laws 1973, LB 341, § 1; Laws 1976, LB 460, § 5; Laws 2001, LB 329, § 8.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

3-129 Aircraft; license, certificate, or permit required.

Except as provided in section 3-130, it shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective license, certificate, or permit issued by the United States Government.

Source: Laws 1945, c. 5, § 9(2), p. 91; Laws 1973, LB 341, § 2; Laws 2002, LB 446, § 1.

3-129.01 Guest, defined; claim for damages; rights.

The owner or operator of any aircraft shall not be liable for any damages to any passenger or person related to such owner or operator as spouse or within the second degree of consanguinity or affinity who is riding in such aircraft as a guest or by invitation and not for hire unless such damage is caused by (1) the pilot of such aircraft being under the influence of intoxicating liquor or (2) the gross negligence of the owner or operator in the operation of such aircraft. For the purpose of this section, the term guest shall mean a person who accepts a ride in any aircraft without giving compensation therefor, but shall not be construed to apply to or include any such passenger in any aircraft being demonstrated to such passenger as a prospective purchaser. Relationship by consanguinity or affinity within the second degree shall include parents, grandparents, children, grandchildren, brothers, and sisters. If the marriage of the

owner or operator is terminated by death or dissolution, the affinial relationship with the blood kindred of his or her spouse shall be deemed to continue.

Source: Laws 1959, c. 11, § 1, p. 119; Laws 1984, LB 690, § 1.

3-130 Certificate or permit; registration; exception.

The provisions of section 3-129 shall not apply to:

(1) An aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft;

(2) An airman operating military or public aircraft or any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft;

(3) Persons operating model aircraft or to any person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser;

(4) A nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence; or

(5) An airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

Source: Laws 1945, c. 5, § 9(3), p. 92; Laws 1973, LB 341, § 3.

3-131 Certificate, license, registration, or permit; duty to carry, present for inspection, and exhibit.

The federal license, certificate or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when he is operating within this state and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the department, official, manager or person in charge of any airport in this state upon which he shall land or the reasonable request of any other person. The federal aircraft license, certificate or permit, required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted therein where it may readily be seen by passengers or inspectors and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the department, official, manager or person in charge of any airport in this state upon which it shall land or the reasonable request of any person.

Source: Laws 1945, c. 5, § 9(4), p. 92; Laws 1973, LB 341, § 4.

3-132 Repealed. Laws 1976, LB 460, § 10.

3-133 Airports; license; requirement; approval of site; operation without license unlawful.

Any proposed airport or restricted landing area shall be first licensed by the department before such airport or area shall be used or operated. Any municipality or person acquiring property for the purpose of constructing or establish-

ing an airport or restricted landing area shall, prior to such acquisition, make application to the department for a certificate of approval of the site selected and the general purpose or purposes for which the property is to be acquired, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. It shall be unlawful for any municipality or officer or employee thereof, or for any person, to operate an airport or restricted landing area for which a license has not been issued by the department.

Source: Laws 1945, c. 5, § 9(6), p. 93; Laws 2002, LB 446, § 2.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

The Revised Airports Act required the licensing of airports and restricted landing areas except restricted landing areas designed for personal use. Bruns v. City of Seward, 186 Neb. 658, 185 N.W.2d 853 (1971).

3-134 Air navigation facility; certificate of approval; hearing; notice; order; license.

Whenever the Department of Aeronautics makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within fifteen days after notice of such order has been sent the applicant by registered or certified mail, demands a public hearing, or whenever the department desires to hold a public hearing, before making an order, such a public hearing in relation thereto shall be held in the municipality applying for the certificate of approval or license or, in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area or other air navigation facility is proposed to be situated, or the major portion thereof, if located in more than one county, at which hearing all parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the department in a legal newspaper published in or of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least fifteen days prior to the date of hearing. After a proper and timely demand has been made, the order shall be stayed until after the hearing, when the department may affirm, modify, or reverse it, or make a new order. If no hearing is demanded, as herein provided, the order shall become effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the department, it may grant a license for its operation and use, and no hearing may be demanded thereon.

Source: Laws 1945, c. 5, § 9(7), p. 94; Laws 1957, c. 242, § 1, p. 816.

3-135 Air navigation facility; certificate of approval; hearing; standards to be considered.

In determining whether it shall issue a certificate of approval or license for the use or operation of any proposed airport or restricted landing area, the department shall take into consideration (1) its proposed location, size and layout, (2) the relationship of the proposed airport or restricted landing area to a comprehensive plan for statewide and nationwide development, (3) whether there are safe areas available for expansion purposes, (4) whether the adjoining area is free from obstructions based on a proper glide ratio, (5) the nature of

the terrain, (6) the nature of the uses to which the proposed airport or restricted landing area will be put, and (7) the possibilities for future development.

Source: Laws 1945, c. 5, § 9(8), p. 94.

3-136 Certificate of approval; restricted landing area for personal use; exception.

The provisions of sections 3-133 to 3-135 shall not apply to restricted landing areas designed for personal use.

Source: Laws 1945, c. 5, § 9(9), p. 95.

This section specifically exempts from licensing requirements restricted landing areas designed for personal use and therefore the Department of Aeronautics is without authority to issue licenses for such landing areas. Nebraska Public Power Dist. v. Huebner, 202 Neb. 587, 276 N.W.2d 228 (1979).

3-137 Air navigation facility; certificate of approval; revocation, grounds.

The department is empowered to temporarily or permanently revoke any certificate of approval or license issued by it when it shall determine that an airport, restricted landing area, or other navigation facility is not being maintained or used in accordance with the provisions of sections 3-101 to 3-154 and the rules and regulations lawfully promulgated pursuant thereto.

Source: Laws 1945, c. 5, § 9(10), p. 95.

3-138 Certificate of approval; federal government; exception.

The provisions of sections 3-133 to 3-136 shall not apply to any airport, restricted landing area or other air navigation facility owned or operated by the federal government within this state.

Source: Laws 1945, c. 5, § 9(11), p. 95.

3-139 Department; certificate of approval, permit, or license; refuse to issue; notice; set forth reasons; inspection of premises.

In any case where the Department of Aeronautics refuses to (1) issue a certificate of approval of a license or the renewal of a license for an airport, restricted landing area or other air navigation facility, or (2) permit the registration of any license, certificate, or permit, it shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given, registration permitted, license granted or order modified or changed. Any order, made by the department pursuant to the provisions of sections 3-101 to 3-154, shall be served upon the interested persons by either registered or certified mail or in person. To carry out the provisions of sections 3-101 to 3-154 the director, officers, and employees of the department and any officers, state or municipal, charged with the duty of enforcing sections 3-101 to 3-154 may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, restricted landing areas, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

Source: Laws 1945, c. 5, § 10(1), p. 95; Laws 1957, c. 242, § 2, p. 817; Laws 1976, LB 460, § 6.

3-140 Appeal; procedure.

Any person aggrieved by an order of the department or by the granting or denial of any license, certificate, or registration may appeal the order or such granting or denial, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1945, c. 5, § 10(2), p. 96; Laws 1988, LB 352, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

3-141 Department; air navigation facilities; acquire by purchase, gift, or condemnation; establish; improve; operate; dispose of property; exception.

The department is authorized and empowered, on behalf of and in the name of this state, within the limitation of available appropriations, to (1) acquire, by purchase, gift, devise, lease, condemnation proceedings or otherwise, real or personal property for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, (2) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police such airports, restricted landing areas and other air navigation facilities either within or without this state, (3) make, prior to any such acquisition, investigations, surveys, and plans, (4) erect, install, construct and maintain at such airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers and (5) dispose of any such property, airport, restricted landing area or any other air navigation facility by sale, lease, or otherwise, in accordance with the laws of this state governing the disposition of other like property of the state. It may not, however, acquire or take over any airport, restricted landing area or other air navigation facility owned or controlled by a municipality of this state without the consent of such municipality. It may erect, equip, operate and maintain on any airport such buildings and equipment as are necessary and proper to establish, maintain and conduct such airport and air navigation facilities connected therewith.

Source: Laws 1945, c. 5, § 11(1), p. 96.

3-142 Department; airports; easements; acquire by condemnation.

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of sections 3-101 to 3-154, it is hereby granted authority to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interest in airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports and restricted landing areas and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit the right, power or authority

of the state or any municipality to zone property adjacent to any airport or restricted landing area pursuant to any law of this state.

Source: Laws 1945, c. 5, § 11(2), p. 97.

3-143 Department; joint activities; authorized.

The department may engage in all activities jointly with the United States, with other states, with municipalities or other agencies of this state, and with persons owning privately owned public use airports.

Source: Laws 1945, c. 5, § 11(3), p. 97; Laws 1995, LB 609, § 10.

3-144 Department; right of eminent domain; procedure.

The department may exercise the right of eminent domain, in the name of the state, for the purpose of acquiring any property which it is herein authorized to acquire by condemnation. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The fact that the property so needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by such department by the exercise of the right of eminent domain herein conferred. It shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken. Nothing in the State Aeronautics Department Act shall be construed as granting to privately owned public use airports the authority to exercise the power of eminent domain nor shall anything in the State Aeronautics Department Act be construed as granting to the department or any municipality the authority to exercise the right of eminent domain for the purpose of acquiring lands or easements for the sole use or benefit of privately owned public use airports.

Source: Laws 1945, c. 5, § 11(4), p. 97; Laws 1951, c. 101, § 26, p. 458; Laws 1995, LB 609, § 11.

3-145 Department; airport; lease; sell.

It may (1) lease, for a term not exceeding ten years, such airports, other air navigation facilities or real property acquired or set apart for airport purposes, to private parties, any municipal or state government, the national government or any department of any such government for operation, (2) lease or assign, for a term not exceeding ten years, to private parties, any municipal or state government, the national government, or any department of any such government for operation or other use consistent with the purposes of sections 3-101 to 3-154, space, area, improvements or equipment on such airports, (3) sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and (4) confer the privilege or concession of supplying, upon the airports, goods, commodities, things, services and facilities; *Provided*, that in each case in so doing the public is not deprived of its rightful, equal and uniform use thereof.

Source: Laws 1945, c. 5, § 11(5), p. 98.

3-146 Department; rentals; power to determine; charges; lien; enforce.

It shall have the authority to determine the charges or rental for the use of any properties and the charges for any service or accommodations under its control and the terms and conditions under which such properties may be used; *Provided*, that in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. To enforce the payment of charges, the state shall have a lien which the department may enforce, substantially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage or care of any personal property.

Source: Laws 1945, c. 5, § 11(6), p. 98.

3-147 Airports; acquisition of land; purpose.

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of any airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with any municipality, municipalities, or any person owning a privately owned public use airport; the assistance of this state in any such acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers herein granted to the department are hereby declared to be public and governmental functions exercised for a public purpose and matters of public necessity. Such lands and other property and privileges acquired are declared to be public property.

Source: Laws 1945, c. 5, § 12, p. 99; Laws 1995, LB 609, § 12; Laws 2001, LB 173, § 2.

3-148 Aircraft fuel tax; Aircraft Fuel Tax Fund; created; distribution; terms, defined.

There is hereby imposed a tax of five cents per gallon upon aviation gasoline and a tax of three cents per gallon upon aviation jet fuel purchased for and used in aircraft within the State of Nebraska. Such aircraft tax shall be levied, collected, and refunded in the manner provided in Chapter 66, article 4, with reference to other motor fuel. The State Treasurer shall credit the aircraft tax and fees so collected and remitted to a special fund to be known as the Aircraft Fuel Tax Fund, which fund shall be distributed as provided in this section. The State Treasurer shall make all refunds as provided in sections 3-150 and 3-151 from the fund, and the balance of the aircraft tax shall be credited to the Department of Aeronautics Cash Fund.

For purposes of this section, aviation gasoline shall mean fuel used in aircraft meeting the criteria established for motor vehicle fuel in section 66-482. The terms aviation fuel and aircraft fuel as used in the statutes shall include both aviation gasoline and aviation jet fuel.

Source: Laws 1945, c. 5, § 13, p. 99; Laws 1947, c. 6, § 1, p. 67; Laws 1965, c. 18, § 1, p. 152; Laws 1965, c. 17, § 2, p. 150; Laws 1965, c. 8, § 8, p. 93; Laws 1985, LB 272, § 1; Laws 1991, LB 627, § 1; Laws 1992, LB 1013, § 1.

3-149 Aircraft fuel tax; collection; violation; penalty.

The suppliers, distributors, wholesalers, and importers defined in Chapter 66, article 4, shall collect the tax as prescribed in section 3-148, keep an account thereof separately from other fuel tax, and remit the tax collected accordingly to the Tax Commissioner. The Tax Commissioner shall remit the tax to the State Treasurer in the same manner as is provided by law for the collection and remittance of motor vehicle fuel tax. No other or different tax shall be imposed for fuel bought for and used in aircraft. Such tax shall be used for the purposes set forth in the State Aeronautics Department Act. The penalty for violation of the provisions of this section relating to the collection and remittance of the tax shall be the same as set forth for the violation of the law with reference to the motor fuel tax contained in Chapter 66, article 7, and the right of enforcement and the penalties shall be likewise applicable as set forth therein.

Source: Laws 1945, c. 5, § 14, p. 100; Laws 1985, LB 272, § 2; Laws 1991, LB 627, § 2; Laws 1992, LB 1013, § 2; Laws 1994, LB 1160, § 48.

3-150 Aircraft fuel tax; repayment; fuel used for air school purposes.

Any person, firm, partnership, limited liability company, company, agency, corporation, body politic, municipality, or National Guard or reserve officer of the United States Army who buys and uses aircraft fuel meeting the specifications set by the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue, bought for and used only in aircraft in connection with any air school approved by the federal government, on which the tax has been paid or which is chargeable under section 3-148 and who consumes the same for purposes of operating or propelling aircraft used strictly for air school purposes shall be reimbursed the amount of tax so paid in the manner and subject to the conditions provided in this section and section 3-151.

Source: Laws 1945, c. 5, § 15, p. 100; Laws 1976, LB 460, § 7; Laws 1991, LB 627, § 3; Laws 1993, LB 121, § 83.

3-150.01 Repealed. Laws 1985, LB 272, § 4.

3-151 Aircraft fuel tax; repayment; presentation of claims.

All claims for reimbursement shall be made by affidavit in such form and containing such information as the Tax Commissioner shall prescribe. Such claims shall be accompanied by the original invoices of sales and receipts and shall be filed with the commissioner within seven months from the date of purchase or invoice. The commissioner may require such further information as he shall deem necessary for the determination of such claims. He shall transmit all claims approved by him to the Director of Administrative Services, who shall forthwith draw his warrant against the proceeds of the tax levied under section 3-148 and credited to the Aircraft Fuel Tax Fund in the state treasury upon the presentation of proper vouchers for each claim for reimbursement; and the State Treasurer shall pay such warrants out of money in such fund without specific appropriation.

Source: Laws 1945, c. 5, § 16, p. 100; Laws 1955, c. 6, § 1, p. 66; Laws 1967, c. 13, § 1, p. 101.

3-152 Violations; penalty.

Any person violating any of the provisions of sections 3-101 to 3-154, or any of the rules, regulations or orders issued pursuant thereto, shall be guilty of a Class II misdemeanor.

Source: Laws 1945, c. 5, § 17, p. 101; Laws 1977, LB 40, § 29.

3-153 Repealed. Laws 1963, c. 339, § 1.

3-154 Act, how cited.

Sections 3-101 to 3-154 may be cited as the State Aeronautics Department Act.

Source: Laws 1945, c. 5, § 21, p. 101.

3-155 Real property formerly used as army airfields; disposal; conditions.

The Department of Aeronautics is hereby authorized and directed to dispose of all real property held by the department and formerly used by the United States as army airfields, and which is not required for airport operational use purposes. The department shall seek approval from the Federal Aviation Administration to dispose of such property. The property may be platted and subdivided into lots or parcels to be sold separately so as to obtain the greatest total sale price.

The department shall dedicate the necessary roads for airport access and shall reserve such easements for access, utilities, drainage, and other purposes as may be necessary or convenient to maintain the airports as operational. The sales may be made subject to such terms, conditions, and restrictions as may be required by the deeds by which such property was conveyed to the State of Nebraska by the Federal Aviation Administration. When approval is received, the department shall have such property appraised by noninterested appraisers qualified to make appraisals based on experience and who have professional status as appraisers of real property. The appraisers shall be selected by the department based on competitive bids received after three weeks' notice of invitation for bids has been published in at least two newspapers of general circulation throughout the state. The notice shall state that the selection shall be made of the lowest and best qualified bidders, and that the department reserves the right to reject any and all bids and to readvertise for further bids. Each appraiser's report shall contain (1) an opinion as to the fair market value of the lands appraised, showing a segregation of actual land value, elements and basis of damage, and depreciated in place value of buildings and improvements, if any, (2) a report of income derived from the land in recent years, (3) the adaptability of the land, including the most profitable or highest and best use, (4) a report of a personal inspection of the lands appraised, including a detailed description of their physical characteristics and conditions, (5) the general history of the property and its environs, and a statement of the character of the area surrounding the land being appraised, indicating any of the favorable and unfavorable influences, (6) a listing of recent sales of similar property in the area, showing seller, purchaser, date of sale, selling price, acreage involved, buildings and improvements involved, if any, and an estimate of the value of such improvements, and if there is a difference in value between comparable sales and the property appraised, a discussion of the difference in value to be included, (7) a listing of recent offerings for sale of property in the same general area, including the property being appraised, if recently offered, and the prices

quoted, if any, (8) a trend of land values in the area and current land or real estate market conditions, (9) the actual valuation of real property in the community, (10) the effective date of valuation, (11) a statement of the qualifications of the appraiser including a statement by the appraiser that he has no personal interest, present or prospective, in the land being appraised, and (12) the signature of the appraiser and date of report. Such property shall be sold to the highest bidder, but in no case shall such property be sold at less than the appraised value. Notice of such sale and time and place where the same will be held shall be given as provided in section 72-258. When the highest bid is less than the appraised value, the sale shall be canceled and except for property leased pursuant to section 3-157 the property shall be offered for sale again within one year after the date of the previous offering.

Source: Laws 1969, c. 23, § 1, p. 199; Laws 1971, LB 165, § 1; Laws 1972, LB 1481, § 1; Laws 1978, LB 637, § 2; Laws 1979, LB 187, § 11.

3-156 Department of Aeronautics Trust Fund; created; real property; proceeds of sale; how used; investment.

The Department of Aeronautics Trust Fund is created. The necessary expenses incurred in the sale of property under section 3-155 shall be paid from the Department of Aeronautics Cash Fund, and the proceeds from the sale of such property shall be credited to the Department of Aeronautics Trust Fund after reimbursement of costs of sale have been made to the Department of Aeronautics Cash Fund. The net proceeds from the disposal of such property shall be used by the Department of Aeronautics in conformance with any agreements upon which the Federal Aviation Administration conditions its consent to the sale of the aforementioned land and the quit claim deeds (1) filed in the office of the register of deeds of Dodge County on November 17, 1947, and recorded in Deeds Record 89 on page 342 and September 16, 1948, and recorded in Deeds Record 89 on page 578, (2) filed in the office of the register of deeds of Red Willow County on September 16, 1948, in Deeds Record 71 on page 17, September 14, 1966, in Deeds Record 91 on page 281, and December 17, 1968, in Deeds Record 93 on page 549, (3) filed in the office of the register of deeds of Clay County on November 17, 1947, in Deeds Record 86 on page 561, September 16, 1948, in Deeds Record 87 on page 148, and March 14, 1968, in Deeds Record 95 on page 321, (4) filed in the office of the register of deeds of Fillmore County on September 16, 1948, in Deeds Record 39 on page 229, February 21, 1968, in Deeds Record 25 on page 90, January 26, 1948, in Deeds Record 39 on page 189, September 21, 1948, in Deeds Record 39 on page 236, and February 13, 1968, in Deeds Record 25 on page 83, and (5) filed in the office of the register of deeds of Thayer County on January 31, 1948, in Deeds Record 48 on page 493, September 16, 1948, in Deeds Record 48 on page 581, and December 29, 1967, in Deeds Record 58 on page 531, and the rules and regulations of the Federal Aviation Administration, part 155, adopted December 7, 1962. Any money in the Department of Aeronautics Trust Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1969, c. 23, § 2, p. 200; Laws 1971, LB 165, § 2; Laws 1995, LB 7, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

3-157 Department; real property; lease; when; requirements.

The Department of Aeronautics may lease for a period not exceeding twelve years real property held by the department that has been offered for sale for two consecutive years and has not been sold. The lease shall provide for annual rental payments based on fair rental value. The rental payments shall be deposited in the Department of Aeronautics Cash Fund. The department shall cause reappraisals to be made of the land under lease when it deems it necessary due to changes in buildings or improvements, changes in the land, or for other reasons. The department may, after the expiration of any lease, offer such land for sale by public auction as set forth in section 3-155 or may enter into another lease.

Source: Laws 1978, LB 637, § 3; Laws 1980, LB 896, § 1; Laws 2002, LB 446, § 3.

3-158 Person renting aircraft; insurance information; notice.

Any person who in the ordinary course of his or her business rents an aircraft to another person shall deliver to the renter a written notice stating the nature and extent of insurance coverage provided, if any, for the renter against loss of or damage to the hull of the aircraft or liability arising out of the ownership, maintenance, or use of the aircraft. The notice shall contain the name of the person giving the notice and shall be in the form prescribed by rule or regulation which the Department of Aeronautics shall adopt and promulgate.

Source: Laws 1986, LB 781, § 1.

ARTICLE 2

AIRPORTS AND LANDING FIELDS

Cross References

Cities and villages, see sections 18-1501 to 18-1509.
Cities of the metropolitan class, see sections 14-107 and 18-1501 to 18-1509.
Overhead lines, cables, and pipelines, construction near airports and landing fields, see sections 75-713 to 75-717.

Section

Section

3-201 Terms, defined.

For the purpose of the Revised Airports Act, unless herein specifically otherwise provided, the definitions of words, terms, and phrases appearing in the State Aeronautics Department Act of this state are hereby adopted. The following words, terms, and phrases shall in the act have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires: (1) Municipality means any county, city, or village of this state or any city airport authority established pursuant to the Cities Airport Authorities Act and (2) airport purposes means and includes airport, restricted landing area, and other air navigation facility purposes.

Source: Laws 1945, c. 34, § 1, p. 156; Laws 1957, c. 9, § 13, p. 125; Laws 2003, LB 5, § 1.

Cross References

Cities Airport Authorities Act, see section 3-514.
For definitions in State Aeronautics Department Act, see section 3-101.

Municipal airport authorities are authorized to acquire property by condemnation for establishing airports. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Municipalities were empowered to acquire, establish, construct, improve, operate, and regulate municipal airports. City of Ord v. Biemond, 175 Neb. 333, 122 N.W.2d 6 (1963).

Constitutionality of Revised Airports Act raised but not decided. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

Under former law municipality was defined as village, city, or county. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-201.01 Temporary airports and landing fields; approval; application; purpose of landing area.

Any proposed airport, restricted landing area, or other air navigation facility which will be in existence for less than thirty consecutive days shall first be approved by the Department of Aeronautics before any such airport, landing area, or other facility shall be used or operated. Any municipality or person proposing the use of property for such purpose shall first make application for a temporary permit for the site selected and the general purpose or purposes for which the property will be used, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. Designation of the location and approval of sites for the proposed temporary airports, restricted landing areas, and other air navigation facilities as provided in section 3-104 may be delegated to the department by the Nebraska Aeronautics Commission. The provisions of this section shall not apply to restricted landing areas designated for personal use pursuant to section 3-136.

Source: Laws 1976, LB 460, § 8.

3-202 Municipality; powers.

Every municipality is hereby authorized, through its governing body, to (1) acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities, (2) acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state, (3) make, prior to any such acquisition, investigations, surveys, and plans, (4) construct, install, and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers and (5) purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the state without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

Source: Laws 1945, c. 34, § 2(1), p. 156.

3-203 Municipality; property, territorial or extraterritorial; acquire; right of eminent domain; procedure; effect.

Property needed by a municipality for an airport or restricted landing area, for the enlargement of either, or for other airport purposes may be acquired by purchase, gift, devise, lease, or other means, if such municipality is able to agree with the owners of the property on the terms of such acquisition, and otherwise by condemnation. Full power to exercise the right of eminent domain for such purposes is hereby granted every municipality both within and without its territorial limits. For all property which is to be acquired by a city of the

metropolitan class outside of its zoning jurisdiction, approval must be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The title to real property so acquired shall be in fee simple, absolute, and unqualified in any way. The fact that the property needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by the municipality by the exercise of the right of eminent domain herein conferred. It shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken.

Source: Laws 1945, c. 34, § 2(2), p. 157; Laws 1947, c. 7, § 1, p. 69; Laws 1951, c. 101, § 27, p. 458; Laws 1981, LB 354, § 1.

Cross References

For acquisition of aviation fields by cities and villages through eminent domain, see section 18-1501.

Where but one municipality is involved and charter thereof prescribes procedure for condemnation, that procedure must be followed. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-204 Airport hazards; municipality; easements; acquire; right of eminent domain; effect on zoning.

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports or restricted landing areas acquired or operated under the provisions of sections 3-201 to 3-238 and 18-1502, every municipality is authorized to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air spaces over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports or restricted landing areas and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power or authority to zone property adjacent to airports and restricted landing areas under the provisions of any law of this state.

Source: Laws 1945, c. 34, § 2(3), p. 157.

Airport authority was authorized to acquire by eminent domain an aviation easement. Johnson v. Airport Authority, 173 Neb. 801, 115 N.W.2d 426 (1962).

3-205 Encroachment upon airport protection privileges; unlawful; removal.

It shall be unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object, or plant, cause to be planted or permit to grow higher any tree or trees or other vegetation, which shall encroach upon any airport protection privileges acquired pursuant to the provisions of sections 3-202 to 3-204. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances, or the municipality in charge of the airport or restricted landing area for which airport protection privileges have been acquired as in sections

3-202 to 3-204 provided may go upon the land of others and remove any such encroachment without being liable for damages in so doing.

Source: Laws 1945, c. 34, § 2(4), p. 158.

3-206 Acquisition of property; purposes.

(1) The acquisition of any lands for the purpose of establishing airports or other air navigation facilities, (2) the acquisition of airport protection privileges, (3) the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, and (4) the exercise of any other powers herein granted to municipalities are hereby declared to be public, governmental, and municipal functions exercised for a public purpose and matters of public necessity. Such lands and other property, easements, and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in the Revised Airports Act shall and are hereby declared to be public property.

Source: Laws 1945, c. 34, § 3(1), p. 158; Laws 2001, LB 173, § 3.

The statutes governing airports were not expressly or impliedly repealed by the passage of the 1998 constitutional amendment to Neb. Const. art. VIII, sec. 2, or subsection (1)(a) of section 77-202. Airports owned and operated by municipalities are exempt from taxation. City of York v. York Cty. Bd. of Equal., 266 Neb. 297, 664 N.W.2d 445 (2003).

Declaration of public purpose does not determine whether operation of airport is in a governmental or in a proprietary capacity. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-207 Repealed. Laws 1969, c. 138, § 28.

3-208 Acquisition of property; prior acts validated.

Any acquisition of property, within or without the limits of any municipality, for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective.

Source: Laws 1945, c. 34, § 4, p. 159.

3-209 Municipality; acquired property and income; exempt from taxation.

Any property acquired by a municipality pursuant to the provisions of sections 3-201 to 3-238 and 18-1502 shall be exempt from taxation to the same extent as other property used for public purposes. All income received in connection with the operation by a municipality of any airport or other air navigation facility shall also be exempt from taxation.

Source: Laws 1945, c. 34, § 5, p. 159.

3-210 Municipality; costs; paid by appropriation of funds or bonds; cost, defined.

The cost of investigating, surveying, planning, acquiring, establishing, constructing, enlarging or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with the provisions of sections 3-201 to 3-238 and 18-1502 may be paid for by appropriation of money available therefor, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of the municipality shall determine. The

word cost includes awards in condemnation proceedings and rentals where an acquisition is by lease.

Source: Laws 1945, c. 34, § 6(1), p. 159.

3-211 Bonds; issuance; limitation.

Any bonds to be issued by any municipality pursuant to the provisions of sections 3-201 to 3-238 and 18-1502 shall be authorized and issued in the manner and within the limitation, except as herein otherwise provided, prescribed by the laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for the construction of works of internal improvements.

Source: Laws 1945, c. 34, § 6(2), p. 159.

3-212 Bonds; issuance; prior issues validated; issuance of additional bonds; legal obligations.

In all cases where a municipality has heretofore issued any bonds for the purpose of investigating, surveying, planning, acquiring, establishing, constructing, enlarging, equipping, or improving any airport, or other air navigation facility, or site therefor, or to meet the cost of structures of other property incidental to their operation, whether such airport or other air navigation facility was termed, under the law existing at the time of the issuance of such bonds, an airport, a landing field, a landing strip, an aviation field, or a flying field, or has incurred any other indebtedness, or entered into any lease or other contract in connection with the acquisition, establishment, construction, ownership, enlargement, control, leasing, equipment, improvement, maintenance, operation, or regulation of any such airport or other air navigation facility, or site therefor, or structure or other property incidental to its operation, the proceedings heretofore taken in all such cases are hereby in all respects validated and confirmed. Any bonds already issued thereunder are validated and made legal obligations of such municipality and such municipality is hereby authorized and empowered, pursuant to such proceedings, to issue further bonds for such purposes up to the limit fixed in the original authorization thereof, without limitation of the general power herein granted to all municipalities in this state, which bonds when issued shall be legal obligations of such municipality according to their terms.

Source: Laws 1945, c. 34, § 6(3), p. 160.

3-213 Municipalities; power to raise funds; use.

The governing bodies having power to appropriate money within the municipalities in this state acquiring, establishing, constructing, enlarging, improving, maintaining, equipping or operating airports and other air navigation facilities under the provisions of sections 3-201 to 3-238 and 18-1502, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities, sufficient money to carry out the provisions of sections 3-201 to 3-238 and 18-1502.

Source: Laws 1945, c. 34, § 7(1), p. 160.

3-214 Revenue; disposition; excess.

The revenue obtained from the ownership, control and operation of any such airport or other air navigation facility shall be used, first, to finance the maintenance, improvement and operating expenses thereof and, second, to make payments of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. Revenue in excess of the foregoing requirements may be applied to finance the extension or improvement of the airport or other air navigation facilities.

Source: Laws 1945, c. 34, § 7(2), p. 160.

3-215 Municipality; general powers; rules and regulations; adopt.

In addition to the general power in sections 3-201 to 3-238 and 18-1502 conferred, and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purpose or purposes is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation and regulation thereof in an officer, a board or body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board or body. The expense of such construction, enlargement, improvement, maintenance, equipment, operation and regulation shall be a responsibility of the municipality;

(2) To adopt and amend all needful rules, regulations and ordinances for the management, government and use of any properties under its control, whether within or without the territorial limits of the municipality; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of said rules, regulations and ordinances, and enforce said penalties in the same manner in which penalties prescribed by other rules, regulations and ordinances of the municipality are enforced. For the purposes of such management, government and direction of public use, such part of all highways, roads, streets, avenues, boulevards, and territory as adjoins, or lies within five hundred feet of the limits of any airport or restricted landing area acquired or maintained under the provisions of sections 3-201 to 3-238 and 18-1502 shall be under like control and management of the municipality. It may also adopt and enact rules, regulations and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They must conform to and be consistent with the laws of this state and the rules and regulations of the Department of Aeronautics of the state and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto;

(3) To lease for a term not exceeding ten years such airports, other air navigation facilities or real property acquired or set apart for airport purposes to private parties, any municipal or state government, the national government,

or any department of any such government for operation; to lease or assign space, area, improvements or equipment on such airports for a term not exceeding ten years to private parties, any municipal or state government, the national government, or any department of any such government for operation or use consistent with the purposes of sections 3-201 to 3-238 and 18-1502; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges or concessions of supplying upon its airports goods, commodities, things, services and facilities; *Provided*, that in each case the public is not thereby deprived of its rightful, equal, and uniform use thereof;

(4) To sell or lease any real or personal property, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the sinking fund from which funds have been authorized to be taken to finance such bonds. In the event all the proceeds of such sale are not needed to pay the principal of said bonds remaining unpaid, the remainder shall be paid into the general fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations shall be paid into the general fund of the municipality;

(5) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used; *Provided*, that in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. To enforce the payment of charges, the municipality shall have a lien and may enforce it, substantially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage or care of any personal property; and

(6) To exercise all powers necessarily incidental to the exercise of the general and special powers herein granted.

Source: Laws 1945, c. 34, § 8, p. 161.

The Legislature has empowered municipalities to impose use charges for the privilege of using municipal airport facilities. City of Ord v. Biemond, 175 Neb. 333, 122 N.W.2d 6 (1963).

City is given power to enact rules and regulations governing use of airport. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-216 Municipality; accept gifts of money; expend.

A municipality is authorized to accept, receive, and receipt for federal money, and other money, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal money upon such airports and other air navigation facilities.

Source: Laws 1945, c. 34, § 9(1), p. 163.

3-217 Repealed. Laws 1947, c. 8, § 2.

3-218 Contracts; laws governing.

All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports or other air navigation facilities, made by the municipality itself or through the agency of the Department of Aeronautics, shall be made pursuant to the laws of this state governing the making of like contracts; *Provided, however*, that where such acquisition, construction, improvement, enlargement, maintenance, equipment or operation is financed wholly or partly with federal money the municipality, or the Department of Aeronautics as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder.

Source: Laws 1945, c. 34, § 9(3), p. 164.

3-219 Municipality; public waters; powers.

The power herein granted to a municipality to establish and maintain airports shall include the power to establish and maintain such airports in, over and upon any public waters of this state within the limits or jurisdiction of or bordering on the municipality, any submerged land under such public waters, and any artificial or reclaimed land which before the artificial making or reclamation thereof constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport.

Source: Laws 1945, c. 34, § 10(1), p. 164.

3-220 Municipalities; public waters; additional powers.

All the other powers herein granted municipalities with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, and artificial or reclaimed land.

Source: Laws 1945, c. 34, § 10(2), p. 165.

3-221 Joint exercise of powers, authorized; when.

All powers, rights and authority granted to any municipality in sections 3-201 to 3-238 and 18-1502 may be exercised and enjoyed by two or more municipalities, or by this state and one or more municipalities therein, acting jointly, either within or without the territorial limits of either or any of said municipalities and within or without this state, or by this state or any municipality therein, acting jointly with any other state or municipality therein, either within or without this state, if the laws of such other state permit such joint action.

Source: Laws 1945, c. 34, § 11(1), p. 165.

Power to condemn may be exercised jointly by village and county. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-222 Municipality; terms, defined.

For the purposes of sections 3-221 to 3-232 only, unless another intention clearly appears or the context otherwise requires, this state shall be included in

the term municipality, and all the powers conferred upon municipalities in sections 3-201 to 3-238 and 18-1502, if not otherwise conferred by law, are hereby conferred upon this state when acting jointly with any municipality or municipalities. Where reference is made to the governing body of a municipality, that term shall mean, as to the state, its Department of Aeronautics.

Source: Laws 1945, c. 34, § 11(2), p. 165.

State of Nebraska and municipality may act jointly in acquiring airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-223 Municipality; joint agreements and action; authorized.

Any two or more municipalities may enter into agreements with each other, duly authorized by ordinance or resolution, as may be appropriate, for joint action pursuant to the provisions of sections 3-221 to 3-232. Concurrent action by the governing bodies of the municipalities involved shall constitute joint action.

Source: Laws 1945, c. 34, § 11(3), p. 165.

Two or more municipalities may agree with each other for joint action in establishing airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-224 Joint agreements; contents.

Each such agreement shall (1) specify its terms, (2) the proportionate interest which each municipality shall have in the property, facilities and privileges involved, (3) the proportion of the preliminary costs, costs of acquisition, establishment, construction, enlargement, improvement and equipment, and of the expenses of maintenance, operation and regulation to be borne by each, (4) make such other provisions as may be necessary to carry out the provisions of sections 3-221 to 3-232, (5) provide for amendments thereof, (6) the conditions and methods of termination and (7) the disposition of all or any part of the property, facilities and privileges jointly owned if said property, facilities and privileges, or any part thereof, shall cease to be used for the purposes herein provided or if the agreement shall be terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and the assumption or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

Source: Laws 1945, c. 34, § 11(4), p. 165.

Two or more municipalities may agree for joint ownership and operation of an airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-225 Joint agreements; board, created; members; terms; compensation.

Municipalities acting jointly as herein authorized shall create a board from the inhabitants of such municipalities for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled, and operated. Such board shall consist of members to be appointed by the governing body of each municipality involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time

and upon such terms as to compensation, if any, as may be provided for in the agreement.

Source: Laws 1945, c. 34, § 11(5), p. 166.

3-226 Board; officers; adopt rules of procedure.

Each such board shall organize, select officers for terms to be fixed by the agreement, and adopt and from time to time amend rules of procedure.

Source: Laws 1945, c. 34, § 11(6), p. 166.

3-227 Board; powers.

Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of such municipalities granted by the Revised Airports Act, except as herein provided. Real property, airports, restricted landing areas, air protection privileges, or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by authority of the governing bodies of each of the municipalities involved. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each on or before the preceding May first, of a budget for the ensuing fiscal year. Rules and regulations provided for by subdivision (2) of section 3-215 shall become effective only upon approval of each of the appointing governing bodies and the Department of Aeronautics. No real property and no airport, other air navigation facility, or air protection privilege, owned jointly, shall be disposed of by the board, by sale, lease, or otherwise, except by authority of all the appointing governing bodies, but the board may lease space, area, or improvements and grant concessions on airports for aeronautical purposes or purposes incidental thereto, subject to the provisions of subdivision (3) of section 3-215. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1945, c. 34, § 11(7), p. 166; Laws 2001, LB 173, § 4.

3-228 Joint agreements; ordinances enacted concurrent with each other; effect; publication.

Each municipality, acting jointly with another, pursuant to the provisions of sections 3-221 to 3-232, is authorized and empowered to enact, concurrently with the other municipalities involved, such ordinances as are provided for by subdivision (2) of section 3-215, and to fix by such ordinances penalties for the violation thereof. Such ordinances, when so concurrently adopted, shall have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or without the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of said municipalities in like manner as are its individual ordinances. The consent of the Department of Aeronautics to any such ordinance, where the state is a party to the joint venture, shall be equivalent to the enactment of the ordinance by a municipality. The publication provided for in subdivision (2) of section 3-215, aforesaid, shall be made in each municipality involved in the manner provided by law or charter for publication of its individual ordinances.

Source: Laws 1945, c. 34, § 11(8), p. 167.

3-229 Joint agreements; condemnation proceedings; property acquired held as tenants in common.

Condemnation proceedings shall be instituted, in the names of the municipalities jointly, and the property acquired shall be held by the municipalities as tenants in common. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1945, c. 34, § 11(9), p. 168; Laws 1951, c. 101, § 28, p. 459.

Condemnation may be instituted by municipalities jointly. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-230 Joint agreements; funds; revenue, use.

For the purpose of providing funds for necessary expenditures in carrying out the provisions of sections 3-221 to 3-232, a joint fund shall be created and maintained, into which each of the municipalities involved shall deposit its proportionate share as provided by the joint agreement. Such funds are to be provided by bond issues, tax levies and appropriations made by each municipality in the same manner as though it were acting separately under the authority of sections 3-201 to 3-238 and 18-1502. The revenue obtained from the ownership, control and operation of the airports and other air navigation facilities jointly controlled shall be paid into such fund, to be expended as provided in section 3-214. Revenue in excess of the cost of maintenance and operating expenses of the joint properties shall be divided as may be provided in the original agreement for the joint venture.

Source: Laws 1945, c. 34, § 11(10), p. 168.

3-231 Joint agreements; funds; disbursed by order of board.

All disbursements from such fund shall be made by order of the board in accordance with such rules and regulations and for such purposes as the appointing governing bodies, acting jointly, shall prescribe.

Source: Laws 1945, c. 34, § 11(11), p. 168.

3-232 Joint agreements; specific performance authorized.

Specific performance of the provisions of any joint agreement entered into as provided for in sections 3-221 to 3-231 may be enforced as against any party thereto by the other party or parties thereto.

Source: Laws 1945, c. 34, § 11(12), p. 168.

3-233 Municipality; assist another municipality; gift; lease; appropriation of money by taxation or bonds.

Whenever the governing body of any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality in exercising the powers and authority granted by sections 3-201 to 3-238 and 18-1502, such first-mentioned municipality is expressly authorized and empowered to furnish such assistance by gift, or lease with or without rental, of real property, by the donation, lease with or without rental, or loan, of personal property, and by the appropriation of money, which may be provided for by taxation or the issuance of bonds in the same manner as funds

might be provided for the same purposes if the municipality were exercising the powers heretofore granted in its own behalf.

Source: Laws 1945, c. 34, § 12, p. 168.

3-234 Purpose of sections.

The purposes of sections 3-201 to 3-238 and 18-1502 are specifically declared to be county purposes as well as generally public, governmental and municipal.

Source: Laws 1945, c. 34, § 13(1), p. 169.

3-235 Powers granted counties.

The powers herein granted to all municipalities are specifically declared to be granted to counties in this state, any other statute to the contrary notwithstanding.

Source: Laws 1945, c. 34, § 13(2), p. 169.

3-236 Airport and air navigational facility; laws governing; jurisdiction.

Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of sections 3-201 to 3-238 and 18-1502, shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it and no other municipality in which such airport or air navigation facility shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations thereon. Such municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in subdivision (2) of section 3-215.

Source: Laws 1945, c. 34, § 14, p. 169.

3-237 Sections, how construed.

Sections 3-201 to 3-238 and 18-1502 shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of aeronautics.

Source: Laws 1945, c. 34, § 16, p. 169.

Uniformity of construction of act is sought. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-238 Act, how cited.

Sections 3-201 to 3-238 and 18-1502 may be cited as the Revised Airports Act.

Source: Laws 1945, c. 34, § 18, p. 170.

Scope and manner of citation of act is set out. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-239 Airport authorities or municipalities; project applications under federal act; approval by department; required; department, act as agent; direct receipt of federal funds; when.

(1) No city airport authority, county airport authority, joint airport authority, or municipality in this state, whether acting alone or jointly with another city

airport authority, county airport authority, joint airport authority, or municipality, or with the state, shall submit to any federal agency or department any project application under the provisions of any act of Congress which provides airport planning or airport construction and development funds for the expansion and improvement of the airport system, unless the project and the project application have been first approved by the Department of Aeronautics.

(2) Except as provided in subsection (3) of this section, no city airport authority, county airport authority, joint airport authority, or municipality shall directly accept, receive, receipt for, or disburse any funds granted by the United States under any act of Congress pursuant to subsection (1) of this section, but it shall designate the Department of Aeronautics as its agent and in its behalf to accept, receive, receipt for, and disburse such funds. Such authorities and municipalities shall enter into an agreement with the department prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations, and applicable laws of this state. Such money as is paid by the United States shall be retained by the state or paid over to the city airport authority, county airport authority, joint airport authority, or municipality under such terms and conditions as may be imposed by the United States in making such grant.

(3) Any city airport authority, county airport authority, joint airport authority, or municipality operating a primary airport may directly accept, receive, receipt for, and disburse any funds granted by the United States for the primary airport under the provisions of any act of Congress pursuant to subsection (1) of this section by informing the department, in writing, of its intent to do so. If an airport loses its status as a primary airport before signing a grant agreement with the United States, the airport shall be subject to the provisions of subsection (2) of this section.

(4) For purposes of this section:

(a) City airport authority means an authority established pursuant to the Cities Airport Authorities Act;

(b) County airport authority means an authority established under sections 3-601 to 3-622;

(c) Joint airport authority means an authority established under the Joint Airport Authorities Act;

(d) Municipality means any county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities; and

(e) Primary airport means any airport which:

(i) Receives scheduled passenger air service;

(ii) Has at least ten thousand revenue passenger enplanements or boardings, as officially recorded by the United States, in at least one of the most recent five calendar years for which official numbers are available; and

(iii) Does not receive any funds apportioned by the United States for nonprimary airports.

Source: Laws 1947, c. 8, § 1, p. 70; Laws 1957, c. 9, § 15, p. 126; Laws 1980, LB 925, § 1; Laws 2002, LB 446, § 4.

Cross References

Cities Airport Authorities Act, see section 3-514.
For definitions, see section 3-501.
Joint Airport Authorities Act, see section 3-716.

3-240 Extraterritorial airport; terms, defined.

As used in sections 3-240 to 3-244, unless the context otherwise requires:

(1) Airport means any area of land or water which is used or intended for use, for the landing and taking off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(2) Air navigation facility means any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(3) Governmental agency means any municipality, city, village, county, public corporation, or other public agency.

Source: Laws 1949, c. 1, § 1, p. 55.

3-241 Extraterritorial airport; state or governmental agency; powers.

This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

Source: Laws 1949, c. 1, § 2, p. 55.

3-242 Extraterritorial airport; adjoining state; powers; right of eminent domain; reciprocity.

Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, if the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in section 3-241. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1949, c. 1, § 3, p. 56; Laws 1951, c. 101, § 29, p. 459.

3-243 Extraterritorial airport; joint exercise of powers.

The powers granted by sections 3-241 and 3-242 may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

Source: Laws 1949, c. 1, § 4, p. 56.

3-244 Act, how cited.

Sections 3-240 to 3-244 may be cited as the Extraterritorial Airports Act.

Source: Laws 1949, c. 1, § 5, p. 56.

ARTICLE 3

AIRPORT ZONING

Section

3-301 Terms, defined.

For purposes of the Airport Zoning Act, unless the context otherwise requires:

(1) Airport means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purposes;

(2) Airport hazard means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft;

(3) Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in the act, but

such area shall not extend in any direction a distance in excess of three miles from the adjacent boundary of an airport;

(4) Political subdivision means any municipality, city, village, or county;

(5) 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;

(6) Structure means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines; and

(7) Tree means any object of natural growth.

Source: Laws 1945, c. 233, § 1, p. 682; Laws 1993, LB 121, § 84.

3-302 Airport hazard; public nuisance; prevention.

It is hereby found that an airport hazard endangers the lives and property of the users of an airport and occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (2) that it is therefor necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (3) that this should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

Source: Laws 1945, c. 233, § 2, p. 683.

3-303 Airport hazard; zoning regulations.

In order to prevent the creation or establishment of airport hazards, every political subdivision, having an airport hazard area within the area of its zoning jurisdiction, may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which the structures and trees may be erected or allowed to grow.

Source: Laws 1945, c. 233, § 3(1), p. 683; Laws 1961, c. 9, § 1, p. 96.

3-304 Zoning board; members; appointment; terms.

Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the area of zoning jurisdiction of such political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to

adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by section 3-303 in the political subdivision within whose area of zoning jurisdiction such area is located. Each such joint board shall have two representatives appointed by each political subdivision participating in its creation as members thereof and also a chairperson elected by a majority of the members so appointed. The term of each member shall be four years, except as otherwise provided in this section. Board members who have served more than two years as of March 1, 1984, shall continue to serve for two more years. Board members who have served less than two years as of March 1, 1984, shall continue to serve for four more years.

Source: Laws 1945, c. 233, § 3(2), p. 683; Laws 1961, c. 9, § 2, p. 96; Laws 1984, LB 837, § 1.

3-305 Zoning regulations; comprehensive zoning ordinance.

In the event that a political subdivision has adopted or hereafter adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations and be administered and enforced in connection therewith.

Source: Laws 1945, c. 233, § 4(1), p. 684.

3-306 Zoning regulations; conflict; stringent limitation or requirement prevails.

In the event of any conflict between any airport zoning regulations adopted under sections 3-301 to 3-333 and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Source: Laws 1945, c. 233, § 4(2), p. 684.

3-307 Zoning regulations; adoption; notice; hearing.

No airport zoning regulations shall be adopted, amended, or changed under sections 3-301 to 3-333 except by the action of the legislative body of the political subdivision in question, or the joint board provided for in section 3-304, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

Source: Laws 1945, c. 233, § 5(1), p. 684.

3-308 Zoning regulations; procedure for adoption; commission; appointment; preliminary report; public hearings; final report.

Prior to the initial zoning of any airport hazard area under sections 3-301 to 3-333, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning

commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city planning commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Source: Laws 1945, c. 233, § 5(2), p. 685.

3-309 Zoning regulations; requirements; reasonable.

All airport zoning regulations adopted under sections 3-301 to 3-333 shall be reasonable and not impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of sections 3-301 to 3-333. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood and the uses to which the property to be zoned is put and adaptable.

Source: Laws 1945, c. 233, § 6(1), p. 685.

3-310 Zoning regulations; nonconforming use; exception.

No airport zoning regulations adopted under sections 3-301 to 3-333 shall require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in section 3-313.

Source: Laws 1945, c. 233, § 6(2), p. 685.

3-311 Zoning regulations; new or changed structure; nonconforming use; permit.

Airport zoning regulations, adopted under sections 3-301 to 3-333, may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed, altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure, tree or nonconforming use to be made, become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

Source: Laws 1945, c. 233, § 7(1), p. 685.

3-312 Zoning regulations; property in violation; variance; allowance; exception.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree or otherwise use his property in violation of the airport zoning regulations adopted under sections 3-301 to 3-333 may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations and sections 3-301 to 3-333; *Provided*, that any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of sections 3-301 to 3-333.

Source: Laws 1945, c. 233, § 7(2), p. 686.

3-313 Zoning regulations; permit or variance; hazard marking and lighting.

In granting any permit or variance under sections 3-311 to 3-313, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of sections 3-301 to 3-333 and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Source: Laws 1945, c. 233, § 7(3), p. 686.

3-314 Zoning regulations; appeal; hearing.

Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under sections 3-301 to 3-333, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

Source: Laws 1945, c. 233, § 8(1), p. 686.

3-315 Zoning regulations; appeal; when taken; notice; record.

All appeals taken under section 3-314 must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency, from which the appeal is taken, shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Source: Laws 1945, c. 233, § 8(2), p. 687.

3-316 Zoning regulations; appeal; stay of proceedings; exception.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life

or property. In such cases the proceedings shall not be stayed except by an order of the board after notice to the agency from which the appeal is taken and on due cause shown.

Source: Laws 1945, c. 233, § 8(3), p. 687.

3-317 Zoning regulations; appeal; hearing; notice; appearances.

The board shall fix a reasonable time for the hearing of appeals, give public notice thereof, give 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 an agent or attorney.

Source: Laws 1945, c. 233, § 8(4), p. 687.

3-318 Zoning regulations; appeal; decisions; powers.

The board may, in conformity with the provisions of sections 3-301 to 3-333, reverse, or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made. To that end it shall have all the powers of the administrative agency from which the appeal is taken.

Source: Laws 1945, c. 233, § 8(5), p. 687.

3-319 Zoning regulations; provide for administration and enforcement.

All airport zoning regulations adopted under sections 3-301 to 3-333 shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to sections 3-301 to 3-333 shall include that of hearing and deciding all permits under section 3-311, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

Source: Laws 1945, c. 233, § 9, p. 687.

3-320 Zoning regulations; board of adjustment; powers; appeals; hearings.

All airport zoning regulations adopted under sections 3-301 to 3-333 shall provide for a board of adjustment to have and exercise the following powers: (1) To hear and decide appeals from any order, requirement, decision or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in sections 3-314 to 3-318; (2) to hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations; and (3) to hear and decide specific variances under section 3-312.

Source: Laws 1945, c. 233, § 10(1), p. 688.

3-321 Board of adjustment; members; appointment; removal.

Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall

consist of five members, each to be appointed for a term of three years by the authority adopting the regulations. Any member thereof may be removed by the appointing authority for cause, upon written charges and after public hearing.

Source: Laws 1945, c. 233, § 10(2), p. 688.

3-322 Board of adjustment; majority vote; jurisdiction.

The concurring vote of a majority of the members of the board of adjustment shall be sufficient to (1) reverse any order, requirement, decision or determination of the administrative agency, (2) decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations or (3) effect any variation in such regulations.

Source: Laws 1945, c. 233, § 10(3), p. 688.

3-323 Board of adjustment; adopt rules; meetings; oaths; public hearings; record of proceedings.

The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be 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. It shall also keep records of its examinations and other official actions. Such minutes and records shall immediately be filed in the office of the board and be a public record.

Source: Laws 1945, c. 233, § 10(4), p. 688.

3-324 Board of adjustment; judicial review; petition; grounds.

Any (1) person aggrieved or taxpayer affected by any decision of a board of adjustment, (2) governing body of a political subdivision or (3) joint airport zoning board, which is of the opinion that a decision of a board of adjustment is illegal, may present a verified petition to the district court setting forth that the decision is illegal in whole or in part and specifying the grounds of the illegality. Such a petition shall be presented to the court within thirty days after the decision is filed in the office of the board.

Source: Laws 1945, c. 233, § 11(1), p. 689.

3-325 Judicial review; writ of error; restraining order; notice.

Upon presentation of such a petition, the court may allow a writ of error directed to the board of adjustment to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, notice to the board and due cause being shown, grant a restraining order.

Source: Laws 1945, c. 233, § 11(2), p. 689.

3-326 Board of adjustment; writ; return; specify grounds for appeal.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return

shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

Source: Laws 1945, c. 233, § 11(3), p. 689.

3-327 Judicial review; jurisdiction of court; objections to decision of board of adjustment.

The court shall have exclusive jurisdiction to affirm, modify or set aside the decision brought up for review, in whole or in part. If it deems it advisable, the court may order further proceedings by the board of adjustment. The findings of fact of the board, if supported by substantial evidence, shall be accepted by the court as conclusive and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board or, if it was not so urged, unless there were reasonable grounds for failure to do so.

Source: Laws 1945, c. 233, § 11(4), p. 689.

3-328 Judicial review; costs.

Costs shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from.

Source: Laws 1945, c. 233, § 11(5), p. 690.

3-329 Judicial review; effect of decision on other structures.

In any case in which airport zoning regulations adopted under sections 3-301 to 3-333, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Source: Laws 1945, c. 233, § 11(6), p. 690.

3-330 Violation; penalty; injunctions.

Each violation of sections 3-301 to 3-333 or of any regulations, orders or rulings promulgated or made pursuant to sections 3-301 to 3-333, shall constitute a Class III misdemeanor. Each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under sections 3-301 to 3-333 may institute, in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of (1) sections 3-301 to 3-333, (2) airport zoning regulations adopted under sections 3-301 to 3-333 or (3) any order or ruling made in connection with their administration or enforcement. The court in such proceedings shall adjudge to the plaintiff such relief by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of sections 3-301 to 3-333 and of the regulations adopted and orders and rulings made pursuant thereto.

Source: Laws 1945, c. 233, § 12, p. 690; Laws 1977, LB 40, § 30.

3-331 Acquisition of property interest; purchase; grant; condemnation; procedure.

In any case in which (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use, (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under sections 3-301 to 3-333, or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire by purchase, grant, or condemnation, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of sections 3-301 to 3-333. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1945, c. 233, § 13, p. 691; Laws 1951, c. 101, § 30, p. 460.

3-332 Department of Aeronautics; municipalities and political subdivisions; assist in planning and developing.

The Department of Aeronautics of the State of Nebraska is authorized to aid and assist municipalities and other political subdivisions of the state in planning, developing and carrying out programs for airport zoning in order to secure uniformity therein as far as possible.

Source: Laws 1945, c. 233, § 16, p. 691.

3-333 Act, how cited.

Sections 3-301 to 3-333 shall be known and may be cited as the Airport Zoning Act.

Source: Laws 1945, c. 233, § 15, p. 691.

ARTICLE 4

REGULATION OF STRUCTURES

Section

3-401 Obstructions to air navigation; regulation; purpose.

There is hereby recognized, declared, and found (1) to exist, in behalf of the citizens of the United States, a public right of freedom of transit in air commerce through the air space of the State of Nebraska, (2) that any obstruction to air navigation (a) interferes with the public right of freedom of

transit in air commerce, (b) endangers the lives and property of those using the air space for travel and transportation by air, and (c) endangers the lives and property of the occupants of land in the State of Nebraska, and (3) that the public health, safety, and welfare require that the erection and maintenance of obstructions to air navigation be regulated and controlled.

Source: Laws 1955, c. 7, § 1, p. 67.

3-402 Terms, defined.

As used in sections 3-401 to 3-409, unless the context otherwise requires:

(1) Structure shall mean any manmade object which is built, constructed, projected, or erected upon, from, and above the surface of the earth, including, but not limited to, towers, antennas, buildings, wires, cables, and chimneys;

(2) Obstruction shall mean any structure which obstructs the air space required for the flight of aircraft and in the landing and taking off of aircraft at any airport or restricted landing area; and

(3) Person shall mean any public utility, public district, or other governmental division or subdivision or any person, corporation, partnership, or limited liability company.

Source: Laws 1955, c. 7, § 2, p. 68; Laws 1993, LB 121, § 85.

3-403 Structures; erection, maintenance in excess of one hundred fifty feet; permit required.

It shall be unlawful for any person, firm, or corporation, without having first applied for and obtained a permit in writing from the Department of Aeronautics of the State of Nebraska, to build, erect or maintain any structure within the State of Nebraska, the height of which exceeds one hundred fifty feet above the surface of the ground at point of installation.

Source: Laws 1955, c. 7, § 3, p. 68; Laws 1963, c. 17, § 1, p. 96.

3-404 Structures; erection, maintenance in excess of one hundred fifty feet; application; form; contents; permit; issuance; considerations.

The application for the permit, required by section 3-403, shall be made in writing on forms prescribed by the Department of Aeronautics and shall contain or be accompanied by details as to the location, construction, height, and dimensions of the proposed structure, the nature of its intended use, and such other information as the Director of Aeronautics may require. Upon the filing of such application the director shall make an investigation and an aeronautical study of such proposed construction and its effect, if any, upon air navigation, and the health, welfare, and safety of the public. If the director, upon such investigation, shall determine that such proposed structure will not constitute a hazard to air navigation and will not interfere unduly with the public right of freedom of transit in commerce through the air space affected thereby, he shall issue to the applicant a permit, required by section 3-403, authorizing the erection and construction of such structure, subject to such conditions as to marking and lighting as the department may prescribe by its rules and regulations, authorized by section 3-407. If he does not so determine, he shall deny the application. In making such investigation, aeronautical study, and determination, the director shall consider (1) the character of flying operations expected to be conducted in the area concerned, (2) the nature of

the terrain, (3) the character of the neighborhood, (4) the uses to which the property concerned is devoted or adaptable, (5) the proximity to existing airports, airways, control areas, and control zones, (6) the height of existing, adjacent structures, and (7) all the facts and circumstances existing. He shall impose only such restrictions or requirements as may be reasonably necessary to effectuate the purpose of sections 3-401 to 3-409.

Source: Laws 1955, c. 7, § 4, p. 68.

3-405 Appeal; procedure.

Any person aggrieved by any action of the Department of Aeronautics in granting or denying a permit under the terms of sections 3-401 to 3-409 may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1955, c. 7, § 5, p. 69; Laws 1988, LB 352, § 9.

Cross References

Administrative Procedure Act, see section 84-920.

3-406 Existing structures; structures erected under authority of federal or state agency; zoning regulations; applicability of sections.

The provisions of sections 3-403 to 3-405 shall not apply to structures hereafter erected under the authority of a license or permit issued by a federal agency or other state agency now having specific statutory jurisdiction over the air space, including authority to prohibit or regulate the height of structures for the promotion of safety in aviation, nor to existing structures. Nothing in sections 3-401 to 3-409 shall be construed to limit or abridge any right, power, or authority to zone property under the provisions of any other law of this state or of the federal government except, that in the event of any conflict between the regulations for height limits of structures, lighting, and marking adopted under the provisions of sections 3-401 to 3-409, and any other regulations applicable to the same area, the more stringent limitation or requirement shall govern and prevail.

Source: Laws 1955, c. 7, § 6, p. 69.

3-407 Structures; lighting; rules and regulations; department adopt.

All structures outside the corporate limits of cities and villages, exceeding a height of two hundred feet above the surface of the ground, and all structures within the corporate limits of cities and villages exceeding a height of five hundred feet shall be marked and lighted in accordance with rules and regulations established by the Department of Aeronautics. The department is authorized to adopt and promulgate rules and regulations for the marking and lighting of such structures in a manner calculated to prevent collisions with such structures by aircraft. It shall be the duty of the persons, firms, and corporations owning, maintaining, or using such structures to provide and maintain such marking and lighting.

Source: Laws 1955, c. 7, § 7, p. 70; Laws 1993, LB 472, § 1.

3-408 Violations; penalty.

Any person, firm, or corporation (1) violating any of the provisions of sections 3-401 to 3-409, (2) submitting false information in the application for a permit,

(3) violating any rule or regulation adopted by the Department of Aeronautics pursuant hereto, as authorized by section 3-407, (4) failing to do and perform any act required hereby, or (5) violating the terms of any permit issued pursuant to the provisions of sections 3-401 to 3-409, shall be guilty of a Class III misdemeanor. Each day any violation continues or any structure erected in violation of the provisions of sections 3-401 to 3-409 shall continue in existence, shall constitute a separate offense.

Source: Laws 1955, c. 7, § 8, p. 70; Laws 1977, LB 40, § 31.

3-409 Structure; violations; injunction; removal.

In addition to the penalties provided for by section 3-408, the erection and maintenance of any structure in violation of the provisions of sections 3-401 to 3-409 may be enjoined by any court of competent jurisdiction in an action for that purpose commenced by the Department of Aeronautics or any other interested person. The erection of such structure and permitting the same to stand or remain, in violation of the provisions of sections 3-401 to 3-409, is hereby declared to be a nuisance and the department, or its authorized agent, is authorized to go upon the premises and abate such nuisance by removing such structure after five days' notice to the interested parties, to be served by mail addressed to them at their last-known place of business or residence. The expense incident to the removal of such structure shall be paid by the owners thereof and if the department removes such structures as provided in this section the expense incurred by the department may be recovered from the sale of the structure or its salvage material.

Source: Laws 1955, c. 7, § 9, p. 71.

ARTICLE 5

CITY AIRPORT AUTHORITY

Section

3-501 Terms, defined.

As used in the Cities Airport Authorities Act, unless the context otherwise requires:

(1) Authority means an airport authority which shall be a body politic and corporate organized pursuant to section 3-502;

(2) City means any city or village of the State of Nebraska;

(3) Bonds means bonds issued by the authority pursuant to the provisions of the Cities Airport Authorities Act;

(4) Board means the members of the authority;

(5) Mayor and city council means, in the case of a village, the chairperson of the board of trustees and the board of trustees, respectively;

(6) Real property means lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property; and

(7) Project means any airport operated by the authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight or as part of aviation operation, air navigation, and air safety operation.

Source: Laws 1957, c. 9, § 1, p. 110; Laws 2002, LB 446, § 5; Laws 2003, LB 5, § 2.

An airport authority is a body corporate and politic. Bowley v. City of Omaha, 181 Neb. 515, 149 N.W.2d 417 (1967).

The Airport Authority Act sustained as constitutional. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

3-502 Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.

(1) Any city may create an airport authority to be managed and controlled by a board. The board, when and if appointed, shall have full and exclusive jurisdiction and control over all facilities owned or thereafter acquired by such city for the purpose of aviation operation, air navigation, and air safety operation.

(2) The Cities Airport Authorities Act shall not become operative as to any city unless the mayor and city council in their discretion activate the airport authority by the mayor appointing and the council approving the board members as provided in this section. Each such board shall be a body corporate and politic, constituting a public corporation and an agency of the city for which such board is established.

(3) Each board in cities of the primary, first, and second classes and in villages shall consist of five members to be appointed by the mayor with the approval of the city council to serve until their successors elected pursuant to section 32-547 take office. Members of such board shall be residents of the city

for which such authority is created. Any vacancy on such board shall be filled by temporary appointment by the mayor, with the approval of the city council, until a successor can be elected, at the next general city election, to serve the unexpired portion, if any, of the term. A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for the removal of such officer may be brought, upon resolution of the city council, in the district court of the county in which such city is located.

(4) Each board in cities of the metropolitan class shall consist of five members who shall be nominated by the mayor and approved by the city council and shall serve for terms of five years. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, and such appointee shall serve the unexpired portion, if any, of the term of the member whose office was vacated. Any member of such board may be removed from office by the mayor, for incompetence, neglect of duty, or malfeasance in office, with the consent and approval of the city council.

(5) The members of the board hereby created shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by the Cities Airport Authorities Act, to be paid as provided in section 23-1112 for county officers and employees. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of the members, or to its officers, agents, and employees, such powers and duties as it may deem proper.

(6) The board and its corporate existence shall continue only for a period of twenty years from the date of appointment of the members thereof and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged. When all liabilities incurred by the authority of every kind and character have been met and all its bonds have been paid in full or such liabilities and bonds have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the city. The authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities. Upon the authority's ceasing to exist, all its remaining rights and properties shall pass to and vest in the city.

Source: Laws 1957, c. 9, § 2, p. 111; Laws 1959, c. 12, § 1, p. 120; Laws 1965, c. 19, § 1, p. 153; Laws 1967, c. 14, § 1, p. 102; Laws 1967, c. 15, § 1, p. 106; Laws 1969, c. 25, § 1, p. 218; Laws 1971, LB 164, § 1; Laws 1972, LB 661, § 1; Laws 1977, LB 201, § 1; Laws 1981, LB 204, § 13; Laws 1988, LB 975, § 1; Laws 1994, LB 76, § 461.

This section gives an airport authority full jurisdiction over all aspects of getting an aircraft and its occupants safely into and out of an airport. Professional Firefighters of Omaha v. City of Omaha, 243 Neb. 166, 498 N.W.2d 325 (1993).

The word airport herein means an airport qualified and licensed for public use. Elliott v. City of Plattsmouth, 187 Neb. 165, 188 N.W.2d 684 (1971).

Under former law the word airport in this section means an airport qualified and licensed for public use. Bruns v. City of Seward, 186 Neb. 658, 185 N.W.2d 853 (1971).

Airport authority's existence dependent upon city which created it and is an agency of that city, existence of airport authority does not prevent parent city from being annexed. Airport Authority of City of Millard v. City of Omaha, 185 Neb. 623, 177 N.W.2d 603 (1970).

3-502.01 Repealed. Laws 1969, c. 25, § 3.

3-502.02 Repealed. Laws 1969, c. 25, § 3.

3-503 Airport authority; acquisition of property; terms; eminent domain; relinquishment; insurance.

(1) Any city creating an authority shall by resolution convey or transfer to it any existing airport or any other property of the city for use in connection with a project, including real and personal property owned or leased by the city and used or useful in connection therewith. In case of real property so conveyed, the title thereto shall remain in the city, but the authority shall have the use and occupancy of such real property for so long as its corporate existence shall continue. In the case of personal property so conveyed, the title shall pass to the authority. Any conveyance of an existing airport shall be subject to any leases or agreements duly and validly made by the city affecting such airports or the property so conveyed, except that any such lease or agreement which is inconsistent with the ability of the authority to issue negotiable bonds may be renegotiated by the authority.

(2) Such city may acquire by purchase or condemnation real property in the name of the city for the projects or for the widening of existing roads, streets, parkways, avenues, or highways, or for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes and partly for other city purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by such city, except that if property is to be acquired outside the zoning jurisdiction of the city creating the authority when such city is of the metropolitan class, approval shall be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised. Such city may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction or operation of a project.

(3) Contracts may be entered into between the city and an authority, or between other political subdivisions of the State of Nebraska and such city or authority, or between each and any of them, providing for the conveyance of property to such city or authority for use in connection with a project, and for the closing of streets, roads, parkways, avenues, or highways. The amounts, terms, and conditions of payment if any shall be made by such city or authority in connection with the conveyances. The contracts may also contain covenants by such city or such political subdivision, as to the road, street, parkway, avenue, or highway improvements to be made by such city or such political subdivision. Any city council may authorize such contracts between the city and the authority by resolution, and no other authorization on the part of the city for such contracts shall be necessary. All obligations of the city for the payment of money to an authority incurred in carrying out the Cities Airport Authorities Act shall be included in and provided for by each annual or biennial budget of such city thereafter made until fully discharged. In the case of other political subdivisions of the state, such contracts shall be authorized as provided by law.

(4) An authority operating under the act may acquire real property for a project in the name of the city in which it was established at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by cities and subdivision (4) of section 3-504, except that if property is to be acquired outside the zoning jurisdiction of the city creating the authority when such city is of the metropolitan class, approval shall be obtained from the county board of the county where the

property is located before the right of eminent domain may be exercised. The authority shall have the use and occupancy of such real property so long as its corporate existence shall continue.

(5) In case an authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project then, if such real property was acquired at the cost and expense of the city, the authority shall have the power to surrender its use and occupancy thereof to the city. If such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease, or otherwise dispose of the real property. The authority shall retain the proceeds of sale, rentals, or other money derived from the disposition of such real property for its corporate purposes.

(6) If the authority does not provide insurance coverage for the real property improvements to real property and the real property of which it has the use and occupancy and the city provides insurance coverage for such improvements and property and names the authority as the named insured, the authority shall reimburse the city for purchasing the insurance coverage if reimbursement is requested by the city.

Source: Laws 1957, c. 9, § 3, p. 113; Laws 1973, LB 22, § 1; Laws 1981, LB 354, § 2; Laws 1989, LB 123, § 1; Laws 2000, LB 1116, § 3.

An airport authority acquiring real property must bring an action in the name of the city in which it was established for and on behalf, of the airport authority. Airport Auth. of Village of Greeley v. Dugan, 259 Neb. 860, 612 N.W.2d 913 (2000).

Municipal airport authorities are authorized to acquire property by condemnation for establishing airports. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

3-504 Airport authority; powers.

Any authority established under the Cities Airport Authorities Act shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of personal property for its corporate purposes;

(4) To acquire in the name of the city, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except (a) as may otherwise be provided in the act and (b) that if property is to be acquired outside the zoning jurisdiction of the city when such city is a city of the metropolitan class, approval must be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities of cities of the primary, first, and second classes and of villages created after September 2, 1973, without further approval until such time as at least three members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority of cities of the primary, first, and second classes and of villages, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such

authority. Any person violating such rules shall be guilty of a Class III misdemeanor;

(6) With the consent of the city, to use the services of agents, employees, and facilities of the city, for which the authority may reimburse the city a proper proportion of the compensation or cost thereof, and also to use the services of the city attorney as legal advisor to the authority;

(7) To appoint officers, agents, and employees and fix their compensation;

(8) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the authority;

(9) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the city in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the authority deems it to be in the public interest, the authority may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(11) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such authority subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(12) To certify annually to the governing body of the city the amount of tax to be levied for airport purposes which the authority requires under its adopted budget statement to be received from taxation, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all the taxable property in such city subject to section 77-3443. The governing body may levy and collect the taxes so certified at the same time and in the same manner as other 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. An authority in a city of the first or second class or a village shall have power to certify annually to the governing body of such a city or village an additional amount of tax to be levied for airport purposes, not to exceed three and five-tenths cents on each one hundred dollars of taxable value, to be levied, collected, set aside, and deposited as specified in this subdivision, and if negotiable bonds of the authority are thereafter issued, this power shall continue until such bonds are paid in full. When such additional amount of tax is first certified, the governing body may then require, but not thereafter, approval of the same by a majority vote of the governing body or by a majority vote of the electors voting on the same at a general or special election. The additional levy shall be subject to section 77-3443. The provisions of this subdivision shall not apply to cities of the metropolitan class;

(13) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such periods of time and for such consideration as the authority shall determine;

(14) To accept grants, loans, or contributions from the United States, the State of Nebraska, any agency or instrumentality of either of them, or the city in which such authority is established and to expend the proceeds thereof for any corporate purposes;

(15) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(16) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred on such authorities by the act.

Source: Laws 1957, c. 9, § 4, p. 115; Laws 1959, c. 12, § 2, p. 122; Laws 1969, c. 26, § 1, p. 225; Laws 1969, c. 145, § 14, p. 677; Laws 1973, LB 22, § 2; Laws 1974, LB 796, § 1; Laws 1977, LB 40, § 32; Laws 1979, LB 187, § 12; Laws 1981, LB 354, § 3; Laws 1992, LB 719A, § 11; Laws 1996, LB 1114, § 18; Laws 1997, LB 269, § 4; Laws 1998, LB 306, § 1; Laws 2001, LB 173, § 5.

An airport authority acquiring real property must bring an action in the name of the city in which it was established for and on behalf of the airport authority. Airport Auth. of Village of Greeley v. Dugan, 259 Neb. 860, 612 N.W.2d 913 (2000).

Municipal airport authorities are authorized to acquire property by condemnation for establishing airports. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

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).

An airport authority has broad powers to include all facilities necessary or convenient in constructing an airport project. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

3-504.01 Airport authority; authority for creation; election not required; supremacy over city charter; validation of proceedings.

Sections 3-501 to 3-514 shall be full authority for the creation of airport authorities by cities, and for the exercise of the powers therein granted to cities and to such authorities, and no action, proceeding or election shall be required prior to the creation of airport authorities hereunder or to authorize the exercise of any of the powers herein granted, any provision of law or of any city

charter to the contrary notwithstanding, and the proceedings of the mayor and council of any city heretofore taken for the creation and establishment of an airport authority are hereby ratified, validated and confirmed.

Source: Laws 1959, c. 12, § 4, p. 126.

3-504.02 Airport authority; cities of primary class; development of commercial aviation; representation in commercial air service hearings; additional tax levy.

An airport authority may, and in cities of the primary class shall, in addition to the powers enumerated in section 3-504, encourage, foster, and promote the development of commercial and general aviation for the city which it serves, and advance the interests of such city in aeronautics and in commercial air transportation and its scheduling. An airport authority in cities of the primary class, under direction of the mayor, shall represent the interests of such city in commercial air service hearings, except that representation in the name of the city shall be only by the consent of such city. In cities of the primary class the city council may establish a fund for the purposes of this section by an annual levy of not to exceed three-tenths of one cent on each one hundred dollars which shall be levied and collected upon the same property and in addition to the levy provided in subdivision (12) of section 3-504. The levy in this section shall be subject to section 77-3443.

Source: Laws 1963, c. 16, § 1, p. 95; Laws 1979, LB 187, § 13; Laws 1997, LB 269, § 5.

3-505 Airport authority; city officers and employees; transfer; retention of privileges; social security and pension plans; continuance of coverage.

Officers and employees of any board or department in or of a city may be transferred to the authority established in the city, and shall be eligible for such transfer and appointment without examination to offices and positions under the authority. Officers or employees of such city, who shall have accepted such transfer and who are at the time of such transfer members or beneficiaries of any existing pension or retirement system, shall continue to have the rights, privileges, obligations, and status with respect to such system or systems as are now prescribed by law. In a city of the metropolitan or of the primary class, the authority may enter into an agreement with the city to provide for the continued coverage of officers and employees of the authority, and for the coverage of such officers and employees not formerly employed by the city, under the city's social security system, pension plan, or retirement plan, and shall pay its proportionate cost of such pension or retirement plan and expense of social security coverage.

Source: Laws 1957, c. 9, § 5, p. 118; Laws 1959, c. 12, § 3, p. 125; Laws 1963, c. 18, § 1, p. 97.

3-506 Airport authority; finances; how handled.

All income, revenue, receipts, profits, and money of an authority from whatever source derived shall be paid either to the treasurer of the city in which such authority is established as ex officio treasurer of the authority who shall not commingle such money with any other money under his or her control or to the person appointed as treasurer of the airport authority in accordance with section 3-506.01. Such money shall be deposited in a separate bank,

capital stock financial institution, or qualifying mutual financial institution account or accounts. Such money shall be withdrawn only by check, draft, or order signed by the treasurer on requisition of the chairperson of the authority or of such other person or persons as the authority may authorize to make such requisitions, approved by the board. The chief auditing officer of the city and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of such authority, including its receipts, disbursements, contracts, leases, sinking funds, and investments and any other matters relating to its financial standing. Notwithstanding the provisions of this section, such authority may contract with the holders of any of its bonds 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 in any way to secure bonds. The authority may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of authorities pursuant to the Public Funds Deposit Security Act. 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 1957, c. 9, § 6, p. 118; Laws 1978, LB 868, § 1; Laws 1989, LB 33, § 3; Laws 1999, LB 396, § 1; Laws 2001, LB 362, § 4.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

3-506.01 Airport authority; treasurer; appointed; bond.

(1) An airport authority may appoint a treasurer.

(2) If a treasurer is appointed by the authority, the treasurer of the city in which such authority is established shall no longer serve as ex officio treasurer of the authority.

(3) If a treasurer is appointed, such treasurer shall furnish bond, in an amount to be determined by the authority, running to the authority conditioned upon the faithful performance of such treasurer's duties.

Source: Laws 1978, LB 868, § 2.

3-507 Airport authority; bonds; general; limited purposes; bond anticipation notes; issuance; powers conferred; personal liability.

(1) An authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such authority is established. Such authorities shall have power, from time to time and whenever refunding is deemed expedient, to issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed or may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. All bonds

shall be general obligations of the authority issuing the same and shall be payable out of any revenue, income, receipts, profits, or other money of the authority unless the authority expressly provides otherwise in the resolution authorizing issuance in which event the bonds shall be limited obligations of the authority and shall be payable only out of that part of the revenue, income, receipts, profits, or other money of the authority as is specified in such resolution. All bonds issued pursuant to the Cities Airport Authorities Act shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code subject only to any provisions contained in such bonds for the registration of the principal thereof.

(2) All such bonds shall be authorized by a resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, 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, and be subject to such terms of redemption and at such redemption premiums as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. No proceedings for the issuance of bonds of an authority shall be required other than those required by the act, 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 authorities pursuant to the act.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds of an authority may contain covenants and agreements on the part of the authority to protect and safeguard the security and payment of such bonds, which covenants and agreements shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) Pledging all or any part of the revenue, income, receipts, profits, and other money derived by the authority issuing such bonds from the operation, management, or sale of property of any or all such projects of the authority to secure the payment of the bonds or of any issue of the bonds;

(b) The rates, rentals, tolls, charges, license fees, and other fees to be charged by the authority, the amounts to be raised in each year for the services and commodities sold, furnished, or supplied by the authority, and the use and disposition of the revenue of the authority received therefrom;

(c) The setting aside of reserves or sinking funds and the regulation, investment, and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter issued may be applied and pledging such proceeds to secure the payment of bonds or of any issue of bonds;

(e) Limitations on the issuance of additional bonds of the authority, the terms and conditions upon which such additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(f) 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;

(g) Limitations on the amount of money derived from any project to be expended for operating, administrative, or other expenses of the authority; and

(h) Any other matters of like or different character which in any way affect the security or protection of bonds of the authority.

(4) An authority shall have power from time to time to issue bond anticipation notes, referred to as notes in the act, 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 the total estimated cost of the project for which the notes are to be issued including issuance expenses. 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 provided for bonds in this section. 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. The authority shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may 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 issuing such notes 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. The notes may be sold at public or private sale for such price or prices as the authority shall determine.

(5) It is the intention hereof that any pledge of revenue, income, receipts, profits, charges, fees, or other money made by an authority for the payment of bonds shall be valid and binding from the time such pledge is made, that the revenue, income, receipts, profits, charges, fees, 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.

(6) Neither the members of a board nor any person executing bonds or notes shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) An authority shall have power out of any funds available therefor to purchase bonds or notes of such authority. Any bonds so purchased may be held, canceled, or resold by the authority subject to and in accordance with any agreements with bondholders.

Source: Laws 1957, c. 9, § 7, p. 119; Laws 1963, c. 19, § 1, p. 98; Laws 1967, c. 16, § 1, p. 109; Laws 1969, c. 25, § 2, p. 220; Laws 1970, Spec. Sess., c. 5, § 1, p. 17; Laws 1985, LB 307, § 1; Laws 1991, LB 15, § 4.

3-508 Airport authority; bondholders; no impairment of rights or remedies.

The State of Nebraska does covenant and agree with the holders of bonds issued by an authority that the state will not limit or alter the rights hereby vested in an authority to acquire, maintain, construct, reconstruct, and operate projects, to establish and collect such rates, rentals, tolls, charges, license fees, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects 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 section 3-239 and the Cities Airport Authorities Act and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of the bonds.

Source: Laws 1957, c. 9, § 8, p. 123; Laws 2002, LB 446, § 6; Laws 2003, LB 5, § 3.

Sole purpose of this section to protect sources of income of authority and insure eventual payment of outstanding bonds, purpose served when debts of authority become debts of annexing city. Airport Authority of City of Millard v. City of Omaha, 185 Neb. 623, 177 N.W.2d 603 (1970).

3-509 Airport authority; obligations of authority; limited liability.

The bonds, notes, and other obligations of an authority shall not be a debt of the State of Nebraska or of the city in which such authority is established, and neither the state nor the city shall be liable thereon, nor shall such bonds be payable out of any funds other than funds of the authority issuing same.

Source: Laws 1957, c. 9, § 9, p. 123.

City is not liable for debts or other obligations of airport authority which it creates. Lock v. City of Imperial, 182 Neb. 526, 155 N.W.2d 924 (1968).

Issuance of bonds was not unlawful because of this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

3-510 Airport authority; bonds; eligibility for investment; use as security.

Bonds of authorities are hereby made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions, and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, 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 also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities and municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1957, c. 9, § 10, p. 123.

3-511 Airport authority; declaration of public purpose; exemption of property from taxation.

It is hereby found, determined, and declared that the creation of an authority and the carrying out of its corporate purposes is for the benefit of the people of the State of Nebraska, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and a matter of statewide concern, and that aviation projects operated by authorities are essential parts of the public transportation system. The State of Nebraska covenants with the holders of such bonds that authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, or upon the activities of authorities in the operation and maintenance of projects, or upon any charges, fees, revenue, or other income received by authorities except motor vehicle fuel and aviation fuel taxes, and that the bonds and notes of authorities and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by authorities. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1957, c. 9, § 11, p. 124; Laws 2001, LB 173, § 6.

3-512 Repealed. Laws 1969, c. 138, § 28.

3-513 Airport authority; applicability of sections.

Insofar as the provisions of section 3-239 and the Cities Airport Authorities Act are inconsistent with the provisions of any other act or of any city charter, if any, the provisions of section 3-239 and the Cities Airport Authorities Act shall be controlling.

Source: Laws 1957, c. 9, § 14, p. 126; Laws 2002, LB 446, § 7; Laws 2003, LB 5, § 4.

This section is to be read as a type of supremacy clause, nullifying any inconsistent statutory or municipal charter provisions. Professional Firefighters of Omaha v. City of Omaha, 243 Neb. 166, 498 N.W.2d 325 (1993).

3-514 Act, how cited.

Sections 3-501 to 3-514 shall be known and may be cited as the Cities Airport Authorities Act.

Source: Laws 1957, c. 9, § 17, p. 126; Laws 2002, LB 446, § 8.

ARTICLE 6
COUNTY AIRPORT AUTHORITY

Section

Section
3-612. Property; county; authority; powers and duties.
3-613. Authority; powers.
3-614. Authority; promote commercial and general aviation.
3-615. Officers and employees of county; transfer to authority; effect.
3-616. Funds; deposit; withdrawal; audits; effect on bonds and contracts.
3-617. Authority; bonds; notes; issuance; requirements; terms; effects of pledge; personal liability; repurchase.
3-618. Bonds; state; not to impair obligations.
3-619. Bonds, notes, obligations of authority; not debts of State of Nebraska or any county.
3-620. Bonds; who may purchase.
3-621. Authorities; public purpose; property; bonds; tax exempt.
3-622. Airport authority; applicability of sections.

3-601 Real property; acquire; improvements; schedule of charges.

Any county may acquire by lease, for a term not to exceed thirty years, purchase, condemnation, or otherwise, the necessary land within or without such county 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 1969, c. 141, § 1, p. 648.

3-602 Bonds; issuance; terms; election.

For the purpose of acquiring and improving an aviation field, any such county may issue and sell bonds of such county to be designated aviation field bonds, to provide the necessary funds therefor. 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 county at a general or special election held therein, and a majority of the votes cast upon the question of issuing such bonds being in favor thereof. The authority to sell such bonds shall not be limited by any other or special provision of law.

Source: Laws 1969, c. 141, § 2, p. 648; Laws 1970, Spec. Sess., c. 5, § 3, p. 79.

3-603 Tax; limitation; use; election.

For the purpose of acquiring and improving such aviation field, such county may, in lieu of issuing and selling bonds, levy an annual tax of not to exceed seven cents on each one hundred dollars of taxable value of all the taxable property within such county subject to section 77-3443. The tax shall not be levied or collected until the proposition of levying the same has first been submitted to the legal electors of such county at a general or special election held therein and received a majority of the votes cast upon the question of levying such tax. 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 1969, c. 141, § 3, p. 649; Laws 1979, LB 187, § 14; Laws 1992, LB 719A, § 12; Laws 1996, LB 1114, § 19.

3-604 Real property; 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 county.

Source: Laws 1969, c. 141, § 4, p. 649.

3-605 Construction; leasing; improvement; maintenance; management; labor; tax; levy.

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 county 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 of taxable value of all the taxable property in such county subject to section 77-3443. No part of the funds so levied and collected shall be used for any other purpose.

Source: Laws 1969, c. 141, § 5, p. 649; Laws 1979, LB 187, § 15; Laws 1992, LB 719A, § 13; Laws 1996, LB 1114, § 20.

3-606 Repealed. Laws 2001, LB 173, § 22.

3-607 Airport, landing field, airdrome; location and specifications; approval.

No airport, landing field, or airdrome shall be acquired by any county through the issue and sale of bonds, or the levy of taxes, until the location and specifications thereof shall have been approved by the appropriate department or agency of the United States Government.

Source: Laws 1969, c. 141, § 7, p. 650.

3-608 County board; powers.

The governing body of any county shall have power to make and enforce such resolutions, 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 resolutions, 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 county, and to the space above any airport, landing field, or airdrome outside its limits.

Source: Laws 1969, c. 141, § 8, p. 650.

3-609 County board; lease; disposal; powers.

The governing body of any county authorized by section 3-601 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 1969, c. 141, § 9, p. 650.

3-610 Project, defined.

As used in sections 3-611 to 3-621, project shall mean any airport operated by the authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight, or as part of aviation, air navigation, and air safety operation.

Source: Laws 1969, c. 141, § 10, p. 650.

3-611 Airport authority; creation; authorized; board; powers and duties; members; election; vacancy; removal; expenses; quorum.

In addition to the powers granted by sections 3-601 to 3-609, any county may create an airport authority. Such authority shall be managed and controlled by a board which shall have full and exclusive jurisdiction and control over all facilities owned or thereafter acquired by such county for airport purposes. Each such board shall be a body corporate and politic, constituting a public corporation and an agency of the county for which such board is established. Each board shall consist of five members. The county board creating the authority shall appoint board members to serve until their successors elected pursuant to section 32-548 take office. Members of the board must be residents of the county for which the authority is created. Any vacancy on a board shall be filled by temporary appointment by the county board until a successor can be elected at the next general election. A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for removal of such member may be brought, upon resolution by the county board, in the district court of the county in which the authority is located.

The members of the board shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by the provisions of sections 3-601 to 3-622 with reimbursement for mileage to be made at the rate provided in section 81-1176. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of the members, or to its officers, agents, and employees, such powers and duties as it may deem proper. The board and its corporate existence shall continue only for a period of twenty years from the date of appointment of the members thereof and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged. When all liabilities incurred by the authority of every kind and character have been met and all its bonds have been paid in full or such liabilities and bonds have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the county. The authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities. Upon the authority's ceasing to exist, all its remaining rights and properties shall pass to and vest in the county.

The board may enter into leases for nonaviation purposes for periods longer than the corporate existence of the board for a maximum period of twenty years. Such leases shall be subject to the approval of the county at the time the

leases are entered into. At the conclusion of the corporate existence of the board, such leases shall pass to the control of the county.

The board may enter into leases for nonaviation purposes with the State of Nebraska or any political subdivision for land and land improvements. Such leases may be entered into for a maximum of forty years. At the conclusion of the corporate existence of the board, such leases shall pass to the control of the county.

Source: Laws 1969, c. 141, § 11, p. 650; Laws 1976, LB 671, § 1; Laws 1981, LB 204, § 14; Laws 1994, LB 76, § 462; Laws 1996, LB 1011, § 3.

An airport authority has no duty by statute nor common law to provide fire protection for property it leases to another. The Geer Co. v. Hall County Airport Authority, 193 Neb. 17, 225 N.W.2d 32 (1975).

3-612 Property; county; authority; powers and duties.

(1) Any county creating an authority shall by resolution or resolutions, convey or transfer to it any existing airport or any other property of the county for use in connection with a project, including real and personal property owned or leased by the county and used or useful in connection therewith. In case of real property so conveyed, the title thereto shall remain in the county, but the authority shall have the use and occupancy thereof for so long as its corporate existence shall continue. In the case of personal property so conveyed, the title shall pass to the authority. Any conveyance of an existing airport shall be subject to any leases or agreements duly and validly made by the county affecting such airport or the property so conveyed; *Provided*, that any such lease or agreement which is inconsistent with the ability of the authority to issue negotiable bonds may be renegotiated by the authority.

(2) Such county may acquire by purchase or condemnation real property in the name of the county for the projects or for the widening of existing roads, streets, parkways, avenues, or highways, or for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes and partly for other county purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by such county. Such county may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction or operation of a project.

(3) Contracts may be entered into between the county and an authority, or between other political subdivisions of the State of Nebraska and such county or authority, or between each and any of them, providing for the conveyance of property to such county or authority for use in connection with a project, and for the closing of streets, roads, parkways, avenues, or highways. The amounts, terms, and conditions of payment if any shall be made by such county or authority in connection with such conveyances. Such contracts may also contain covenants by such county, or such political subdivision, as to the road, street, parkway, avenue, or highway improvements to be made by such county or such political subdivision. Any county board may authorize such contracts between the county and the authority by resolution, and no other authorization on the part of such county for such contracts shall be necessary. All obligations of such county for the payment of money to an authority incurred in carrying out the provisions of sections 3-601 to 3-622 shall be included in and provided for by each annual budget of such county thereafter made until fully dis-

charged. In the case of other political subdivisions of the state, such contracts shall be authorized as provided by law.

(4) An authority operating under the provisions of sections 3-601 to 3-622 may acquire real property for a project in the name of the county in which it was established at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by counties and subdivision (4) of section 3-613. The authority shall have the use and occupancy of such real property so long as its corporate existence shall continue.

(5) In case an authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project then, if such real property was acquired at the cost and expense of the county, the authority shall have the power to surrender its use and occupancy thereof to the county. If such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease, or otherwise dispose of such real property. Such authority shall retain the proceeds of sale, rentals, or other money derived from the disposition thereof for its corporate purposes.

Source: Laws 1969, c. 141, § 12, p. 652; Laws 1973, LB 22, § 3.

3-613 Authority; powers.

Any authority established under sections 3-601 to 3-622 shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of personal property for its corporate purposes;

(4) To acquire in the name of the county, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except as may otherwise be provided in such sections, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities created after September 2, 1973, without further approval until such time as three or more members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such authority. Any person violating such rules shall be guilty of a Class III misdemeanor;

(6) With the consent of the county, to use the services of agents, employees, and facilities of the county, for which the authority may reimburse the county a proper proportion of the compensation or cost thereof, and also to use the services of the county attorney as legal advisor to the authority;

(7) To appoint officers, agents, and employees and fix their compensation;

(8) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the authority;

(9) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the county in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the authority deems it to be in the public interest, the authority may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(11) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such authority subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(12) To annually request of the county board the amount of tax to be levied for airport purposes subject to section 77-3443, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all the taxable property in such county. The governing body shall levy and collect the taxes so requested at the same time and in the same manner as other 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;

(13) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such period of time and for such consideration as the authority shall determine;

(14) To accept grants, loans, or contributions from the United States, the State of Nebraska, any agency or instrumentality of either of them, or the

county in which such authority is established and to expend the proceeds thereof for any corporate purposes;

(15) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(16) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred on such authorities by sections 3-601 to 3-622.

Source: Laws 1969, c. 141, § 13, p. 653; Laws 1973, LB 22, § 4; Laws 1977, LB 40, § 33; Laws 1979, LB 187, § 16; Laws 1992, LB 719A, § 14; Laws 1996, LB 1114, § 21; Laws 1997, LB 269, § 6; Laws 2001, LB 173, § 7.

An airport authority has no duty by statute nor common law to provide fire protection for property it leases to another. The Geer Co. v. Hall County Airport Authority, 193 Neb. 17, 225 N.W.2d 32 (1975).

3-614 Authority; promote commercial and general aviation.

An airport authority may in addition to the powers enumerated in section 3-613, encourage, foster, and promote the development of commercial and general aviation for the county which it serves, and advance the interests of such county in aeronautics and in commercial air transportation and its scheduling.

Source: Laws 1969, c. 141, § 14, p. 656.

3-615 Officers and employees of county; transfer to authority; effect.

Officers and employees of any board or department in or of a county may be transferred to the authority established in the county, and shall be eligible for such transfer and appointment without examination to offices and positions under the authority. Officers or employees of such county, who shall have accepted such transfer and who are at the time of such transfer members or beneficiaries of any existing pension or retirement system, shall continue to have the rights, privileges, obligations, and status with respect to such system or systems as are now prescribed by law.

Source: Laws 1969, c. 141, § 15, p. 656.

3-616 Funds; deposit; withdrawal; audits; effect on bonds and contracts.

All income, revenue, receipts, profits, and money of an authority from whatever source derived shall be paid to the treasurer of the authority who shall not commingle such money with any other money under his or her control. Such money shall be deposited in a separate bank, capital stock financial institution, or qualifying mutual financial institution account or accounts. Such money shall be withdrawn only by check, draft, or order signed by such treasurer on requisition of the chairperson of the authority or of such other person or persons as the authority may authorize to make such requisitions, approved by the board. The chief auditing officer of the county and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of such authority, including its receipts, disbursements, contracts, leases, sinking funds, and investments and any other matters relating to its financial standing. Notwithstanding the provisions of this section, such authority may contract with the

holders of any of its bonds 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 in any way to secure bonds. The authority may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of authorities pursuant to the Public Funds Deposit Security Act. 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. 141, § 16, p. 657; Laws 1988, LB 975, § 2; Laws 1989, LB 33, § 4; Laws 1999, LB 396, § 2; Laws 2001, LB 362, § 5.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

3-617 Authority; bonds; notes; issuance; requirements; terms; effects of pledge; personal liability; repurchase.

(1) An authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such authority is established. Such authorities shall have power, from time to time and whenever refunding is deemed expedient, to issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. All bonds shall be general obligations of the authority issuing the same and shall be payable out of any revenue, income, receipts, profits, or other money of the authority, unless the authority shall expressly provide otherwise in the resolution authorizing their issuance, in which event the bonds shall be limited obligations of the authority issuing the same and shall be payable only out of that part of the revenue, income, receipts, profits, or other money of the authority as shall be specified by the authority in such resolution. All bonds issued pursuant to the provisions of sections 3-601 to 3-622 shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to any provisions contained in such bonds for the registration of the principal thereof.

(2) All such bonds shall be authorized by a resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, 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, at such place or places within or without the State of Nebraska, and be subject to such terms of redemption and at such redemption premiums as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. No proceedings for the issuance of bonds of an

authority shall be required other than those required by the provisions of sections 3-601 to 3-622, and the provisions of all other laws, 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 authorities pursuant to sections 3-601 to 3-622.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds of an authority may contain covenants and agreements on the part of the authority to protect and safeguard the security and payment of such bonds, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) Pledging all or any part of the revenue, income, receipts, profits, and other money derived by the authority issuing such bonds from the operation, management, or sale of property of any or all such projects of the authority to secure the payment of the bonds or of any issue of the bonds;

(b) The rates, rentals, tolls, charges, license fees, and other fees to be charged by the authority and the amounts to be raised in each year for the services and commodities sold, furnished, or supplied by the authority, and the use and disposition of the revenue of the authority received therefrom;

(c) The setting aside of reserves or sinking funds and the regulation, investment, and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter issued may be applied, and pledging such proceeds to secure the payment of bonds, or of any issue of bonds;

(e) Limitations on the issuance of additional bonds of the authority, the terms and conditions upon which such additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(f) 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;

(g) Limitations on the amount of money derived from any project to be expended for operating, administrative, or other expenses of the authority; and

(h) Any other matters, of like or different character, which in any way affect the security or protection of bonds of the authority.

(4) 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 the total estimated cost of the project for which the notes are to be issued including issuance expenses. 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 in the future. Such notes may 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 issuing such notes 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. The notes may be sold at public or private sale for such price or prices as the authority shall determine.

(5) It is the intention hereof that any pledge of revenue, income, receipts, profits, charges, fees, or other money made by an authority for the payment of bonds shall be valid and binding from the time such pledge is made, that the revenue, income, receipts, profits, charges, fees, 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.

(6) Neither the members of a board nor any person executing bonds or notes shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) An authority shall have power out of any funds available therefor to purchase bonds or notes of such authority. Any bonds so purchased may be held, canceled, or resold by the authority subject to and in accordance with any agreements with bondholders.

Source: Laws 1969, c. 141, § 17, p. 657; Laws 1971, LB 1, § 1; Laws 1985, LB 307, § 2.

3-618 Bonds; state; not to impair obligations.

The State of Nebraska does covenant and agree with the holders of bonds issued by an authority that the state will not limit or alter the rights hereby vested in an authority to acquire, maintain, construct, reconstruct, and operate projects, to establish and collect such rates, rentals, tolls, charges, license fees, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects 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 3-601 to 3-622 and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of such bonds.

Source: Laws 1969, c. 141, § 18, p. 661.

3-619 Bonds, notes, obligations of authority; not debts of State of Nebraska or any county.

The bonds, notes, and other obligations of an authority shall not be a debt of the State of Nebraska or of the county in which such authority is established, and neither the state nor the county shall be liable thereon, nor shall such bonds be payable out of any funds other than funds of the authority issuing the same.

Source: Laws 1969, c. 141, § 19, p. 662.

3-620 Bonds; who may purchase.

Bonds of authorities are hereby made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions, and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, 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 also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities and municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1969, c. 141, § 20, p. 662.

3-621 Authorities; public purpose; property; bonds; tax exempt.

It is hereby found, determined, and declared that the creation of an authority and the carrying out of its corporate purposes is for the benefit of the people of the State of Nebraska, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and a matter of statewide concern, and that projects operated by authorities are essential parts of the public transportation system. The State of Nebraska covenants with the holders of bonds, issued under the provisions of sections 3-610 to 3-621, that authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, or upon the activities of authorities in the operation and maintenance of projects, or upon any charges, fees, revenue, or other income received by authorities except motor vehicle fuel and aviation fuel taxes, and that the bonds and notes of authorities and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by authorities. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1969, c. 141, § 21, p. 662; Laws 2001, LB 173, § 8.

3-622 Airport authority; applicability of sections.

Sections 3-610 to 3-621 shall be full authority for the creation of airport authorities by counties, and for the exercise of powers therein granted to counties and to such authorities, and no action, proceeding or election shall be

required prior to the creation of such airport authorities other than those provided for in sections 3-610 to 3-621.

Source: Laws 1969, c. 141, § 22, p. 663.

ARTICLE 7
JOINT AIRPORT AUTHORITY

Section

3-701 Terms, defined.

For purposes of the Joint Airport Authorities Act, unless the context otherwise requires:

(1) Authority shall mean a joint airport authority which shall be a body politic and corporate organized pursuant to the act and shall be deemed to embrace the geographical area included within each municipality joining in its organization or thereafter becoming associated therewith as provided in the act;

(2) Political subdivision shall mean any county, city, or village of this state, any airport authority created by any county, city, or village pursuant to law, or any joint airport authority;

(3) Governing body, in the case of a county, shall mean the chairperson and board of commissioners or supervisors thereof, as the case may be, in the case of a city, shall mean the mayor and council thereof, in the case of a village, shall mean the chairperson and board of trustees thereof, and, in the case of an airport authority or a joint airport authority, shall mean the governing board thereof;

(4) Agreement shall mean an agreement entered into pursuant to section 3-702;

(5) Bonds shall mean bonds issued by the joint authority pursuant to the act;

(6) Board shall mean the governing body of the joint authority;

(7) Real property shall mean lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights-of-way,

uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property;

(8) Project shall mean any airport leased, constructed, owned, and operated by the joint authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight or as part of aviation operation, air navigation, and air safety operation;

(9) General election shall mean the statewide general election specified in section 32-403; and

(10) Primary election shall mean the statewide primary election specified in section 32-401.

Source: Laws 1969, c. 24, § 1, p. 202; Laws 1994, LB 76, § 463.

3-702 Joint airport authority; agreement; governed by a board.

Any political subdivision otherwise authorized by law to own or operate an airport is hereby authorized to enter into an agreement with any other municipality or combination of municipalities pursuant to the provisions of the Interlocal Cooperation Act, with respect to the creation of a joint airport authority of the political subdivisions concerned. Such joint authority shall be governed by a five-member board having full and exclusive jurisdiction and control over all facilities specified in such agreement, whether then in existence or to be thereafter acquired, and having to do with aviation, air navigation, and air safety.

Source: Laws 1969, c. 24, § 2, p. 203.

Cross References

Interlocal Cooperation Act, see section 13-801.

3-703 Joint airport authority; agreement; contents; board; members; election; qualifications; vacancies; how filled.

The agreement shall specify, in addition to those things required by section 13-804, (1) the date upon which the initial board is to organize, (2) the geographic boundaries or limits of the districts into which the joint authority shall be divided, of which there may be no more than five, from which the members of the initial board shall be appointed and from which their successors shall be elected, (3) the number of board members to be initially appointed, and thereafter elected, from each district designated pursuant to subdivision (2) of this section, and (4) the method by which the five members of the initial board shall be appointed and the duration of their respective terms of office. The limits of each district may be changed only upon the affirmative vote of a majority of the whole membership of the board. Each member of the board shall be a registered voter and reside within the district from which he or she is appointed or elected. The terms of office of the members of the initial board shall expire at such time as their successors shall have been elected and qualified pursuant to section 32-549. Vacancies on the board, other than those resulting from expiration of a term of office, may be filled by a majority vote of the remaining members of the board. Any member so appointed shall serve

until a successor is elected at the next general election to serve the unexpired portion of the term if any.

Source: Laws 1969, c. 24, § 3, p. 203; Laws 1994, LB 76, § 464.

3-704 Repealed. Laws 1994, LB 76, § 615.

3-705 Board; members; expenses; quorum; delegation; term of existence; disposition of rights and properties; jurisdiction.

The members of the board shall not be entitled to compensation for their services, but shall be entitled to reimbursement for expenses paid or incurred in the performance of the duties imposed upon them by the provisions of sections 3-701 to 3-716 with reimbursement to be made in the same manner as provided in section 23-1112 for county officers and employees. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of its members, or to its officers, agents, and employees, such powers and duties as it may deem proper. The joint authority and its corporate existence shall continue only for a period of thirty years from the date of its initial organization and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged or arrangements for such payment or discharge duly made and provided for. When all liabilities incurred by the joint authority of every kind and character have been met and all its bonds have been paid in full, or such liabilities and bonds have otherwise been discharged or arrangements for such payment or discharge duly made and provided for, all rights and properties of the joint authority shall pass to and be vested in such public body as the board may deem advisable and in the best public interest, and the board may make such agreements and take such actions as it shall determine upon with respect thereto. Provision for ultimate disposition of the rights and properties of the joint authority may also be set forth in the agreement pursuant to which the joint authority is organized, and any such provisions shall be controlling. The joint authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities.

Source: Laws 1969, c. 24, § 5, p. 205; Laws 1981, LB 204, § 15.

3-706 Joint authority; property; control; convey; transfer; title; acquire.

(1) Any political subdivision participating in the creation of a joint authority may, by resolution or resolutions, convey or transfer to it in accordance with the provisions of the agreement, any existing airport or any other property of such political subdivision for use in connection with a project, including real and personal property owned or leased by such political subdivision and used or useful in connection therewith. The title to any such property shall pass to the joint authority. Any conveyance of an existing airport shall be subject to any leases or agreements duly and validly made by the political subdivision affecting such airports or the property so conveyed, but any such lease or agreement which is inconsistent with the ability of the joint authority to issue negotiable bonds may be renegotiated by the authority.

(2) Any county, city, or village participating in the creation of a joint authority may acquire by purchase or condemnation real property in its name

for the project or for the widening of existing roads, streets, parkways, avenues, or highways, or for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes, by purchase or condemnation in the manner provided in sections 76-704 to 76-724. Such county, city, or village may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction or operation of a project.

(3) Contracts may be entered into between any political subdivision and a joint authority, or between other public bodies of the State of Nebraska and such political subdivision or joint authority, or between each and any of them, providing for the conveyance of property to such political subdivision or joint authority for use in connection with a project, and for the closing of streets, roads, parkways, avenues, or highways. The amounts, terms, and conditions of payment, if any, shall be prescribed by such political subdivision or joint authority in connection with such conveyances. Such contracts may also contain covenants by such political subdivision or such public body as to the road, street, parkway, avenue, or highway improvements to be made by such political subdivision or such public body. The governing body of any political subdivision may authorize such contracts between such political subdivision and the joint authority by resolution, and no other authorization on the part of such political subdivision for such contracts shall be necessary. All obligations of any county, city, or village for the payment of money to a joint authority incurred in carrying out the provisions of the Joint Airport Authorities Act shall be included in and provided for by each annual or biennial budget of any county, city, or village thereafter made until fully discharged. In the case of other public bodies of the state, such contracts shall be authorized as provided by law.

(4) A joint authority operating under the provisions of the Joint Airport Authorities Act may acquire real property for a project in its own name at the cost and expense of the joint authority by purchase or condemnation pursuant to the provisions of sections 76-704 to 76-724 and subdivision (4) of section 3-707. The joint authority shall have the use and occupancy of such real property for so long as its corporate existence shall continue.

(5) If a joint authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project the joint authority shall have power to sell, lease, or otherwise dispose thereof. Such joint authority shall retain the proceeds of sale, rentals, or other money derived from the disposition thereof for its corporate purposes.

Source: Laws 1969, c. 24, § 6, p. 205; Laws 1973, LB 22, § 5; Laws 2000, LB 1116, § 4.

3-707 Joint authority; powers.

Any joint authority established under the Joint Airport Authorities Act shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of personal property for its corporate purposes;

(4) To acquire, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and,

except as may otherwise be provided in the act, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities created after September 2, 1973, without further approval until such time as three or more members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such joint authority;

(6) To appoint officers, agents, and employees and fix their compensation;

(7) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the joint authority;

(8) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the political subdivisions by which such joint authority was established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the joint authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(9) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the joint authority deems it to be in the public interest, it may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the joint authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To charge fees, rentals, and other charges for the use of projects under its jurisdiction subject to and in accordance with such agreements with bondholders as may be made as provided in the act. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the joint authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the joint authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(11) To certify annually to each tax-levying body the amount of tax to be levied for airport purposes subject to section 77-3443, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all of the taxable property therein, to insure that all of the taxable property within each county, city, and village which has become interested in a joint airport authority, directly or indirectly, as set forth in section 3-702, whether at the time of the authority's initial organization or thereafter, becomes subject to taxation for the purposes of such authority. Whenever a city or village so interested in a joint authority is situated within a county which is likewise interested in the same joint authority, the joint authority shall, in order to avoid the possibility of double taxation, certify the tax only to the tax-levying body of the county and shall not certify any tax to the tax-levying body of such city or village. Such tax-levying bodies shall request the county board to levy and collect the taxes so certified at the same time and in the same manner as other taxes of such county, city, or village, as the case may be, are levied and collected, and the proceeds of such taxes as collected shall be set aside and deposited in the special account or accounts in which other revenue of the joint authority is deposited;

(12) To covenant in any resolution or other instrument pursuant to which it issues any of its bonds or other obligations that the joint authority will, for so long as any such bonds or obligations and the interest thereon remain outstanding and unpaid, annually certify to each tax-levying body referred to in subdivision (11) of this section the maximum tax which the joint authority is, at the time of issuing such bonds or other obligations, authorized to so certify and that it will, in the event of any change in the method of assessment, so certify such tax as will raise the same amount in dollars as such maximum tax would have raised at the time such bonds or other obligations were issued;

(13) To pledge for the security of the principal of any bonds or other obligations issued by the joint authority and the interest thereon any revenue derived by the joint authority from taxation;

(14) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms, for such periods of time, and for such consideration as the joint authority shall determine;

(15) To accept grants, loans, or contributions from the United States, the State of Nebraska, or any agency or instrumentality of either of them and to expend the proceeds thereof for any corporate purposes;

(16) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(17) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(18) To do all things necessary or convenient to carry out the powers expressly conferred by the act.

Source: Laws 1969, c. 24, § 7, p. 207; Laws 1973, LB 22, § 6; Laws 1979, LB 187, § 17; Laws 1992, LB 719A, § 15; Laws 1996, LB 1114, § 22; Laws 2001, LB 173, § 9.

3-708 Joint authority; foster, promote, and develop commercial and general aviation.

A joint airport authority shall, in addition to the powers enumerated in section 3-707, encourage, foster, and promote the development of commercial and general aviation for the area which it serves, and advance the interest of such area in aeronautics and in commercial air transportation and its scheduling. A joint airport authority may represent the interest of such area in commercial air service hearings.

Source: Laws 1969, c. 24, § 8, p. 210.

3-709 Funds; deposit; withdrawals; security; contracts authorized.

All income, revenue, receipts, profits, and money of a joint authority, from whatever source derived, shall be paid to the treasurer of the joint authority who shall not commingle such money with any other money under his or her control. Such money shall be deposited in a separate bank, capital stock financial institution, or qualifying mutual financial institution account or accounts. Such money shall be withdrawn only by check, draft, or order signed by the treasurer on requisition of the chairperson of the joint authority or of such other person or persons as the joint authority may authorize to make such requisitions, approved by the board. Notwithstanding the provisions of this section, such joint authority may contract with the holders of any of its bonds as to collection, custody, securing, investment, and payment of any money of the joint authority or any money held in trust or otherwise for the payment of bonds or in any way to secure bonds. The joint authority may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of joint authorities pursuant to the Public Funds Deposit Security Act. 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. 24, § 9, p. 211; Laws 1989, LB 33, § 5; Laws 1999, LB 396, § 3; Laws 2001, LB 362, § 6.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

3-710 Bonds; notes; issuance; requirements; terms; effects of pledge; personal liability; repurchase.

(1) A joint authority may from time to time issue its negotiable bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such joint authority is established. Such authority may, from time to time and whenever refunding is deemed expedient, issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. All bonds shall be general obligations of the joint authority issuing

the same and shall be payable out of any revenue, income, receipts, profits, or other money of the joint authority, unless the joint authority shall expressly provide otherwise in the resolution authorizing their issuance, in which event the bonds shall be limited obligations of the joint authority issuing the same and shall be payable only out of that part of the revenue, income, receipts, profits, or other money of the joint authority as shall be specified by the joint authority in such resolution. All bonds and appurtenant interest coupons, if any, issued pursuant to the provisions of sections 3-701 to 3-716 shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to any provisions contained in such bonds for the registration of the principal and interest thereof.

(2) All such bonds shall be authorized by resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, 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, at such place or places within or without this state, and be subject to such terms of redemption and at such redemption premiums as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the joint authority shall determine. No proceedings for the issuance of bonds of a joint authority shall be required other than those required by the provisions of sections 3-701 to 3-716, 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 joint airport authorities pursuant to sections 3-701 to 3-716.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds of a joint authority may contain covenants and agreements on the part of the joint authority to protect and safeguard the security and payment of such bonds, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) Pledging all or any part of the revenue, income, receipts, profits, and other money derived by the joint authority issuing such bonds from the operation, management, or sale of property of any or all such projects of the joint authority to secure the payment of the bonds or of any issue of the bonds;

(b) The rates, rentals, tolls, charges, license fees, and other fees to be charged by the joint authority and the amounts to be raised in each year for the services and commodities sold, furnished, or supplied by the joint authority, and the use and disposition of the revenue of the joint authority received therefrom;

(c) The setting aside of reserves or sinking funds and the regulation, investment, and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter issued may be applied, and pledging such proceeds to secure the payment of bonds or of any issue of bonds;

(e) Limitations on the issuance of additional bonds of the joint authority, the terms and conditions upon which such additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(f) 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;

(g) Limitations on the amount of money derived from any project to be expended for operating, administrative, or other expenses of the joint authority; and

(h) Any other matters, of like or different character, which in any way affect the security or protection of bonds of the joint authority.

(4) A joint authority may from time to time issue bond anticipation notes, referred to in this subsection as notes, and from time to time 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 the total estimated cost of the project for which the notes are to be issued including issuance expenses. Payment of such notes shall be made from any money or revenue which the joint authority may have available for such purpose or from the proceeds of the sale of bonds of the joint authority, or such notes may be exchanged for a like amount of such bonds. The authority may pledge such money or revenue of the joint 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 provided for bonds. All notes shall be issued and sold in the same manner as bonds, and any joint authority may make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may 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 joint authority sufficient to provide for the payment of the notes in full at the maturity thereof. The joint authority issuing such notes 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. The notes may be sold at public or private sale for such price or prices as the authority shall determine.

(5) It is the intention of sections 3-701 to 3-716 that any pledge of revenue, income, receipts, profits, charges, fees, or other money made by a joint authority for the payment of bonds shall be valid and binding from the time such pledge is made, that the revenue, income, receipts, profits, charges, fees, and other money so pledged and thereafter received by the joint 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 subsequently arising claims of any kind in tort, contract, or otherwise against the joint 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.

(6) Neither the members of a board nor any person executing bonds or notes shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) A joint authority may, out of any funds available therefor, purchase bonds or notes of such joint authority. Any bonds so purchased may be held, canceled,

or resold by the joint authority subject to and in accordance with any agreements with bondholders.

Source: Laws 1969, c. 24, § 10, p. 211; Laws 1970, Spec. Sess., c. 5, § 2, p. 75; Laws 1985, LB 307, § 3.

3-711 Bonds; state; not to impair obligations.

The State of Nebraska does hereby covenant and agree with the holders of bonds issued by a joint authority that the state will not limit or alter the rights hereby vested in a joint authority to acquire, maintain, construct, reconstruct, and operate projects, to establish and collect such rates, rentals, tolls, charges, license fees, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with the holders of bonds of the joint 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 3-701 to 3-716 and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of such bonds.

Source: Laws 1969, c. 24, § 11, p. 215.

3-712 Bonds; not debt of State of Nebraska or political subdivision.

The bonds, notes, and other obligations of a joint authority shall not be a debt of the State of Nebraska or of the political subdivisions creating or otherwise interested in such joint authority, and neither the state nor any such political subdivision shall be liable thereon, nor shall such bonds be payable out of any funds other than funds of the joint authority issuing the same.

Source: Laws 1969, c. 24, § 12, p. 216.

3-713 Bonds; who may purchase.

Bonds of joint airport authorities are hereby made securities in which all public officers and bodies of this state, all municipal subdivisions and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, 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 also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities and municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1969, c. 24, § 13, p. 216.

3-714 Joint authority; public purpose; property; bonds; tax exempt.

It is hereby found, determined, and declared that the creation of a joint authority and the carrying out of its corporate purposes is for the benefit of the people of the State of Nebraska, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and a matter of statewide concern, that aviation projects operated by joint authorities are essential parts of the public transportation system. The State of Nebraska covenants with the holders of such bonds that joint authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision to the extent such property is used for a public purpose, or upon the activities of joint authorities in the operation and maintenance of projects, or upon any charges, fees, revenue, or other income received by authorities except motor vehicle fuel and aviation fuel taxes, and that the bonds and notes of joint authorities and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by authorities.

Source: Laws 1969, c. 24, § 14, p. 216; Laws 2001, LB 173, § 10.

3-715 Sections, how construed.

Insofar as the provisions of sections 3-701 to 3-716 are inconsistent with the provisions of any other act or of any city charter, if any, the provisions of sections 3-701 to 3-716 shall be controlling.

Source: Laws 1969, c. 24, § 15, p. 217.

3-716 Act, how cited.

Sections 3-701 to 3-716 may be cited as the Joint Airport Authorities Act.

Source: Laws 1969, c. 24, § 16, p. 217.

ARTICLE 8

NEBRASKA STATE AIRLINE AUTHORITY

Section

3-801 Act, how cited.

Sections 3-801 to 3-806 shall be known and may be cited as the Nebraska State Airline Authority Act.

Source: Laws 1990, LB 1184, § 1.

3-802 Legislative findings.

The Legislature finds that:

(1) Nebraska is a large state with great distances between rural and urban areas and needs air transportation to better link such areas;

(2) There is a serious problem affecting commercial aviation and its availability to the citizens of the State of Nebraska;

(3) Many intrastate air travelers must pass through an out-of-state hub to reach another destination in Nebraska;

(4) Airline deregulation has had a significant impact on states such as Nebraska in the reduction of the availability of intrastate commercial airline service to Nebraska citizens;

(5) The significant reduction in intrastate commercial airline service and the increased cost of such service has an adverse effect upon the development of the state's resources, the improvement of the state's economic facilities, and the state's ability to expand upon its program of economic development;

(6) Resolution of the serious and significant problem regarding intrastate commercial airline service cannot be corrected or alleviated without public assistance in the development of an intrastate commercial airline providing intrastate service between Nebraska communities; and

(7) It will economically benefit the people of the State of Nebraska to foster and encourage a public-private partnership in the development of airline properties and facilities and the conduct of intrastate commercial airline service.

Source: Laws 1990, LB 1184, § 2.

3-803 Terms, defined.

For purposes of the Nebraska State Airline Authority Act:

(1) Airline facilities or facilities shall mean all real or personal property used or useful in the conduct of airline services;

(2) Authority shall mean the Nebraska State Airline Authority created in section 3-804; and

(3) Department shall mean the Department of Aeronautics.

Source: Laws 1990, LB 1184, § 3.

3-804 Nebraska State Airline Authority; created; members; terms; expenses; personnel; department; contract with authority.

(1) The Nebraska State Airline Authority is hereby created. The authority shall be a body corporate and politic consisting of seven members appointed by the Governor with the approval of a majority of the Legislature. The Governor shall make such appointments within thirty days of April 7, 1990. No person shall be appointed to the authority who is an elected official of the State of Nebraska or any political subdivision thereof. All appointments to the authority shall be for four-year terms, except that when making the initial appointments the Governor shall designate two members to serve four years, two members to serve three years, two members to serve two years, and one member to serve one year. Any vacancy on the authority shall be filled for the remainder of the term by appointment in the same manner as the original appointment. The

authority shall annually choose a chairperson from its membership. Four members of the authority shall constitute a quorum.

(2) The department shall, out of funds appropriated for that purpose, contract with the authority for the purposes listed in section 3-805. No funds shall be appropriated from the Department of Aeronautics Cash Fund for the purposes of the Nebraska State Airline Authority Act. The authority shall exercise all of its prescribed functions independently from the department, including administrative functions. At least annually, the authority shall submit any records, information, and reports in the form and at such times as required by the department, including audits conducted by certified public accountants.

(3) Each member of the authority shall receive a per diem as the Governor shall determine and shall be reimbursed for actual and necessary expenses.

(4) The authority may employ personnel necessary to carry out its duties.

Source: Laws 1990, LB 1184, § 4.

3-805 Authority; powers.

For the purposes of developing the resources and improving the economic facilities of the state, the authority may engage in developing and improving an intrastate commercial airline to operate on a regularly scheduled basis and to provide intrastate commercial airline service at a reasonable cost to the travelers in this state through:

(1) Making reports and recommendations to the Legislature concerning the provision of airline facilities and services;

(2) Planning, establishing, financing, acquiring, developing, constructing, purchasing, enlarging, maintaining, equipping, and protecting an airline and airline facilities, including aircraft. For such purposes the authority may acquire, by purchase, gift, devise, lease, or condemnation, real or personal property or any interest therein;

(3) Conducting continuous studies into the need for such facilities;

(4) Securing authorization for projects and funding from the Legislature for developing an intrastate commercial airline;

(5) Entering into agreements with public or private entities for operation of an intrastate commercial airline; and

(6) Entering into agreements with owners of publicly owned airports or owners of facilities capable of assisting in an intrastate commercial airline operation.

Source: Laws 1990, LB 1184, § 5.

3-806 Report; contents.

The authority shall submit to the Legislature no later than December 1, 1990, a report containing:

(1) Recommendations for a funding mechanism for the development of an intrastate commercial airline;

(2) Plans for the establishment of an intrastate commercial airline; and

(3) A market and needs analysis of existing air service and proposed alternatives to such air service.

Source: Laws 1990, LB 1184, § 6.

CHAPTER 4
ALIENS

Section
4-101. Repealed. Laws 1974, LB 811, § 21.
4-102. Repealed. Laws 1974, LB 811, § 21.
4-103. Repealed. Laws 1974, LB 811, § 21.
4-104. Repealed. Laws 1974, LB 811, § 21.
4-105. Repealed. Laws 1974, LB 811, § 21.
4-106. Aliens; labor or educational organization; appointment or election to office; unlawful; penalty.
4-107. Nonresident alien; property by succession or testamentary disposition; taking of property in this state; conditions; escheat; disposition of escheated property.

Cross References

Constitutional provisions:
Farm and ranch, ownership restrictions, see Article XII, section 8, Constitution of Nebraska.
Property rights may be regulated by law, see Article I, section 25, Constitution of Nebraska.
Adult education, see sections 79-11,133 to 79-11,135.
Employee, death of, report to Nebraska Workers' Compensation Court, see section 48-144.
Estate or guardianship, court must notify consul before hearing, see section 30-333.
Explosive materials permits, prohibition of, see section 28-1229.
Fur-harvesting permits, prohibition of, see section 37-411.
Militia, subject to service in, when, see section 55-106.
Real property, rights and disabilities, see Chapter 76, article 4.
Uniform Credentialing Act, issuance of credential, when, see section 38-129.
Voter, challenge of, see section 32-928.
Voting, penalty for, see section 32-1530.
Workers' compensation, dependents compensated under, see sections 48-122 and 48-123.

4-101 Repealed. Laws 1974, LB 811, § 21.

4-102 Repealed. Laws 1974, LB 811, § 21.

4-103 Repealed. Laws 1974, LB 811, § 21.

4-104 Repealed. Laws 1974, LB 811, § 21.

4-105 Repealed. Laws 1974, LB 811, § 21.

4-106 Aliens; labor or educational organization; appointment or election to office; unlawful; penalty.

It shall be unlawful for any alien to be elected to or hold any office in a labor or educational organization in the State of Nebraska. Any person, officer, or any member of any labor organization knowingly or willfully violating the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1963, c. 20, § 1, p. 103; Laws 1977, LB 40, § 34.

4-107 Nonresident alien; property by succession or testamentary disposition; taking of property in this state; conditions; escheat; disposition of escheated property.

(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant;

(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

(c) Upon proof that such nonresident alien heirs, distributees, devisees, or legatees may receive the benefit, use, or control of property or proceeds from estates of persons dying in this state without confiscation in whole or in part, by the governments of such foreign countries.

(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to exist, the property shall be delivered to the State Treasurer to be held for a period of five years from date of death during which time such nonresident alien may show that he has become eligible to receive such property. If at the end of such period of five years no showing of eligibility is made by such nonresident alien, his rights to such property or proceeds shall be barred.

(4) At any time within the one year following the date the rights of such nonresident alien have been barred, any other person other than an ineligible nonresident alien who, in the case of succession or testamentary disposition, would have been entitled to the property or proceeds by virtue of the laws of Nebraska governing intestate descent and distribution had the nonresident alien predeceased the decedent, may petition the district court of Lancaster County for payment or delivery of such property or proceeds to those entitled thereto.

(5) If no person has petitioned the district court of Lancaster County for payment or delivery of such property or proceeds within six years from the date of death of decedent, such property or proceeds shall be disposed of as escheated property.

(6) All property other than money delivered to the State Treasurer under this section may within one year after delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property. Any sale held under this section shall be preceded by a single publication of notice thereof at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold and the cost of such publication and other expenses of sale paid out of the proceeds of such sale. The purchaser at any sale conducted by the State Treasurer pursuant to this section shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

Source: Laws 1963, c. 21, § 1, p. 104.

Prior to 1963, when the method by which nonresident aliens may take land by inheritance was provided, nonresident aliens could not inherit lands in Nebraska but were to be paid the full value therefor by the state. Shames v. State, 192 Neb. 614, 223 N.W.2d 481 (1974).

CHAPTER 5
APPORTIONMENT

Article.
1. General Apportionment. Transferred or Repealed.
2. Legislative Districts. Transferred.

ARTICLE 1
GENERAL APPORTIONMENT

Section
5-101. Repealed. Laws 1968, Spec. Sess., c. 1, § 3.
5-101.01. Transferred to section 32-1501.
5-102. Transferred to section 32-1503.
5-103. Repealed. Laws 1965, c. 22, § 6.
5-103.01. Repealed. Laws 1988, LB 789, § 4.
5-104. Repealed. Laws 1963, c. 23, § 4.
5-104.01. Repealed. Laws 1965, c. 22, § 6.
5-104.02. Repealed. Laws 1965, c. 22, § 6.
5-104.03. Repealed. Laws 1971, LB 954, § 5.
5-104.04. Transferred to section 32-305.
5-104.05. Repealed. Laws 1971, LB 954, § 5.
5-104.06. Repealed. Laws 1971, LB 954, § 5.
5-104.07. Repealed. Laws 1981, LB 406, § 53.
5-104.08. Repealed. Laws 1981, LB 406, § 53.
5-104.09. Repealed. Laws 1981, LB 406, § 53.
5-104.10. Repealed. Laws 1981, LB 406, § 53.
5-105. Transferred to section 24-301.02.
5-105.01. Repealed. Laws 1984, LB 640, § 1.
5-105.02. Repealed. Laws 1963, c. 128, § 13.
5-105.03. Repealed. Laws 1984, LB 640, § 1.
5-105.04. Repealed. Laws 1984, LB 640, § 1.
5-105.05. Repealed. Laws 1984, LB 640, § 1.
5-106. Repealed. Laws 1972, LB 1032, § 287.
5-106.01. Repealed. Laws 1963, c. 340, § 1.
5-107. Transferred to section 75-101.01.
5-107.01. Transferred to section 75-101.02.
5-108. Transferred to section 32-1057.
5-108.01. Transferred to section 32-4,158.
5-108.02. Transferred to section 32-1059.
5-109. Transferred to section 24-201.02.
5-109.01. Repealed. Laws 1988, LB 789, § 4.
5-110. Repealed. Laws 1988, LB 789, § 4.

5-101 Repealed. Laws 1968, Spec. Sess., c. 1, § 3.

5-101.01 Transferred to section 32-1501.

5-102 Transferred to section 32-1503.

5-103 Repealed. Laws 1965, c. 22, § 6.

5-103.01 Repealed. Laws 1988, LB 789, § 4.

5-104 Repealed. Laws 1963, c. 23, § 4.

5-104.01 Repealed. Laws 1965, c. 22, § 6.

5-104.02 Repealed. Laws 1965, c. 22, § 6.

5-104.03 Repealed. Laws 1971, LB 954, § 5.

5-104.04 Transferred to section 32-305.

5-104.05 Repealed. Laws 1971, LB 954, § 5.

5-104.06 Repealed. Laws 1971, LB 954, § 5.

5-104.07 Repealed. Laws 1981, LB 406, § 53.

5-104.08 Repealed. Laws 1981, LB 406, § 53.

5-104.09 Repealed. Laws 1981, LB 406, § 53.

5-104.10 Repealed. Laws 1981, LB 406, § 53.

5-105 Transferred to section 24-301.02.

5-105.01 Repealed. Laws 1984, LB 640, § 1.

5-105.02 Repealed. Laws 1963, c. 128, § 13.

5-105.03 Repealed. Laws 1984, LB 640, § 1.

5-105.04 Repealed. Laws 1984, LB 640, § 1.

5-105.05 Repealed. Laws 1984, LB 640, § 1.

5-106 Repealed. Laws 1972, LB 1032, § 287.

5-106.01 Repealed. Laws 1963, c. 340, § 1.

5-107 Transferred to section 75-101.01.

5-107.01 Transferred to section 75-101.02.

5-108 Transferred to section 32-1057.

5-108.01 Transferred to section 32-4,158.

5-108.02 Transferred to section 32-1059.

5-109 Transferred to section 24-201.02.

5-109.01 Repealed. Laws 1988, LB 789, § 4.

5-110 Repealed. Laws 1988, LB 789, § 4.

ARTICLE 2
LEGISLATIVE DISTRICTS

Section
5-201. Transferred to section 50-1101.
5-202. Transferred to section 50-1102.
5-203. Transferred to section 50-1103.
5-204. Transferred to section 50-1104.
5-205. Transferred to section 50-1105.

Section
5-206. Transferred to section 50-1106.
5-207. Transferred to section 50-1107.
5-208. Transferred to section 50-1108.
5-209. Transferred to section 50-1109.
5-210. Transferred to section 50-1110.
5-211. Transferred to section 50-1111.
5-212. Transferred to section 50-1112.
5-213. Transferred to section 50-1113.
5-214. Transferred to section 50-1114.
5-215. Transferred to section 50-1115.
5-216. Transferred to section 50-1116.
5-217. Transferred to section 50-1117.
5-218. Transferred to section 50-1118.
5-219. Transferred to section 50-1119.
5-220. Transferred to section 50-1120.
5-221. Transferred to section 50-1121.
5-222. Transferred to section 50-1122.
5-223. Transferred to section 50-1123.
5-224. Transferred to section 50-1124.
5-225. Transferred to section 50-1125.
5-226. Transferred to section 50-1126.
5-227. Transferred to section 50-1127.
5-228. Transferred to section 50-1128.
5-229. Transferred to section 50-1129.
5-230. Transferred to section 50-1130.
5-231. Transferred to section 50-1131.
5-232. Transferred to section 50-1132.
5-233. Transferred to section 50-1133.
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5-243. Transferred to section 50-1143.
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5-246. Transferred to section 50-1146.
5-247. Transferred to section 50-1147.
5-248. Transferred to section 50-1148.
5-249. Transferred to section 50-1149.
5-250. Transferred to section 50-1150.
5-251. Transferred to section 50-1151.
5-252. Transferred to section 50-1152.

5-201 Transferred to section 50-1101.

5-202 Transferred to section 50-1102.

5-203 Transferred to section 50-1103.

5-204 Transferred to section 50-1104.

5-205 Transferred to section 50-1105.

5-206 Transferred to section 50-1106.

5-207 Transferred to section 50-1107.

5-208 Transferred to section 50-1108.

5-209 Transferred to section 50-1109.

5-210 Transferred to section 50-1110.

5-211 Transferred to section 50-1111.

5-212 Transferred to section 50-1112.

5-213 Transferred to section 50-1113.

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5-220 Transferred to section 50-1120.

5-221 Transferred to section 50-1121.

5-222 Transferred to section 50-1122.

5-223 Transferred to section 50-1123.

5-224 Transferred to section 50-1124.

5-225 Transferred to section 50-1125.

5-226 Transferred to section 50-1126.

5-227 Transferred to section 50-1127.

5-228 Transferred to section 50-1128.

5-229 Transferred to section 50-1129.

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5-250 Transferred to section 50-1150.

5-251 Transferred to section 50-1151.

5-252 Transferred to section 50-1152.

CHAPTER 6
ASSIGNMENT FOR CREDITORS

Section

6-101 Repealed. Laws 1945, c. 6 § 1.

6-102 Repealed. Laws 1945, c. 6 § 1.

6-103 Repealed. Laws 1945, c. 6 § 1.

6-104 Repealed. Laws 1945, c. 6 § 1.

6-105 Repealed. Laws 1945, c. 6 § 1.

6-106 Repealed. Laws 1945, c. 6 § 1.

6-107 Repealed. Laws 1945, c. 6 § 1.

6-108 Repealed. Laws 1945, c. 6 § 1.

6-109 Repealed. Laws 1945, c. 6 § 1.

6-110 Repealed. Laws 1945, c. 6 § 1.

6-111 Repealed. Laws 1945, c. 6 § 1.

6-112 Repealed. Laws 1945, c. 6 § 1.

6-113 Repealed. Laws 1945, c. 6 § 1.

6-114 Repealed. Laws 1945, c. 6 § 1.

6-115 Repealed. Laws 1945, c. 6 § 1.

6-116 Repealed. Laws 1945, c. 6 § 1.

6-117 Repealed. Laws 1945, c. 6 § 1.

6-118 Repealed. Laws 1945, c. 6 § 1.

6-119 Repealed. Laws 1945, c. 6 § 1.

6-120 Repealed. Laws 1945, c. 6 § 1.

6-121 Repealed. Laws 1945, c. 6 § 1.

6-122 Repealed. Laws 1945, c. 6 § 1.

6-123 Repealed. Laws 1945, c. 6 § 1.

6-124 Repealed. Laws 1945, c. 6 § 1.

6-125 Repealed. Laws 1945, c. 6 § 1.

6-126 Repealed. Laws 1945, c. 6 § 1.

6-127 Repealed. Laws 1945, c. 6 § 1.

6-128 Repealed. Laws 1945, c. 6 § 1.

6-129 Repealed. Laws 1945, c. 6 § 1.

6-130 Repealed. Laws 1945, c. 6 § 1.

6-131 Repealed. Laws 1945, c. 6 § 1.

6-132 Repealed. Laws 1945, c. 6 § 1.

6-133 Repealed. Laws 1945, c. 6 § 1.

6-134 Repealed. Laws 1945, c. 6 § 1.

6-135 Repealed. Laws 1945, c. 6 § 1.

6-136 Repealed. Laws 1945, c. 6 § 1.

6-137 Repealed. Laws 1945, c. 6 § 1.

6-138 Repealed. Laws 1945, c. 6 § 1.

6-139 Repealed. Laws 1945, c. 6 § 1.

6-140 Repealed. Laws 1945, c. 6 § 1.

6-141 Repealed. Laws 1945, c. 6 § 1.

6-142 Repealed. Laws 1945, c. 6 § 1.

6-143 Repealed. Laws 1945, c. 6 § 1.

6-144 Repealed. Laws 1945, c. 6 § 1.

6-145 Repealed. Laws 1945, c. 6 § 1.

CHAPTER 7
ATTORNEYS AT LAW

Section

Cross References

Constitutional provision:
Restrictions on practice by a judge, see Article V, section 14, Constitution of Nebraska.
Attorney General, see Chapter 84, article 2.
Attorney-client privilege, see sections 25-21,263, 27-503, 29-1921, 43-512.03, 43-3715, and 48-146.02.
Confessions of judgment, on warrant of attorney, see sections 25-1309 to 25-1312.
County attorney, see Chapter 23, article 12.
County court, nonattorney not to represent party, see section 25-2702.
Duty of fidelity, violations, see section 28-613.
Jails, consultation with prisoners, see sections 29-3907 and 47-201.
Judges:
Disqualification, see section 24-739.
Selection, see Chapter 24, article 8.
Jury packing, penalty, see section 25-1612.
Legal expense insurance, see section 44-3301 et seq.
Public defenders, see Chapter 23, article 34, and Chapter 29, article 39.
Service on attorney, see section 25-534.
Surety on official bond, attorney not to be, see section 11-114.

7-101 Unauthorized practice of law; penalty.

Except as provided in section 7-101.01, no person shall practice as an attorney or counselor at law, or commence, conduct or defend any action or proceeding to which he is not a party, either by using or subscribing his own name, or the name of any other person, or by drawing pleadings or other papers to be signed and filed by a party, in any court of record of this state, unless he has been previously admitted to the bar by order of the Supreme Court of this state. No such paper shall be received or filed in any action or proceeding unless the same bears the endorsement of some admitted attorney, or is drawn, signed, and presented by a party to the action or proceeding. It is hereby made the duty of the judges of such courts to enforce this prohibition. Any person who shall violate any of the provisions of this section shall be guilty

of a Class III misdemeanor, but this section shall not apply to persons admitted to the bar under preexisting laws.

Source: R.S.1866, c. 3, § 1, p. 14; Laws 1893, c. 1, § 1, p. 63; Laws 1895, c. 6, § 1, p. 72; Laws 1905, c. 6, § 1, p. 58; R.S.1913, § 265; C.S.1922, § 260; C.S.1929, § 7-101; R.S.1943, § 7-101; Laws 1967, c. 17, § 1, p. 114; Laws 1977, LB 40, § 35.

1. Practices prohibited
2. Admission and disbarment

1. Practices prohibited

A trustee's duties in connection with his or her office do not include the right to present argument pro se in courts of the state because in this capacity such trustee would be representing interests of others and would therefore be engaged in the unauthorized practice of law. Back Acres Pure Trust v. Fahnlander, 233 Neb. 28, 443 N.W.2d 604 (1989).

Only a person who has been admitted to the practice of law may participate in a trial by the examination of witnesses unless he appears in his own behalf. State v. Warford, 223 Neb. 368, 389 N.W.2d 575 (1986).

To be convicted under this statute, the statute requires only that a pleading be drafted with the intent that it will be filed in court, not that it is actually filed. State v. Thierstein, 220 Neb. 766, 371 N.W.2d 746 (1985).

Disbarred attorney could not conduct representative suit. Niklaus v. Abel Construction Co., 164 Neb. 842, 83 N.W.2d 904 (1957).

The conducting of a hearing before the State Railway Commission constitutes the practice of law where it requires the exercise of legal training, knowledge and skill. State ex rel. Johnson v. Childe, 147 Neb. 527, 23 N.W.2d 720 (1946).

Person engaging in ''ambulance chasing'' is guilty of illegal practice of law. State ex rel. Wright v. Hinckle, 137 Neb. 735, 291 N.W. 68 (1940).

Practice of law includes preparing and filing of pleadings in justice court, trial of cases, examination of witnesses, argument, and giving advice to persons as to their legal rights. State ex rel. Hunter v. Kirk, 133 Neb. 625, 276 N.W. 380 (1937).

One may be guilty of practice of law without a license notwithstanding he receives no fee for services performed. State ex rel. Wright v. Barlow, 131 Neb. 294, 268 N.W. 95 (1936).

A nonattorney personal representative is engaged in the unauthorized practice of law if he personally brings a wrongful death action for medical negligence on behalf of the deceased's estate. Waite v. Carpenter, 1 Neb. App. 321, 496 N.W.2d 1 (1992).

2. Admission and disbarment

One who is suspended from the practice of law is no longer an admitted attorney within the meaning of this section. State ex rel. NSBA v. Frank, 219 Neb. 271, 363 N.W.2d 139 (1985).

Court which has the power to license attorneys to practice law has inherent power to disbar them from further practice by judicial act. State ex rel. Sorensen v. Goldman, 127 Neb. 340, 255 N.W. 32 (1934).

Section is declarative of the common law as far as it goes, but does not circumscribe the powers of the court. In re Dunn, 85 Neb. 606, 124 N.W. 120 (1909).

Nonresident cannot be admitted to practice generally. In re Robinson, 82 Neb. 172, 117 N.W. 352 (1908).

Supreme Court has sole power to pass upon the qualifications of applicants for admission to the bar, and has sole power to annul admission. In re Disbarment Proceedings of Newby, 76 Neb. 482, 107 N.W. 850 (1906).

Applicant for admission generally must be citizen of United States and resident of state. In re Admission to the Bar, 61 Neb. 58, 84 N.W. 611 (1900).

7-101.01 Practice of law; students; Supreme Court; rule or order.

The Supreme Court may by rule or order authorize students pursuing a course in instruction in a law school in the State of Nebraska and who have successfully completed their junior year of instruction which students when graduated are eligible to take the examination for admission to the bar of this state to practice as attorneys or counselors at law upon such terms and conditions, and with such supervision, as the Supreme Court may prescribe.

Source: Laws 1967, c. 17, § 2, p. 115.

Except as provided in this section, relating to certified law students, no person shall practice as an attorney or counselor at law, or commence, conduct, or defend any action or proceeding to which he or she is not a party, by using or subscribing his or her own name. Anderzhon/Architects v. 57 Oxbow II Partnership, 250 Neb. 768, 553 N.W.2d 157 (1996).

7-102 Admission to bar; requirements; examinations; bar commission.

(1) Admission to the Nebraska bar shall be governed by admission standards and procedures established by rules adopted by the Supreme Court. Such standards may include, without limitation, educational requirements, character and fitness standards, and satisfactory performance on a bar examination testing the applicant's knowledge of such legal principles as the court may determine. No person shall be admitted to the Nebraska bar, nor permitted to retain such admittance, unless it is shown to the satisfaction of the Supreme

Court that such person is of good moral character. The Supreme Court may appoint a bar commission, designated as the Nebraska State Bar Commission, composed of not less than six persons learned in the law to assist in or conduct any bar examination and, by rule of court, to assist the Supreme Court in matters pertaining to bar admission.

(2) The application for admission to the bar shall include the applicant's social security number. Each applicant shall submit to the bar commission with the application for admission a complete set of his or her legible fingerprints along with written permission authorizing the set of fingerprints to be forwarded to the Identification Division of the Federal Bureau of Investigation, through the Nebraska State Patrol. Upon request by the bar commission, the Nebraska State Patrol shall undertake a search for criminal history record information relating to the applicant, including transmittal of the applicant's fingerprints to the Identification Division of the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information concerning the applicant from federal repositories of such information and repositories of such information in other states if authorized by federal law. The Nebraska State Patrol shall issue a report to the bar commission and to the applicant which includes the criminal history record information concerning the applicant. The fingerprint record check provided for in this subsection shall be solely for the purpose of evaluating and confirming information provided by the applicant for admission, except that if the applicant appeals a denial of admission to the bar or a refusal of permission to take the bar examination, the filing of such an appeal with the Supreme Court shall constitute a release of the information obtained from such a fingerprint record check for purposes of the appeal.

Source: R.S.1866, c. 3, § 2, p. 14; Laws 1895, c. 6, § 2, p. 72; Laws 1903, c. 5, § 1, p. 54; Laws 1907, c. 2, § 1, p. 50; R.S.1913, § 266; Laws 1917, c. 4, § 1, p. 57; C.S.1922, § 261; C.S.1929, § 7-102; R.S. 1943, § 7-102; Laws 1997, LB 752, § 59; Laws 2002, LB 848, § 1.

The Nebraska Supreme Court is vested with the sole power to admit persons to the practice of law in this state and to fix qualifications for admission to the Nebraska bar. In re Application of Roseberry, 270 Neb. 508, 704 N.W.2d 229 (2005).

Misconduct of an attorney indicative of moral unfitness to practice law, although not committed in a professional relationship, justifies disbarment. State ex rel. Hunter v. Marconnit, 134 Neb. 898, 280 N.W. 216 (1938).

The Supreme Court has exclusive power to determine qualifications of persons who may be permitted to practice law. State ex rel. Hunter v. Kirk, 133 Neb. 625, 276 N.W. 380 (1937).

Supreme Court is vested with sole power to fix qualifications for admission to bar. State ex rel. Wright v. Barlow, 131 Neb. 294, 268 N.W. 95 (1936).

Good moral character is a requirement for admission to bar and to retention of license to practice. State ex rel. Sorensen v. Scoville, 123 Neb. 457, 243 N.W. 269 (1932).

Applicant must be of age when examined. Under former law study in office must have been in this state. Admission without examination applied only to graduates of designated colleges. In re Admission to the Bar, 61 Neb. 58, 84 N.W. 611 (1900).

In granting a license to practice law, it is implied in license that attorney will properly conduct himself. State ex rel. Attorney General v. Burr, 19 Neb. 593, 28 N.W. 261 (1886).

7-103 Practice by nonresident attorneys; requirements; reciprocity.

Any regularly admitted practicing attorney in the courts of record of another state or territory, having professional business in the courts of record of this state may, on motion, be admitted to practice for the purpose of said business only in any of said courts upon taking the oath as required by section 7-104, and upon it being made to appear to the court by a written showing filed therein that he has associated and appearing with him in the action an attorney who is a resident of Nebraska duly and regularly admitted to practice in the courts of record of this state upon whom service may be had in all matters

connected with said action with the same effect as if personally made on such foreign attorney within this state; *Provided*, regularly licensed practicing attorneys of other states, the laws of which states permit the practice in its courts of attorneys from this state without a local attorney being associated with such attorney, shall not be required to comply with the provisions of this section.

Source: R.S.1866, c. 3, § 3, p. 14; Laws 1903, c. 5, § 2, p. 55; R.S.1913, § 267; C.S.1922, § 262; Laws 1927, c. 60, § 1, p. 222; C.S.1929, § 7-103.

The courts of this state look primarily to members of its bar for the conduct of litigation in which they appear. That is one of the reasons for the requirement of this section that the attorneys admitted to practice in other states first associate with members of the Nebraska bar when appearing in this state. State ex rel. Douglas v. Bigelow, 214 Neb. 464, 334 N.W.2d 444 (1983).

Nonresident, assisting county attorney in prosecution of a felony, must qualify. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Nonresident may not be admitted to practice generally. In re Robinson, 82 Neb. 172, 117 N.W. 352 (1908).

Court may admit nonresident attorney interested in case for purpose of that business only. In re Admission to the Bar, 61 Neb. 58, 84 N.W. 611 (1900).

7-104 Admission to bar; oath; form.

Every attorney upon being admitted to practice in the Supreme Court or district courts of this state, shall take and subscribe an oath substantially in the following form: You do solemnly swear that you will support the Constitution of the United States, and the Constitution of this state, and that you will faithfully discharge the duties of an attorney and counselor, according to the best of your ability.

Source: R.S.1866, c. 3, § 4, p. 14; Laws 1899, c. 5, § 1, p. 55; R.S.1913, § 268; C.S.1922, § 263; C.S.1929, § 7-104.

1. Requirements of oath
2. Violation of oath
3. Administration of oath

1. Requirements of oath

Conduct of an attorney in a courtroom must at all times conform to his oath. State ex rel. Nebraska State Bar Assn. v. Rhodes, 177 Neb. 650, 131 N.W.2d 118 (1964).

Oath taken by an attorney requires him to faithfully discharge his duties. State ex rel. Nebraska State Bar Assn. v. Jensen, 171 Neb. 1, 105 N.W.2d 459 (1960).

Oath requires lawyers to observe canons of professional ethics. State ex rel. Nebraska State Bar Assn. v. Fitzgerald, 165 Neb. 212, 85 N.W.2d 323 (1957).

Oath requires attorney to observe established codes of professional ethics. State ex rel. Nebraska State Bar Assn. v. Richards, 165 Neb. 80, 84 N.W.2d 136 (1957).

Oath requires attorney to refrain from impeding or obstructing the administration of justice. State ex rel. Nebraska State Bar Assn. v. Palmer, 160 Neb. 786, 71 N.W.2d 491 (1955).

Oath of attorney requires him to observe standards and codes of professional ethics and honor. State ex rel. Nebraska State Bar Assn. v. Wiebusch, 153 Neb. 583, 45 N.W.2d 583 (1951).

Oath administered to attorney requires him faithfully to discharge his duties, one of which is to abstain from all offensive practices. State ex rel. Sorensen v. Goldman, 127 Neb. 340, 255 N.W. 32 (1934).

2. Violation of oath

An attorney who misappropriates client trust funds to cover deficits in business account violates his oath of office under this section, as well as the Code of Professional Responsibility. State ex rel. NSBA v. Veith, 238 Neb. 239, 470 N.W.2d 549 (1991).

To determine whether and to what extent discipline should be imposed in a disciplinary proceeding against an attorney, it is necessary that the Supreme Court consider the nature of the offense, the need for deterring others, the maintenance of the reputation of the bar as a whole, the protection of the public, the attitude of the offender generally, and his present or future fitness to continue in the practice of law. State ex rel. NSBA v. Miller, 225 Neb. 261, 404 N.W.2d 40 (1987).

Attorney who secured forged endorsement of his client's bond receipt and then cashed the receipt violated his oath to faithfully discharge his duties as an attorney to the best of his abilities. State ex rel. NSBA v. Kelly, 221 Neb. 8, 374 N.W.2d 833 (1985).

Cumulative acts of deception upon a client are distinguishable from isolated incidents of neglect and therefor justify more serious sanctions. State ex rel. NSBA v. Frank, 214 Neb. 825, 336 N.W.2d 557 (1983).

A party has failed to faithfully discharge his duties as an attorney and counselor when he conceals material facts from a court and presents a report known by him to be less than a true, accurate, and full account. State ex rel. Nebraska State Bar Assn. v. McArthur, 212 Neb. 815, 326 N.W.2d 173 (1982).

Attorney's violation of a disciplinary rule and failure to act competently by neglecting a matter entrusted to him is conduct violative of an attorney's oath as a member of the bar. State ex rel. Nebraska State Bar Assn. v. Divis, 212 Neb. 699, 325 N.W.2d 652 (1982).

An attorney who fails to use a trust account for client's funds, and who fails to properly transmit client's funds to the client, is guilty of unprofessional conduct and violates the Canons of Ethics and his oath as a member of the bar of this court. State ex rel. Nebraska State Bar Assn. v. Conley, 209 Neb. 717, 310 N.W.2d 520 (1981).

Failure to use a trust account for client's funds and to promptly transmit client's funds to the client is a violation of the

Canons of Ethics and oath as a member of the bar. State ex rel. Nebraska State Bar Assn. v. James, 209 Neb. 306, 307 N.W.2d 524 (1981).

An attorney who fails to fully explain to a client the nature of the client's claim and to adequately represent the client has violated his oath of office under this section as well as the Code of Professional Responsibility. State ex rel. Nebraska State Bar Association v. Walsh, 206 Neb. 737, 294 N.W.2d 873 (1980).

An attorney who performs an illegal act, such as knowingly writing an insufficient funds check, may be in violation of his oath under this section as well as the Code of Professional Responsibility even if he isn't prosecuted. State ex rel. Nebraska State Bar Association v. Walsh, 206 Neb. 737, 294 N.W.2d 873 (1980).

Where conduct of attorneys violates the Code of Professional Responsibility and their oath as attorneys, but does not involve moral turpitude, a judgment of reprimand and censure is appropriate. State ex rel. Nebraska State Bar Assn. v. Addison & Levy, 198 Neb. 61, 251 N.W.2d 717 (1977).

Misconduct of a lawyer acting as a judge may justify disbarment. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

3. Administration of oath

Under former act, for purpose of admission, either district court or Supreme Court had authority to administer the required oath. In re Robinson, 82 Neb. 172, 117 N.W. 352 (1908).

7-105 Duties of attorneys and counselors.

It is the duty of an attorney and counselor: (1) To maintain the respect due to the courts of justice and to judicial officers; (2) to counsel or maintain no other actions, proceedings or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense; (3) to employ, for the purpose of maintaining the cause confided to him, such means only as are consistent with the truth; (4) to maintain inviolate the confidence, and, at any peril to himself, to preserve the secrets of his clients; (5) to abstain from all offensive practices and to advise no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged; (6) not to encourage the commencement or continuance of an action or proceeding from any motive of passion or interest.

Source: R.S.1866, c. 3, § 5, p. 14; R.S.1913, § 269; C.S.1922, § 264; C.S.1929, § 7-105.

1. Contract of employment
2. Dealing with property
3. Misconduct
4. Negligence
5. Privileged communication
6. Miscellaneous

1. Contract of employment

The duty of an attorney is personal in its nature, and therefore a contract for legal services cannot be assigned by the attorney without the consent of the client. Corson v. Lewis, 77 Neb. 446, 109 N.W. 735 (1906); Hilton v. Crooker, 30 Neb. 707, 47 N.W. 3 (1890).

Where one member of a firm of attorneys is retained, the retainer is of the entire firm, and it is the duty of the member retained to inform his partners of all engagements he has undertaken on behalf of the firm, and impart to them all of the facts within his knowledge bearing on the case. Ganzer v. Schiffbauer, 40 Neb. 633, 59 N.W. 98 (1894).

Employment terminates with judgment and exhaustion of legal process thereon, and does not extend to subsequent proceedings to reach property of debtor or enforce liability against sureties. Lamb v. Wilson, 3 Neb. Unof. 505, 97 N.W. 325 (1903).

2. Dealing with property

Where attorneys purchase property from their client, there is a presumption against the validity of the transaction which can only be overcome by clear evidence of good faith, of full knowledge and of independent consent and action. Hamilton v. Allen, 86 Neb. 401, 125 N.W. 610 (1910).

Purchase of subject matter of suit is voidable by client, unless attorney shows by clear and conclusive proof that no advantage was taken, that matter was explained to client, and price was fair and reasonable. Levara v. McNeny, 73 Neb. 414, 102 N.W. 1042 (1905).

An attorney may not purchase at judicial sale property in which his client is interested, and if he does so, the client at his election may treat the attorney as trustee. Olson v. Lamb, 56 Neb. 104, 76 N.W. 433 (1898).

3. Misconduct

A law firm should be disqualified from representing its client when it hires as temporary clerical help a disbarred attorney who previously worked as an attorney on the same case for another firm which represents the opposing party, because such action has the appearance of impropriety. State ex rel. Creighton Univ. v. Hickman, 245 Neb. 247, 512 N.W.2d 374 (1994).

Violation of the provisions of this section constituted grounds for disbarment of attorney. State ex rel. Nebraska State Bar Assn. v. Rhodes, 177 Neb. 650, 131 N.W.2d 118 (1964).

Enlarging size of bullet hole in belt received in evidence was misconduct. State ex rel. Nebraska State Bar Assn. v. Fisher, 170 Neb. 483, 103 N.W.2d 325 (1960).

Giving of false testimony by an attorney is an act of moral turpitude and justifies suspension or disbarment. State ex rel. Nebraska State Bar Assn. v. Butterfield, 169 Neb. 119, 98 N.W.2d 714 (1959).

Misappropriation by an attorney of money belonging to his client is such a disregard of duty as to warrant disbarment. State ex rel. Hunter v. Hatteroth, 134 Neb. 451, 279 N.W. 153 (1938).

An attorney's failure to account to his client for money received in a professional capacity constitutes a violation of his duty to client and to public, and warrants disbarment. State ex rel. Hunter v. Boe, 134 Neb. 162, 278 N.W. 144 (1938).

Attorneys upon admission assume duties as officers of the court, and in performance thereof they must conform to certain ethical standards generally recognized by the profession. State ex rel. Hunter v. Crocker, 132 Neb. 214, 271 N.W. 444 (1937).

''Ambulance chasing'' by attorney is violation of duty to abstain from all offensive practices. State ex rel. Sorensen v. Goldman, 127 Neb. 340, 255 N.W. 32 (1934).

Attorneys, in performance of duties assumed, must conform to certain standards in relation to clients, to courts, to profession, and to public. State ex rel. Sorensen v. Ireland, 125 Neb. 570, 251 N.W. 119 (1933).

Improper and offensive statements by attorneys are violation of requirement to maintain due respect to courts of justice. Flannigan v. State, 125 Neb. 519, 250 N.W. 908 (1933).

Delinquency in accounting for money received in professional capacity is ground for disbarment as violating duty to maintain respect due courts. State ex rel. Spillman v. Priest, 118 Neb. 47, 223 N.W. 635 (1929).

Drawing pleadings and preparing case for trial is violation of duty of an attorney who has been suspended from practice. State v. Fisher, 103 Neb. 736, 174 N.W. 320 (1919).

Court will disbar for professional misconduct in relations of attorney with court, but will not investigate charge of crime while matter pending on indictment. In re Disbarment Proceedings of Newby, 76 Neb. 482, 107 N.W. 850 (1906).

Contract to share fees with layman who procures third parties to employ attorney and who secures evidence is violation of duties of attorney and is void. Langdon v. Conlin, 67 Neb. 243, 93 N.W. 389 (1903).

Attorney cannot represent both sides without consent of the clients. Cox v. Barnes, 45 Neb. 172, 63 N.W. 394 (1895).

Propriety of methods of defense rests largely with attorney, but aiding escape of defendant is not ''defense''. State ex rel. Attorney General v. Burr, 19 Neb. 593, 28 N.W. 261 (1886).

4. Negligence

Expression of an opinion by an attorney as to the probabilities of realizing a certain sum upon the sale of real property does not render the attorney liable because of mistake in such estimate. Reumping v. Wharton, 56 Neb. 536, 76 N.W. 1076 (1898).

5. Privileged communication

A communication concerning the date, time, and place of a scheduled trial is not confidential in nature and is not protected from disclosure by subsection (4) of this section. State v. Hawes, 251 Neb. 305, 556 N.W.2d 634 (1996).

Obligation of secrecy is not violated where attorney is called upon to testify to facts showing a purpose of perpetrating a conscious intentional fraud upon the court. In re Watson, 83 Neb. 211, 119 N.W. 451 (1909).

6. Miscellaneous

Violation of this section authorized disbarment. State ex rel. Nebraska State Bar Assn. v. Palmer, 160 Neb. 786, 71 N.W.2d 491 (1955).

Obligation rests upon attorneys to maintain the respect due to the courts of justice and to judicial officers, and to abstain from all offensive practices. In re Dunn, 85 Neb. 606, 124 N.W. 120 (1909).

Damages for unauthorized appearance in action not concerning collections are not recoverable in suit against attorney for failure to account for collections. Scott v. Kirschbaum, 47 Neb. 331, 66 N.W. 443 (1896).

An attorney has the right to refuse a retainer which would require his appearance before a particular judge. Hawes v. State, 46 Neb. 149, 64 N.W. 699 (1895).

7-106 Deceit or collusion; penalty.

An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court, or judge, or a party to an action or proceeding, is liable to be disbarred.

Source: R.S.1866, c. 3, § 6, p. 15; R.S.1913, § 270; C.S.1922, § 265; C.S.1929, § 7-106; R.S.1943, § 7-106; Laws 1963, c. 25, § 1, p. 128.

1. Disbarment
2. Suspension
3. Civil liability

1. Disbarment

Supreme Court reporter who was also attorney violated this section by demanding $2,500 from printer to guarantee renewal of contract to print Nebraska Reports; respondent disbarred. State ex rel. Nebraska State Bar Assn. v. Green, 210 Neb. 878, 317 N.W.2d 97 (1982).

Manipulation of transfer of judgment to mislead court into allowance of a wrongful setoff warrants disbarment. State ex rel. Nebraska State Bar Assn. v. Hendrickson, 138 Neb. 846, 295 N.W. 892 (1941), on rehearing, 139 Neb. 522, 298 N.W. 148 (1941).

Attorney who obtains loan from client by false representations respecting the mortgage security is guilty of such misconduct as to justify disbarment. State ex rel. Nebraska State Bar Assn. v. Basye, 138 Neb. 806, 295 N.W. 816 (1941).

Failure of attorney to account for, or the misappropriation of, money of his clients received in his professional capacity is ground for disbarment of attorney. State ex rel. Nebraska State Bar Assn. v. McGan, 138 Neb. 665, 294 N.W. 430 (1940).

Conversion of funds of client received from settlement of judgment and refusal to give client information as to status of judgment required disbarment of attorney. State ex rel. Nebraska State Bar Association v. Hyde, 138 Neb. 541, 293 N.W. 408 (1940).

Deceit practiced upon client in sale of stock sustains disbarment. State ex rel. Hunter v. Marconnit, 134 Neb. 898, 280 N.W. 216 (1938).

Misappropriation of money belonging to client warrants disbarment. State ex rel. Hunter v. Hatteroth, 134 Neb. 451, 279 N.W. 153 (1938).

Failure to account to client for money received in a professional capacity is sufficient to justify disbarment. State ex rel. Hunter v. Boe, 134 Neb. 162, 278 N.W. 144 (1938).

Conviction of attorney of embezzlement is conclusive evidence warranting disbarment. State ex rel. Wright v. Sowards, 134 Neb. 159, 278 N.W. 148 (1938).

An attorney, representing a defendant in a criminal prosecution, who procures or induces a material witness for the prosecution to absent himself from the trial and conceal his whereabouts is guilty of such conduct as to merit disbarment. State ex rel. Good v. Cooper, 131 Neb. 771, 270 N.W. 310 (1936).

Misappropriation of money belonging to client is such disregard of duty as to warrant disbarment of attorney. State ex rel. Sorensen v. Goldman, 127 Neb. 340, 255 N.W. 32 (1934).

Securing of money from clients for court costs in promised litigation where attorney knew, through lapse of time and other causes that claims were uncollectible, is equivalent to fraud and deceit and justifies disbarment. State ex rel. Sorensen v. Ireland, 125 Neb. 570, 251 N.W. 119 (1933).

Conversion of money of minors by attorney while acting as their guardian sustained disbarment. State ex rel. Good v. Black, 125 Neb. 382, 251 N.W. 109 (1933).

Restitution of money embezzled does not justify reinstatement of attorney disbarred for misappropriation of funds. State ex rel. Spillman v. Priest, 123 Neb. 241, 242 N.W. 433 (1932).

Attorney who fails to account for money collected by him for client and entrusted to him by client for purpose of investment is guilty of misconduct justifying disbarment. State ex rel. Spillman v. Priest, 118 Neb. 47, 223 N.W. 635 (1929).

An attorney who knowingly uses forgery of another to impose upon a court is guilty of such conduct as to warrant disbarment. State v. Fisher, 103 Neb. 736, 174 N.W. 320 (1919).

This section was not intended to limit the inherent powers of the court. In re Dunn, 85 Neb. 606, 124 N.W. 120 (1909).

Preparation of false affidavit where there is no attempt to make use of it in any way to deceive court is not ground for disbarment. In re Watson, 83 Neb. 211, 119 N.W. 451 (1909).

Evidence offered insufficient to establish by clear preponderance that attorney attempted to deceive court. In re Newby, 82 Neb. 235, 117 N.W. 691 (1908).

District court can disbar an attorney from practice before it for deceit practiced upon that court, but Supreme Court has sole power to disbar generally. In re Disbarment Proceedings of Newby, 76 Neb. 482, 107 N.W. 850 (1906).

Disbarment is a special proceeding. Morton v. Watson, 60 Neb. 672, 84 N.W. 91 (1900).

Conspiracy to bribe juror participated in by attorney warranted disbarment. Blodgett v. State, 50 Neb. 121, 69 N.W. 751 (1897).

Validity and effectiveness of judicial power to disbar attorneys is recognized. Niklaus v. Simmons, 196 F.Supp. 691 (D. Neb. 1961).

2. Suspension

Tampering with exhibit received in evidence was conduct justifying suspension from practice. State ex rel. Nebraska State Bar Assn. v. Fisher, 170 Neb. 483, 103 N.W.2d 325 (1960).

Presentation of claim to Legislature supported by an appraisement that attorney knew had been fraudulently altered was sufficient to justify suspension. State v. Fisher, 82 Neb. 361, 117 N.W. 882 (1908).

Attorney, who removed case to federal court by filing affidavit of local prejudice when his real reason was to secure allowance of attorney's fees not recoverable in state court, was subject to reprimand. In re Breckenridge, 31 Neb. 489, 48 N.W. 142 (1891).

Procuring release of prisoner under sentence of death through imposition on a United States Commissioner was such conduct as to justify suspension for two years. State ex rel. Attorney General v. Burr, 19 Neb. 593, 28 N.W. 261 (1886).

3. Civil liability

Recovery of treble the actual damages sustained is unconstitutional. Abel v. Conover, 170 Neb. 926, 104 N.W.2d 684 (1960).

In civil action to recover treble damages under this section, evidence did not disclose any fraud, deceit or any unprofessional conduct. Martin v. Reavis, 117 Neb. 219, 220 N.W. 238 (1928).

7-107 Powers of attorneys.

An attorney or counselor has power: (1) To execute, in the name of his client, a bond for an appeal, certiorari, writ of error, or any other paper necessary and proper for the prosecution of a suit already commenced; (2) to bind his client by his agreement in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court; (3) to receive money claimed by his client, in an action or proceeding, during the pendency thereof or afterwards, unless he has been previously discharged by his client, and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

Source: R.S.1866, c. 3, § 7, p. 15; R.S.1913, § 271; C.S.1922, § 266; C.S.1929, § 7-107.

1. Appearance
2. Powers
3. Agreements
4. Miscellaneous

1. Appearance

After discharge, an attorney may appear in case as amicus curiae and suggest facts necessary to the protection of minors whose rights have been disregarded. Jones v. Hudson, 93 Neb. 561, 141 N.W. 141 (1913), 44 L.R.A.N.S. 1182 (1913).

Where an attorney appears in an action, the presumption is that he was authorized to appear. Ebel v. Stringer, 73 Neb. 249, 102 N.W. 466 (1905).

The authority of an attorney to appear will be presumed even though appearance is upon behalf of plaintiff and one defendant. Union P. Ry. Co. v. Vincent, 58 Neb. 171, 78 N.W. 457 (1899).

The authority of an attorney who enters an appearance will be presumed to justify him in doing so. Missouri P. Ry. Co. v. Fox, 56 Neb. 746, 77 N.W. 130 (1898).

Where judgment is rendered against a party whose appearance is entered by an unauthorized attorney, the presumption of jurisdiction arising from the appearance of the attorney is not conclusive, and in a direct attack on the judgment, the fact that

the appearance was unauthorized may be shown. Kaufmann v. Drexel, 56 Neb. 229, 76 N.W. 559 (1898).

When an attorney appears in a cause, the presumption is that he has authority and that presumption continues until the want of authority is shown. Vorce v. Page, 28 Neb. 294, 44 N.W. 452 (1889).

Unauthorized appearance of attorney may be ratified before judgment. Little v. Giles, 27 Neb. 179, 42 N.W. 1044 (1889).

The right of an attorney to enter an appearance for a party can be called in question only by the party himself. Baldwin v. Foss, 14 Neb. 455, 16 N.W. 480 (1883).

Although authority will be presumed when an attorney appears for a defendant not served with process, yet if the defendant proves attorney had no authority, his rights cannot be affected by the attorney's acts. Kepley v. Irwin, 14 Neb. 300, 15 N.W. 719 (1883).

Unauthorized bringing of action resulting in decree of foreclosure may be repudiated by client. McDowell v. Gregory, 14 Neb. 33, 14 N.W. 899 (1883).

Appearance of attorney, who had no authority to waive process or defend the suit, may be explained, and showing made that court pronouncing judgment did not have jurisdiction of the cause or person. Eaton v. Hasty, 6 Neb. 419, 29 Am. R. 365 (1877).

2. Powers

A lawyer's proper duties and powers, within the meaning of this section, do not include settling a lawsuit without a client's express authority. Luethke v. Suhr, 264 Neb. 505, 650 N.W.2d 220 (2002).

An attorney's power to bind his client extends to administrative hearings and proceedings. Brennan v. School Dist. No. 21, 235 Neb. 948, 458 N.W.2d 227 (1990).

The waiver of foundation for certain evidence is a matter of trial strategy within the scope of counsel's duty and such action is binding on a defendant who has voluntarily absented himself from the trial. State v. Sayers, 211 Neb. 555, 319 N.W.2d 438 (1982).

Attorneys employed by counties 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).

While the relationship of attorney and client exists, the attorney has authority to receive money due his client in an action or proceeding in which the attorney rightly appears, but that authority ceases with the severance of the relationship. Gordon v. Hennings, 89 Neb. 252, 131 N.W. 228 (1911).

An attorney may receive and receipt for money due his client in a case in which he is employed, and the act will bind his client, unless the party paying had notice of revocation of the attorney's authority to act. Gordon v. City of Omaha, 77 Neb. 556, 110 N.W. 313 (1906).

Attorney cannot bind client by acts in another action in his own behalf. Hamilton Brown Shoe Co. v. Milliken, 62 Neb. 116, 86 N.W. 913 (1901).

An attorney cannot, without actual authority, sell and assign his client's judgment. Henry & Coatsworth Co. v. Halter, 58 Neb. 685, 79 N.W. 616 (1899).

A debtor is bound to take notice of the authority of an attorney employed to collect a debt, and unless specially authorized by client, the attorney has no authority to accept in payment of debt anything but money, nor to release one of two joint debtors in consideration of the other giving security for the debt. Cram v. Sickel, 51 Neb. 828, 71 N.W. 724 (1897).

Attorney employed to collect debt has no power, without express authority, to compromise claim or release a debtor except upon payment of full amount of debt in money. Smith v. Jones, 47 Neb. 108, 66 N.W. 19 (1896).

Implied authority of an attorney to bind his client does not authorize him to execute indemnity bond to sheriff when client is readily available. Luce v. Foster, 42 Neb. 818, 60 N.W. 1027 (1894).

Attorney has authority to confess judgment for costs in order to have default judgment set aside. Stanton & Co. v. Spence, 22 Neb. 191, 34 N.W. 359 (1887).

Attorney cannot compromise judgment and accept payment in a debt owing by the attorney. Hamrick v. Combs, 14 Neb. 381, 15 N.W. 731 (1883).

Attorney having notes and mortgage in his possession for collection has authority to receive payment, surrender the notes, and agree to release the mortgage. Ward v. Beals, 14 Neb. 114, 15 N.W. 353 (1883).

An attorney, by virtue of his employment to make collections, has no authority to release a surety on a promissory note without payment. Stoll v. Sheldon, 13 Neb. 207, 13 N.W. 201 (1882).

Authority to give notice of termination of agency upon behalf of principal is not within the express or implied powers of an attorney, at least before the commencement of action. Tingley v. Parshall, 11 Neb. 443, 9 N.W. 571 (1881).

Attorney, by virtue of his general authority, cannot authorize an execution to issue against the property of his client while a supersedeas bond is on file. State Bank of Nebraska v. Green, 8 Neb. 297 (1879).

Joint employment of an attorney by principal and surety to defend suit does not give authority to sign a stay bond on behalf of the surety. Anderson v. Hendrickson, 1 Neb. Unof. 610, 95 N.W. 844 (1901).

An attorney employed to prosecute action has no authority to dismiss it contrary to the desire and over the objection of the client. Steinkamp v. Gaebel, 1 Neb. Unof. 480, 95 N.W. 684 (1901).

3. Agreements

Subsection (2) of this statute does not make an oral contract invalid, but only relates to the character of evidence by which it may be established. Heese Produce Co. v. Lueders, 233 Neb. 12, 443 N.W.2d 278 (1989).

Statements of attorney, made out of court, as to existence of oral agreement upon behalf of client, are not admissible in evidence. Oddo v. Fred F. Shields, 144 Neb. 111, 12 N.W.2d 659 (1944).

Oral agreements between attorneys, entered into out of court, will not be recognized or considered. Drake v. Ralston, 137 Neb. 72, 288 N.W. 377 (1939).

Second subdivision of this section does not make oral agreement invalid, but prescribes character of evidence to prove it and, if proved, without objection, by incompetent evidence, it may be enforced. Anderson v. Walsh, 109 Neb. 759, 192 N.W. 328 (1923).

Attorney has no authority to make agreement that purchaser at judicial sale shall pay amount of his bid to a third person instead of to the officer making the sale. Fire Assn. of Philadelphia v. Ruby, 58 Neb. 730, 79 N.W. 723 (1899).

Written stipulations of counsel in regard to trial of cause may be set aside in the discretion of the court when their enforcement would result in serious injury to one party and would not be prejudicial to the other party. Keens v. Robertson, 46 Neb. 837, 65 N.W. 897 (1896).

Oral agreement of attorney to arbitrate matters in litigation cannot be proved by testimony of person who heard the agreement made. German-American Ins. Co. v. Buckstaff, 38 Neb. 135, 56 N.W. 692 (1893).

Written agreements of attorneys, or oral agreements entered into by them in open court, in regard to the disposition of cases, will be enforced, but oral agreements entered into out of court will not be recognized. Rich v. State Nat. Bank of Lincoln, 7 Neb. 201, 29 Am. R. 382 (1878).

Agreement as to conduct of suit made in open court and entered on record, binds client. McCann v. McLennan, 3 Neb. 25 (1873).

4. Miscellaneous

The State's comments during a juvenile court proceeding are not judicial admissions and do not bind the State to use the same theory in a criminal proceeding. State v. Canady, 263 Neb. 552, 641 N.W.2d 43 (2002).

Stipulation of attorneys in injunction suit for later determination of issue of damages was binding. Kuhlmann v. Platte Valley Irr. Dist., 166 Neb. 493, 89 N.W.2d 768 (1958).

Where money is paid to an attorney upon a claim of a third party, he cannot withhold the money from the third person upon the ground that he is also a creditor of the person paying the money. Wilder v. Millard, 93 Neb. 595, 141 N.W. 156 (1913).

Where attorney was authorized to collect judgment by a levy upon and sale of land, and client advises attorney it does not want to bid on land but desires its money, attorney may purchase at execution sale where full amount of judgment is bid. Washburn v. Osgood, 38 Neb. 804, 57 N.W. 529 (1894).

Attorney cannot be compelled by summary order to pay into court money in his hands collected as a fee and as to which there is a dispute between attorneys over division of fees. Baldwin v. Foss, 16 Neb. 80, 19 N.W. 496 (1884).

7-108 Attorney's liens.

An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession in the course of his professional employment; and upon money in his hands belonging to his client, and in the hands of the adverse party in an action or proceeding in which the attorney was employed from the time of giving notice of the lien to that party.

Source: R.S.1866, c. 3, § 8, p. 15; R.S.1913, § 272; C.S.1922, § 267; C.S.1929, § 7-108.

1. Attaches
2. Does not attach
3. Priority
4. Destruction
5. Intervention
6. Notice
7. Miscellaneous

1. Attaches

To be entitled to an attorney's lien, it is necessary that an attorney-client relationship exists, either express or implied. Hammond v. Nebraska Nat. Gas Co., 209 Neb. 616, 309 N.W.2d 75 (1981).

An action to enforce an attorney's charging lien is equitable in nature and will not be tried before a jury. Barber v. Barber, 207 Neb. 101, 296 N.W.2d 463 (1980).

Attorney's lien extends to the whole indebtedness covering the general balances due. Anderson v. Lamme, 174 Neb. 398, 118 N.W.2d 339 (1962).

Charging lien may be enforced by action in equity. Neighbors & Danielson v. West Nebraska Methodist Hospital, 162 Neb. 816, 77 N.W.2d 667 (1956).

An attorney's charging lien is confined to fees and costs due for services rendered in the particular action in which it is sought to enforce the lien. Nicholson v. Albers, 144 Neb. 253, 13 N.W.2d 145 (1944).

To the extent of his reasonable charges and disbursements, an attorney is entitled to a lien upon money in his hands belonging to his client. State ex rel. Nebraska State Bar Assn. v. Bachelor, 139 Neb. 253, 297 N.W. 138 (1941).

Attorney's lien is confined to fees and costs due for services rendered in particular case in which lien is sought to be enforced. Reynolds v. Warner, 128 Neb. 304, 258 N.W. 462 (1935), 97 A.L.R. 1128 (1935).

Lien is valid on full amount of judgment where settlement made while appeal pending. Griggs v. Chicago, R. I. & P. Ry. Co., 104 Neb. 301, 177 N.W. 185 (1920).

An attorney has a charging lien upon money in the hands of an adverse party, but an attorney discharged by client before collection of money, although lien is not dissolved, cannot collect money over client's objection. Gordon v. Hennings, 89 Neb. 252, 131 N.W. 228 (1911).

An attorney's lien, when filed in a pending action, binds real estate previously attached, and client cannot prevent enforcement of lien by dismissal of action. Zentmire v. Brailey, 89 Neb. 158, 130 N.W. 1047 (1911).

Judgment in favor of a prosecutrix in a bastardy proceeding is subject to the lien of her attorney for services in obtaining the judgment, and an assignment of the judgment after filing of attorney's lien does not affect lien and assignee takes subject thereto. Taylor v. Stull, 79 Neb. 295, 112 N.W. 577 (1907).

An attorney has lien for his compensation and disbursements on money received in client's behalf, and the right of lien is not affected by the fact that the client is an executor or trustee and the services were rendered and money received on behalf of an estate. Burleigh v. Palmer, 74 Neb. 122, 103 N.W. 1068 (1905).

This section, declaratory of common law, gives attorney a retaining lien upon all papers, books, documents and money of client which come into his possession in the course of his professional employment, and a charging lien upon money in the hands of adverse party where notice of existence of claim of lien is given. Cones v. Brooks, 60 Neb. 698, 84 N.W. 85 (1900).

Attorney may recover property fraudulently conveyed upon which lien attached. Chamberlain v. Grimes, 42 Neb. 701, 60 N.W. 948 (1894).

An attorney has a lien for a general balance upon money in his hands belonging to his client, and until the lien is discharged he is not liable to a prosecution for embezzlement. Van Etten v. State, 24 Neb. 734, 40 N.W. 289 (1888), 1 L.R.A. 669 (1888).

Where a judgment debtor, with knowledge of an attorney's lien, pays the judgment direct to the creditor, he cannot evade the payment of amount due attorney for services. Griggs & Ashby v. White, 5 Neb. 467 (1877).

An attorney, prosecuting a claim before a county board, has a lien without filing a claim or giving notice thereof, and an assignee of the claim takes subject thereto. Maloney v. Douglas County, 2 Neb. Unof. 396, 89 N.W. 248 (1902).

2. Does not attach

To be valid against subsequent purchasers, agreement creating lien on real estate must meet requirements of section 76-211. Marechale v. Burr, 195 Neb. 306, 237 N.W.2d 860 (1976).

Property in the hands of a court-appointed receiver is not subject to attorney's lien. Lewis v. Gallemore, 175 Neb. 279, 121 N.W.2d 388 (1963).

An attorney has only such lien for services performed as provided by statute and is not entitled to a lien on real estate owned by client. Young v. Card, 145 Neb. 857, 18 N.W.2d 302 (1945).

This section does not give a right to a lien upon real estate involved in a foreclosure action. Marshall v. Casteel, 143 Neb. 68, 8 N.W.2d 690 (1943).

Attorney, prior to settlement of his claim for services, has a lien only upon the money of client which comes into his hands. State ex rel. Nebraska State Bar Association v. Rein, 141 Neb. 758, 4 N.W.2d 829 (1942).

Except as provided by statute, an attorney has no lien for services performed by him. Card v. George, 140 Neb. 426, 299 N.W. 487 (1941).

Assistant or associate counsel employed by attorney without client's knowledge or consent is not entitled to lien. Snyder v. Smith, 132 Neb. 504, 272 N.W. 401 (1937).

Lien does not attach where attorney fails to comply with statute. Vanderlip v. Barnes, 101 Neb. 573, 163 N.W. 856 (1917); Lavender v. Atkins, 20 Neb. 206, 29 N.W. 467 (1886).

Award paid into court in condemnation proceedings for present owners of land is not subject to lien of attorney for former owner. Clay County v. Howard, 95 Neb. 389, 145 N.W. 982 (1914).

Attorney for defendant has no lien upon funds in the hands of third party garnished by plaintiff. Phillips v. Hogue, 63 Neb. 192, 88 N.W. 180 (1901).

Attorney's lien cannot be enforced where there is nothing to which such lien can attach. Yeiser v. Lowe, 50 Neb. 310, 69 N.W. 847 (1897).

Filing of attorney's lien after settlement is completed does not confer any rights in favor of attorney against adverse party. Sheedy v. McMurtry, 44 Neb. 499, 63 N.W. 21 (1895).

Attorney's lien cannot be asserted against money appropriated to client by Legislature while money is in the custody of State Treasurer. State ex rel. Sayre v. Moore, 40 Neb. 854, 59 N.W. 755 (1894), 25 L.R.A. 774 (1894).

An attorney is not entitled to a lien before judgment upon a cause of action for tort which in case of the death of the parties would not survive. Abbott v. Abbott, 18 Neb. 503, 26 N.W. 361 (1886).

Federal court receiver is not ''adverse party'' within meaning of this section, and money in his hands is not subject to attorney's lien. Culhane v. Anderson, 17 F.2d 559 (8th Cir. 1927).

3. Priority

Where two judgments, arising out of the same transaction, have been obtained by each of two parties against the other, attorney's lien is subordinate to the right of setoff. Dalton State Bank v. Eckert, 135 Neb. 500, 282 N.W. 490 (1938).

Lien of attorney for services in procuring judgment will not be allowed to reduce the amount of a setoff if the judgment is sufficient to satisfy both the setoff and the attorney's lien. Stone v. Snell, 86 Neb. 581, 125 N.W. 1108 (1910).

Attorney's lien is subject to proper setoff or defense pleaded. Field v. Maxwell, 44 Neb. 900, 63 N.W. 62 (1895).

The assignee of a judgment takes it subject to the rights of an attorney who has properly filed a lien. Yates v. Kinney, 33 Neb. 853, 51 N.W. 230 (1892).

Lien of attorney upon judgment to the extent of his reasonable fees and disbursements is paramount to any rights of the parties in the suit or to setoff. Rice v. Day, 33 Neb. 204, 49 N.W. 1128 (1891).

Vendor's lien is superior to attorney's lien for services rendered vendee. Smith v. Mesarvey, 22 Neb. 756, 36 N.W. 137 (1888).

Lien of attorney, upon judgment obtained by him, to the extent of his reasonable fees and disbursements, is paramount to any rights of the parties in the suit or to any setoff. Boyer v. Clark & McCandless, 3 Neb. 161 (1873).

Lien of attorneys upon judgment is paramount to any setoff not pleaded. Finney v. Gallop, 2 Neb. Unof. 480, 89 N.W. 276 (1902).

Where a degree enjoining collection of judgment and allowing a setoff conditions the injunction on payment into court of a sum more than sufficient to satisfy lien, it is unnecessary to consider relative priorities of setoff and the attorney's lien. Commercial State Bank of Crawfordsville v. Ketchum, 1 Neb. Unof. 454, 96 N.W. 614 (1901).

4. Destruction

After an attorney's lien has attached, a party adverse to the attorney's client cannot, if he has notice thereof, destroy the lien by voluntary settlement made without the consent or knowledge of the attorney. Spethman v. Hofeldt, 141 Neb. 83, 2 N.W.2d 620 (1942).

An attorney may have a lien upon the claim of his client in action for personal injuries, and the lien, once attached, cannot be destroyed by voluntary settlement made without knowledge or consent of the attorney. Heinisch v. Travelers Mut. Casualty Co., 135 Neb. 13, 280 N.W. 234 (1938).

Attorneys have lien upon judgment for amount agreed which cannot be defeated by recovery of judgment against client by adverse party and attempted setoff thereof. Ward v. Watson, 27 Neb. 768, 44 N.W. 27 (1889).

5. Intervention

Where attorney claims lien on money belonging to a minor plaintiff which is subsequently, by agreement of the parties, paid into court, the proper practice is for attorney to file an intervening petition to have the amount and extent of his lien judicially determined. Myers v. Miller, 134 Neb. 824, 279 N.W. 778 (1938), 117 A.L.R. 977 (1938).

An attorney may have a lien upon the claim of his client in an action for personal injury prior to judgment, and after settlement has been made with notice of his lien, may intervene as a party plaintiff to establish his lien. Corson v. Lewis, 77 Neb. 449, 114 N.W. 281 (1907).

Where parties to divorce action become reconciled, court may dismiss suit and attorney is not entitled to intervene to enforce fees after dismissal. Petersen v. Petersen, 76 Neb. 282, 107 N.W. 391 (1906), 124 A.S.R. 812 (1906).

Attorney may appeal in client's name to enforce lien on fund. Counsman v. Modern Woodmen of America, 69 Neb. 710, 96 N.W. 672 (1903), reversed on rehearing, 69 Neb. 713, 98 N.W. 414 (1904).

When a judgment to which an attorney's lien has attached is compromised in fraud of the attorney's rights, proper method of procedure is for the attorney to intervene and have amount of his lien determined. Jones v. Duff Grain Co., 69 Neb. 91, 95 N.W. 1 (1903).

Attorney having a lien on a judgment may intervene to revive judgment, and filing of petition is sufficient notice of the lien to the judgment debtor. Greek v. McDaniel, 68 Neb. 569, 94 N.W. 518 (1903).

Dismissal of suit will not be set aside and cause reinstated to protect attorney's lien where charge of fraud to defeat lien was not established. Kretsinger v. Weber, 43 Neb. 468, 61 N.W. 718 (1895).

Attorney may set aside fraudulent dismissal or settlement with notice of lien. Aspinwall v. Sabin, 22 Neb. 73, 34 N.W. 72 (1887), 3 A.S.R. 258 (1887).

To entitle an attorney to become a party to an action for the purpose of protecting and enforcing his lien, it must appear that fees are due him for services in that case. Oliver v. Sheeley, 11 Neb. 521, 9 N.W. 689 (1881).

After settlement and dismissal of action by client, action may be continued for purpose of protecting and enforcing lien of attorney. Reynolds v. Reynolds, 10 Neb. 574, 7 N.W. 322 (1880).

Where attorney has obtained judgment for client and perfected lien, he may enforce it notwithstanding a compromise and settlement made by his client with other party, and court may permit him to intervene to protect his lien. Patrick v. Leach, 17 F. 476 (Cir. Ct, D. Neb. 1881).

6. Notice

Although an attorney's lien on funds in the hands of an adverse party is not perfected until notice is given, such notice need not be express or in any specific form. Rather, it need be only understood by the parties that the attorney is entitled to the funds as compensation. Kleager v. Schaneman, 212 Neb. 333, 322 N.W.2d 659 (1982).

In order to perfect a lien against assets in the hands of an adverse party, an attorney must give to the adverse party notice of the existence of the claim and that it will be asserted. Such notice need not be in any specific form. Barber v. Barber, 207 Neb. 101, 296 N.W.2d 463 (1980).

Notice of attorney's lien is not required to be in any specific form or to be given in any particular manner. Tuttle v. Wyman, 149 Neb. 769, 32 N.W.2d 742 (1948).

Attorney has lien upon money in the hands of adverse party from time of giving notice of lien to that party. In re Estate of Linch, 139 Neb. 761, 298 N.W. 697 (1941).

An attorney is entitled to a lien upon money in the hands of an adverse party only from the time of giving notice to that party. In re Estate of Alexander, 133 Neb. 218, 274 N.W. 551 (1937).

Notice of lien filed with papers is good, and binds adverse party. Hoyt v. C., R. I. & P. Ry. Co., 88 Neb. 161, 129 N.W. 292 (1911).

Claim in suit on insurance policy to recover attorney's fees as part of the costs is not notice of claim of attorney's lien. Cobbey v. Dorland, 50 Neb. 373, 69 N.W. 951 (1897).

In order to render an adverse party liable to a lien for services of attorney, claim of lien must be filed with the papers or notice given, and mere knowledge of existence of contingent fee agreement is not notice. Elliott v. Atkins, 26 Neb. 403, 42 N.W. 403 (1889).

Actual notice to adverse party is sufficient. Sayre v. Thompson, 18 Neb. 33, 24 N.W. 383 (1885).

Attorney has no lien on judgment obtained by him in favor of his client which he can enforce against a third party, and to secure a lien he must give personal notice in writing. Patrick v. Leach, 12 F. 661 (Cir. Ct., D. Neb. 1881).

7. Miscellaneous

Under this section, money in the hands of a court-appointed receiver is not in the hands of an adverse party. Holste v. Burlington Northern R.R. Co., 256 Neb. 713, 592 N.W.2d 894 (1999).

7-109 Admission of attorneys from other states without examination.

Any person producing a license, or other satisfactory voucher, proving either that he has been regularly admitted an attorney at law in the courts of record of any state where the requirements for admission when he was admitted were equal to those prescribed in this state, or so proving that he has practiced law five full years in courts of record under license in any state, and proving also that he is a person of good moral character, may be admitted by the Supreme Court to the bar in this state without examination.

Source: R.S.1866, c. 3, § 9, p. 15; Laws 1903, c. 5, § 9, p. 55; R.S.1913, § 273; C.S.1922, § 268; C.S.1929, § 7-109.

Section was not repealed as a whole by Chapter 6, Laws of 1895, but power of district court to admit was taken away by that act. In re Burton, 76 Neb. 752, 107 N.W. 1015 (1906).

District courts cannot admit, except in case pending. In re Admission to the Bar, 61 Neb. 58, 84 N.W. 611 (1900).

7-110 Parties acting in their own behalf.

Plaintiffs shall have the liberty of prosecuting, and defendants shall have the liberty of defending, in their proper persons.

Source: R.S.1866, c. 3, § 10, p. 16; R.S.1913, § 274; C.S.1922, § 269; C.S.1929, § 7-110.

In absence of unusual circumstances, defendant who is sui juris and mentally competent has right to conduct his defense in person without assistance of counsel. State v. Beasley, 183 Neb. 681, 163 N.W.2d 783 (1969).

Plaintiffs have the liberty of prosecuting, and defendants have the liberty of defending, in their own proper persons without the assistance of an attorney. Weiner v. Schrempp, 177 Neb. 583, 129 N.W.2d 518 (1964).

Disbarred attorney could not prosecute representative action in his own name. Niklaus v. Abel Construction Co., 164 Neb. 842, 83 N.W.2d 904 (1957).

Party to suit may act as his own attorney. Vielehr v. Malone, 158 Neb. 436, 63 N.W.2d 497 (1954).

7-111 Practice of law by judge and certain officials; prohibited; exceptions; penalty.

No person shall be permitted to practice as an attorney in any of the courts of this state while holding the office of judge of the Supreme Court, Clerk of the

Supreme Court, judge of the Court of Appeals, judge of the district court, judge of the Nebraska Workers' Compensation Court, or judge of the county court. No sheriff, constable, county clerk, clerk of the district court, or jailer shall practice as an attorney in any court in the county where he or she holds office. Such prohibition shall not apply to acting judges of the Nebraska Workers' Compensation Court appointed under section 48-155.01. An attorney at law who holds the office of clerk magistrate shall not be permitted to practice as an attorney in any action, matter, or proceeding brought before himself or herself or appealed from his or her decision to a higher court, nor shall any county judge draw any paper or written instrument to be filed in his or her own court except such as he or she is required by law to draw. No clerk magistrate shall draw any paper or written instrument in any matter assigned to him or her except such as he or she is required by law to draw. Any person who violates any of the provisions of this section shall be guilty of a Class V misdemeanor.

Source: R.S.1866, c. 3, § 11, p. 16; Laws 1877, § 1, p. 39; Laws 1899, c. 5, § 2, p. 55; Laws 1903, c. 6, § 1, p. 56; R.S.1913, § 275; Laws 1917, c. 5, § 1, p. 58; C.S.1922, § 270; C.S.1929, § 7-111; R.S. 1943, § 7-111; Laws 1959, c. 13, § 1, p. 127; Laws 1969, c. 28, § 1, p. 232; Laws 1969, c. 29, § 1, p. 233; Laws 1971, LB 2, § 1; Laws 1972, LB 1032, § 92; Laws 1977, LB 40, § 36; Laws 1984, LB 13, § 1; Laws 1991, LB 732, § 11.

Cross References

Constitutional prohibition on practice of law, see Article V, section 14, Constitution of Nebraska.

Attorney holding office of county judge cannot practice in own court. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

County judge cannot practice in any proceeding brought in his own court. State ex rel. Nebraska Bar Assn. v. Wiebusch, 153 Neb. 583, 45 N.W.2d 583 (1951).

7-112 Endorsement of original papers.

Upon filing original papers in any case, it shall be the duty of an attorney to endorse thereon his name.

Source: R.S.1866, c. 3, § 13, p. 16; R.S.1913, § 276; C.S.1922, § 271; C.S.1929, § 7-112.

7-113 Attorneys as guardians; duties.

It shall be the duty of every attorney to act as the guardian of a minor or incompetent defendant in any suit pending against him when appointed for that purpose by an order of the court. He shall prepare himself to make the proper defense, to guard the rights of such defendant, and shall be entitled to such compensation as the court shall deem reasonable.

Source: R.S.1866, c. 3, § 14, p. 16; R.S.1913, § 277; C.S.1922, § 272; C.S.1929, § 7-113; R.S.1943, § 7-113; Laws 1961, c. 13, § 1, p. 105.

1. Compensation
2. Miscellaneous

1. Compensation

Guardian for incompetent person in proceedings under Chapter 83, article 5, who carries out functions of guardian ad litem on appeal is entitled to reasonable compensation to be taxed as costs. State v. Cavitt, 182 Neb. 712, 157 N.W.2d 171 (1968).

Attorney acting as guardian ad litem is entitled to reasonable compensation for his services. White v. Ogier, 175 Neb. 883, 125 N.W.2d 68 (1963).

Guardian ad litem of an infant defendant is entitled to such compensation as the court shall deem reasonable taxed as costs. Omey v. Stauffer, 174 Neb. 247, 117 N.W.2d 481 (1962).

Guardian ad litem is entitled to such compensation as the court shall deem reasonable. Peterson v. Skiles, 173 Neb. 470, 113 N.W.2d 628 (1962).

Fee for guardian ad litem in divorce suit may be taxed as costs. Weesner v. Weesner, 168 Neb. 346, 95 N.W.2d 682 (1959).

Courts are authorized to tax as costs a reasonable fee for services of a guardian ad litem, the litigant to whom such fee is taxed depending on the circumstances of the case and discretion of the court. Ben B. Wood Realty Co. v. Wood, 132 Neb. 817, 273 N.W. 493 (1937).

Fees for guardian ad litem are properly allowed, though appeal in will contest is dismissed by district court. Shelby v. Meikle, 62 Neb. 10, 86 N.W. 939 (1901).

Services rendered by guardian ad litem do not furnish consideration for deed by the ward, since for performing the services the attorney must look only for the amount of his compensation to the court, which taxes the compensation allowed as part of the costs. Englebert v. Troxell, 40 Neb. 195, 58 N.W. 852 (1894), 26 L.R.A. 177 (1894), 42 A.S.R. 665 (1894).

2. Miscellaneous

In suit for specific performance of contract, guardian ad litem fee for representing minor defendants cannot be taxed to adult defendants, but are costs taxable to plaintiff. Hajek v. Hajek, 108 Neb. 503, 188 N.W. 181 (1922).

Guardian ad litem may take appeal. Hunter v. Buchanan, 87 Neb. 277, 127 N.W. 166 (1910), 29 L.R.A.N.S. 147 (1910), Ann. Cas. 1912A 1072 (1910).

It is the duty of an attorney acting as guardian ad litem to submit to court for its consideration every relevant fact involving the rights of his ward. In re Estate of Manning, 85 Neb. 60, 122 N.W. 711 (1909).

A guardian ad litem has no authority to make stipulations for allowances against estate of ward, and at every stage of proceedings it is his duty to insist upon strict proof of everything which affects the rights of the ward. Court has no authority to appoint guardian ad litem until ward is served with process. In re Estate of Manning, 83 Neb. 417, 119 N.W. 672 (1909).

7-114 Disbarment and contempt cases; costs.

In all proceedings instituted for the suspension, censure, or disbarment of attorneys at law, and in all contempt proceedings, the court costs shall be taxed as the court shall deem equitable.

Source: Laws 1911, c. 170, § 1, p. 547; R.S.1913, §§ 278, 279; C.S.1922, § 273; C.S.1929, § 7-114; R.S.1943, § 7-114; Laws 1955, c. 8, § 1, p. 72.

Informers acting in good faith are not liable for costs. Morton v. Watson, 60 Neb. 672, 84 N.W. 91 (1900).

Provision for taxation of costs applies to disbarment and contempt proceedings. Niklaus v. Simmons, 196 F.Supp. 691 (D. Neb. 1961).

7-115 Disbarment and contempt cases; court costs, defined.

As used in sections 7-114 to 7-116, unless the context otherwise requires, court costs shall be deemed to include, but not be limited to: (1) Costs and fees otherwise authorized by statute; (2) all costs and expenses approved by the court which are incurred by reason of reference of the matter to a referee for the taking of testimony in accordance with the rules of the Supreme Court; and (3) all necessary costs and expenses incurred in investigation and preparation of charges leading to the institution of proceedings for suspension, censure, or disbarment, or all necessary costs and expenses incurred by the respondent in defending against such proceedings; *Provided*, the costs and expenses referred to in subdivision (3) shall be claimed by the successful party in the proceeding within thirty days after final disposition of the charges, after which the losing party shall have fifteen days in which to prepare and submit to the court objections to all or any part of such claim, whereupon the court without further hearing shall allow or disallow all or any part of such claim as costs, in its discretion.

Source: Laws 1955, c. 8, § 2, p. 72.

7-116 Disbarment and contempt cases; judgment for costs; transcript to district court; lien; effect.

Judgments for costs herein provided for may be filed in the district court of any county in this state, and shall thereupon become a lien and be enforceable in such county in the same manner as other money judgments.

Source: Laws 1955, c. 8, § 3, p. 73.

CHAPTER 8
BANKS AND BANKING

Article.

Cross References

Accountancy Act, Public, applicability, see section 1-164.
Acknowledgements taken by stockholders, officers, and directors, see section 64-214.
Administrative Procedure Act, see section 84-920.
Cooperative credit associations, provisions as to, see sections 21-1301 to 21-1306.
Credit unions, supervised by department, see sections 21-1701 to 21-17,116.
Department of Banking and Finance, general powers, see section 81-301.
Deposits of money of state and political subdivisions, see sections 77-2301 to 77-2309 and 77-2386 to 77-23,106.
Insurance, solicitation and sale, when authorized, see section 44-392.
Interest, see sections 45-101.02 to 45-1,111.
Public Funds Deposit Security Act, see sections 77-2386 to 77-23,106.
Records Management Act, provisions as to, see sections 84-1201 to 84-1227.
Revenue, pledge of assets of depository banks to secure deposits of public funds, actions to recover deposits, see sections 77-2363 and 77-2364.

ARTICLE 1
GENERAL PROVISIONS

Cross References

For provisions of premium on bond of receiver, see section 25-21,218.
For provisions relating to appointment of Director of Banking and Finance, see section 81-102.
For provisions relating to disclosure of confidential information, see section 8-1401.
For salary of Director of Banking and Finance, see section 81-103.
For term of Director of Banking and Finance, see section 81-109.

Section

8-101 Terms, defined.

For purposes of the Nebraska Banking Act, unless the context otherwise requires:

(1) Bank subsidiary corporation means a corporation which has a bank as a shareholder and which is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits. A bank subsidiary corporation is not to be considered a branch of its bank shareholder;

(2) Capital or capital stock means capital stock;

(3) Department means the Department of Banking and Finance;

(4) Director means the Director of Banking and Finance;

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the act. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans;

(6) Order includes orders transmitted by electronic transmission;

(7) Automatic teller machine means a machine established and located off the premises of a financial institution which has a main chartered office or approved branch located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated. An unattended automatic teller machine shall not be deemed to be a branch operated by a financial institution;

(8) Automatic teller machine surcharge means a fee that an operator of an automatic teller machine imposes upon a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made;

(9) Data processing center means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and either authorized or routed to a switch or other data processing center in order to enable the automatic teller machine or point-of-sale terminal to perform any function for which it is designed;

(10) Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device in conjunction with a personal identification number. A point-of-sale terminal is not a branch operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution;

(11) Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions,

including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(12) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company;

(13) Financial institution employees includes parent holding company and affiliate employees;

(14) Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and are routed and transmitted to a financial institution, data processing center, or other switch, wherever located. A switch may also be a data processing center;

(15) Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

(16) Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus; and

(17) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1963, c. 29, § 1, p. 134; Laws 1965, c. 27, § 1, p. 198; Laws 1967, c. 19, § 1, p. 117; Laws 1975, LB 269, § 1; Laws 1976, LB 561, § 1; Laws 1987, LB 615, § 1; Laws 1988, LB 375, § 1; Laws 1993, LB 81, § 1; Laws 1994, LB 611, § 1; Laws 1995, LB 384, § 1; Laws 1997, LB 137, § 1; Laws 1998, LB 1321, § 1; Laws 2000, LB 932, § 1; Laws 2002, LB 1089, § 1; Laws 2003, LB 131, § 1; Laws 2003, LB 217, § 1.

When a corporation is conducting business as a bank, that corporation falls within the purview of Nebraska's banking statutes which regulate banks and banking in this state. In re Invol. Dissolution of Battle Creek State Bank, 254 Neb. 120, 575 N.W.2d. 356 (1998).

Notwithstanding interest rate limits under Nebraska statutes, national bank in Nebraska can legally charge, on credit card transactions, same rates allowed by section 45-114 et seq. Fisher v. First Nat. Bank of Omaha, 548 F.2d 255 (8th Cir. 1977).

8-101.01 Act, how cited.

Sections 8-101 to 8-1,140 shall be known and may be cited as the Nebraska Banking Act.

Source: Laws 1998, LB 1321, § 32; Laws 1999, LB 396, § 4.

8-102 Department of Banking and Finance; supervision and control of specified financial institutions; declaration of public purpose.

The department shall, under the laws of this state specifically made applicable to each, have general supervision and control over banks, trust companies, credit unions, and building and loan associations; all of which are hereby declared to be quasi-public in nature and subject to regulation and control by the state.

Source: Laws 1963, c. 29, § 2, p. 134; Laws 2002, LB 1094, § 1; Laws 2003, LB 131, § 2.

Supervision and control extends to branches. First Fed. Sav. & Loan Assn. v. Department of Banking, 187 Neb. 562, 192 N.W.2d 736 (1971).

8-103 Director of Banking and Finance; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.

(1) The director shall have charge of and full supervision over the examination of banks and the enforcement of compliance with the statutes by banks and their holding companies in their business and functions and shall constructively aid and assist banks in maintaining proper banking standards and efficiency. The director shall also have charge of and full supervision over the examination of and the enforcement of compliance with the statutes by trust companies, building and loan associations, and credit unions in their business and functions and shall constructively aid and assist trust companies, building and loan associations, and credit unions in maintaining proper standards and efficiency.

(2) If the director is financially interested directly or indirectly in any financial institution doing business in Nebraska, subject to his or her jurisdiction, the financial institution shall be under the direct supervision of the Governor, and as to such financial institution, the Governor shall exercise all the supervisory powers otherwise vested in the Director of Banking and Finance by the laws of this state, and reports of examination by state bank examiners, foreign state bank examiners, examiners of the Federal Reserve Board, examiners of the Office of the Comptroller of the Currency, and examiners for the Federal Deposit Insurance Corporation shall be transmitted to the Governor.

(3)(a) No person employed by the department shall be permitted to borrow money from any financial institution doing business in Nebraska subject to the jurisdiction of the department, except that persons employed by the department may borrow money in the normal course of business from the Nebraska State Employees Credit Union.

(b) In the event a loan to a person employed by the department is sold or otherwise transferred to a financial institution doing business in Nebraska and subject to the jurisdiction of the department, no violation of this section occurs if (i) the person employed by the department did not solicit the sale or transfer of the loan and (ii) the person employed by the department gives notice to the director of such sale or transfer. The director, in his or her discretion, may require such person to make all reasonable efforts to seek another lender.

(4) Any person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

Source: Laws 1933, c. 18, § 2, p. 135; C.S.Supp.,1941, § 8-1,123; R.S. 1943, § 8-102; Laws 1963, c. 29, § 3, p. 135; Laws 1967, c. 20,

§ 1, p. 122; Laws 1985, LB 653, § 1; Laws 1988, LB 375, § 2; Laws 1996, LB 1053, § 1; Laws 2002, LB 1094, § 2; Laws 2003, LB 131, § 3.

8-103.01 Repealed. Laws 2002, LB 1094, § 19.

8-104 Director of Banking and Finance; oath; bond or insurance.

The director shall, before assuming the duties of office, take and subscribe to the constitutional oath of office, and file the same in the office of the Secretary of State, and shall be bonded or insured as required by section 11-201.

Source: Laws 1933, c. 18, § 1, p. 134; Laws 1935, c. 12, § 1, p. 81; C.S.Supp.,1941, § 8-1,122; R.S.1943, § 8-101; Laws 1947, c. 16, § 2, p. 96; Laws 1947, c. 11, § 1, p. 75; Laws 1951, c. 303, § 1, p. 994; Laws 1957, c. 367, § 2, p. 1289; Laws 1959, c. 425, § 1, p. 1427; Laws 1961, c. 14, § 1, p. 106; R.R.S.1943, § 8-101; Laws 1963, c. 29, § 4, p. 135; Laws 1967, c. 20, § 2, p. 122; Laws 1978, LB 653, § 4; Laws 2004, LB 884, § 3.

Cross References

For provisions of premium on bond of receiver, see section 25-21,218.
For provisions relating to appointment of Director of Banking and Finance, see section 81-102.

Department of Banking is a legal entity, and as receiver and liquidating agent of bank, had authority, by proceeding in court, to prosecute action to collect stockholders' liability. Department of Banking v. Foe, 136 Neb. 422, 286 N.W. 264 (1939).

Under this section, the Department of Banking is a legal entity and has authority to sue. In re Estate of Hall, 136 Neb. 417, 286 N.W. 262 (1939); Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

Under 1929 act, Department of Banking was ineligible to be appointed a judicial receiver because it was not a qualified legal entity. State ex rel. Sorensen v. Hoskins State Bank, 132 Neb. 878, 273 N.W. 834 (1937).

8-105 Deputies; examiners and assistants; disqualifications; salaries; bond or insurance.

(1) The director may employ such deputies, examiners, and other assistants as he or she may need to discharge in a proper manner the duties imposed upon him or her by law. Neither the director, nor any deputy or assistant, shall employ any person who at the time of hire is a relative of the director or a relative of any deputy or assistant in the work of the department. The deputies, examiners, and other assistants shall perform such duties as shall be assigned to them. The deputies and financial institution examiners hired after March 4, 2003, shall hold office at the will of the director and shall receive such salary as set by the director and approved by the Governor based upon the level of credentials for the positions. Each employee who is employed as a deputy or a financial institution examiner on March 4, 2003, may elect to become employed at will. The election to become employed at will may be made at any time upon notification to the director in writing, but once made, such election shall be final. Until the election to be employed at will is made, the employee shall be treated as continuing participation in the State Personnel System. The director shall, with the approval of the Governor, fix the compensation of the other examiners and assistants, which shall be paid either monthly or on a biweekly basis.

(2) The deputies, examiners, and other assistants, before assuming the duties of office, shall be bonded or insured as required by section 11-201.

Source: Laws 1933, c. 18, § 3, p. 135; Laws 1933, c. 19, § 3, p. 186; C.S.Supp.,1941, § 8-1,124; Laws 1943, c. 13, § 1, p. 77; R.S. 1943, § 8-103; Laws 1945, c. 238, § 19, p. 712; Laws 1947, c. 16,

§ 3, p. 97; Laws 1951, c. 311, § 1, p. 1065; Laws 1955, c. 9, § 1, p. 74; R.R.S.1943, § 8-103; Laws 1963, c. 29, § 5, p. 135; Laws 1973, LB 164, § 1; Laws 1978, LB 653, § 5; Laws 1996, LB 1053, § 2; Laws 2003, LB 85, § 1; Laws 2004, LB 884, § 4.

8-106 Director of Banking and Finance; rules and regulations; power to make; standards.

The director shall have the power to make such rules and to establish such regulations for the government of banks under his supervision as may in his judgment seem wise and expedient and which do not in any way conflict with any of the provisions of law. In making such rules and regulations, the director shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions.

Source: Laws 1923, c. 191, § 34, p. 457; C.S.1929, § 8-104; Laws 1933, c. 18, § 7, p. 137; C.S.Supp.,1941, § 8-104; R.S.1943, § 8-107; Laws 1963, c. 29, § 6, p. 136.

Cross References

For adoption and promulgation of administrative rules, see sections 84-901 to 84-920.

8-107 Banks; books and accounts; failure to keep; penalty.

The department shall have power to require the officers of any bank, or any of them, to open and keep such books or accounts as the department in its discretion may determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such bank. Any bank that refuses or neglects to open and keep such books or accounts as may be prescribed by the department shall be subject to a penalty of ten dollars for each day it neglects or fails to open and keep such books and accounts after receiving written notice from the department. Such penalty may be collected in the manner prescribed for the collection of fees for the examination of such bank.

Source: Laws 1923, c. 191, § 33, p. 456; C.S.1929, § 8-102; Laws 1933, c. 18, § 5, p. 136; C.S.Supp.,1941, § 8-102; R.S.1943, § 8-105; Laws 1963, c. 29, § 7, p. 136.

Bank officer must enter up transaction at once. State ex rel. Sorensen v. Citizens State Bank of Wahoo, 124 Neb. 846, 248 N.W. 388 (1933).

8-108 Director of Banking and Finance; financial institution examination; powers; procedure; charge.

The director, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, papers, and affairs of any bank or other institution in Nebraska subject to the department's jurisdiction, or its holding company, if any, and in so doing to administer oaths and affirmations, to examine on oath or affirmation the officers, agents, and clerks of such institution or its holding company, if any, touching the matter which they may be authorized and directed to inquire into and examine, and to subpoena the attendance of any person or persons in this state to testify under oath or affirmation in relation to the affairs of such institution or its holding company, if any. Such powers shall include, but not be limited to, the authority to examine and monitor by electronic means the books, papers, and affairs of

any financial institution or the holding company of a financial institution. The examination may be in the presence of at least two members of the board of directors of the institution or its holding company, if any, undergoing such examination, and it shall be the duty of the examiner to incorporate in his or her report the names of the directors in whose presence the examination was made. The director may accept any examination or report from the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency. The director may provide any such examination or report to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency. The department shall have power to examine the books, papers, and affairs of any electronic data processing center which has contracted with a financial institution to conduct the financial institution's electronic data processing business. The department may charge the electronic data processing center for the time spent by examiners in such examination at the rate set forth in section 8-606 for examiners' time spent in examinations of financial institutions.

Source: Laws 1909, c. 10, § 8, p. 69; R.S.1913, § 287; Laws 1919, c. 190, tit. V, art. XVI, § 6, p. 687; C.S.1922, § 7987; Laws 1923, c. 191, § 8, p. 441; C.S.1929, § 8-118; Laws 1933, c. 18, § 13, p. 142; C.S.Supp.,1941, § 8-118; R.S.1943, § 8-115; Laws 1963, c. 29, § 8, p. 137; Laws 1985, LB 653, § 2; Laws 1988, LB 375, § 3; Laws 1992, LB 757, § 2; Laws 2007, LB124, § 1.

8-109 Bank examiner; failure to report unlawful conduct or unsafe condition; penalty.

If any bank examiner shall have knowledge of the insolvency or unsafe condition of any bank under state supervision, or that there are bad or doubtful assets in such bank, or that the bank or any of its officers has violated any law governing the conduct of the bank, or that it is unsafe and inexpedient to permit such bank to continue business, and shall fail to forthwith report such fact in writing over his signature to the department, he shall be guilty of a Class II misdemeanor and shall forfeit his office.

Source: Laws 1923, c. 191, § 36, p. 457; Laws 1925, c. 30, § 8, p. 127; C.S.1929, § 8-110; Laws 1933, c. 18, § 9, p. 139; C.S.Supp.,1941, § 8-110; R.S.1943, § 8-108; Laws 1963, c. 29, § 9, p. 137; Laws 1977, LB 40, § 37.

8-110 Banks; bonds; filing; approval; requirements; open to inspection.

The department shall require each state bank to obtain a fidelity bond, naming the bank as obligee, in an amount to be fixed by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the bank from loss which it may sustain, of money or other personal property, including that for which the bank 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 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. 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. 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 bank involved.

Source: C.S.1929, § 8-103; Laws 1930, Spec. Sess., c. 6, § 13, p. 32; Laws 1933, c. 18, § 6, p. 137; C.S.Supp.,1941, § 8-103; R.S.1943, § 8-106; Laws 1963, c. 29, § 10, p. 138; Laws 1973, LB 164, § 2; Laws 1979, LB 220, § 1; Laws 1985, LB 653, § 3.

Each executive officer of a state bank is required by this section to give a surety bond to protect it from pecuniary loss sustained by it through forbidden acts committed directly by him or by connivance with others. Luikart v. Flannigan, 130 Neb. 901, 267 N.W. 165 (1936).

8-111 Director of Banking and Finance; real estate; power to convey; execution of conveyance.

The director may convey any real estate title to which is vested in the Department of Banking and Finance by operation of law or otherwise. Such conveyance shall be signed by the director, sealed with the seal of the department, and acknowledged by the director.

Source: Laws 1925, c. 30, § 7, p. 127; Laws 1929, c. 38, § 20, p. 167; C.S.1929, § 8-112; Laws 1933, c. 18, § 10, p. 140; C.S.Supp.,1941, § 8-112; R.S.1943, § 8-109; Laws 1963, c. 29, § 11, p. 138.

8-112 Director of Banking and Finance; records required; list of borrowers; disclosures prohibited; confidential records.

(1) The director shall keep, as records of his or her office, proper books showing all acts, matters, and things done under the jurisdiction of the department. Neither the director nor anyone connected with the department shall in any instance disclose the name of any depositor or debtor of any financial institution or other entity regulated by the department or the amount of his or her deposit or debt to anyone, except insofar as may be necessary in the performance of his or her official duty, except that the department may maintain a record of borrowers from the financial institutions in this state and may give information concerning the total liabilities of any such borrowers to any financial institution owning obligations of such borrowers.

(2) Examination reports, investigation reports, and documents and information relating to such reports are confidential records of the department and may be released or disclosed only (a) insofar as is necessary in the performance of the official duty of the department or (b) pursuant to a properly issued subpoena and upon entry of a protective order from a court of competent jurisdiction to protect and keep confidential the names of borrowers or depositors or to protect the public interest. If examination reports, investigation reports, or documents and information relating to such reports are subpoenaed from the department, the party issuing the subpoena shall give notice of the issuance of such subpoena at least three business days in advance of the entry of a protective order to the financial institution which is the subject of such reports or documents and information, unless the financial institution is al-

ready a party to the underlying proceeding or unless such notice is otherwise prohibited by law or by court order.

Source: Laws 1923, c. 191, § 35, p. 457; Laws 1929, c. 38, § 18, p. 166; C.S.1929, § 8-119; Laws 1933, c. 18, § 14, p. 142; C.S.Supp.,1941, § 8-119; R.S.1943, § 8-116; Laws 1963, c. 29, § 12, p. 138; Laws 1987, LB 2, § 1; Laws 1996, LB 1053, § 3; Laws 1997, LB 137, § 2; Laws 1999, LB 396, § 6.

8-113 Unauthorized use of word bank or its derivatives; penalty.

No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity. This section does not apply to: (1) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency; (2) bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used; (3) affiliates or subsidiaries of (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used; (4) organizations substantially owned by (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used, or (d) any combination of entities listed in subdivisions (a) through (c) of this subdivision; (5) mortgage bankers licensed or registered under the Mortgage Bankers Registration and Licensing Act, if the word mortgage immediately precedes the word bank or its derivative; (6) organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 and exempt from taxation under section 501(a) of the code; (7) trade associations which are exempt from taxation under section 501(c)(6) of the code which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof; and (8) such other firms, companies, corporations, or associations as have been in existence and doing business prior to December 1, 1975, under a name composed in part of the word bank or some derivative thereof. Any violation of this section shall be a Class V misdemeanor.

Source: Laws 1921, c. 297, § 1, p. 949; Laws 1921, c. 313, § 1, p. 1000; C.S.1922, § 7985; Laws 1929, c. 37, § 1, p. 155; C.S.1929, § 8-116; Laws 1933, c. 18, § 12, p. 141; C.S.Supp.,1941, § 8-116;

R.S.1943, § 8-113; Laws 1963, c. 29, § 13, p. 139; Laws 1977, LB 40, § 38; Laws 1987, LB 2, § 2; Laws 1998, LB 1321, § 2; Laws 2004, LB 999, § 1; Laws 2005, LB 533, § 1; Laws 2007, LB124, § 2.

Cross References

Mortgage Bankers Registration and Licensing Act, see section 45-701.

8-114 Banks; corporate status required; unlawful banking; penalty.

It shall be unlawful for any person to conduct a bank within this state except by means of a corporation duly organized for such purpose under the laws of this state. It shall be unlawful for any corporation to receive money upon deposit or conduct a bank under the laws of this state until such corporation has complied with all the provisions and requirements of the Nebraska Banking Act. Any violation of this section shall be a Class V misdemeanor for each day of the continuation of such offense and be cause for the appointment of a receiver as provided in the act to wind up such banking business.

Source: Laws 1909, c. 10, § 2, p. 66; R.S.1913, § 281; Laws 1919, c. 190, tit. V, art. XVI, § 3, p. 686; C.S.1922, § 7984; C.S.1929, § 8-115; R.S.1943, § 8-111; Laws 1963, c. 29, § 14, p. 139; Laws 1977, LB 40, § 39; Laws 1987, LB 2, § 3; Laws 1998, LB 1321, § 3.

Where a federal savings and loan association installs a computer in a store to facilitate electronic transfer of funds between the association and its depositors, the store operator, by manning the computer, is not engaging in a banking or savings and loan business. State ex rel. Meyer v. American Community Stores Corp., 193 Neb. 634, 228 N.W.2d 299 (1975).

It is unlawful to conduct a bank except by means of a corporation. First Nat. Bank & Trust Co. v. Ley, 182 Neb. 164, 153 N.W.2d 743 (1967).

8-115 Banks; charter required.

No corporation shall conduct a bank in this state without having first obtained a charter in the manner provided in the Nebraska Banking Act.

Source: Laws 1909, c. 10, § 11, p. 71; R.S.1913, § 290; Laws 1919, c. 190, tit. V, art. XVI, § 9, p. 689; C.S.1922, § 7990; C.S.1929, § 8-120; Laws 1933, c. 18, § 15, p. 143; C.S.Supp.,1941, § 8-120; R.S. 1943, § 8-117; Laws 1963, c. 29, § 15, p. 140; Laws 1987, LB 2, § 4; Laws 1998, LB 1321, § 4.

When application is made for charter, it is the duty of state officials to investigate and determine integrity and responsibility of applicants for charter. Shumway v. Warrick, 108 Neb. 652, 189 N.W. 301 (1922).

State Banking Board did not abuse discretion in refusing charter where evidence of unfitness and unfavorable financial ability was presented. In re Commercial State Bank, 105 Neb. 248, 179 N.W. 1021 (1920).

Refusal to grant charter is not justified where required capital paid in and proposed stockholders show requisite qualifications. State ex rel. Woolridge v. Morehead, 100 Neb. 864, 161 N.W. 569 (1917), L.R.A. 1917D 310 (1917).

Discretionary power given to state officials to refuse charter to savings bank to be conducted in same room and with same directors as national bank. State ex rel. Chamberlin v. Morehead, 99 Neb. 146, 155 N.W. 879 (1915).

Even though issued a charter under state law, state bank which becomes a member of Federal Deposit Insurance Corporation thereby becomes an instrumentality of United States, and federal statute forbidding embezzlement of funds of member bank applies to officer of such bank. United States v. Doherty, 18 F.Supp. 793 (D. Neb. 1937), affirmed 94 F.2d 495 (8th Cir. 1938).

8-115.01 Banks; new charter; transfer of charter; procedure.

When an application required by section 8-120 is made by a corporation, the following procedures shall be followed:

(1) Except as provided for in subdivision (2) of this section, when application is made for a new bank charter, 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 bank. 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 for a new bank charter and the director determines, in his or her discretion, that the conditions of subdivision (3) of this section are met, then the public hearing requirement of subdivision (1) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county where the main office of the applicant is to be located and (b) after giving notice to all financial institutions located within such county, the director receives a substantive objection to the application within fifteen days after the first day of publication;

(3) The director shall consider the following in each application before the public hearing requirement of subdivision (1) of this section may be waived:

(a) Whether the experience, character, and general fitness of the applicant and of the applicant's officers and directors is such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently;

(b) Whether the length of time that the applicant or a majority of the applicant's officers, directors, and shareholders have been involved in the business of banking in this state has been for a minimum of five consecutive years; and

(c) Whether the condition of financial institutions currently owned by the applicant, the applicant's holding company, if any, or the applicant's officers, directors, or shareholders is such as to indicate that a hearing on the current application would not be necessary;

(4) Except as provided in subdivision (6) of this section, when application is made for transfer of a bank charter and move of the main office of a bank to any location other than within the corporate limits of the city or village of its original charter or, if such bank charter is not located in a city or village, then for transfer outside the county in which it is located, 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 warrants a hearing. If the director determines that the condition of the applicant 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 main office and charter of the applicant would be located and (b) give notice of such application to all financial institutions located within the county where the proposed main office and charter would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed relocation within fifteen days after the first day of publication, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subdivision shall be published for two consecutive weeks in a newspaper of general circulation in the county where the main office 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. When the persons making application for transfer of a main office and charter are officers

or directors of the bank, there is a rebuttable presumption that such persons are parties of integrity and responsibility;

(5) Except as provided in subdivision (6) of this section, when application is made for a move of any bank's main office within the city, village, or county, if not chartered within a city or village, of its original charter, the director shall publish notice of the proposed move in a newspaper of general circulation in the county where the main office of the applicant is located and shall give notice of such intended move to all financial institutions located within the county where such bank is located. If the director receives a substantive objection to such move within fifteen days after publishing such notice, he or she shall publish an additional notice and hold a hearing as provided in subdivision (1) of this section;

(6) With the approval of the director, a bank may move its main office and charter to the location of a branch of the bank without public notice or hearing as long as (a) the condition of the bank, in the discretion of the director, does not warrant a hearing and (b) the branch (i) is located in Nebraska, (ii) has been in operation for at least one year as a branch of the bank or was acquired by the bank pursuant to section 8-1506 or 8-1516, and (iii) is simultaneously relocated to the original main office location;

(7) 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;

(8) The expense of any publication and certified mailing required by this section shall be paid by the applicant; and

(9) Notwithstanding any provision of this section, the director shall take immediate action on any charter application or applications concerned without the benefit of a hearing in the case of an emergency so declared by the Governor, the Secretary of State, and the director.

Source: Laws 1965, c. 25, § 1, p. 191; Laws 1967, c. 19, § 2, p. 117; Laws 1973, LB 164, § 3; Laws 1974, LB 721, § 1; Laws 1979, LB 220, § 2; Laws 2002, LB 957, § 1; Laws 2003, LB 217, § 2; Laws 2005, LB 533, § 2.

8-116 Banks; capital stock; undivided profits; amount required.

(1) A charter for a bank hereafter organized shall not be issued unless the corporation applying therefor shall have a surplus of not less than fifty thousand dollars or fifty percent of its paid-up capital stock, whichever is greater, and a paid-up capital stock as follows: In villages or counties of less than one thousand inhabitants, one hundred thousand dollars; in cities, villages, or counties of one thousand or more and less than twenty-five thousand inhabitants, not less than one hundred fifty thousand dollars; in cities or counties of twenty-five thousand or more and less than one hundred thousand inhabitants, not less than two hundred thousand dollars; and in cities or counties of one hundred thousand or more inhabitants, not less than five hundred thousand dollars. Such corporation shall also have minimum paid-in undivided profits of not less than twenty percent of its paid-up capital stock.

(2) Notwithstanding subsection (1) of this section, the department shall have the authority to determine the minimum amount of paid-up capital stock,

surplus, and paid-in undivided profits required for any corporation applying for a bank charter, which amounts shall not be less than the amounts provided in subsection (1) of this section.

(3) For purposes of this section, population shall be determined by the most recent federal decennial census.

Source: Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 95; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(1), p. 102; R.S.1943, § 8-119; Laws 1959, c. 15, § 3, p. 132; Laws 1961, c. 15, § 1, p. 111; R.R.S.1943, § 8-119; Laws 1963, c. 29, § 16, p. 140; Laws 1967, c. 19, § 3, p. 118; Laws 1973, LB 164, § 4; Laws 1979, LB 220, § 3; Laws 1983, LB 252, § 2; Laws 2002, LB 1094, § 3.

8-116.01 Banks; capital notes and debentures; issuance; conditions.

With the approval of the director, any bank may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors. The capital stock of any bank as such term capital stock is used respectively in sections 8-116, 8-118, and 8-127, the capital of any corporation transacting a banking business as the term capital is used in section 8-187, and the capital of a bank as the term capital is used in section 8-132, shall be deemed to be unimpaired when the amount of such capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the department. Before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of its capital, disregarding the notes or debentures to be retired, must be paid in, in cash, to the end that the sound capital assets shall at least equal the capital or capital stock of the bank in the sense such terms capital and capital stock are used in the respective sections named. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such bank and shall not be held liable for assessments to restore impairments in the capital of such bank.

Source: Laws 1935, c. 8, § 11, p. 76; C.S.Supp.,1941, § 8-411; R.S.1943, § 8-710; Laws 1961, c. 14, § 9, p. 109; R.R.S.1943, § 8-710; Laws 1973, LB 164, § 5; Laws 2003, LB 217, § 3; Laws 2005, LB 533, § 3.

8-117 Repealed. Laws 2002, LB 1094, § 19.

8-117.01 Repealed. Laws 2002, LB 1094, § 19.

8-118 Banks; unlawful promotion; sale of stock prior to issuance of charter; penalty.

It shall be unlawful for any person for hire (1) to promote or attempt to promote the organization of a corporation to conduct the business of a bank in this state or (2) to sell the capital stock of such a corporation prior to the issuance of a charter to such corporation authorizing its operation as a bank.

Any person violating the provisions of this section shall be guilty of a Class II misdemeanor.

Source: Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 96; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(4), p. 103; R.S.1943, § 8-122; Laws 1959, c. 15, § 6, p. 134; R.R.S.1943, § 8-122; Laws 1963, c. 29, § 18, p. 141; Laws 1967, c. 19, § 5, p. 119; Laws 1973, LB 164, § 6; Laws 1977, LB 40, § 40.

8-119 Capital stock; sale; compensation prohibited; false statement; penalties.

No corporation organized for the purpose of conducting a bank under the laws of this state shall be granted the certificate provided in section 8-121, or the charter provided in section 8-122, until there shall have been filed with the department a statement, under oath, of the president or cashier of such corporation that no premium, bonus, commission, compensation, reward, salary, or other form of remuneration has been paid, or promised to be paid, to any person for selling the stock of such corporation. The president or cashier of any such corporation who shall be found guilty of filing a false statement under the provisions of this section shall be guilty of a Class I misdemeanor. Whenever, after such certificate and charter shall have been delivered, the department shall determine, after a public hearing that such statement is false, it shall cancel such certificate and charter, and a receiver shall be appointed for such corporation in the manner provided for in case of a corporation which is conducting a bank in an unsafe or unauthorized manner.

Source: Laws 1919, c. 190, tit. V, art. XVI, § 54, p. 708; C.S.1922, § 8034; C.S.1929, § 8-128; R.S.1943, § 8-130; Laws 1963, c. 29, § 19, p. 141; Laws 1967, c. 19, § 5, p. 119; Laws 1973, LB 164, § 7; Laws 1977, LB 40, § 41.

This section is referred to as providing penalty of fine and imprisonment, in contrasting this section with another section of the banking act which failed to provide a penalty, and holding that the failure to provide a penalty disclosed legislative intent that statute should be directory rather than mandatory. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-120 Corporation; application to conduct, merge, or transfer bank; contents.

(1) Every corporation organized for and desiring to conduct a bank or to conduct a bank for purposes of a merger with an existing bank shall make under oath and transmit to the department a complete detailed application giving (a) the name of the proposed bank; (b) a certified copy of the articles of incorporation; (c) the names of the stockholders; (d) the county, city, or village and the exact location therein in which such bank is proposed to be located; (e) the nature of the proposed banking business; (f) the proposed amounts of paid-up capital stock, surplus, and undivided profits, and the items of actual cash and property, as reported and approved at a meeting of the stockholders, to be included in such amounts; and (g) a statement that at least twenty percent of the amounts stated in subdivision (f) of this subsection have in fact been paid in to the corporation by its stockholders.

(2) In the case of a merger, the existing bank which is to be merged into shall complete an application and meet the requirements of this section.

(3) This section also applies when application is made for transfer of a bank charter and move of a bank's main office to any location other than (a) within the corporate limits of the city or village of its original charter, (b) within the county in which it is located if such bank charter is not located in a city or village, or (c) as provided in subdivision (6) of section 8-115.01.

Source: Laws 1909, c. 10, § 15, p. 74; R.S.1913, § 294; Laws 1919, c. 190, tit. V, art. XVI, § 15, p. 691; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 7996; C.S.1929, § 8-126; Laws 1933, c. 18, § 17, p. 143; C.S.Supp.,1941, § 8-126; R.S.1943, § 8-128; Laws 1959, c. 15, § 9, p. 135; R.R.S.1943, § 8-128; Laws 1963, c. 29, § 20, p. 142; Laws 1967, c. 19, § 7, p. 120; Laws 1980, LB 916, § 1; Laws 2002, LB 957, § 2; Laws 2005, LB 533, § 4.

Where it appears in an error proceeding that an administrative agency acted within its jurisdiction and there is some competent evidence to sustain its findings and order, the order will be sustained. First Nat. Bank of Bellevue v. Southroads Bank, 189 Neb. 748, 205 N.W.2d 346 (1973).

Preliminary statement, without articles of incorporation, was sufficient. First Nat. Bank & Trust Co. of Beatrice v. Ley, 182 Neb. 164, 153 N.W.2d 743 (1967).

8-121 Corporation; examination of application by department; charter approval intended; certificate; issuance.

If the department, upon examination of the application required by section 8-120, is satisfied that such corporation has complied with the requirements of the Nebraska Banking Act and if charter approval is intended, it shall issue to such corporation a certificate stating that such corporation has complied with the laws of this state, advising of any requirements which must be met.

Source: Laws 1909, c. 10, § 14, p. 73; Laws 1911, c. 8, § 14, p. 79; R.S.1913, § 293; Laws 1919, c. 90, tit. V, art. XVI, § 14, p. 691; Laws 1921, c. 302, § 1, p. 957; C.S.1922, § 7995; Laws 1925, c. 28, § 2, p. 120; C.S.1929, § 8-125; Laws 1930, Spec. Sess., c. 6, § 15, p. 33; Laws 1933, c. 18, § 16, p. 143; C.S.Supp.,1941, § 8-125; R.S.1943, § 8-127; Laws 1963, c. 29, § 21, p. 142; Laws 1967, c. 19, § 8, p. 120; Laws 1973, LB 164, § 8; Laws 1987, LB 2, § 5; Laws 1998, LB 1321, § 5.

Charter and certificate may issue although all requirements have not been met. First Nat. Bank & Trust Co. of Beatrice v. Ley, 182 Neb. 164, 153 N.W.2d 743 (1967).

8-122 Issuance of charter to transact business.

(1) After the examination and approval by the department of the application required by section 8-120, if the department upon investigation and after any public hearing on the application held pursuant to section 8-115.01 shall be satisfied that the stockholders and officers of the corporation applying for such charter are parties of integrity and responsibility, that the requirements of section 8-702 have been met, and that the public necessity, convenience, and advantage will be promoted by permitting such corporation to engage in business as a bank, the department shall, upon the payment of the required fees, and, upon the filing with the department of a statement, under oath, of the president, secretary, or treasurer, that the paid-up capital stock, surplus, and undivided profits have been paid in, as determined by the department in accordance with section 8-116, issue to such corporation a charter to transact the business of a bank in this state provided for in its articles of incorporation. In the case of a bank organized to merge with an existing bank, there shall be a

rebuttable presumption that the public necessity, convenience, and advantage will be met by the merger of the two banks, except that such presumption shall not apply when the new bank that is formed by the merger is at a different location than that of the former existing bank. Any application for merger under this subsection shall be subject to section 8-1516.

(2) On payment of the required fees and the receipt of the charter, such corporation may begin to conduct a bank.

Source: Laws 1909, c. 10, § 16, p. 74; Laws 1911, c. 8, § 1, p. 79; R.S.1913, § 295; Laws 1919, c. 190, tit. V, art. XVI, § 16, p. 692; Laws 1921, c. 302, § 2, p. 958; C.S.1922, § 7997; C.S.1929, § 8-127; R.S.1943, § 8-129; Laws 1947, c. 12, § 1, p. 77; Laws 1957, c. 10, § 1, p. 128; R.R.S.1943, § 8-129; Laws 1963, c. 29, § 22, p. 142; Laws 1967, c. 19, § 9, p. 120; Laws 1980, LB 916, § 2; Laws 1983, LB 252, § 3; Laws 1996, LB 1275, § 2; Laws 2002, LB 957, § 3; Laws 2002, LB 1094, § 4.

The Department of Banking and Finance is required to hold a public hearing to determine, among other things, the integrity of the parties applying for a bank merger and the fairness of the merger to minority shareholders. Schmid v. Clarke, Inc., 245 Neb. 856, 515 N.W.2d 665 (1994).

When more than one application is filed for a given license, the Department of Banking and Finance should compare the applications rather than follow a strict first-to-file rule. Southwestern Bank & Trust Co. v. Department of Banking and Finance, 206 Neb. 599, 294 N.W.2d 343 (1980).

This section involves the granting of a bank charter and not the removal of one. Douglas County Bank v. Department of Banking, 187 Neb. 545, 192 N.W.2d 401 (1971).

Finding of Department of Banking in the language of this section is adequate to sustain the issuance of a charter. First Nat. Bank & Trust Co. v. Ley, 182 Neb. 164, 153 N.W.2d 743 (1967).

When an application is made to Department of Banking for a charter to do a banking business, it is its duty to determine, after proper investigation, the integrity and responsibility of the persons making the application. Shumway v. Warrick, 108 Neb. 652, 189 N.W. 301 (1922).

Where it appears that Department of Banking, in granting a charter, has acted within its jurisdiction, and all the jurisdictional facts essential to uphold its final order are sustained by competent evidence, its action will be upheld on review in error proceedings. In re Commercial State Bank, 105 Neb. 248, 179 N.W.1021 (1920).

Under this section, prior to its amendment in 1921, where a corporation filed the oath that the capital stock had been paid in, and if parties were of integrity and responsibility and paid the fees required by law, the corporation was entitled to a charter irrespective of the number of banks in the locality. State ex rel. Woolridge v. Morehead, 100 Neb. 864, 161 N.W. 569 (1917), L.R.A. 1917D 310 (1917).

8-122.01 Repealed. Laws 2002, LB 1094, § 19.

8-123 Transferred to section 8-1902.

8-124 Banks; board of directors; officers; term; meetings; examination; audit.

The affairs and business of any bank chartered after September 2, 1973, or which has had transfer of twenty-five percent or more of voting shares after September 2, 1973, shall be managed or controlled by a board of directors of not less than five and not more than fifteen members, who shall be selected at such time and in such manner as may be provided by the articles of incorporation of the corporation and in conformity with the Nebraska Banking Act. Any bank chartered before September 2, 1973, may have a minimum of three directors and not more than fifteen directors so long as it does not have transfer of twenty-five percent or more voting shares, with such directors selected as provided in this section. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. The board shall appoint a secretary and, from among its own members, select a president. Such officers shall hold their office at the pleasure of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter, and at one of such meetings in each year a thorough examination of

the books, records, funds, and securities held by the bank shall be made and recorded in detail upon its record book. In lieu of the one annual examination required, the board of directors may accept one annual audit by an accountant or accounting firm approved by the Director of Banking and Finance.

Source: Laws 1909, c. 10, § 26, p. 78; Laws 1911, c. 8, § 26, p. 81; R.S.1913, § 305; Laws 1919, c. 190, tit. V, art. XVI, § 26, p. 696; C.S.1922, § 8007; C.S.1929, § 8-138; R.S.1943, § 8-140; Laws 1961, c. 15, § 4, p. 112; R.R.S.1943, § 8-140; Laws 1963, c. 29, § 24, p. 143; Laws 1967, c. 21, § 1, p. 123; Laws 1973, LB 164, § 9; Laws 1974, LB 721, § 2; Laws 1987, LB 2, § 6; Laws 1998, LB 1321, § 6; Laws 2005, LB 533, § 5; Laws 2007, LB124, § 3.

Terms of office of a bank officer are required to be for one year. Sullivan v. David City Bank, 181 Neb. 395, 148 N.W.2d 844 (1967).

Person who permits himself to be held out as director of bank is estopped to deny that he was owner of sufficient shares in his own right to qualify as director. Kienke v. Kirsch, 121 Neb. 688, 238 N.W. 33 (1931).

Buying capital stock of rival bank not an ordinary banking transaction within the powers of a stockholder, the president, a single director, or all combined. Cooper v. Bane, 110 Neb. 83, 196 N.W. 119 (1923).

8-124.01 Banks; board of directors; vacancy; notice; filling; notice.

At any time that a vacancy on the board of directors of a bank occurs, the bank shall, within thirty days, notify the department of the vacancy. Vacancies shall be filled within ninety days by appointment by the remaining directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. When the vacancy has been filled, the bank shall notify the department that the vacancy has been filled and include in the notice the name, address, and occupation of the director appointed.

Source: Laws 1973, LB 164, § 10; Laws 1995, LB 599, § 1.

8-125 Banks; board of directors; meetings; record; contents; publication.

A full and complete record of the proceedings and business of all meetings of the board of directors shall be spread upon the bank's minutes. Such record of the meetings shall show the gross earnings and disposition thereof by indicating expenses and taxes paid, worthless items charged off, depreciation in assets, amount carried to surplus fund, and amount of dividend, and shall also indicate the amount of undivided profits remaining. Published statements of assets and liabilities shall show for undivided profits only the net amount after deducting all expenses.

Source: Laws 1923, c. 191, § 37, p. 458; C.S.1929, § 8-139; R.S.1943, § 8-141; Laws 1963, c. 29, § 25, p. 144.

8-126 Bank directors; qualifications; approval by department; revocation of approval; procedure.

A majority of the members of the board of directors of any bank transacting business under the Nebraska Banking Act shall have their residences in this state or within twenty-five miles of the main office of the bank. Reasonable efforts shall be made to acquire members of such board of directors from the county in which such bank is located. Directors of banks shall be persons of good moral character, known integrity, business experience, and responsibility. No person shall act as a member of the board of directors of any bank until such bank applies for and obtains approval from the Department of Banking and Finance.

If the department, upon investigation, determines that any director of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors, the department shall have authority, following notice and opportunity for hearing, to revoke such approval to act as a member of the board of directors. The department may adopt and promulgate rules and regulations and prescribe forms to carry out this section.

Source: Laws 1909, c. 10, § 12, p. 71; R.S.1913, § 291; Laws 1919, c. 190, tit. V, art. XVI, § 10, p. 689; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 7991; C.S.1929, § 8-121; Laws 1935, c. 7, § 1, p. 70; C.S.Supp.,1941, § 8-121; R.S.1943, § 8-118; Laws 1959, c. 15, § 2, p. 132; R.R.S.1943, § 8-118; Laws 1963, c. 29, § 26, p. 144; Laws 1973, LB 164, § 11; Laws 1986, LB 1035, § 1; Laws 1987, LB 2, § 7; Laws 1988, LB 996, § 1; Laws 1989, LB 322, § 1; Laws 1993, LB 81, § 2; Laws 1997, LB 137, § 3; Laws 1998, LB 1321, § 7.

Under former law a director of commercial state bank must have been the owner of at least four percent of its capital stock in his own name and right, and a person having acted as director was estopped to deny ownership of stock standing in his name. Kienke v. Hudson, 122 Neb. 475, 240 N.W. 562 (1932); Kienke v. Kirsch, 121 Neb. 688, 238 N.W. 33 (1931).

8-127 List of stockholders; open to inspection; violation; penalty.

The president and cashier, or the business manager, of every bank shall cause to be kept at all times a full and correct list of the names and residences of all its stockholders, the number of shares held by each, and the amount of paid-up capital represented thereby. Such list shall be subject to the inspection of all stockholders of the bank during all business hours, and shall be kept in the business office where all stockholders may have ready access to it. Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 1909, c. 10, § 38, p. 85; R.S.1913, § 317; Laws 1919, c. 190, tit. V, art. XVI, § 38, p. 701; C.S.1922, § 8018; C.S.1929, § 8-157; R.S.1943, § 8-162; Laws 1963, c. 29, § 27, p. 145; Laws 1977, LB 40, § 42.

8-128 Capital stock; increase; decrease; notice; publication; denial by department, when.

The paid-in capital stock of any bank may be increased or decreased in the following manner: The stockholders at any regular meeting or at any special meeting duly called for such purpose shall by vote of those owning two-thirds of the capital stock authorize the president or cashier to notify the department of the proposed increase or reduction of paid-in capital stock, and a notice containing a statement of the amount of any proposed reduction of paid-in capital stock shall be published for four weeks in some newspaper published and of general circulation in the county where such bank is located. Reduction of paid-in capital stock shall be discretionary with the department, but shall be denied if granting the same would reduce the paid-in capital stock below the requirements of the Nebraska Banking Act or would impair the security of the depositors. The bank shall notify the department when the proposed increase or decrease of the paid-in capital stock has been consummated.

Source: Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S.

1943, § 8-157; Laws 1961, c. 15, § 7, p. 113; R.R.S.1943, § 8-157; Laws 1963, c. 29, § 28, p. 145; Laws 1987, LB 2, § 8; Laws 1998, LB 1321, § 8.

8-129 Stockholders' meeting; Director of Banking and Finance may call; notice; expense.

Whenever the director shall deem it expedient he may call a meeting of the stockholders of any bank organized under the laws of this state, by mailing notice of such meeting to each stockholder five days previous thereto. All necessary expenses incurred in the giving of such notice shall be borne by the bank whose stockholders are required to convene.

Source: Laws 1933, c. 18, § 41, p. 157; C.S.Supp.,1941, § 8-1,126; R.S. 1943, § 8-1,106; Laws 1963, c. 29, § 29, p. 146.

8-130 Federal reserve system; membership by state banks and trust companies authorized; examinations.

Any bank or trust company, incorporated under the laws of this state, shall have power to subscribe to the capital stock of the Federal Reserve Bank of Kansas City, Missouri, and become a member of the federal reserve system created and organized under an act of Congress of the United States, approved December 23, 1913, and known as the Federal Reserve Act, and shall have power to assume such liabilities and to exercise such powers as a member of such system as are prescribed by the provisions of such act, or amendments thereto. So long as such bank or trust company shall remain a member of such system, it shall be subject to examination by the legally constituted authorities, and to all provisions of such Federal Reserve Act and regulations made pursuant thereto by the Federal Reserve Board which are applicable to such bank or trust company as a member of the federal reserve system. The state authorities may, in their discretion, accept examinations and audits made under the provisions of the Federal Reserve Act in lieu of examinations required of banks or trust companies organized under the laws of this state.

Source: Laws 1915, c. 175, § 1, p. 359; Laws 1919, c. 190, tit. V, art. XVI, § 65, p. 711; C.S.1922, § 8045; C.S.1929, § 8-163; R.S.1943, § 8-166; Laws 1963, c. 29, § 30, p. 146.

8-131 Repealed. Laws 2003, LB 217, § 50.

8-132 Banks; available funds; deficient reserve; impairment of capital; duty of bank; powers and duties of department; notice to bank.

The available funds of a bank shall consist of cash on hand and balances due from other solvent banks approved by the department. Cash shall include lawful money of the United States and exchange for any clearinghouse association. Whenever the available funds or any reserve of any bank are deemed deficient by the department, such bank shall not make any new loans or discount otherwise than by discounting or purchasing bills of exchange payable at sight or make any dividends of its profits until it has on hand available funds and reserve deemed sufficient for operation by the department. The department shall notify any bank, in case its available funds or reserves are deemed deficient or its capital is impaired, to make good such available funds, reserves, or capital within such time as the department may direct, and any failure of

such bank to make good any deficiency in the amount of its available funds, reserve, or capital within the time directed shall be cause for the director to take possession of such bank, declare it insolvent, and liquidate it as provided in the Nebraska Banking Act.

Source: Laws 1909, c. 10, § 23, p. 77; R.S.1913, § 302; Laws 1919, c. 190, tit. V, art. XVI, § 23, p. 695; C.S.1922, § 8004; C.S.1929, § 8-135; Laws 1933, c. 18, § 24, p. 147; C.S.Supp.,1941, § 8-135; R.S. 1943, § 8-137; R.R.S.1943, § 8-137; Laws 1963, c. 29, § 32, p. 147; Laws 1965, c. 28, § 1, p. 200; Laws 1987, LB 2, § 9; Laws 1998, LB 1321, § 9; Laws 2003, LB 217, § 4.

8-132.01 Impairment of capital; amortization of loan losses; authorized; conditions.

Whenever any examination of a bank reveals that loan losses have occurred at the bank to the extent that the capital of the bank is impaired and additional capitalization is required, such bank shall, after meeting the following qualification, be allowed to amortize such loan losses over a period of seven years. In order to meet the amortization qualification, the bank shall submit a written plan to the Director of Banking and Finance outlining specific steps the bank intends to take to avoid further deterioration and to return to profitability. The director shall have the authority to accept or reject such plan for qualification and, if accepted, shall insure that such plan is regularly reviewed.

Source: Laws 1986, LB 983, § 1; Laws 1989, LB 296, § 1.

8-133 Rate of interest; inducements prohibited; penalties.

(1) A state-chartered bank may pay interest at any rate on any deposits made or retained in the bank.

(2) Any officer, director, stockholder, or employee of a bank or any other person who directly or indirectly, either personally or for the bank, pays any money, gives any consideration of value, or pledges any assets, except as provided by law, as an inducement, in addition to the legal interest, for making or retaining a deposit in the bank shall be guilty of a Class IV felony. Any depositor who accepts any such inducement shall be guilty of a Class IV felony. Deposits made in violation of this section shall not be entitled to priority of payment from the assets of the bank. In determining the maximum interest that may be paid on deposits, the bank shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions.

(3) A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345. A bank may also secure deposits made by the United States Secretary of the Interior on behalf of any individual Indian or any Indian tribe under 25 U.S.C. 162a by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in 25 U.S.C. 162a.

(4) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor a guaranty bond

which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

Source: Laws 1909, c. 10, § 27, p. 79; Laws 1911, c. 8, § 27, p. 81; R.S.1913, § 306; Laws 1919, c. 190, tit. V, art. XVI, § 27, p. 696; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 8008; Laws 1925, c. 28, § 1, p. 119; C.S.1929, § 8-140; Laws 1930, Spec. Sess., c. 6, § 8, p. 30; Laws 1933, c. 18, § 26, p. 148; C.S.Supp.,1941, § 8-140; R.S.1943, § 8-142; Laws 1959, c. 15, § 12, p. 136; R.R.S.1943, § 8-142; Laws 1963, c. 29, § 33, p. 147; Laws 1977, LB 40, § 43; Laws 1978, LB 966, § 1; Laws 1980, LB 966, § 1; Laws 1990, LB 956, § 1; Laws 1994, LB 979, § 1; Laws 1996, LB 1053, § 4; Laws 2003, LB 217, § 5.

1. Excessive interest
2. Other inducements

1. Excessive interest

To make a prima facie case on claim against receiver of insolvent state bank, claimant need only plead and prove ownership of duly issued certificate of deposit. State ex rel. Sorensen v. State Bank of Bee, 128 Neb. 491, 259 N.W. 641 (1935).

Where interest at a greater rate than the maximum allowed by law is paid on certificates of deposit, the claim of the depositor in receivership is not entitled to priority. State ex rel. Sorensen v. State Bank of Bee, 128 Neb. 442, 259 N.W. 172 (1935).

Where holder of certificate on which excess interest has been paid surrenders such certificate to the bank and receives a bill payable, which is transferred to another, and such other person presents it to the bank while it is a going concern and receives in exchange a certificate of deposit drawing interest at the legal rate, such certificate is entitled to priority. State ex rel. Spillman v. Farmers Bank of Crawford, 116 Neb. 445, 217 N.W. 950 (1928).

Where certificate draws lawful rate but from date anterior to its issuance, transaction was not a deposit entitled to priority. State ex rel. Spillman v. Security Bank of Eddyville, 116 Neb. 165, 216 N.W. 169 (1927).

Where money was placed in a state bank and certificate of deposit issued bearing lawful rate of interest with understanding that bank should pay bonus of one percent above legal rate, transaction was not a deposit entitled to priority. State ex rel. Spillman v. Security State Bank of Eddyville , 115 Neb. 667, 214 N.W. 293 (1927); Iams v. Farmers State Bank of Decatur, 101 Neb. 778, 165 N.W. 145 (1917).

Where agreement was that bank officer individually should pay the excess interest, but, without knowledge of certificate holder, the bank actually pays it, deposit was entitled to priority. State ex rel. Spillman v. Atlas Bank of Neligh, 114 Neb. 781, 210 N.W. 152 (1926); State ex rel. Davis v. Farmers State Bank of Benedict, 112 Neb. 474, 199 N.W. 839 (1924).

Where interest at a rate greater than the maximum allowed has been paid by a state bank, but such practice is abandoned while the bank is a going concern, certificates issued in renewal at a lawful rate are entitled to priority, even though such renewals include accumulations of excess interest. State ex rel. Spillman v. American Exchange Bank of Bristow, 114 Neb. 626, 209 N.W. 217 (1926).

Where agreement for excess interest is a closed transaction, it may be abandoned without tainting future deposits. State ex rel. Davis v. Newcastle State Bank, 114 Neb. 389, 207 N.W. 683 (1926).

Where holder of certificates drawing excessive rate exchanges them for new certificates drawing legal rate, while bank is going concern, the new certificates are entitled to priority. State ex rel. Spillman v. American Exchange Bank of Bristow, 112 Neb. 834, 201 N.W. 895 (1924).

Prohibition of this section does not prevent an officer of a bank, while acting in good faith, from paying additional interest on his personal account, and deposit made under such arrangement is not deprived of priority. State ex rel. Davis v. Wayne County Bank, 112 Neb. 792, 201 N.W. 907 (1924).

Where secret agreement for excess interest has been abandoned, new certificate for actual amount deposited, bearing lawful rate, not vitiated. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 788, 201 N.W. 899 (1924).

This section bearing penalty contrasted with section providing no penalty. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

Where bank issued certificates of deposit bearing interest at maximum legal rate and received in exchange an amount less than the face of the certificates, deposit was not entitled to priority. State ex rel. Davis v. Farmers State Bank of Halsey, 111 Neb. 117, 196 N.W. 908 (1923).

Where deposit is represented by cashier's check which includes excess interest, it is not entitled to priority. State ex rel. Davis v. Banking House of A. Castetter, 110 Neb. 564, 194 N.W. 784 (1923).

2. Other inducements

Agreement between stockholders of bank and its depositors and creditors that bank was to be liquidated by its officers, did not contravene this section. Department of Banking v. Walker, 131 Neb. 732, 269 N.W. 907 (1936).

Where another statutory provision requires deposit of public money in bank to be secured, deposit subject to negotiations between bank and city, provisions of this section do not apply. Luikart v. City of Aurora, 125 Neb. 263, 249 N.W. 590 (1933).

Pledge of assets by bank to secure or retain deposit is inducement to depositor to make such deposit, and both the bank official and depositor are subject to criminal prosecution. Bliss v. Pathfinder Irrigation District, 122 Neb. 203, 240 N.W. 291 (1932).

Arrangement for ''parring'' checks, resulting in slight advantage above legal rate to depositor, does not deprive him of priority. State ex rel. Spillman v. Nebraska State Bank of Harvard, 118 Neb. 660, 225 N.W. 778 (1929).

8-134 Deposits; repayment only on presentation of pass book, when; notice.

Banks may, by agreement, provide that deposits received under agreement shall be repaid only on presentation of pass books and may require notice to be given before such deposits are repaid.

Source: Laws 1963, c. 29, § 34, p. 148.

8-135 Deposits; withdrawal methods authorized; section; how construed.

(1) All persons, regardless of age, may become depositors in any bank and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(a) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments so made; or

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

(vi) Any electronic terminal, computer, magnetic tape, or other electronic means.

(2) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as it existed on September 4, 2005, and shall not affect the legal relationships between a minor and any person other than the bank.

Source: Laws 1963, c. 27, § 1, p. 132; Laws 1963, c. 29, § 35, p. 148; Laws 2005, LB 533, § 6.

8-136 Repealed. Laws 1974, LB 354, § 316.

8-137 Checks; certification; requirements; effect.

No officer or employee of any bank shall certify any check drawn upon such bank unless the person, firm, or corporation drawing the check has on deposit with the bank at the time such check is certified an amount of credit, on the depositors' ledger of such bank, subject to the payment of such check, equal to the amount specified in such check; but the amount of such check shall not be recoverable from the payee or holder except in case of fraud. Whenever a check drawn upon any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm, or corporation drawing the same.

Source: Laws 1909, c. 10, § 39, p. 85; R.S.1913, § 318; Laws 1919, c. 190, tit. V, art. XVI, § 39, p. 701; C.S.1922, § 8019; C.S.1929, § 8-158; R.S.1943, § 8-163; Laws 1963, c. 29, § 37, p. 149.

8-138 Deposits; receiving when insolvent; prohibition; penalty.

No bank shall accept or receive on deposit for any purpose any money, bank bills, United States treasury notes or currency, or other notes, bills, checks, drafts, credits, or currency, when such bank is insolvent; and if any bank shall receive or accept on deposit any such deposits when such bank is insolvent, the officer, agent, or employee knowingly receiving or accepting or being accessory

to, or permitting or conniving at the receiving or accepting on deposit therein or thereby, any such deposit shall be guilty of a Class III felony.

Source: Laws 1909, c. 10, § 30, p. 80; R.S.1913, § 309; Laws 1919, c. 190, tit. V, art. XVI, § 30, p. 697; C.S.1922, § 8010; C.S.1929, § 8-147; R.S.1943, § 8-147; Laws 1963, c. 29, § 38, p. 149; Laws 1977, LB 40, § 44.

Insolvent bank has no power to receive deposits. Torgeson v. Department of Trade and Commerce, 127 Neb. 38, 254 N.W. 735 (1934).

In prosecution against banker for receiving deposits knowing bank to be insolvent, intentional fraud, deceit, false reports and wrongful entries on bank books are not elements of the offense as defined by statute. Flannigan v. State, 125 Neb. 519, 250 N.W. 908 (1933).

Instruction to jury defining insolvency of bank as being when the actual cash value of its assets was insufficient to pay its liabilities to depositors, or when it was unable to meet the demands of its creditors in the usual and ordinary manner, was not prejudicial to defendant. Gutru v. State, 125 Neb. 506, 250 N.W. 913 (1933).

Conviction under this section sustained upon evidence that deposits were received when real value of assets were less than liabilities of bank, and defendant had knowledge of the deposits and insolvency. Flannigan v. State, 125 Neb. 163, 249 N.W. 609 (1933).

Banking department has no authority to authorize a bank, its officers or employees, to violate this section. State v. Kastle, 120 Neb. 758, 235 N.W. 458 (1931).

Constitutionality of this section sustained. Westbrook v. State, 120 Neb. 625, 234 N.W. 579 (1931).

This section bearing penalty contrasted with section providing no penalty. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-139 Executive officers; approval of loans and investments; qualifications; license; revocation; regulations; forms; violations; penalty.

No loan or investment shall be made by a bank, directly or indirectly, without the approval of an active executive officer. Executive officers of banks shall be persons of good moral character, known integrity, business experience and responsibility, and be capable of conducting the affairs of a bank on sound banking principles. No person shall act as an active executive officer of any bank until such bank shall apply for and obtain from the department a license for such person to so act. If the department, upon investigation, shall be satisfied that any active executive officer of a bank is conducting its business in an unsafe or unauthorized manner, or is endangering the interests of the stockholders or depositors, the department shall have authority to revoke such license. Any person who shall act or attempt to act as an active executive officer of any bank, except under a license from the department, or anyone who shall permit or assist such person to act or attempt to act as such, shall be guilty of a Class III felony. The department may make and enforce reasonable regulations and prescribe forms to be used to carry out the intent of this section.

Source: Laws 1921, c. 297, § 7, p. 952; C.S.1922, § 8048; C.S.1929, § 8-166; Laws 1933, c. 18, § 38, p. 154; C.S.Supp.,1941, § 8-166; R.S.1943, § 8-169; Laws 1963, c. 29, § 39, p. 150; Laws 1977, LB 40, § 45.

8-140 Repealed. Laws 1994, LB 611, § 4.

8-141 Loans; limits; exceptions.

(1) No bank shall directly or indirectly loan to any single corporation, limited liability company, firm, or individual, including in such loans all loans made to the several members or shareholders of such firm, limited liability company, or corporation, for the use and benefit of such corporation, limited liability company, firm, or individual, more than twenty-five percent of the paid-up capital, surplus, and capital notes and debentures or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. Such limitations shall be subject to the following exceptions:

(a) Obligations of any person, partnership, limited liability company, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the notes covered by such documents, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(b) Obligations of any person, partnership, limited liability company, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(c) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by negotiable warehouse receipts in an amount not less than one hundred fifteen percent of the face amount of the note or notes secured by such documents shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus; or

(d) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, in an amount at least equal to the face amount of the note or notes secured by such collateral, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus.

(2) For purposes of this section, the discounting of bills of exchange, drawn in good faith against actually existing values, and the discounting of commercial paper actually owned by the persons negotiating the same shall not be considered as the lending of money. Loans or obligations shall not be subject to any limitation under this section, based upon such capital and surplus or such unimpaired capital and unimpaired surplus, to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States Government or any authorized agency thereof, including any corporation wholly owned directly or indirectly by the United States, or general obligations of any state of the United States or any political subdivision thereof. The phrase general obligation of any state or any political subdivision thereof means an

obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation, but does not include municipal revenue bonds and sanitary and improvement district warrants which are subject to the limitations set forth in this section. Any bank may subscribe to, invest in, purchase, and own single-family mortgages secured by the Federal Housing Administration or the United States Department of Veterans Affairs and mortgage-backed certificates of the Government National Mortgage Association which are guaranteed as to payment of principal and interest by the Government National Mortgage Association. Such mortgages and certificates shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus. Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state, when such loans are approved by the Director of Banking and Finance by regulation or otherwise, shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus. Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject under this section to any limitation based on such capital and surplus or such unimpaired capital and unimpaired surplus. The department may adopt and promulgate rules and regulations governing the terms and conditions of such security interest and segregated deposit account. For the purpose of determining lending limits, partnerships shall not be treated as separate entities. Each individual shall be charged with his or her personal debt plus the debt of every partnership in which he or she is a partner, except that for purposes of this section (a) an individual shall only be charged with the debt of any limited partnership in which he or she is a partner to the extent that the terms of the limited partnership agreement provide that such individual is to be held liable for the debts or actions of such limited partnership and (b) no individual shall be charged with the debt of any general partnership in which he or she is a partner beyond the extent to which (i) his or her liability for such partnership debt is limited by the terms of a contract or other written agreement between the bank and such individual and (ii) any personal debt of such individual is incurred for the use and benefit of such general partnership.

(3) A loan made within lending limits at the initial time the loan was made may be renewed, extended, or serviced without regard to changes in the lending limit of a bank following the initial extension of the loan if (a) the renewal, extension, or servicing of the loan does not result in the extension of funds beyond the initial amount of the loan or (b) the accrued interest on the loan is not added to the original amount of the loan in the process of renewal, extension, or servicing.

(4) Any bank may purchase or take an interest in life insurance contracts for any purpose incidental to the business of banking. A bank's purchase of any life insurance contract, as measured by its cash surrender value, from any one life insurance company shall not at any time exceed twenty-five percent of the paid-up capital, surplus, and capital notes and debentures of such bank or fifteen percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank, whichever is greater. A bank's purchase of life insurance contracts, as measured by their cash surrender values, in the aggregate from all life insurance companies shall not at any time exceed thirty-five percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank. The limitations under this subsection on a bank's

purchase of life insurance contracts, in the aggregate from all life insurance companies, shall not apply to any contract purchased prior to April 5, 1994.

(5) For purposes of this section, unimpaired capital and unimpaired surplus means (a) the bank's tier 1 and tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), and (b) the balance of the bank's allowance for loan and lease losses not included in the bank's tier 2 capital for purposes of the calculation of risk-based capital by the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3). Notwithstanding the provisions of section 8-1,140, the department may, by order, deny or limit the inclusion of goodwill in the calculation of a bank's unimpaired capital and unimpaired surplus or in the calculation of a bank's paid-up capital and surplus.

Source: Laws 1909, c. 10, § 33, p. 81; R.S.1913, § 312; Laws 1919, c. 190, tit. V, art. XVI, § 33, p. 698; Laws 1921, c. 313, § 1, p. 1002; C.S.1922, § 8013; Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 151; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(1), p. 67; R.S.1943, § 8-150; Laws 1959, c. 15, § 14, p. 137; R.R.S.1943, § 8-150; Laws 1963, c. 29, § 41, p. 151; Laws 1965, c. 28, § 3, p. 201; Laws 1969, c. 35, § 1, p. 241; Laws 1972, LB 1151, § 1; Laws 1973, LB 164, § 13; Laws 1986, LB 983, § 2; Laws 1987, LB 753, § 1; Laws 1988, LB 788, § 1; Laws 1990, LB 956, § 2; Laws 1993, LB 81, § 3; Laws 1993, LB 121, § 87; Laws 1994, LB 979, § 2; Laws 1999, LB 396, § 7; Laws 2006, LB 876, § 8.

A violation of this section does not nullify a bank loan which exceeds the statutory limit; status as a loan in excess of a statutory limit is not a defense for a debtor or the debtor's guarantor in an action by a bank to recover the statutorily excessive loan. Schuyler State Bank v. Cech, 228 Neb. 588, 423 N.W.2d 464 (1988).

Language of this section including partnership within its purview contrasted with section 8-140 before 1931 amendment. State v. Pielsticker, 118 Neb. 419, 225 N.W. 51 (1929).

Excessive borrower cannot avail himself of this section to defeat collection of his debt. Bank of College View v. Nelson, 106 Neb. 129, 183 N.W. 100 (1921).

8-142 Loans; excessive amount; violations; penalty.

Any officer or employee of any bank who shall violate or knowingly permit a violation of the provisions of section 8-141, shall be guilty of a Class IV misdemeanor.

Source: Laws 1909, c. 10, § 33, p. 82; R.S.1913, § 312; Laws 1919, c. 190, tit. V, art. XVI, § 33, p. 698; Laws 1921, c. 313, § 1, p. 1002; C.S.1922, § 8013; Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 152; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(2), p. 68; R.S.1943, § 8-151; Laws 1963, c. 29, § 42, p. 152; Laws 1977, LB 40, § 47.

8-143 Loans; excessive amount; violations; forfeiture of charter; directors' personal liability.

If the directors of any bank shall knowingly violate or knowingly permit any of the officers, agents, or servants of the bank to violate any of the provisions of section 8-141, all rights, privileges, and franchises of the bank shall be thereby forfeited. Before such charter shall be declared forfeited, such violation shall be

determined and adjudged by a court of competent jurisdiction in a suit brought for that purpose by the director in his own name. In case of such violation, every director who participated in or knowingly assented to the same shall be held liable in his personal and individual capacity for all damages which the bank, its shareholders, or any other person shall have sustained in consequence of such violation.

Source: Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 152; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(3), p. 68; R.S.1943, § 8-152; Laws 1959, c. 15, § 15, p. 138; R.R.S. 1943, § 8-152; Laws 1963, c. 29, § 43, p. 152.

To state a cause of action under this section against bank directors, a plaintiff must factually allege that (1) the loan exceeds the limit imposed by section 8-141; (2) the directors participated in or knowingly assented to the violation of section 8-141; (3) the plaintiff is a person entitled to relief under this section; and (4) the plaintiff has sustained damages as the result of the excessive loan. Schuyler State Bank v. Cech, 228 Neb. 588, 423 N.W.2d 464 (1988).

That part of this section imposing personal liability upon bank directors for damages sustained as the result of knowingly making excessive loans is remedial in character, and a cause of action therefor is complete the moment the excessive loan is made. Department of Banking v. McMullen, 134 Neb. 338, 278 N.W. 551 (1938).

This section bearing penalty contrasted with section 8-147. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-143.01 Extension of credit; limits; written report; credit report; violation; penalty; powers of director.

(1) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five percent of the bank's unimpaired capital and unimpaired surplus unless (a) the extension of credit has been approved in advance by a majority vote of the entire board of directors of the bank, a record of which shall be made and kept as a part of the records of such bank, and (b) the interested party has abstained from participating directly or indirectly in such vote.

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

(3) No bank shall extend credit to any of its executive officers licensed pursuant to section 8-139, and no such executive officer shall borrow from or otherwise become indebted to his or her bank, except in the amounts and for the purposes set forth in subsection (4) of this section.

(4) A bank shall be authorized to extend credit to any of its executive officers licensed pursuant to section 8-139:

(a) In any amount to finance the education of such executive officer's children;

(b)(i) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of such executive officer if the extension of credit is secured by a first lien on the residence and the residence is owned or is expected to be owned after the extension of credit by the executive officer and (ii) in the case of a refinancing, only the amount of the refinancing used to repay the original extension of credit, together with the

closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this subdivision are included within this category of credit;

(c) In any amount if the extension of credit is (i) secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States, (ii) secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States, or (iii) secured by a perfected security interest in a segregated deposit account in the lending bank; or

(d) For any other purpose not specified in subdivisions (a), (b), and (c) of this subsection if the aggregate amount of such other extensions of credit to such executive officer does not exceed, at any one time, the greater of two and one-half percent of the bank's unimpaired capital and unimpaired surplus or twenty-five thousand dollars, but in no event greater than one hundred thousand dollars or the amount of the bank's lending limit as prescribed in section 8-141, whichever is less.

(5)(a) Except as provided in subdivision (b) or (c) of this subsection, any executive officer licensed pursuant to section 8-139 shall make, on an annual basis, a written report to the board of directors of the bank of which he or she is an executive officer stating the date and amount of all loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, the security therefor, and the purpose for which the proceeds have been or are to be used.

(b) Except as provided in subdivision (c) of this subsection, in lieu of the reports required by subdivision (a) of this subsection, the board of directors of a bank may obtain a credit report from a recognized credit agency, on an annual basis, for any or all of its executive officers licensed pursuant to section 8-139.

(c) Subdivisions (a) and (b) of this subsection do not apply to any executive officer licensed pursuant to section 8-139 if such officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating in the major policymaking functions of the bank and does not actually participate in the major policymaking functions of the bank.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141.

(7)(a) Except as provided in subdivision (b) of this subsection, no bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons unless the extension of credit (i) is made on substantially the same terms, including interest rates and collateral, as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this section and who are not employed by the bank and (ii) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Nothing in subdivision (a) of this subsection shall prohibit any extension of credit made by a bank pursuant to a benefit or compensation program under the provisions of 12 C.F.R. 215.4(a)(2).

(8) For purposes of this section:

(a) Executive officer shall mean a person who participates or has authority to participate, other than in the capacity of director, in the major policymaking functions of the bank, whether or not the officer has an official title, the title designates such officer as an assistant, or such officer is serving without salary or other compensation. Executive officer shall include the chairperson of the board of directors, the president, all vice presidents, the cashier, the corporate secretary, and the treasurer, unless the executive officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating, other than in the capacity of director, in the major policymaking functions of the bank, and the executive officer does not actually participate in such functions. A manager or assistant manager of a branch of a bank shall not be considered to be an executive officer unless such individual participates or is authorized to participate in the major policymaking functions of the bank; and

(b) Unimpaired capital and unimpaired surplus shall mean the sum of:

(i) The total equity capital of the bank reported on its most recent consolidated report of condition filed under section 8-166;

(ii) Any subordinated notes and debentures approved as an addition to the bank's capital structure by the appropriate federal banking agency; and

(iii) Any valuation reserves created by charges to the bank's income reported on its most recent consolidated report of condition filed under section 8-166.

(9) Any executive officer, director, or principal shareholder of a bank or any other person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

(10) The Director of Banking and Finance shall have authority to adopt and promulgate rules and regulations to implement this section, including rules or regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O.

Source: Laws 1994, LB 611, § 2; Laws 1997, LB 137, § 4; Laws 1999, LB 396, § 8; Laws 2001, LB 53, § 1; Laws 2005, LB 533, § 7.

8-144 Loans or extension of credit; improper; willful and knowing violation; liability.

Any officer or employee of any bank who shall willfully and knowingly violate any of the provisions of sections 8-141 to 8-143.01 shall be liable under his or her bond for any loss to the bank resulting therefrom.

Source: Laws 1909, c. 10, § 40, p. 86; R.S.1913, § 319; Laws 1919, c. 190, tit. V, art. XVI, § 40, p. 701; C.S.1922, § 8020; C.S.1929, § 8-159; R.S.1943, § 8-153; Laws 1963, c. 29, § 44, p. 152; Laws 1994, LB 611, § 3.

8-145 Loans; other improper solicitation or receipt of benefits; unlawful inducement; penalty.

Any stockholder or director, officer, agent, or employee of any bank who, for the use or benefit of himself or any other person than such bank, solicits or asks for or receives or agrees to receive from any person, any gift or compensation or reward or inducement of any kind for (1) procuring or endeavoring to procure any loan from such bank to any person, or (2) procuring or endeavoring to procure the purchase by such bank from any person of any negotiable or

nonnegotiable instrument of any kind by discount or otherwise, or (3) procuring or endeavoring to procure the purchase by such bank from any person of any real or personal property of any kind, or (4) procuring or endeavoring to procure such bank to permit any person to overdraw his account with such bank, shall be guilty of a Class I misdemeanor.

Source: Laws 1923, c. 191, § 40, p. 458; C.S.1929, § 8-151; R.S.1943, § 8-154; Laws 1963, c. 29, § 45, p. 152; Laws 1977, LB 40, § 48.

8-146 Repealed. Laws 1972, LB 1358, § 1.

8-147 Direct borrowing of bank; loans and investments; limitation on amounts; illegal transfer of assets; violation; penalty.

(1) The aggregate amount of direct borrowing of any bank shall at no time exceed the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures, except with the prior written permission of the director. Direct borrowing shall not include:

(a) Money borrowed on the bank's bills payable secured by (i) direct or indirect obligations of the United States Government or (ii) obligations guaranteed by agencies of the United States Government;

(b) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal reserve system or the federal reserve banks, if the bank is a member of the federal reserve system;

(c) Rediscounts, bills payable, borrowings, or other liabilities with or to the Federal Home Loan Bank System or the Federal Home Loan Banks, if the bank is a member of the Federal Home Loan Bank System; or

(d) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal intermediate credit banks.

(2) The aggregate amount of the loans and investments of any bank shall at no time exceed fifteen times the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures. For purposes of this section, loans and investments shall not include a bank's (a) cash reserves, (b) real estate and buildings at which the bank is authorized to conduct its business, (c) furniture and fixtures, and (d) obligations set forth in subdivisions (1)(a), (b), and (c) of this section.

(3) Any bank becoming a member of the federal reserve system or the Federal Home Loan Bank System shall have the same privileges to the same extent as national banks.

(4) With the prior written permission of the director, a bank may rediscount paper in an amount in excess of its paid-up capital stock.

(5) Any transfer of assets of a bank in violation of this section shall be void as against the creditors of the bank.

(6) Any officer, director, or employee of a bank who does, or permits to be done, any act in violation of this section and any other person who knowingly assists in the violation of this section shall be guilty of a Class IV felony.

Source: Laws 1909, c. 10, § 24, p. 78; R.S.1913, § 303; Laws 1919, c. 190, tit. V, art. XVI, § 24, p. 695; Laws 1922, Spec. Sess., c. 6, § 1, p. 66; C.S.1922, § 8005; Laws 1923, c. 190, § 1, p. 435; C.S.1929, § 8-136; Laws 1933, c. 18, § 25, p. 147; C.S.Supp.,1941, § 8-136; R.S.1943, § 8-138; Laws 1945, c. 8, § 1, p. 105; Laws 1959, c. 15,

§ 11, p. 136; R.R.S.1943, § 8-138; Laws 1963, c. 29, § 47, p. 153; Laws 1969, c. 36, § 1, p. 243; Laws 1973, LB 143, § 1; Laws 1977, LB 40, § 49; Laws 1982, LB 779, § 1; Laws 1983, LB 177, § 1; Laws 1994, LB 979, § 3; Laws 1996, LB 1053, § 5; Laws 1997, LB 2, § 1.

Query made by court as to whether borrowing of money upon behalf of bank through execution of individual obligations of directors to third parties was a transaction in violation of this section. State ex rel. Sorensen v. Farmers State Bank of Wood River, 127 Neb. 139, 254 N.W. 728 (1934).

Bank may rediscount note and mortgage beyond the limits provided in this section by permission of the banking department. Luikart v. Hunt, 124 Neb. 642, 247 N.W. 790 (1933).

Execution by bank officer of bills payable in behalf of bank in excess of the amount of its capital stock and surplus justified conviction under this section. Hinds v. State, 121 Neb. 508, 237 N.W. 617 (1931).

Prior to amendment of this section in 1923, in absence of provision for penalty, loan to bank made in violation of this section was not void, and where contract was completely executed by lending of money and execution and delivery of notes therefor, borrowing bank could not refuse payment of notes. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-148 Banks; own capital stock; loans on, purchase, or use as collateral by bank prohibited; exceptions.

(1) Except as provided in subsection (2) or (3) of this section, a bank shall not make any loan or discount on the security of the shares of its own capital stock or the capital stock of its holding company, if any, be the purchaser or holder of any such shares, or purchase any securities convertible into stock or, except as provided in this section and sections 8-148.01, 8-148.02, 8-148.04, 8-148.06, 8-149, and 21-2109, the shares of any corporation, unless such security or purchase is necessary to prevent loss upon a debt previously contracted in good faith. Such stock so purchased or acquired shall, within six months after the time of its purchase unless written approval of a longer holding period is obtained from the director, be sold or disposed of at public or private sale, or in default thereof, a receiver may be appointed to close up the business of the bank, except that such stock, if shares of another bank or a bank holding company, shall be sold or disposed of as required by the director. In no case shall the amount of stock so held at any one time exceed ten percent of the paid-up capital of such bank.

(2) Any bank may subscribe to, invest, purchase, and own shares of investment companies registered under the Investment Company Act of 1940 when the investment companies' assets consist of and are limited to obligations that are eligible for investment by the bank. The department may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownership.

(3) Any bank may subscribe to, invest, purchase, and own Student Loan Marketing Association stock, Government National Mortgage Association stock, Federal National Mortgage Association stock, Federal Agricultural Mortgage Corporation stock, Federal Home Loan Mortgage Corporation stock, or stock issued by any authorized agency of the United States Government, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, which the department has approved by rule and regulation or order. The department may further adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownerships, except that a bank shall not obligate more than five percent of its capital, surplus, undivided profits, and unencumbered reserves for such stock.

Source: Laws 1909, c. 10, § 25, p. 78; R.S.1913, § 304; Laws 1919, c. 190, tit. V, art. XVI, § 25, p. 695; C.S.1922, § 8006; C.S.1929, § 8-137;

R.S.1943, § 8-139; Laws 1963, c. 29, § 48, p. 154; Laws 1973, LB 164, § 14; Laws 1985, LB 165, § 1; Laws 1987, LB 532, § 1; Laws 1987, LB 453, § 2; Laws 1987, LB 237, § 1; Laws 1988, LB 996, § 2; Laws 1993, LB 81, § 4; Laws 2003, LB 217, § 6; Laws 2005, LB 533, § 8.

Except to prevent loss upon a debt previously contracted in good faith, a state bank is without power, directly or through agent, to buy or hold capital stock of another bank. Cooper v. Bane, 110 Neb. 83, 196 N.W. 119 (1923).

8-148.01 Corporation operating a computer center; investment of funds; limitation.

Any bank may invest not more than ten percent of its capital and surplus either in stock of a corporation operating a computer center or directly, alone or with others, in a computer center. With written approval of the Director of Banking and Finance, such additional percentage of its capital and surplus may be so invested as the director shall approve. Such investment shall not be subject to the provisions of sections 8-148, 8-149, and 8-150.

Source: Laws 1967, c. 18, § 1, p. 116; Laws 1993, LB 81, § 5.

8-148.02 Banks; subscribe, invest, buy, and own stock; agricultural credit corporation; livestock loan company; limitation.

Any bank may subscribe to, invest, buy, and own stock in any agricultural credit corporation or livestock loan company, or its affiliate, the principal business of which corporation must be the extension of short and intermediate term credit to farmers and ranchers, including partnerships, limited liability companies, and corporations engaged in farming and ranching, for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. Such bank shall not obligate more than thirty-five percent of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures for such purposes, except that if such bank owns at least eighty percent of the voting stock of such agricultural credit corporation or livestock loan company, such limitation on the amount of obligation for such purposes shall not apply. Such subscription, investment, possession, or ownership shall not be subject to the provisions of sections 8-148, 8-149, and 8-150.

Source: Laws 1969, c. 30, § 1, p. 235; Laws 1971, LB 720, § 1; Laws 1974, LB 845, § 1; Laws 1982, LB 779, § 2; Laws 1993, LB 121, § 88.

8-148.03 Bonds of the State of Israel; securities; banks; savings and loan associations, insurance companies, credit unions; invest funds.

Bonds of the State of Israel are hereby made securities in which banks, savings and loan associations, insurance companies, and credit unions may properly and legally invest funds.

Source: Laws 1974, LB 845, § 3.

8-148.04 Community development investments; conditions.

(1) Any bank may make a community development investment or investments either directly or through purchasing an equity interest in or an evidence of indebtedness of an entity primarily engaged in making community development investments, if the following conditions are satisfied:

(a) An investment under this subsection does not expose the bank to unlimited liability; and

(b) The bank's aggregate investment under this subsection does not exceed fifteen percent of its capital and surplus. If the bank's investment in any one entity will exceed five percent of its capital and surplus, the prior written approval of the department must be obtained.

(2) Nothing in this section shall prevent a bank from charging off as a contribution an investment made pursuant to subsection (1) of this section.

(3) Such subscription, investment, possession, or ownership shall not be subject to sections 8-148, 8-149, and 8-150.

(4) For purposes of this section, community development investments means investments of a predominantly civic, community, or public nature and not merely private and entrepreneurial.

Source: Laws 1993, LB 81, § 6; Laws 1994, LB 979, § 4; Laws 1996, LB 1184, § 1; Laws 2006, LB 876, § 9; Laws 2007, LB124, § 4.

8-148.05 Qualified Canadian Government obligations; investment.

(1) Any bank may deal in, underwrite, and purchase for its own account qualified Canadian Government obligations to the same extent that such bank may deal in, underwrite, and purchase for its own account obligations of the United States Government or general obligations of any state thereof.

(2) For purposes of this section:

(a) Qualified Canadian Government obligation shall mean any debt obligation which is backed by Canada or any Canadian province to a degree which is comparable to the liability of the United States Government or any state thereof for any obligation which is backed by the full faith and credit of the United States Government or any state thereof. Qualified Canadian Government obligations shall also include any debt obligation of any agent of Canada or any Canadian province if:

(i) The obligation of such agent is assumed in such agent's capacity as agent for Canada or any Canadian province; and

(ii) Canada or any Canadian province, on whose behalf such agent is acting with respect to such obligation, is ultimately and unconditionally liable for such obligation; and

(b) The term Canadian province shall mean a province of Canada and shall include the Yukon Territory and the Northwest Territories and their successors.

Source: Laws 1993, LB 423, § 1.

8-148.06 Banks; subscribe, invest, buy, own, and sell stock; bank subsidiary corporation; limitation.

Any bank may subscribe to, invest in, buy, own, and sell the common stock, obligations, and other securities of one or more bank subsidiary corporations organized under the laws of the State of Nebraska. A bank shall not obligate more than thirty-five percent of its paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures for such purposes. An additional percentage of its paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures may be invested with written

approval of the director. The subscription, investment, possession, or ownership is not subject to sections 8-148, 8-149, and 8-150.

Source: Laws 1995, LB 384, § 2.

8-148.07 Bank subsidiary corporation; authorized activities.

A bank subsidiary corporation shall engage in only those activities prescribed under subdivision (1) of section 8-101 or that its bank shareholder is authorized to perform under the laws of this state and shall engage in those activities only at locations in this state where the bank shareholder could be authorized to perform activities.

Source: Laws 1995, LB 384, § 3; Laws 2000, LB 932, § 2.

8-148.08 Bank subsidiary corporation; examination and regulation.

A bank subsidiary corporation is subject to examination and regulation by the department to the same extent as its bank shareholder.

Source: Laws 1995, LB 384, § 4.

8-149 Banks; investment in bank premises or holding corporations; loans upon security of stock of holding corporation; written approval of Director of Banking and Finance required; when.

(1) No bank shall, without the written approval of the director, (a) invest in bank premises or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or (b) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans will exceed the paid-up capital stock, surplus, and capital notes and debentures of such bank. Stock held as authorized by this section shall not be subject to the provisions of section 8-148.

(2) Investments by a bank in bank premises necessary for the transaction of its business shall include, but not be limited to:

(a) Premises that are owned and occupied, or to be occupied if under construction, by the bank, its branches, or its consolidated subsidiaries;

(b) Real estate acquired and intended, in good faith, for use in future expansions;

(c) Parking facilities that are used by customers or employees of the bank, its branches, or its consolidated subsidiaries;

(d) Residential property for the use of officers or employees of the bank, its branches, or its consolidated subsidiaries who are:

(i) Located in areas where suitable housing at a reasonable price is not readily available; or

(ii) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(e) Property for the use of officers, employees, or customers of the bank, its branches, and its consolidated subsidiaries or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, if the purchase and operation of the property qualifies as a deductible business expense for federal tax purposes.

Source: Laws 1963, c. 29, § 49, p. 155; Laws 1973, LB 164, § 15; Laws 1997, LB 137, § 5; Laws 2007, LB124, § 5.

8-150 Banks; real estate; power to acquire and convey; limitations and conditions.

Any bank may purchase, hold, and convey real estate for the following purposes: (1) Such as is authorized by section 8-149; (2) such as shall be conveyed to it for debts due the bank; and (3) such as it shall purchase at sale under judgments, decrees, deeds of trust, or mortgages held by the bank or shall purchase to secure debts due to it upon its securities, but the bank at such sale shall not bid a larger amount than required to satisfy such judgments or decrees with costs. Real estate acquired in satisfaction of debts or at a sale upon judgments, decrees, deeds of trust, or mortgages shall be sold at private or public sale within five years unless authority shall be given in writing by the department to hold it for a longer period. The total amount of real estate held by any bank for purposes of subdivisions (2) and (3) of this section shall not be entered on the records of the bank as an asset at a value greater than (a) the unpaid balance of the debts due the bank plus its out-of-pocket expenses incurred in acquiring clear title, (b) its judgments or decrees with costs, or (c) the appraised value of such real estate, whichever is less, except that a bank may expend funds as necessary for repairs or to complete a project in order to market such property. A bank may utilize property acquired by it under subdivisions (2) and (3) of this section in any manner authorized by the department.

Source: Laws 1909, c. 10, § 29, p. 80; R.S.1913, § 308; Laws 1919, c. 190, tit. V, art. XVI, § 29, p. 697; C.S.1922, § 8009-a; Laws 1925, c. 30, § 10, p. 128; C.S.1929, § 8-145; Laws 1933, c. 18, § 29, p. 149; C.S.Supp.,1941, § 8-145; R.S.1943, § 8-145; Laws 1959, c. 15, § 13, p. 137; R.R.S.1943, § 8-145; Laws 1963, c. 29, § 50, p. 155; Laws 1985, LB 653, § 5.

8-151 Banks; book value of property; increases; written approval required.

No bank shall increase the book value of its existing real estate, furniture, or fixtures without first notifying the department of its intention so to do and obtaining a written approval therefor.

Source: Laws 1923, c. 191, § 47, p. 462; C.S.1929, § 8-146; Laws 1933, c. 18, § 30, p. 150; C.S.Supp.,1941, § 8-146; R.S.1943, § 8-146; Laws 1961, c. 15, § 5, p. 112; R.R.S.1943, § 8-146; Laws 1963, c. 29, § 51, p. 155.

8-152 Banks; loans on real estate; authorized.

A bank may make loans secured by real estate or may participate with other institutions in such loans whether such participation occurs at the inception of the loan or at any time thereafter.

Source: Laws 1963, c. 29, § 52, p. 156; Laws 1965, c. 28, § 4, p. 202; Laws 1972, LB 1226, § 1; Laws 1973, LB 164, § 16; Laws 1974, LB 845, § 2; Laws 1979, LB 220, § 6; Laws 1982, LB 779, § 3; Laws 1994, LB 979, § 5.

8-153 Checks; preprinted information; cleared at par; exception.

All checks, unless sent to banks as special collection items, shall have preprinted the magnetically encoded routing and transit symbol of the bank

and either the name of the maker or the magnetically encoded account number of the maker. Except for checks sent to banks as special collection items, all checks drawn on any bank organized under the laws of this state shall be cleared at par by the bank on which they are drawn.

Source: Laws 1945, c. 11, § 1, p. 110; R.R.S.1943, § 8-163.01; Laws 1963, c. 29, § 53, p. 157; Laws 1979, LB 269, § 1.

Special collection items are those which in fact actually require the employment of unusual and individual treatment. Placek v. Edstrom, 151 Neb. 225, 37 N.W.2d 203 (1949).

Act sustained as constitutional. Placek v. Edstrom, 148 Neb. 79, 26 N.W.2d 489 (1947).

8-154 Repealed. Laws 1981, LB 199, § 1.

8-155 Forged, altered, or raised checks; payment on; liability of bank to depositor; when.

No bank which has paid and charged to the account of a depositor any money on a forged, altered, or raised check issued in the name of such depositor shall be liable to such depositor or his legal representative for the amount paid thereon, unless such depositor or his legal representative shall notify the bank that the check so paid is forged, altered, or raised either (1) within one year after notice to such depositor that the vouchers representing payments charged to the account of such depositor for the period during which such payment was made are ready for delivery, or (2) in case no such notice has been given within one year after the return to such depositor or his legal representative of the voucher representing such payment.

Source: Laws 1919, c. 18, § 1, p. 83; C.S.1922, § 8050; C.S.1929, § 8-167; R.S.1943, § 8-170; Laws 1963, c. 29, § 55, p. 157.

8-156 Forged, altered, or raised checks; payment on; notice; registered or certified mail.

The notice referred to in section 8-155 may be given by either registered or certified mail addressed to such depositor or his legal representative at his last-known address with postage prepaid.

Source: Laws 1919, c. 18, § 2, p. 83; C.S.1922, § 8051; C.S.1929, § 8-168; R.S.1943, § 8-171; Laws 1957, c. 242, § 3, p. 818; R.R.S.1943, § 8-171; Laws 1963, c. 29, § 56, p. 158.

8-157 Branch banking; Director of Banking and Finance; powers.

(1) Except as otherwise provided in this section and section 8-2104, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a)(i) Except as provided in subdivision (2)(a)(ii) of this section, with the approval of the director, any bank located in this state may establish and maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made.

(ii) Any bank that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, or any bank that is a subsidiary of a bank holding company that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of

section 8-910, shall not establish and maintain an unlimited number of branches as provided in subdivision (2)(a)(i) of this section. With the approval of the director, a bank as described in this subdivision may establish and maintain in the county in which such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made.

(iii) Any bank which establishes and maintains branches pursuant to subdivision (2)(a)(i) of this section and which subsequently becomes a bank as described in subdivision (2)(a)(ii) of this section shall not be subject to the limitations as to location of branches contained in subdivision (2)(a)(ii) of this section with regard to any such established branch and shall continue to be entitled to maintain any such established branch as if such bank had not become a bank as described in subdivision (2)(a)(ii) of this section.

(b) With the approval of the director, any bank or any branch may establish and maintain a mobile branch at which all banking transactions allowed by law may be made. Such mobile branch may consist of one or more vehicles which may transact business only within the county in which such bank or such branch is located and within counties in this state which adjoin such county.

(c) For purposes of this subsection:

(i) Class I county means a county in this state with a population of three hundred thousand or more as determined by the most recent federal decennial census;

(ii) Class II county means a county in this state with a population of at least two hundred thousand and less than three hundred thousand as determined by the most recent federal decennial census;

(iii) Class III county means a county in this state with a population of at least one hundred thousand and less than two hundred thousand as determined by the most recent federal decennial census; and

(iv) Class IV county means a county in this state with a population of less than one hundred thousand as determined by the most recent federal decennial census.

(3) With the approval of the director, a bank may establish and maintain branches acquired pursuant to section 8-1506 or 8-1516. All banking transactions allowed by law may be made at such branches.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a branch of another financial institution in Nebraska if the acquired branch is converted to a branch of the acquiring bank. All banking transactions allowed by law may be made at a branch acquired pursuant to this subsection.

(5) With the approval of the director, a bank may establish a branch pursuant to subdivision (6) of section 8-115.01. All banking transactions allowed by law may be made at such branch.

(6) The name given to any branch established and maintained pursuant to this section shall not be substantially similar to the name of any existing bank or branch which is unaffiliated with the newly created branch and is located in the same city, village, or county. The name of such newly created branch shall be approved by the director.

(7) A bank which has a main chartered office or an approved branch located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any branch thereof.

(8) A bank which has a main chartered office or approved branch located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, that has students who reside in the same city or village as the main chartered office or branch of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school that has students who reside in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

(9) Upon receiving an application for a branch to be established pursuant to subdivision (2)(a) of this section, to establish a mobile branch pursuant to subdivision (2)(b) of this section, to acquire a branch of another financial institution pursuant to subsection (4) of this section, or to move the location of an established branch other than a move made pursuant to subdivision (6) of section 8-115.01, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank 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 or mobile branch would be located, the expense of which shall be paid by the applicant bank, and (b) give notice of such application to all financial institutions located within the county where the proposed branch or mobile branch would be located and to such other interested parties as the director may determine. The director shall send the notice to financial institutions 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. If the director receives any substantive objection to the proposed branch or mobile 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 or mobile branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing. The expense of any publication and certified mailing required by this section shall be paid by the applicant.

Source: Laws 1927, c. 33, § 1, p. 153; C.S.1929, § 8-1,118; R.S.1943, § 8-1,105; Laws 1959, c. 17, § 1, p. 141; R.R.S.1943, § 8-1,105; Laws 1963, c. 29, § 57, p. 158; Laws 1973, LB 312, § 1; Laws 1975, LB 269, § 2; Laws 1977, LB 77, § 1; Laws 1983, LB 58, § 1; Laws 1983, LB 252, § 4; Laws 1984, LB 1026, § 1; Laws 1985, LB 295, § 1; Laws 1985, LB 625, § 1; Laws 1986, LB 983, § 3; Laws 1987, LB 615, § 2; Laws 1988, LB 703, § 1; Laws 1989, LB 272, § 1; Laws 1990, LB 956, § 4; Laws 1991, LB 190, § 1; Laws 1991, LB 782, § 1; Laws 1992, LB 470, § 1; Laws 1992, LB 757, § 3; Laws 1993, LB 81, § 7; Laws 1995, LB 456, § 1; Laws 1995, LB 599, § 2; Laws 1996, LB 1275, § 3; Laws

1997, LB 56, § 1; Laws 1997, LB 136, § 1; Laws 1997, LB 137, § 6; Laws 1997, LB 351, § 9; Laws 2002, LB 957, § 4; Laws 2002, LB 1089, § 2; Laws 2002, LB 1094, § 5; Laws 2003, LB 217, § 7; Laws 2005, LB 533, § 9.

Subsection (3) of this section does not indicate that the approval of the director of the Department of Banking and Finance absolves a bank from any obligations it may owe to the minority shareholders, that the director is required to disapprove a merger that is unfair to the minority shareholders, or that the director is empowered to require a bank to pay the fair value of a dissenter's shares. Stoneman v. United Neb. Bank, 254 Neb. 477, 577 N.W.2d 271 (1998).

Detached facility approximately one block from bank, providing drive-in and walk-in teller stations offering most banking services, is a branch bank. Nebraskans for Independent Banking, Inc. v. Omaha Nat. Bank, 530 F.2d 755 (8th Cir. 1976). (Opinion vacated and cause remanded to district court for further proceedings in light of Supreme Court per curiam opinion, 426 U.S. 310, dated June 7, 1976.)

Federal district court would not abstain from deciding whether state banking statute was properly adopted by Nebraska Legislature where analysis of the applicable Nebraska case law left no doubt that such statute was invalid. Nebraskans for Independent Banking, Inc. v. Omaha Nat. Bank, 423 F.Supp. 519 (D. Neb. 1976).

Branch banking is illegal in Nebraska. Farris v. Indian Hills Nat. Bank, 244 F.Supp. 594 (D. Neb. 1964).

8-157.01 Financial institution; electronic terminals; use; user financial institution.

(1) Any financial institution which has a main chartered office or approved branch located in the State of Nebraska may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, and account balance inquiry, may be conducted. Any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public may be conducted at an automatic teller machine upon thirty days' prior written notice to the director if the director does not object to the proposed other transaction within the thirty-day notice period. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Such automatic teller machines shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. It shall not be deemed discrimination if an automatic teller machine does not offer the same transaction services as other automatic teller machines or if there are no fees charged between affiliate financial institutions for the use of automatic teller machines.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution or its designated data processing center shall be responsible for transmitting transactions originating from its automatic teller machine to a switch, but nothing contained in this section shall be construed to require routing of all transac-

tions to a switch. All automatic teller machines must be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided for switching transactions. The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that it is not available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the automatic teller machines, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the automatic teller machines by financial institution employees.

(3) An establishing financial institution shall not be deemed to make an automatic teller machine available on a nondiscriminating basis if, through personnel services offered, advertising on or off the automatic teller machine's premises, or otherwise, it discriminates in the use of the automatic teller machine against any user financial institution which has a main chartered office or approved branch located in the State of Nebraska.

(4)(a) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2004. Such notice shall (i) be posted in a prominent and conspicuous location on or at the automatic teller machine at which the electronic funds transfer is initiated by the consumer and (ii) appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(b) Subdivision (a)(ii) of this subsection shall not apply until January 1, 2005, to any automatic teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals. A point-of-sale terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. Nothing in this subsection shall prohibit payment of fees to a financial institution which issues an access device used to initiate electronic funds transfer transactions at a point-of-sale terminal.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws

governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises. The acquiring financial institution shall be responsible for compliance with all applicable standards, rules, and regulations governing point-of-sale transactions.

(7) Any financial institution, upon a request of the director, shall file with the director a current listing of all point-of-sale terminals established by the financial institution within this state. For purposes of this subsection, point-of-sale terminal shall include a group of one or more of such terminals established at a single business location. Such listing shall contain any reasonable descriptive information pertaining to the point-of-sale terminal as required by the director. Neither the establishment of such point-of-sale terminal nor any transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Following establishment of a point-of-sale terminal, the director, upon notice and after a hearing, may terminate or suspend the use of such point-of-sale terminal if he or she determines that it is not made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, that the necessary information is not on file with the director, or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing center. Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at the point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8) Transactions at point-of-sale terminals may include:

(a) Check guarantees;

(b) Account balance inquiries;

(c) Transfers of funds from a customer's account for payment to a seller's account for goods and services on whose premises the point-of-sale terminal is located in payment for the goods and services;

(d) Cash withdrawals by a customer from the customer's account or accounts;

(e) Transfers between accounts of the same customers at the same financial institution; and

(f) Such other transactions as the director, upon application, notice, and hearing, may approve.

(9)(a) Automatic teller machines may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institution or financial institutions and a third party.

(b) Point-of-sale terminals may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institutions and a third party. No one, through personnel services offered, advertising on or off the point-of-sale terminal premises, or otherwise, may discriminate in the use of the point-of-sale terminal against any other user financial institution.

(10) All financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to January 1, 1993, shall be deemed to be approved for purposes of this section.

(11) Use of an automatic teller machine or a point-of-sale terminal through access to a switch and use of any switch shall be made available on a nondiscriminating basis to any financial institution. A financial institution shall only be permitted use of the switch if the financial institution conforms to reasonable technical operating standards which have been established by the switch.

(12) To assure maximum safety and security against malfunction, fraud, theft, and other accidents or abuses and to assure that all such access devices will have the capability of activating all automatic teller machines and point-of-sale terminals established in this state, no automatic teller machine or point-of-sale terminal shall accept an access device which does not conform to such specifications as are generally accepted. No automatic teller machine or point-of-sale terminal shall be established or operated which does not accept an access device which conforms with such specifications.

An automatic teller machine shall bear a logo type or other identification symbol designed to advise customers that the automatic teller machine may be activated by any access device which complies with the generally accepted specifications. A point-of-sale terminal shall either bear or the premises on which the point-of-sale terminal is established shall contain a visible logo type or other identification symbol designed to advise customers that the point-of-sale terminal may be activated by any access device which complies with the generally accepted specifications. An automatic teller machine or point-of-sale terminal may also bear, at the option of the establishing or acquiring financial institution, any of the following:

(a) The names of all individual financial institutions using such automatic teller machines or point-of-sale terminals in alphabetical order, except that the establishing or acquiring financial institution may be listed first, and in a uniform typeface, size, and color; or

(b) The logo type or symbol of any association, corporation, or other entity or organization formed by one or more of the financial institutions using such automatic teller machines or point-of-sale terminals.

(13) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

(14) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution

or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days after the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,134 to 8-1,139 and to having the privileges granted in this section revoked.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(c) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(d) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(e) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(f) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(g) Establishing financial institution means any financial institution establishing an automatic teller machine which has a main chartered office or approved branch located in the State of Nebraska;

(h) Financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union, or a subsidiary of any such entity;

(i) Personal identification number means a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(j) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer; and

(k) User financial institution means any financial institution which desires to avail itself of and provide its customers with automatic teller machine or point-of-sale terminal services.

(16) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(17) Nothing in this section requires any federally chartered establishing financial institution to obtain the approval of the director for the establishment of any automatic teller machine.

(18) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or to allow customers of out-of-state financial institutions to use its automatic teller machines located in the State of Nebraska. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program shall not be considered for purposes of determining if an automatic teller machine located in the State of Nebraska has been made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2.

8-158 Banks; appointment as personal representative or administrator; authorized.

Any bank, chartered to conduct a banking business in this state and so authorized by its corporate articles, shall have power to act, either by itself or jointly with any natural person or persons, as personal representative of the estate of any deceased person or as administrator of the estate of any person under the appointment of a court of record having jurisdiction of the estate of such deceased person.

Source: Laws 1959, c. 18, § 1, p. 142; Laws 1961, c. 14, § 3, p. 107; Laws 1961, c. 16, § 1, p. 116; R.R.S.1943, § 8-1,117; Laws 1963, c. 29, § 58, p. 158; Laws 1973, LB 164, § 17; Laws 1986, LB 909, § 1.

8-159 Banks; trust department; authorization.

Any bank, having adopted or amended its articles of incorporation to authorize the conduct of a trust business as defined in the Nebraska Trust Company Act, may be further chartered by the director to transact a trust company business in a trust department in connection with such bank.

Source: Laws 1959, c. 19, § 1, p. 143; Laws 1961, c. 14, § 4, p. 107; R.R.S.1943, § 8-1,118; Laws 1963, c. 29, § 59, p. 159; Laws 1993, LB 81, § 9; Laws 1998, LB 1321, § 10.

8-160 Banks; trust department; amendment of charter; supervision.

The director shall have the power to issue to banks amendments to their charters of authority to transact trust business as defined in the Nebraska Trust Company Act and shall have general supervision and control over such trust department of banks.

Source: Laws 1959, c. 19, § 2, p. 143; Laws 1961, c. 14, § 5, p. 108; R.R.S.1943, § 8-1,119; Laws 1963, c. 29, § 60, p. 159; Laws 1993, LB 81, § 10; Laws 1998, LB 1321, § 11.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-161 Banks; trust department; application; investigation; authorization.

The director, before granting to any bank the right to operate a trust department, shall require such bank to make an application for amendment of its charter, setting forth such information as the director may require. If, upon investigation, the department shall be satisfied that the bank requesting such charter is operated by stockholders, directors, and officers of integrity and responsibility, the department shall, with such additional capital as the director shall require, issue to such bank an amendment to its charter, entitling it to operate a trust department and entitling it to transact the business provided for in the Nebraska Trust Company Act.

Source: Laws 1959, c. 19, § 3, p. 144; Laws 1961, c. 14, § 6, p. 108; R.R.S.1943, § 8-1,120; Laws 1963, c. 29, § 61, p. 159; Laws 1993, LB 81, § 11; Laws 1998, LB 1321, § 12.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-162 Banks; trust department; separation from other departments; powers; duties.

The trust department of a bank when chartered under sections 8-159 to 8-161 shall be separate and apart from every other department of the bank and shall have all of the powers, duties, and obligations of a trust company provided in the Nebraska Trust Company Act.

Source: Laws 1959, c. 19, § 4, p. 144; Laws 1961, c. 14, § 7, p. 108; R.R.S.1943, § 8-1,121; Laws 1963, c. 29, § 62, p. 159; Laws 1993, LB 81, § 12; Laws 1998, LB 1321, § 13.

Cross Reference

Nebraska Trust Company Act, see section 8-201.01.

8-162.01 Banks; trust department; conduct of business; location.

Any bank authorized to transact a trust company business in a trust department pursuant to sections 8-159 to 8-162 may conduct such trust company business at the office of any bank which is a subsidiary of the same bank holding company as the authorized bank.

Source: Laws 1993, LB 81, § 13.

8-163 Dividends; withdrawal of capital or surplus prohibited; not made; when.

No bank shall withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any part of its capital or surplus without the written permission of the director. If losses have at any time been sustained equal to or exceeding the undivided profits on hand, no dividends shall be made. No dividend shall be made by any bank in an amount greater than the net profits on hand without the written permission of the director. As used in this section, net profits on hand shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets after deducting from the total thereof all current operating expenses, losses and

bad debts, accrued dividends on preferred stock if any, and federal and state taxes, for the present and two immediately preceding calendar years.

Source: Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-156; Laws 1963, c. 29, § 63, p. 160; Laws 1988, LB 996, § 3.

8-164 Dividends declared; conditions.

The board of directors of any bank may declare dividends on its capital stock but only under the following conditions:

(1) All bad debts required to be charged off by either the directors or the department shall first have been charged off. All debts due any bank on which interest is past due and unpaid for a period of six months, unless such debts are well secured or in the process of collection, shall be considered bad debts within the meaning of this section; and

(2) Twenty percent of the net profits accumulated since the preceding dividend shall first have been carried to the surplus fund unless such surplus fund equals or exceeds the amount of the paid-up capital stock.

Source: Laws 1909, c. 10, § 28, p. 79; R.S.1913, § 307; Laws 1919, c. 190, tit. V, art. XVI, § 28, p. 696; C.S.1922, § 8009; C.S.1929, § 8142; Laws 1930, Spec. Sess., c. 6, § 11, p. 31; Laws 1933, c. 18, § 27, p. 149; Laws 1935, c. 10, § 1, p. 78; Laws 1937, c. 16, § 1, p. 122; C.S.Supp.,1941, § 8-142; Laws 1943, c. 19, § 4, p. 104; R.S.1943, § 8-143; Laws 1951, c. 10, § 1, p. 82; Laws 1953, c. 7, § 1, p. 71; R.R.S.1943, § 8-143; Laws 1963, c. 29, § 64, p. 160; Laws 1985, LB 653, § 6; Laws 1988, LB 996, § 4; Laws 1994, LB 979, § 6.

Stockholders ordinarily are entitled to share equally in the distribution of dividends, which should go to the record owners of the stock when such dividends are declared, but this may be varied by agreement between the stockholders, and a purchaser of corporate stock, with notice of such an agreement, takes title to the stock subject thereto. Empson v. Deuel County State Bank, 134 Neb. 597, 279 N.W. 293 (1938).

8-165 Losses; charged to surplus fund; restoration of surplus fund; effect on dividends.

Any losses sustained by any bank in excess of its undivided profits shall be charged to its surplus fund. Its surplus fund shall thereafter be reimbursed from the earnings, and no dividends shall thereafter be declared or paid by any such bank, without the written permission of the director, until such surplus fund shall be fully restored to its former amount.

Source: Laws 1923, c. 191, § 38, p. 458; C.S.1929, § 8-144; R.S.1943, § 8-144; Laws 1949, c. 8, § 1, p. 68; R.R.S.1943, § 8-144; Laws 1963, c. 29, § 65, p. 160; Laws 1988, LB 996, § 5.

8-166 Banks; reports to department; form; number required; verification; waiver.

Every bank shall make to the department not less than two reports during each year according to the form which may be prescribed by the department, which report shall be certified as correct, in the manner prescribed by the department, by the president, vice president, cashier, or assistant cashier and in addition by two members of the board of directors. The director may waive the

requirements of this section if a bank files its reports electronically with the Federal Deposit Insurance Corporation, the Federal Reserve Board, or an electronic collection agent of the Federal Deposit Insurance Corporation or the Federal Reserve Board.

Source: Laws 1909, c. 10, § 17, p. 75; R.S.1913, § 296; Laws 1919, c. 190, tit. V, art. XVI, § 17, p. 692; C.S.1922, § 7998; C.S.1929, § 8-129; Laws 1933, c. 18, § 19, p. 144; Laws 1941, c. 10, § 1, p. 80; C.S.Supp.,1941, § 8-129; R.S.1943, § 8-131; Laws 1957, c. 11, § 1, p. 134; Laws 1961, c. 15, § 2, p. 111; R.R.S.1943, § 8-131; Laws 1963, c. 29, § 66, p. 161; Laws 1997, LB 137, § 7.

8-167 Banks; reports to department; contents; publication.

Each report required by section 8-166 shall exhibit in detail and under appropriate headings the resources and liabilities of the bank at the close of business on any past day specified by the call for report and shall be submitted to the department within thirty days, or as may be required by the department, after the receipt of requisition for the report. A summary of such report in the form prescribed by the department shall be published one time in a legal newspaper in the place where such bank is located. If there is no legal newspaper in the place where the bank is located, then such summary shall be published in a legal newspaper published in the same county or, if none is published in the county, in a legal newspaper of general circulation in the county. Such publication shall be at the expense of such bank. Proof of such publication shall be transmitted to the department within thirty days, or as may be required by the department, from the date fixed for such report.

Source: Laws 1909, c. 10, § 18, p. 75; R.S.1913, § 297; Laws 1919, c. 190, tit. V, art. XVI, § 18, p. 693; C.S.1922, § 7999; C.S.1929, § 8-130; Laws 1933, c. 18, § 20, p. 145; Laws 1941, c. 10, § 2, p. 81; C.S.Supp.,1941, § 8-130; R.S.1943, § 8-132; Laws 1963, c. 29, § 67, p. 161; Laws 1978, LB 641, § 2; Laws 1986, LB 960, § 1.

Purpose of Legislature was to require a full statement of the transactions of the officers concerning the business done by them in their official capacities as officers and agents of the bank. Wentz v. State, 108 Neb. 597, 188 N.W. 467 (1922).

8-167.01 Banks; publication requirements not applicable; when.

The publication requirements of section 8-167 shall not apply to any bank that makes a disclosure statement available to any member of the general public upon request in compliance with the disclosure of financial information provisions of 12 C.F.R. part 350 or 12 C.F.R. section 208.17.

Source: Laws 1995, LB 384, § 18.

8-168 Banks; special reports to department.

Any bank shall be required to furnish such special reports as may be required by the department to enable such department to obtain full and complete knowledge of the condition of such bank.

Source: Laws 1909, c. 10, § 19, p. 76; R.S.1913, § 298; Laws 1919, c. 190, tit. V, art. XVI, § 19, p. 693; C.S.1922, § 8000; C.S.1929, § 8-131; Laws 1933, c. 18, § 21, p. 145; C.S.Supp.,1941, § 8-131; R.S. 1943, § 8-133; Laws 1963, c. 29, § 68, p. 161.

8-169 Banks; reports; published statements; failure to make; penalty, recovery.

Any bank that shall fail, neglect, or refuse to make or furnish any report or any published statement required by the Nebraska Banking Act shall pay to the department fifty dollars for each day such failure shall continue, unless the department shall extend the time for filing such report.

Source: Laws 1909, c. 10, § 20, p. 76; R.S.1913, § 299; Laws 1919, c. 190, tit. V, art. XVI, § 20, p. 693; C.S.1922, § 8001; C.S.1929, § 8-132; Laws 1933, c. 18, § 22, p. 146; C.S.Supp.,1941, § 8-132; R.S. 1943, § 8-134; R.R.S.1943, § 8-134; Laws 1963, c. 29, § 59, p. 162; Laws 1973, LB 164, § 18; Laws 1998, LB 1321, § 14.

This section is referred to as providing penalty in contrasting this section with another section of the banking act which failed to provide a penalty, and holding that the failure to provide a penalty disclosed legislative intent that statute should be directory rather than mandatory. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-170 Records and files; time required to be kept; destroy, when.

(1) Banks shall not be required to preserve or keep their records or files for a longer period than six years next 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 (2) of this section.

(2)(a) Ledger sheets showing unpaid balances in favor of depositors of banks shall not be destroyed unless the bank has remitted such unpaid balances to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. Banks 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 bank shall not be destroyed.

Source: Laws 1949, c. 10, § 1, p. 71; R.R.S.1943, § 8-1,111; Laws 1963, c. 29, § 70, p. 162; Laws 1999, LB 396, § 10.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

8-171 Records; destruction; liability; excuse for failure to produce.

No liability shall accrue against any bank destroying any such records after the expiration of the time provided in section 8-170. In any cause or proceedings in which any such records or files may be called in question or be demanded of the bank or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of sections 8-170 to 8-174 shall be a sufficient excuse for the failure to produce them.

Source: Laws 1949, c. 10, § 2, p. 71; R.R.S.1943, § 8-1,112; Laws 1963, c. 29, § 71, p. 162.

8-172 Repealed. Laws 1975, LB 279, § 75.

8-173 Actions against bank on claims inconsistent with records; accrual of cause of action; limitations.

All causes of action against a bank based upon a claim or claims inconsistent with an entry or entries in any bank record or ledger, made in the regular course of business, shall accrue one year after the date of such entry or entries.

No action founded upon such a cause may be brought after the expiration of five years from the date of such accrual.

Source: Laws 1949, c. 10, § 4, p. 71; Laws 1951, c. 13, § 1, p. 88; R.R.S.1943, § 8-1,114; Laws 1963, c. 29, § 73, p. 163.

8-174 Records and files; destruction; applicable to national banks so far as may be permitted by laws of United States.

The provisions of sections 8-170 to 8-174, so far as may be permitted by the laws of the United States, shall apply to the records and files of national banks.

Source: Laws 1949, c. 10, § 5, p. 72; R.R.S.1943, § 8-1,115; Laws 1963, c. 29, § 74, p. 163.

8-175 Banks; false entry or statement; other offenses relating to books and records; penalty.

Any person who shall willfully and knowingly subscribe to, or make, or cause to be made, any false statement or false entry in the books of any bank, or shall knowingly subscribe to or exhibit false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such bank, or shall make, state, or publish any false statement of the amount of the assets or liabilities of any such bank, or shall fail to make true and correct entry in the books and records of such bank of its business and transactions in the manner and form prescribed by the department, or shall mutilate, alter, destroy, secrete, or remove any of the books or records of such bank without the written consent of the director, or shall make, state, or publish any false statement of the amount of the assets or liabilities of any such bank, shall be guilty of a Class III felony.

Source: Laws 1909, c. 10, § 21, p. 77; R.S.1913, § 300; Laws 1919, c. 190, tit. V, art. XVI, § 21, p. 694; C.S.1922, § 8002; C.S.1929, § 8-133; Laws 1933, c. 18, § 23, p. 146; C.S.Supp.,1941, § 8-133; R.S. 1943, § 8-135; Laws 1963, c. 29, § 75, p. 163; Laws 1977, LB 40, § 51.

Crime of making a false statement of condition of a bank with intent to deceive was a felony. State v. Hylton, 175 Neb. 828, 124 N.W.2d 230 (1963).

Mere making of false report is not sufficient to sustain conviction under this section, but in addition intent to deceive must be charged and proved. Foreman v. State, 127 Neb. 824, 257 N.W. 237 (1934).

In prosecution hereunder it is not essential to the commission of the offense that the statement be made in the presence of two directors of bank. Flannigan v. State, 124 Neb. 748, 248 N.W. 92 (1933).

Intent to deceive is an element of the felony described herein. Foreman v. State, 124 Neb. 74, 245 N.W. 422 (1932), 85 A.L.R. 821 (1932).

This section applies to minutes of meetings of board of directors. Kienke v. Kirsch, 121 Neb. 688, 238 N.W. 33 (1931).

To be guilty under this section, bank officer must willfully and knowingly make the entry, the entry must be false, and it must have been made with intent to deceive. Spearman v. State, 120 Neb. 799, 235 N.W. 465 (1931).

Omission by bank officer to include in report to banking department a certificate of deposit caused to be issued by him to pay a personal obligation is making false statement under this section. Wentz v. State, 108 Neb. 597, 188 N.W. 467 (1922).

8-176 Repealed. Laws 1965, c. 141, § 2, p. 482.

8-177 Banks; consolidation; approval required; creditors' claims.

Any bank, which is in good faith winding up its business for the purpose of consolidating with some other bank, may transfer its resources and liabilities to the bank with which it is in the process of consolidation, but no consolidation shall be made without the consent of the department, nor shall such consolida-

tion operate to defeat the claim of any creditor or hinder any creditor in the collection of his debt against such banks or either of them.

Source: Laws 1909, c. 10, § 41, p. 86; R.S.1913, § 320; Laws 1919, c. 190, tit. V, art. XVI, § 41, p. 701; C.S.1922, § 8021; C.S.1929, § 8-160; Laws 1933, c. 18, § 36, p. 154; C.S.Supp.,1941, § 8-160; R.S. 1943, § 8-164; Laws 1963, c. 29, § 77, p. 164.

An indebtedness of a bank incurred in an attempted liquidation in violation of this section is ultra vires and does not furnish the foundation for stockholders' double liability. Luikart v. Jones, 138 Neb. 472, 293 N.W. 346 (1940).

This section does not, of itself, make a consolidated bank liable for debts of old banks. Wilson v. Continental National Bank, 130 Neb. 614, 266 N.W. 68 (1936).

Two state banks cannot consolidate without consent of banking department, and sale of entire capital stock to stockholder, president and director of rival bank is not necessarily a consolidation within the meaning of this section. Cooper v. Bane, 110 Neb. 83, 196 N.W. 119 (1923).

8-178 National bank; reorganization as state bank; authorization; vote required; trust company business; conversion; public hearing; when.

Any national banking association located and doing business within the State of Nebraska which follows the procedure prescribed by the laws of the United States may convert into a state bank or merge or consolidate with a state bank upon a vote of the holders of at least two-thirds of the capital stock of such state bank when the resulting state bank meets the requirements of the state law as to the formation of a new state bank. If the national banking association has been further chartered to conduct a trust company business within a trust department of the bank, the trust department to be converted shall meet the requirements of state law as to the formation of a trust company business within a trust department of a state bank.

The public hearing requirement of subdivision (1) of section 8-115.01 and the rules and regulations of the department shall be required only if (1) after publishing a notice of the proposed conversion in a newspaper of general circulation in the county where the main office of the national bank is located, the expense of which shall be paid by the applicant bank, the director receives an objection to the conversion within fifteen days after such publication or (2) in the discretion of the director, the condition of the bank warrants a hearing. If the national bank has been further chartered to conduct a trust company business within a trust department of the bank, the notice of the proposed conversion of the national bank shall include notice that the trust department will be converted in connection with the national bank conversion.

Source: Laws 1909, c. 11, § 1, p. 96; R.S.1913, § 343; Laws 1919, c. 190, tit. V, art. XVI, § 63, p. 711; C.S.1922, § 8043; C.S.1929, § 8-161; Laws 1933, c. 18, § 37, p. 154; C.S.Supp.,1941, § 8-161; R.S. 1943, § 8-165; Laws 1951, c. 11, § 1(1), p. 84; R.R.S.1943, § 8-165; Laws 1963, c. 29, § 78, p. 165; Laws 1995, LB 599, § 3; Laws 2002, LB 957, § 5; Laws 2006, LB 876, § 10.

8-179 National bank; reorganization as state bank; procedure; trust company business; charter.

(1) The resulting state bank shall file a statement with the department, under the oath of its president or cashier, (a) showing that the procedure prescribed by the laws of the United States and by this state have been followed, (b) setting forth in the statement the matter prescribed by sections 8-121 and 8-1901 to 8-1903, and (c) if the national bank has been further chartered to conduct a trust company business within a trust department of the bank, setting forth the

matter prescribed by sections 8-159 to 8-162.01. Upon payment of all applicable fees, the department shall issue to such corporation the certificate provided for in section 8-122, a charter to transact the business provided for in its articles of incorporation, and, if applicable, a charter to conduct a trust company business within a trust department of the bank.

(2) The department may accept good assets of any such national bank, worth not less than par, in lieu of the payment otherwise provided by law for the stock of such resulting bank. When the parties requesting the conversion, merger, or consolidation are officers or directors of either the national bank or of the state bank, they shall be accepted without investigation as parties of integrity and responsibility. Unless the resulting bank is at a different location than the former national or state bank, the department shall recognize the public necessity, convenience, and advantage of permitting the resulting bank and, if applicable, the trust company business within a trust department of the bank, to engage in business.

Source: Laws 1951, c. 11, § 1(2), p. 84; R.R.S.1943, § 8-165.01; Laws 1963, c. 29, § 79, p. 165; Laws 1995, LB 384, § 5; Laws 2006, LB 876, § 11.

8-180 State bank; reorganization as national bank; vote required.

Any state bank, without the approval of any state authority, may, upon a vote of the holders of at least two-thirds of its capital stock, convert into and merge or consolidate with national banking associations as provided by federal law.

Source: Laws 1951, c. 11, § 1(3), p. 85; R.R.S.1943, § 8-165.02; Laws 1963, c. 29, § 80, p. 165.

8-181 National or state bank; conversion, merger, or consolidation; resulting bank; considered same corporate entity; termination of franchise.

When a national bank has converted into or merged or consolidated with a state bank, or a state bank has converted into or merged or consolidated with a national bank, the resulting bank shall be considered the same business and corporate entity as the former bank or banks and as a continuation thereof, and the ownership and title to all properties and assets and the obligations and liabilities of the converting, merging, or consolidating banks shall automatically pass to and become the properties and assets and the obligations and liabilities of the resulting bank. Upon the conversion, merger, or consolidation, when the resulting bank is a national bank, the franchise of the converting, merging, or consolidating state bank shall automatically terminate.

Source: Laws 1951, c. 11, § 1(4), p. 85; R.R.S.1943, § 8-165.03; Laws 1963, c. 29, § 81, p. 166.

8-182 State bank; conversion, merger, or consolidation with a national bank; objecting stockholders; stock; payment.

The owner of shares of a state bank which were voted against a conversion into or a merger or consolidation with a national bank shall be entitled to receive, from the assets of such state bank, the value of such stock in cash, when the merger or consolidation becomes effective, upon written demand made to the resulting bank at any time within thirty days after the effective date of the merger or consolidation, accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the

shareholders' meeting approving the conversion, merger, or consolidation, by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the conversion, merger, or consolidation, one by the board of directors of the resulting state bank, and the third by the two so chosen. If the appraisal is not completed within sixty days after the merger or consolidation becomes effective the department shall cause an appraisal to be made and such appraisal shall then govern. The expenses of appraisal shall be paid by the resulting bank.

Source: Laws 1951, c. 11, § 1(5), p. 85; R.R.S.1943, § 8-165.04; Laws 1963, c. 29, § 82, p. 166.

8-183 National or state bank; conversion, merger, or consolidation; resulting bank; assets; valuation.

Without approval by the department, no asset shall be carried on the books of the resulting bank, when the resulting bank is a state bank, at a valuation higher than that on the books of the converting, merging, or consolidating bank at the time of the examination, by a state or national bank examiner, last occurring before the effective date of the conversion, merger, or consolidation.

Source: Laws 1951, c. 11, § 1(6), p. 86; R.R.S.1943, § 8-165.05; Laws 1963, c. 29, § 83, p. 167.

8-183.01 State or federal savings association; conversion to state bank; plan of conversion; procedure.

(1) Any state or federal savings association, whether formed as a mutual association or a capital stock association, may apply to the director to convert to a state bank.

(2) Any savings association seeking to convert its form of organization pursuant to this section shall first obtain approval of a plan of conversion by resolution adopted by not less than a two-thirds majority vote of the total number of directors authorized to vote.

(3) Upon approval of a plan of conversion by the board of directors, such plan and the resolution approving it shall be submitted to the director. The director shall approve the plan of conversion if he or she finds, after appropriate investigation, that:

(a) The plan of conversion is fair and equitable;

(b) The interests of the applicant, its members or shareholders, its savings account holders, and the public are adequately protected; and

(c) The converting savings association has complied with the requirements of this section.

(4) If the director approves the plan of conversion, the approval shall be in writing and sent to the home office of the converting savings association. As part of its approval, the director may prescribe terms and conditions to be fulfilled either before or after the conversion to cause the converting savings association to conform to the requirements of the Nebraska Banking Act.

(5) If the director disapproves the plan of conversion, the reasons for such disapproval shall be stated in writing and sent to the home office of the converting savings association, which shall be afforded an opportunity to amend and resubmit the plan within a reasonable period of time as prescribed by the director. In the event the director disapproves the plan after such

resubmission, written notice of such final disapproval shall be sent by certified mail to the savings association's home office.

Source: Laws 1998, LB 1321, § 27.

8-183.02 State or federal savings association; plan of conversion; approval.

(1) If the director approves a plan of conversion in accordance with section 8-183.01, such plan shall be submitted for adoption to the members or shareholders of the converting savings association by vote at a meeting called to consider such action. At least three weeks prior to such meeting, a copy of the plan, together with an accurate summary plan description explaining the operation of the plan and the rights, duties, obligations, liabilities, conditions, and requirements which may be imposed upon such members or shareholders and the converted association as a result of the operation of the plan, shall be mailed to each member or shareholder eligible to vote at such meeting.

(2) The plan of conversion must be approved by not less than sixty percent of the total outstanding shares, which may be voted by proxy or in person at the meeting called to consider such conversion.

(3) A certified copy of the proceedings at such meeting shall be filed with the director within thirty days after such meeting.

(4) If the plan of conversion is approved, the board of directors of the savings association shall take action to obtain a state bank charter, adopt articles of incorporation, adopt bylaws, elect directors and officers, and take such other action as is required or appropriate for a state bank corporation.

Source: Laws 1998, LB 1321, § 28.

8-183.03 State or federal savings association; conversion to state bank; requirements.

(1) To obtain a state bank charter, a savings association shall meet the requirements of state law as to the formation of a new state bank. The public hearing requirement of subdivision (1) of section 8-115.01 shall only be required if (a) after publishing a notice of the proposed conversion in a newspaper of general circulation in the county where the main office of the converting savings association is located, the expense of which shall be paid by the applicant savings association, the director receives a substantive objection to the conversion within fifteen days after such publication or (b) in the discretion of the director, the condition of the savings association warrants a hearing.

(2) If the savings association is a federal association, compliance with the procedure for conversion to a state bank prescribed by the laws of the United States, if any, shall be demonstrated to the director.

(3) When the persons requesting the conversion of the savings association are officers or directors of the savings association, there shall be a rebuttable presumption that such persons are parties of integrity and responsibility.

(4) If the main office of the resulting state bank is to be at the same location as the main office of the converting savings association, the director shall recognize that the public necessity, convenience, and advantage of the community will be met by permitting the resulting bank to engage in business.

(5) The director may make an examination of the applicant savings association prior to his or her decision on the application for a state bank charter. The cost of such examination shall be paid by the applicant savings association.

Source: Laws 1998, LB 1321, § 29; Laws 2002, LB 957, § 6.

8-183.04 State or federal savings association; mutual savings association; retention of mutual form authorized.

Notwithstanding any other provision of the Nebraska Banking Act or any other Nebraska law, a state or federal savings association which was formed and in operation as a mutual savings association as of July 15, 1998, may elect to retain its mutual form of corporate organization upon conversion to a state bank. All references to shareholders or stockholders for state banks shall be deemed to be references to members for such a converted savings association. The director shall have the power to adopt and promulgate rules and regulations governing such converted mutual savings associations. In adopting and promulgating such rules and regulations, the director may consider the provisions of sections 8-301 to 8-384 governing savings associations in mutual form of corporate organization.

Source: Laws 1998, LB 1321, § 30; Laws 2005, LB 533, § 10.

8-183.05 State or federal savings association; issuance of state bank charter; effect; section, how construed.

(1) Upon the issuance of a state bank charter to a converting savings association, the corporate existence of the converting association shall not terminate, but such bank shall be a continuation of the entity so converted and all property of the converted savings association, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, immediately, by operation of law and without any conveyance or transfer and without any further act or deed, shall vest in and remain the property of such converted savings association, and the same shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting savings association.

(2) Upon issuance of the charter, the new state bank shall continue to have and succeed to all the rights, obligations, and relations of the converting savings association.

(3) All pending actions and other judicial proceedings to which the converting savings association is a party shall not be abated or discontinued by reason of such conversion but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion had not been made, and such converted savings association may continue the actions in its new corporate name. Any judgment, order, or decree may be rendered for or against the converting savings association theretofore involved in the proceedings.

(4) Nothing in this section shall be construed to authorize a converted savings association to establish branches except as permitted by section 8-157 and the Interstate Branching by Merger Act of 1997. This subsection shall not be

construed to require divestiture of any branches of a savings association in existence at the time of the conversion to a state bank charter.

Source: Laws 1998, LB 1321, § 31; Laws 2002, LB 1089, § 4.

Cross References

Interstate Branching by Merger Act of 1997, see section 8-2101.

8-184 Voluntary liquidation; approval required; examination; fees.

Whenever any bank shall desire to go into voluntary liquidation, it shall first obtain the written consent of the department which may, before granting such request, order a special examination of the affairs of such bank, for which the same fees may be collected as in regular examination.

Source: Laws 1909, c. 10, § 34, p. 83; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 153; C.S.Supp., 1941, § 8-153; R.S. 1943, § 8-158; Laws 1963, c. 29, § 84, p. 167.

8-185 Voluntary liquidation; procedure.

Any bank may voluntarily liquidate by paying off all its depositors in full. The bank so liquidating shall file a certified statement with the department, setting forth the fact that all its liabilities have been paid and naming its stockholders with the amount of stock held by each, and surrender its certificate of authority to transact a banking business. The department shall cause an examination to be made of any such bank for the purpose of determining that all of its liabilities, except liabilities to stockholders, have been paid. Upon such examination, if it appears that all liabilities other than liabilities to stockholders have been paid, the bank shall cease to be subject to the Nebraska Banking Act.

Source: Laws 1909, c. 10, § 42, p. 86; R.S.1913, § 321; Laws 1919, c. 190, tit. V, art. XVI, § 42, p. 702; Laws 1921, c. 299, § 1, p. 954; C.S.1922, § 8022; C.S.1929, § 8-169; Laws 1933, c. 18, § 39, p. 155; C.S.Supp.,1941, § 8-169; R.S.1943, § 8-159; Laws 1963, c. 29, § 85, p. 167; Laws 1987, LB 2, § 10; Laws 1998, LB 1321, § 15.

8-186 Bank; possession; voluntary surrender to department; notice; posting; liens dissolved.

Any bank may place its affairs and assets under the control of the department by posting on its door the following notice: This bank is in the hands of the Department of Banking and Finance. The posting of such notice, or the taking possession of any bank by the department or by any bank examiner shall be sufficient to place all of its assets of whatever nature immediately in the possession of the department, and shall operate as a bar to the levying of attachments or executions thereon, and shall operate to dissolve and release all levies, judgment liens, attachments, or other liens obtained through legal proceedings within sixty days next preceding the posting of such notice or the taking possession of such bank by the department.

Source: Laws 1909, c. 10, § 43, p. 86; R.S.1913, § 322; Laws 1919, c. 190, tit. V, art. XVI, § 43, p. 703; C.S.1922, § 8023; C.S.1929, § 8-170; Laws 1933, c. 18, § 40, p. 156; C.S.Supp.,1941, § 8-170; R.S. 1943, § 8-172; Laws 1963, c. 29, § 86, p. 168.

8-187 Banks; department may take possession; when; examination of affairs; liens dissolved; retention of possession.

Whenever it appears to the department from any examination or report provided for by the laws of this state that the capital of any bank is impaired, or that such bank is conducting its business in an unsafe or unauthorized manner, or is endangering the interests of its depositors, or upon failure of such bank to make any of the reports or statements required by the laws of this state, or if the officers or employees of any bank refuse to submit its books, papers, and affairs to the inspection of any examiner, or if any officer thereof refuses to be examined upon oath touching the affairs of any such bank, or if from any examination or report provided for by law, the department has reason to conclude that such bank is in an unsafe or unsound condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any such bank neglects or refuses to observe any order of the department, the department may forthwith take possession of the property and business of the bank and shall thereafter conduct the affairs of the bank, and shall retain possession of all money, rights, credits, assets, and property of every description belonging to the bank, as against any mesne or final process issued by any court against the bank whose property has been taken, and may retain possession for a sufficient time to make an examination of its affairs and dispose thereof as provided by law. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against the bank or its property, acquired within sixty days next preceding the taking of possession, in the event the bank is liquidated and the business of the bank is not resumed or carried on after the taking over thereof by the department, shall be void and the property affected by the levy, judgment lien, attachment, or other lien so obtained shall be wholly discharged and released therefrom. The director shall retain possession of the property and business of the bank until the bank shall resume business or its affairs are finally liquidated as provided in the Nebraska Banking Act.

Source: Laws 1909, c. 10, § 48, p. 89; R.S.1913, § 328; Laws 1919, c. 190, tit. V, art. XVI, § 49, p. 705; C.S.1922, § 8029; Laws 1923, c. 191, § 11, p. 443; Laws 1925, c. 30, § 1, p. 122; Laws 1929, c. 38, § 16, p. 164; C.S.1929, § 8-181; Laws 1933, c. 18, § 42, p. 157; C.S.Supp.,1941, § 8-181; R.S.1943, § 8-173; Laws 1963, c. 29, § 87, p. 168; Laws 1987, LB 2, § 11; Laws 1998, LB 1321, § 16.

1. Taking possession
2. Liens
3. Liquidation
4. Reorganization
5. Miscellaneous

1. Taking possession

This section empowers the Department of Banking and Finance to take possession of the property and business of a bank and conduct its affairs, retaining possession of all money, rights, credits, assets, and property of every description belonging to the bank, whenever it finds that a bank is conducting its business in an unsafe or unauthorized manner. Even after a court has appointed a receiver to liquidate a banking corporation's assets and business, this section still empowers the Department of Banking and Finance to take possession of that bank and conduct its affairs, since the corporation continues its legal existence. In re Invol. Dissolution of Battle Creek State Bank, 254 Neb. 120, 575 N.W.2d. 356 (1998).

Taking over of bank was authorized under this section, and acts performed in reference to closed transactions wherein fraud was not charged were not subject to collateral attack. Torgeson v. Department of Trade and Commerce, 127 Neb. 38, 254 N.W. 735 (1934).

Taking over of bank by Department of Banking to manage or liquidate does not effect dissolution of corporation, which retains identity and is subject to suit, provided there is no interference with assets. Svoboda v. Snyder State Bank, 117 Neb. 431, 220 N.W. 566 (1928).

In case of noncompliance with provisions for payment of guaranty fund assessments, Department of Banking was authorized to forthwith take possession of property and business of the bank. Abie State Bank v. Bryan, 282 U.S. 765 (1930).

Upon first taking possession of bank under this section, and pending determination of what course to pursue, state banking

officials are entitled to hold assets as against any mesne or final process issued by any court. Metropolitan Savings Bank & Trust Co. v. Farmers' State Bank, 20 F.2d 775 (8th Cir 1927).

2. Liens

Whenever the practices or condition of a state bank is such that it is taken in charge by Department of Banking, all attachment liens acquired within thirty days are dissolved. Luikart v. Hunt, 124 Neb. 642, 247 N.W. 790 (1933).

Judgment obtained against bank while in hands of state banking officials is not a lien upon real estate of the bank. Brownell v. Svoboda, 118 Neb. 76, 223 N.W. 641 (1929).

3. Liquidation

Under this section, prior to 1929 amendment, Guaranty Fund Commission was required to determine within a reasonable time whether it would operate bank as going concern or liquidate it through a receiver. Morrill County v. Bliss, 125 Neb. 97, 249 N.W. 98 (1933).

Under prior act, this section did not grant to Department of Banking authority to wind up the affairs of an insolvent state bank without the aid of a court. State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

Conveyance of property of bank to trustee for purpose of liquidation and distribution to depositors, creates express trust, and constitutes equitable conversion of real estate into money. Jensen v. Ballmer, 121 Neb. 488, 237 N.W. 613 (1931).

Court was not authorized to appoint receiver in foreclosure action to take charge of mortgaged real estate of bank, where its entire assets are already under control of Department of Banking as receiver of bank. Wells v. Farmers State Bank of Overton, 121 Neb. 462, 237 N.W. 402 (1931).

State banking officials in charge of bank are entitled to reasonable time to determine whether to turn it back or operate it, and in meantime assets immune from execution; creditor seeking to levy must allege and prove state banking officials have been in charge longer than reasonable. McBride v. Taylor, 117 Neb. 381, 220 N.W. 683 (1928).

Where state bank was taken over by Department of Banking and a receiver appointed, the fact of actual insolvency, coupled with admissions by bank directors in statement to department, constituted ''voluntary assignment'' giving United States priority as to postal funds. Bliss v. United States, 44 F.2d 909 (8th Cir. 1930).

This section summarized in reviewing statutory provisions bearing on right of receiver of bank to sue in foreign jurisdiction to recover stockholder's liability. Luikart v. Spurck, 1 F.Supp. 53 (D. Ill. 1932).

4. Reorganization

City not consenting to reorganization plan under this section was entitled to recover balance of deposit unpaid from surety on bond of city treasurer, where bond to secure the deposit had not been given. City of Cozad v. Thompson, 126 Neb. 79, 252 N.W. 606 (1934).

Reorganization, recapitalization and reopening of bank taken over by banking officials under this section do not result in the dissolution of the old bank or in the creation of a new bank. Barber v. Bryan, 123 Neb. 566, 243 N.W. 834 (1932).

Reorganization of insolvent bank is not binding on nonconsenting depositor, who is entitled to sue reorganized bank and liquidation association, but can recover against reorganized bank only to extent of proportionate share of assets taken over by it. Hessen Siak Shams v. Nebraska State Bank of Bloomfield, 48 F.2d 894 (D. Neb. 1931).

5. Miscellaneous

Under facts in this case, denial of motion for continuance under section 8-195 was not erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

Department of Banking is vested with general supervision and control of state banks with authority to do all things necessary for protection of depositors therein. Brownell v. Adams, 121 Neb. 304, 236 N.W. 750 (1931).

Offense of receiving deposits when bank insolvent is not modified by statute permitting Department of Banking to operate bank as going concern. State v. Kastle, 120 Neb. 758, 235 N.W. 458 (1931).

Suit against bank being operated as going concern by Guaranty Fund Commission is not suit against the state. Svoboda v. Snyder State Bank, 117 Neb. 431, 220 N.W. 566 (1928); Metropolitan Savings Bank & Trust Co. of Pittsburgh, Pa. v. Farmers' State Bank of Rosalie, Neb., et al., 20 F.2d 775 (8th Cir. 1927).

This section summarized in reviewing statutory provisions bearing upon general supervisory power of Department of Banking over state banks. State ex rel. Davis v. Exchange Bank of Ogallala, 114 Neb. 664, 209 N.W. 249 (1926).

This section summarized in reviewing statutory provisions bearing upon duty of Department of Banking to see that banking business is conducted in safe manner and that interests of depositors are protected. State ex rel. Chamberlin v. Morehead, 99 Neb. 146, 155 N.W. 879 (1915).

8-188 Banks; possession by department; effective upon notice.

The director, or any deputy or any examiner authorized by the director, may take possession of a bank by handing to the president, cashier or any person in charge of the bank, a written notice that the bank is in the possession of the department.

Source: Laws 1925, c. 30, § 2, p. 123; C.S.1929, § 8-183; Laws 1933, c. 18, § 45, p. 159; C.S.Supp.,1941, § 8-183; R.S.1943, § 8-174; Laws 1963, c. 29, § 88, p. 169.

Under facts in this case, denial of motion for continuance under section 8-195 was not erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

8-189 Banks; attempted prevention of possession by department; penalty.

Any officer, director, or employee of a bank, who shall attempt to prevent the department from taking possession of such bank, shall be guilty of a Class I misdemeanor.

Source: Laws 1923, c. 191, § 14, p. 445; C.S.1929, § 8-184; Laws 1933, c. 18, § 46, p. 159; C.S.Supp.,1941, § 8-184; R.S.1943, § 8-175; Laws 1963, c. 29, § 89, p. 169; Laws 1977, LB 40, § 52.

8-190 Banks; possession by department; refusal to deliver; possession by banks; application for court order.

Whenever any bank refuses or neglects to deliver possession of its affairs, assets, or property of whatever nature to the department or to any person ordered or appointed to take charge of such bank according to the Nebraska Banking Act, the director shall make an application to the district court of the county in which such bank is located or to any judge thereof for an order placing the department or such person in charge thereof and of its affairs and property. If the judge of the district court having jurisdiction is absent from the district at the time such application is to be made, any judge of the Court of Appeals or Supreme Court may grant such order, but the petition and order of possession shall be forthwith transmitted to the clerk of the district court of the county in which such bank is located.

Source: Laws 1909, c. 10, § 56, p. 94; R.S.1913, § 336; Laws 1919, c. 190, tit. V, art. XVI, § 57, p. 709; C.S.1922, § 8037; C.S.1929, § 8-185; Laws 1933, c. 18, § 47, p. 159; C.S.Supp.,1941, § 8-185; R.S. 1943, § 8-176; Laws 1963, c. 29, § 90, p. 170; Laws 1987, LB 2, § 12; Laws 1991, LB 732, § 12; Laws 1998, LB 1321, § 17.

8-191 Banks; possession by department; notice to banks and trust companies; notice or knowledge of possession forestalls liens.

Upon taking possession of the property and business of any bank, the department shall forthwith give notice of such fact by letter or telegram to all banks or trust companies holding or in possession of any assets of such bank, so far as known by such department. No bank so notified or knowing of such possession by the department shall have a lien or charge for any payment, advance, or clearance thereafter made, or liability thereafter incurred, against any of the assets of the bank of whose property and business the department shall have taken possession unless the bank be continued as a going concern.

Source: Laws 1923, c. 191, § 16, p. 445; C.S.1929, § 8-187; Laws 1933, c. 18, § 49, p. 160; C.S.Supp.,1941, § 8-187; R.S.1943, § 8-177; Laws 1963, c. 29, § 91, p. 170.

Act of Department of Banking in taking over insolvent bank is not subject to collateral attack. Torgeson v. Department of Trade and Commerce, 127 Neb. 38, 254 N.W. 735 (1934).

Notice of possession of bank by Department of Banking forestalls all future liens, unless the bank be continued as a going concern. Luikart v. Hunt, 124 Neb. 642, 247 N.W. 790 (1933).

8-192 Banks; possession by department; inventory of assets and liabilities; filing.

Upon taking charge of any bank, the director shall cause to be made an inventory in triplicate of all the property, assets, and liabilities of the bank so far as the same can be ascertained. One copy thereof shall be filed in the office of the director, one copy thereof retained in the bank, and after the declaration of insolvency of the bank, as provided in section 8-194, one copy shall be filed with the clerk of the district court of the county in which the bank is located.

Source: Laws 1929, c. 38, § 21, p. 167; C.S.1929, § 8-188; Laws 1933, c. 18, § 50, p. 161; C.S.Supp.,1941, § 8-188; R.S.1943, § 8-178; Laws 1963, c. 29, § 92, p. 170.

Under facts in this case, denial of motion for continuance under section 8-195 was not erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

8-193 Banks; redelivery of possession; bond; departmental supervision; repossession by department.

Whenever the officers, directors, stockholders, or owners of any insolvent bank give good and sufficient bond running to the department with an incorporated surety company authorized by the laws of this state to transact such business, conditioned upon the full settlement of all the liabilities of such bank by such officers, directors, stockholders, or owners within a stated time, and the bond is approved by the department, then the department shall turn over all the assets of such bank to the officers, directors, stockholders, or owners of the bank furnishing the bond, reserving the same right to require report of the condition and to examine into the affairs of the bank as existed in the department previous to its closing. If, upon such examination, it is found by the department that the officers, directors, stockholders, or owners are not closing up the affairs of the bank in such manner as to discharge its liabilities and to close up its affairs in a manner satisfactory to the department within a reasonable time, the department shall take immediate possession of the bank for the liquidation thereof as provided in the Nebraska Banking Act.

Source: Laws 1919, c. 190, tit. V, art. XVI, § 8, p. 688; C.S.1922, § 7989; Laws 1923, c. 191, § 13, p. 444; C.S.1929, § 8-189; Laws 1933, c. 18, § 51, p. 161; C.S.Supp.,1941, § 8-189; R.S.1943, § 8-179; Laws 1963, c. 29, § 93, p. 171; Laws 1987, LB 2, § 13; Laws 1998, LB 1321, § 18.

Agreement between stockholders of bank and its depositors and creditors under which bank officers were to liquidate bank does not contravene statute where Department of Banking accepted bank officers' joint and several liability in lieu of surety bond. Department of Banking v. Walker, 131 Neb. 732, 269 N.W. 907 (1936).

8-194 Insolvent banks; determination; declaration by Director of Banking and Finance; filing.

Upon determination of insolvency of any bank by the director and failure of owners thereof to restore solvency within the time and in the manner provided by law, or upon violation of the laws of the state by the bank, the director shall make a finding in writing of the condition of the affairs of such bank and a declaration of insolvency and such finding and declaration shall be filed with the clerk of the district court of the county in which such bank is located.

Source: Laws 1929, c. 38, § 10, p. 162; C.S.1929, § 8-190; Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-180; Laws 1963, c. 29, § 94, p. 171.

1. Priority of deposits
2. Appointment of receiver
3. Miscellaneous

1. Priority of deposits

Receiver takes and holds assets of insolvent bank subject to liens against them as they exist at time court enters decree of insolvency. Wells v. Farmers State Bank of Overton, 124 Neb. 386, 246 N.W. 714 (1933).

Priority of unsecured deposits is fixed by status at time of actual closing of bank when court, under this section, adjudges it insolvent and orders it liquidated. State ex rel. Sorensen v. Thurston State Bank, 121 Neb. 407, 237 N.W. 293 (1931).

Upon taking possession of bank under this section, priority of United States attaches for debts due from bank. United States v. Bliss, 40 F.2d 935 (D. Neb. 1930), affirmed on appeal, Bliss v. United States, 44 F.2d 909 (8th Cir. 1930).

2. Appointment of receiver

Amendment of 1933 manifested legislative intent to provide for administrative rather than judicial receivership of banks. Farmers State Bank of Clarks v. Luikart, 131 Neb. 692, 269 N.W. 627 (1936).

Appointment of receiver for purposes of liquidation includes power in receiver to sue for recovery of assets and for losses which bank has suffered by wrongful acts of its officers in violation of their bonds. Luikart v. Flannigan, 130 Neb. 901, 267 N.W. 165 (1936).

Appointment of receiver and judicial determination of deficiency of assets does not vest court appointing receiver with exclusive jurisdiction to try an equity suit for purpose of determining liability of stockholders. Parker v. Luehrmann, 126 Neb. 1, 252 N.W. 402 (1934).

3. Miscellaneous

In a proceeding by a state bank under section 8-195, the bank has the burden to establish that declaration of insolvency hereunder was erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

Taking over of banking corporation by Department of Banking does not effect a dissolution of corporation; it retains its corporate capacity and may be sued on its contracts. Torgeson v. Department of Trade and Commerce, 127 Neb. 38, 254 N.W. 735 (1934).

Receiver of insolvent Nebraska state bank may sue to recover stockholder's double liability in foreign jurisdiction. Luikart v. Spurck, 1 F.Supp. 53 (D. Ill. 1932).

8-195 Insolvent banks; possession by Director of Banking and Finance; petition to enjoin; show cause order; findings by district court; disposition of case.

Whenever any bank of whose property and business the director has taken possession or whose insolvency has been declared as provided in section 8-194 deems itself aggrieved thereby, it may, at any time not later than ten days after such declaration of insolvency has been filed with the clerk of the district court of the county in which the bank is located, petition the district court to enjoin further proceedings, and the court, after citing the director to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties and determining the facts, may, upon proof by the bank, its officers or directors, that it is solvent, that the business of the bank has been and is being conducted as provided by law, that it is not endangering the interests of its depositors and other creditors, and that the director has acted arbitrarily and abused his discretion either by taking possession of the bank or by finding and declaring the bank to be insolvent and ordering its liquidation, set aside such declaration of insolvency and enjoin the director from proceeding further, and direct him to surrender the business and property to the bank. On proof that the bank is insolvent and that its stockholders have failed to restore solvency as provided by law, or that the bank is being operated in violation of law, and that the director has acted within his powers, the petition shall be dismissed by the court.

Source: Laws 1929, c. 38, § 10, p. 162; C.S.1929, § 8-190; Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-181; Laws 1963, c. 29, § 95, p. 172.

In a proceeding by a state bank hereunder, the bank has burden to establish that a declaration of insolvency under section 8-194 was erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

8-196 Insolvent banks; liquidation; injunction; appeal; bond.

An appeal shall operate as a stay of judgment of the district court, and no bond need be given if the appeal is taken by the director, but if the appeal is taken by such bank, a bond shall be given as required by law for appeal in civil cases.

Source: Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-182; Laws 1963, c. 29, § 96, p. 172; Laws 1991, LB 732, § 13.

8-197 Insolvent banks; liquidation by Federal Deposit Insurance Corporation or by liquidating trustees.

Pending final judgment on the petition to enjoin, the director shall retain possession of the property and business of the bank. If not enjoined, the director shall proceed to liquidate the affairs of such bank as provided in the Nebraska Banking Act, except that: (1) The Federal Deposit Insurance Corporation may, under the laws of this state, accept the appointment as receiver or liquidator of any insolvent state bank the deposits of which are insured by the

Federal Deposit Insurance Corporation; or (2) when any state bank is declared insolvent and ordered to be liquidated and the deposits of such bank are not insured by the Federal Deposit Insurance Corporation, then depositors and other creditors of such insolvent state bank, representing fifty-one percent or more of the deposit and other claims in number and in amount of the total thereof, shall have the right to liquidate such insolvent bank by and through liquidating trustees, who shall have the same power as the department and the director to liquidate such bank if, within thirty days after the filing of the declaration of insolvency, articles of trusteeship executed and acknowledged by fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, are filed with the director. The articles creating the trusteeship shall be in writing, shall name the trustees, shall state the terms and conditions of such trust, and shall become effective when it is determined by the director that fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, have signed and acknowledged the same. All nonconsenting depositors and other creditors of the insolvent bank shall be held to be subject to the terms and conditions of such trusteeship to the same extent and with the same effect as if they had joined in the execution thereof, and their respective claims shall be treated in all respects as if they had joined in the execution of such articles of trusteeship. Upon finding that such articles have been executed and acknowledged as provided in this section, the director shall thereupon transfer all of the assets of the insolvent bank to such liquidating trustees and take their receipt therefor, and all duties and responsibilities of the department and the director as otherwise provided by law with respect to such liquidation shall be assumed by such liquidating trustees. The director shall then be relieved from further responsibility in connection therewith, and the director and the person who issued the applicable bond or equivalent commercial insurance policy shall be released from further liability on the director's official bond or equivalent commercial insurance policy in respect to such liquidation. The trustees shall then proceed to liquidate such bank as nearly as may be in the manner provided by law for the liquidation of insolvent banks by the department acting as receiver and liquidating agent.

When the Federal Deposit Insurance Corporation or any party other than the department is appointed receiver and liquidating agent of an insolvent bank or other financial institution, all references to the department or the director as provided in the act for the liquidation of banks and financial institutions shall mean the Federal Deposit Insurance Corporation or other appointed receiver and liquidating agent.

Source: Laws 1933, c. 18, § 53, p. 163; Laws 1935, c. 16, § 1, p. 90; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-183; Laws 1963, c. 29, § 97, p. 173; Laws 1987, LB 2, § 14; Laws 1988, LB 994, § 1; Laws 1998, LB 1321, § 19; Laws 2004, LB 884, § 5.

8-198 Financial institutions; designation of receiver and liquidating agent; department; powers.

The department may be designated the receiver and liquidating agent for any financial institution subject to the department's jurisdiction and, subject to the

district court's supervision and control, may proceed to liquidate such institution or reorganize it in accordance with the Nebraska Banking Act.

Source: Laws 1929, c. 38, § 11, p. 163; C.S.1929, § 8-192; Laws 1933, c. 18, § 52, p. 162; Laws 1941, c. 9, § 1, p. 79; Laws 1941, c. 180, § 1, p. 700; C.S.Supp.,1941, § 8-192; R.S.1943, § 8-184; Laws 1963, c. 29, § 98, p. 174; Laws 1985, LB 653, § 7; Laws 1998, LB 1321, § 20.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

Under 1929 act, Department of Banking was ineligible to be appointed judicial receiver as it is not a qualified legal entity. State ex rel. Sorensen v. Hoskins State Bank, 132 Neb. 878, 273 N.W. 834 (1937).

Under 1929 act, the appointment of a receiver was a judicial act to be performed by the courts. State ex rel. Sorensen v. Nebraska State Bank, 124 Neb. 449, 247 N.W. 31 (1933).

Under 1929 act, this section in a judicial proceeding amounted to no more than a legislative recommendation to the judiciary to appoint secretary as receiver. State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

8-199 Financial institutions; department as receiver; powers; no compensation to director.

Whenever the department has been designated receiver for an institution subject to its jurisdiction, the department shall have all the powers and privileges provided by the laws of this state with respect to any other receiver and such incidental powers as shall be necessary to carry out an orderly and efficient liquidation or reorganization of any financial institution for which the department may have become receiver, either by operation of law or by judicial appointment. Acting by and through the director, the department may in its own name as such receiver enforce on behalf of such institution or its creditors or shareholders, by actions at law or in equity, all debts or other obligations of whatever kind or nature due to such institution or the creditors or shareholders thereof. In like manner, the department may make, execute, and deliver any and all deeds, assignments, and other instruments necessary and proper to effectuate any sale of real or personal property, or the settlement of any obligations belonging or due to such financial institution for which the department may have become receiver, or its creditors or shareholders, when such sale or settlement is approved by the district court of the county in which such institution is located. The director shall receive no fees, salary, or other compensation for his or her services in connection with the liquidation or reorganization of such institutions other than his or her salary.

Source: Laws 1941, c. 9, § 1, p. 79; Laws 1941, c. 1.80, § 1, p. 700; C.S.Supp.,1941, § 8-192; R.S.1943, § 8-185; Laws 1963, c. 29, § 99, p. 174; Laws 1985, LB 653, § 8.

In the absence of an allegation of an individual harm upon which a claimant can directly bring suit, claims are derivative and are properly pursued by the receiver under section 8-199 (Reissue 1983). Weimer v. Amen, 235 Neb. 287, 455 N.W.2d 145 (1990).

Section 8-199 (Reissue 1983) does not unconstitutionally deny access to the courts, violate due process, nor take property for a public purpose without just compensation. Weimer v. Amen, 235 Neb. 287, 455 N.W.2d 145 (1990).

Section 8-199 (Reissue 1983) granted the receiver broad authority to enforce all debts or other obligations of whatever kind or nature due to the creditors of the failed institution which arose by virtue of the institution's insolvency. Weimer v. Amen, 235 Neb. 287, 455 N.W.2d 145 (1990).

8-1,100 Insolvent banks; liquidation; special deputies, assistants, counsel; appointment; compensation; discharge.

The director may, under his hand and official seal, appoint such special deputies or assistants as he may find necessary for the efficient and economical liquidation of insolvent banks, with powers specified in the certificate of appointment, to assist him in the liquidation. The certificate shall be filed in the

office of the director and a certified copy in the office of the clerk of the district court of the county in which such bank is located. He may also employ such counsel and expert assistance as may be necessary to perform the work of liquidation. He shall, subject to the approval of the district court of the county in which the insolvent bank is located, fix the compensation for the services rendered by such special deputies, assistants, and counsel, which shall be taxed as costs of the liquidation. He may discharge such special deputies, assistants, or counsel at any time or may assign them to one or more liquidations or transfer them from one liquidation to another.

Source: Laws 1929, c. 38, § 13, p. 163; C.S.1929, § 8-194; Laws 1933, c. 18, § 56, p. 164; Laws 1933, c. 96, § 2, p. 382; C.S.Supp.,1941, § 8-194; R.S.1943, § 8-186; Laws 1963, c. 29, § 100, p. 175.

Under this section, the Director of Banking is given power to appoint deputies and assistants, with powers specified in a certificate of appointment, to assist him in the liquidation. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

This section referred to in stating contentions of parties that former method of liquidating insolvent banks had been changed by 1929 act. State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

8-1,101 Insolvent banks; liquidation; special deputies, assistants; bond or insurance; conditions.

Upon the declaration of insolvency, the director shall require bonds or equivalent commercial insurance policies from the special deputies or assistants in sums and with such condition as the director shall specify, to be approved by the Governor. The costs of any such bond or policy shall be taxed as costs in the liquidation. Such bond or policy shall be conditioned for the faithful performance of duty, and include indemnity to the department as receiver and liquidating agent.

Source: Laws 1929, c. 38, § 14, p. 164; C.S.1929, § 8-195; Laws 1933, c. 18, § 60, p. 165; C.S.Supp.,1941, § 8-195; R.S.1943, § 8-187; Laws 1963, c. 29, § 101, p. 175; Laws 2004, LB 884, § 6.

8-1,102 Insolvent banks; department as receiver and liquidating agent; liens dissolved; assets; transfers to defraud creditors; preferences.

Upon the declaration of insolvency of a bank by the director, the department shall become the receiver and liquidating agent to wind up the business of that bank, and the department shall be vested with the title to all of the assets of such bank wheresoever the same may be situated and whatsoever kind and character such assets may be, as of the date of the filing of the declaration of insolvency with the clerk of the district court of the county in which such bank is located. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against such bank or its property acquired within sixty days next preceding the filing of the declaration of insolvency shall be void, and the property affected by the levy, judgment lien, attachment, or other lien obtained through legal proceedings, shall be wholly discharged and released therefrom. If at any time within sixty days prior to the taking over by the director of a bank which is later declared insolvent any transfers of the assets of such bank are made to prevent liquidation and distribution of such assets to the bank's creditors as provided in the Nebraska Banking Act or if any transfers are made so as to create a preference of one creditor over another, such transfers

shall be void and the director shall be entitled to recover such assets for the benefit of the trust.

Source: Laws 1933, c. 18, § 54, p. 163; C.S.Supp.,1941, § 8-1,127; R.S. 1943, § 8-188; Laws 1963, c. 29, § 102, p. 176; Laws 1987, LB 2, § 15; Laws 1998, LB 1321, § 21.

8-1,103 Insolvent banks; liquidation; Director of Banking and Finance; powers.

For the purpose of executing and performing any of the powers and duties hereby conferred upon him or her, the director may, in the name of the department or the delinquent bank or in his or her own name as director, prosecute and defend any and all suits and other legal proceedings and may, in the name of the department or the delinquent bank or in his or her own name as director, execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary and proper to effectuate any sale of real or personal property or sale or compromise authorized by order of the court as provided in the Nebraska Banking Act. Any deed or other instrument executed pursuant to such authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the delinquent bank by authority of its board of directors.

Source: Laws 1933, c. 18, § 58, p. 165; C.S.Supp.,1941, § 8-1,129; R.S. 1943, § 8-189; Laws 1963, c. 29, § 103, p. 176; Laws 1987, LB 2, § 16; Laws 1998, LB 1321, § 22.

Department of Banking is a legal entity entitled to sue and defend under this section. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,104 Insolvent banks; liquidation; Director of Banking and Finance; collection of debts; sale or compromise of certain debts; procedure; deposit or investment of funds.

Upon taking possession of the property and business of any bank, the director shall collect all money due to such bank and do such other acts as are necessary to conserve its assets and business and, on declaration of insolvency, he or she shall proceed to liquidate the affairs thereof as provided in the Nebraska Banking Act. He or she shall collect all debts due to and belonging to such bank. If he or she desires to sell or compromise any or all bad or doubtful debts or any or all of the real and personal property of such bank, he or she shall apply to the district court of the county in which the bank is located for an order permitting such sale or compromise on such terms and in such manner as the court may direct. All money so collected by the director may be, from time to time, deposited in one or more state banks or national banks. No deposits of such money shall be made unless a pledge of assets, a depository bond, or both are given as security for such deposit. All depository banks are authorized to give such security. The director may invest a portion or all of such money in short-time interest-bearing securities of the federal government.

Source: Laws 1933, c. 18, § 67, p. 169; C.S.Supp.,1941, § 8-1,131; R.S. 1943, § 8-190; Laws 1963, c. 29, § 104, p. 177; Laws 1987, LB 2, § 17; Laws 1998, LB 1321, § 23.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,105 Insolvent banks; reorganization or liquidation proceedings; district judge; jurisdiction.

In any proceeding in connection with the insolvency, liquidation, or reorganization of a bank of which a district court has jurisdiction, a judge of the district court shall exercise such jurisdiction in any county in the judicial district for which he was elected to perform any official act in the manner and with the same effect as he might exercise in the county in which the matter arose, or to which it may have been transferred, and he may perform any such act in chambers with the same effect as in open court.

Source: Laws 1925, c. 30, § 16, p. 131; C.S.1929, § 8-191; Laws 1933, c. 18, § 55, p. 163; C.S.Supp.,1941, § 8-191; R.S.1943, § 8-191; Laws 1963, c. 29, § 105, p. 178.

Powers of district judge may be exercised at chambers. Mueller v. Keeley, 163 Neb. 613, 80 N.W.2d 707 (1957).

Under this section, jurisdiction is conferred upon a judge of the district court to act in chambers in connection with the insolvency, liquidation or reorganization of a bank with the same effect as in open court. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

Appointment of receiver and judicial determination of deficiency of assets does not vest court appointing receiver with exclusive jurisdiction to try an equity suit for purpose of determining liability of stockholders. Parker v. Luehrmann, 126 Neb. 1, 252 N.W. 402 (1934).

Section sustained as constitutional, and suit for accounting brought by depositor against receiver of bank and state banking officials is a proceeding which may be tried in chambers under this section. Morrill County v. Bliss, 125 Neb. 97, 249 N.W. 98 (1933).

This section referred to in stating contentions of parties that former method of liquidating insolvent banks had been changed by 1929 act. State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

On order to show cause, filed by bank receiver in district court of county where receivership proceedings are pending, court has jurisdiction, at chambers in another county, to adjudicate whether possession of land should be surrendered to receiver. State ex rel. Spillman v. Neligh State Bank, 116 Neb. 858, 219 N.W. 392 (1928).

8-1,106 Insolvent banks; claims; filing; time limit.

The director, within twenty days after the declaration of insolvency of a bank, shall file with the clerk of the district court of the county in which such bank is located, a list setting forth the name and address of each of the creditors of such bank as shown by the books thereof or who are known by the director to be creditors, and within thirty days after filing the list of creditors, he shall also file an order fixing the time and place for filing claims against such bank. The time fixed for filing claims shall not be more than sixty days nor less than thirty days from the date of the filing of the order, and within seven days after the filing of such order, the director shall mail to each known creditor of such bank a copy of the order and a blank form for proof of claim. The director shall also post a copy of the order on the door of the bank, and within two weeks from the date of the order he shall cause notice to be given by publication, in such newspapers as he may direct, once each week for two successive weeks, calling on all persons who may have claims against the bank to present them to the director within the time and the place provided for in the order and to make proof thereof. Such claims shall be sworn to by the creditor or his representative. Any claim, other than claims for deposits and exchange, not presented and filed within the time fixed by such order shall be forever barred. Claims for deposits or exchange as shown by the books of the bank presented after the expiration of the time fixed in the order for filing claims may be allowed by the director upon a showing being made by the creditor, within six months from the date of the expiration of the time for filing claims as fixed by the order, that he did not have knowledge of the closing of the bank and did not receive notice within time to permit the filing of his claim before the time fixed for filing claims had expired.

Source: Laws 1923, c. 191, § 21, p. 448; C.S.1929, § 8-198; Laws 1933, c. 18, § 62, p. 167; C.S.Supp.,1941, § 8-198; R.S.1943, § 8-192; Laws 1963, c. 29, § 106, p. 178.

Section applies not only to depositor's claims but to all claims against assets in hands of receiver, and allowance of claim constitutes judgment. State ex rel. Spillman v. Platte Valley State Bank, 128 Neb. 562, 259 N.W. 643 (1935).

Special time limit for filing claims against insolvent state bank will be applied to bar claims only when the record affirmatively shows compliance with statutory procedure and conditions. State ex rel. Spillman v. State Bank of Papillion, 119 Neb. 525, 232 N.W. 585 (1930).

Duty of receiver to pay taxes before depositors whether claim for taxes filed or not, notwithstanding order of court barring claims not filed. State ex rel. Spillman v. Ord State Bank, 117 Neb. 189, 220 N.W. 265 (1928).

8-1,107 Insolvent banks; claims; listing and classification; notice to claimant; filing of objection; powers and duties of Director of Banking and Finance.

(1) Upon the expiration of the time fixed for presentation of claims, the director shall thoroughly investigate all claims and file with the clerk of the district court of the county in which said bank is located a complete list of all claims against which he knows of no defense and which, in his judgment, are valid, designating their priority of payment, together with a list of the claims which, in his judgment, are invalid. He shall also file an order allowing or rejecting such claims as classified.

(2) When the director reclassifies or rejects a claim, which rejection shall be made when he doubts the justice of a claim, he shall serve written notice of such reclassification or rejection upon the claimant by either registered or certified mail and file, with the clerk of the district court of the county in which the bank is located, an affidavit of the service of such notice, which affidavit shall be prima facie evidence of such service. Such notice shall state the time and place for the filing by claimant of his objections to the classification, reclassification, or rejection of his claim.

Source: Laws 1923, c. 191, § 22, p. 449; C.S.1929, § 8-199; Laws 1930, Spec. Sess., c. 6, § 9, p. 30; Laws 1933, c. 18, § 63, p. 168; C.S.Supp.,1941, § 8-199; R.S.1943, § 8-193; Laws 1957, c. 242, § 4, p. 818; R.S.1943, § 8-193; Laws 1963, c. 29, § 107, p. 179.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,108 Insolvent banks; claims; objections to classification; hearing.

Any person objecting to the classification of his claim and the order based thereon must, within thirty days of the filing of the classification and order with the clerk of the district court, begin an action in that court asking to reclassify his claim and to set aside the order of the director. Notice of this action shall be given by the service of a copy of the petition therein upon the director, who shall, within thirty days of such service, file his answer or other pleading. The court shall then set the matter for hearing at the earliest convenient date and shall try the issues and determine the same according to the usual procedure in matters of equity.

Source: Laws 1923, c. 191, § 23, p. 449; C.S.1929, § 8-1,100; Laws 1930, Spec. Sess., c. 6, § 10, p. 31; Laws 1933, c. 18, § 64, p. 168; C.S.Supp.,1941, § 8-1,100; R.S.1943, § 8-194; Laws 1963, c. 29, § 108, p. 179.

When payment of a dividend is deferred by reason of an unsuccessful contest of an alleged setoff, the creditor so delayed should be allowed interest on the dividend to put that creditor on an equality with the other creditors in his class. Colburn v. Ley, 191 Neb. 427, 215 N.W.2d 869 (1974).

Where any controversy over allowance of claims arises under this section, judicial power is invoked. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

An order fixing a time for filing of petitions of intervention by claimants under this section is not a final judgment, and may be modified at a subsequent term without compliance with the general statute authorizing modification of final judgments at subsequent terms. State ex rel. Sorensen v. South Omaha State Bank, 135 Neb. 478, 282 N.W. 382 (1938).

8-1,109 Insolvent banks; claims; certificate of allowance; assignment; payments endorsed on certificate.

Upon the allowance of a claim against an insolvent bank, the director shall, upon request of the claimant, issue and deliver to the claimant a certificate of indebtedness showing the amount of the claim, the date of the allowance thereof, and whether such claim is one having priority of payment or is a general claim. Any assignment of a claim or certificate of indebtedness shall be filed with the director and shall not be binding until so filed. Upon payment of any dividend on a claim, evidenced by a certificate of indebtedness, such certificate shall be presented and an endorsement of such payment shall be made thereon.

Source: Laws 1929, c. 38, § 22, p. 167; C.S.1929, § 8-1,101; Laws 1933, c. 18, § 65, p. 169; C.S.Supp.,1941, § 8-1,101; R.S.1943, § 8-195; Laws 1963, c. 29, § 109, p. 180.

8-1,110 Insolvent banks; claims; priority.

The claims of depositors for deposits not otherwise secured and claims of holders of exchange shall have priority over all other claims, except federal, state, county, and municipal taxes, and subject to such taxes shall, at the time of the declaration of insolvency of a bank, be a first lien on all the assets of the bank from which they are due and thus in liquidation, but no claim to priority shall be allowed which is based upon any evidence of indebtedness in the hands of or originally issued to any stockholder, officer, or employee of such bank and which represents money obtained by such stockholder, officer, or employee from himself or some other person, firm, corporation, or bank in lieu of or for the purpose of effecting a loan of funds to such failed bank.

Source: Laws 1909, c. 10, § 52, p. 92; R.S.1913, § 332; Laws 1919, c. 190, tit. V, art. XVI, § 53, p. 707; C.S.1922, § 8033; Laws 1923, c. 191, § 24, p. 450; Laws 1925, c. 30, § 12, p. 129; Laws 1929, c. 38, § 19, p. 166; Laws 1929, c. 39, § 1, p. 169; C.S.1929, § 8-1,102; Laws 1930, Spec. Sess., c. 6, § 7, p. 28; Laws 1933, c. 18, § 66, p. 169; Laws 1935, c. 16, § 2, p. 91; C.S.Supp.,1941, § 8-1,102; R.S.1943, § 8-196; Laws 1963, c. 29, § 110, p. 180.

1. Priority allowed
2. Priority disallowed
3. Trust fund
4. Miscellaneous

1. Priority allowed

Statute impresses on assets of failed state bank a first lien for depositors and holders of exchange. State ex rel. Sorensen v. State Bank of Omaha, 128 Neb. 148, 258 N.W. 260 (1934).

By use of term ''otherwise secured'' Legislature intended to exclude from participation in the lien only such depositors as take security for their deposits and in some degree deplete the assets of the bank. State ex rel. Sorensen v. Bank of Campbell, 125 Neb. 485, 251 N.W. 101 (1933).

Priority of lien hereunder fixed by status at time of adjudication of insolvency. Wells v. Farmers State Bank of Overton, 124 Neb. 386, 246 N.W. 714 (1933).

A judgment lien upon the guaranty fund was created by allowance of claim for deposits, and Legislature could not transfer assets of the guaranty fund subject to such lien to depositors' final settlement fund. Bliss v. Bryan, 123 Neb. 461, 243 N.W. 625 (1932).

Payee of draft drawn by bank becoming insolvent before draft paid is holder of exchange hereunder and entitled to payment as a depositor. State ex rel. Sorensen v. First State Bank of Alliance, 123 Neb. 23, 241 N.W. 783 (1932).

Proceeds of forged notes fraudulently endorsed and negotiated by payee may become deposit, chargeable upon guaranty fund, in bank operated and controlled by him. State ex rel. Spillman v. Dunbar State Bank, 120 Neb. 325, 232 N.W. 578 (1930).

County deposit, not protected by bank depository bond, held not otherwise secured, and therefore entitled to priority. State ex rel. Spillman v. Dunbar State Bank, 119 Neb. 335, 228 N.W. 868 (1930).

Renewal of certificate held by officer did not effect loan to bank and was, therefore, entitled to priority. State ex rel. Spillman v. Citizens State Bank of Potter, 117 Neb. 358, 220 N.W. 593 (1928).

Bank paying drafts drawn upon it by correspondent bank which fails is subrogated to rights of original holders of the drafts, and entitled to priority under this section. Nebraska Nat. Bank v. Bruning, 114 Neb. 719, 209 N.W. 510 (1926).

Deposits by bank officer, as trustee, of trust funds raised to assist bank as well as another corporation with which officer is connected, although erroneously credited to officer individually, are entitled to priority. State ex rel. Davis v. Exchange Bank of Ogallala, 114 Neb. 664, 209 N.W. 249 (1926).

Notes discounted by solvent bank for another, and credited to the latter, constitute deposit entitled to priority. State ex rel. Davis v. Newcastle State Bank, 114 Neb. 389, 207 N.W. 683 (1926).

Deposit of own money by stockholder, who does nothing to effect loan to bank from any source is entitled to priority; otherwise, where he deposits money borrowed from another to assist bank. State ex rel. Davis v. Farmers State Bank, 113 Neb. 348, 203 N.W. 572 (1925).

Certificate of deposit issued in payment for negotiable paper in good faith sold to bank by stockholder without fraud or collusion is entitled to priority. State ex rel. Davis v. Farmers State Bank of Allen, 113 Neb. 82, 201 N.W. 893 (1925).

Certificates of deposit are not deprived of priority, although excessive interest paid thereon, where bank officer agrees individually to pay the excess and holder had no knowledge that bank paid it. State ex rel. Davis v. Farmers State Bank of Benedict, 112 Neb. 474, 199 N.W. 839 (1924).

Entire county deposit, although in excess of fifty percent of bank's capital as limited by general revenue statute, is entitled to priority. State ex rel. Davis v. Peoples State Bank of Anselmo, 111 Neb. 126, 196 N.W. 912 (1923), opinion vacated 111 Neb. 136, 198 N.W. 1018 (1924).

Good faith deposit subject to check, drawing interest not exceeding statutory rate, is entitled to priority. Central State Bank v. Farmers State Bank, 101 Neb. 210, 162 N.W. 637 (1917).

United States held entitled to priority over depositors as to postal funds. Bliss v. United States, 44 F.2d 909 (8th Cir. 1930).

2. Priority disallowed

Sureties who are liable on bond given to secure deposit of village in bank which becomes insolvent, and recoup part of their loss by selling bonds given them by the bank for their protection, are not entitled to preferred claim against assets of bank. Shumway v. Department of Banking, 130 Neb. 491, 265 N.W. 553 (1936), opinion withdrawn 131 Neb. 246, 267 N.W. 469 (1936).

Municipal funds deposited in state bank and protected by depository bond, premium of which is paid by bank, becomes, on failure of bank, a deposit ''otherwise secured'' within the statute, and precludes municipality from obtaining preference or participating in distribution of assets on par with unsecured creditors. State ex rel. Sorensen v. South Omaha State Bank, 129 Neb. 43, 260 N.W. 278 (1935).

Deposit of city funds in state bank is ''otherwise secured'' where city requires bank to give depository bond and pay premium therefor. State ex rel. Sorensen v. State Bank of Omaha, 125 Neb. 492, 251 N.W. 99 (1933).

Insolvent bank may not prefer a depositor by exchange of note and mortgage taken from its assets for depositor's certificate of deposit. Luikart v. Hunt, 124 Neb. 642, 247 N.W. 790 (1933).

City exacting security for deposits is to be classified as ''otherwise secured'' under this section and is not entitled to share as preferred creditor in assets of bank and depositor's final settlement fund, and city's claim as to unsecured balance of deposits should be allowed as general claim only. State ex rel. Sorensen v. First State Bank of Alliance, 122 Neb. 109, 239 N.W. 646 (1931).

Where bonds left with bank for safekeeping were sold and proceeds converted by bank officers, certificates of deposit being substituted therefor without the owner's knowledge or authority, claim was not entitled to priority, because the money or its equivalent was not shown to have been placed in or at the command of the bank, and therefore no deposit was created. State ex rel. Spillman v. Dunbar State Bank, 119 Neb. 763, 230 N.W. 687 (1930).

Stockholder who procures and places in bank money to meet pressing demand or to replenish reserve, not for his own use or convenience, is not depositor entitled to priority. State ex rel. Spillman v. Farmers State Bank of Wolbach, 117 Neb. 448, 220 N.W. 569 (1928); State ex rel. Spillman v. Citizens State Bank of Potter, 117 Neb. 358, 220 N.W. 593 (1928); State ex rel. Spillman v. Security State Bank of Eddyville, 116 Neb. 521, 218 N.W. 408 (1928); State ex rel. Spillman v. Farmers State Bank of Dix, 115 Neb. 574, 214 N.W. 4 (1927); State ex rel. Spillman v. Atlas Bank of Neligh, 114 Neb. 646, 209 N.W. 333 (1926).

Stockholder depositing liberty bonds which bank wrongfully converts, who later accepts certificate of deposit therefor, knowing bank to be insolvent is not protected. State ex rel. Spillman v. Atlas Bank of Neligh, 114 Neb. 650, 209 N.W. 334 (1926).

Promissory note, secured by worthless third mortgage is not money or equivalent entitling deposit to priority, and subsequent holder of assigned certificate is not innocent purchaser. State ex rel. Davis v. Kilgore State Bank, 113 Neb. 772, 205 N.W. 297 (1925).

Where officers of bank converted their stock into ostensible deposits by series of questionable transactions, claim was not entitled to priority. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 380, 199 N.W. 812 (1924).

Where certificates of deposit are issued to officer to negotiate for replenishing cash reserve, and the bank receives nothing at time of issuance, the claim is not entitled to priority. State ex rel. Davis v. Farmers State Bank of Halsey, 111 Neb. 117, 196 N.W. 908 (1923).

Where certificate of deposit is issued with understanding that bank will pay bonus in addition to statutory interest, the transaction amounts to a loan of funds not entitled to priority of payment. Iams v. Farmers State Bank, 101 Neb. 778, 165 N.W. 145 (1917).

No preference or priority for the claims of the state against insolvent banks is provided except claims for taxes. City of Lincoln, Neb. v. Ricketts, 84 F.2d 795 (8th Cir. 1936).

3. Trust fund

Fund created by delivery of notes by stockholders to bank to cover contingent reserve was an asset of bank upon which the statutory lien of this section attached upon closing of bank, and was not a trust fund reclaimable by the stockholders. Jorgenson v. Department of Banking, 136 Neb. 1, 284 N.W. 747 (1939).

Basis for giving trust fund priority over depositors under this section is that trust fund does not constitute assets of the bank, but is really property of the claimant held by the bank as trustee. State ex rel. Sorensen v. Citizens Bank of Stuart, 124 Neb. 575, 248 N.W. 82 (1933).

Statute is not applicable to claim based upon trust fund unlawfully converted by bank as trustee. State ex rel. Sorensen v. Farmers State Bank of Polk, 121 Neb. 532, 237 N.W. 857 (1931), 82 A.L.R. 7 (1931).

4. Miscellaneous

Contract for liquidation of bank did not violate this section. Department of Banking v. Walker, 131 Neb. 732, 269 N.W. 907 (1936).

Statute does not apply to fund unlawfully converted by the bank as trustee to its own use. State ex rel. Sorensen v. Citizens Bank of Stuart, 124 Neb. 717, 247 N.W. 427 (1933).

Statutory lien hereunder does not foreclose constitutional powers of equity court to direct a disposition of bank assets in contravention thereof. State ex rel. Sorensen v. Nebraska State Bank, 124 Neb. 449, 247 N.W. 31 (1933).

This section violates neither state constitutional prohibition of special and class legislation (Art. III, sec. 18) nor the 14th

amendment to federal Constitution, equal protection clause. State ex rel. Sorensen v. First State Bank of Alliance, 122 Neb. 502, 240 N.W. 747 (1932), 79 A.L.R. 576 (1932).

This section was intended to prevent state banks from securing deposits, by the pledging of assets, except in the cases specified where pledging is authorized. Bliss v. Pathfinder Irrigation District, 122 Neb. 203, 240 N.W. 291 (1932).

Priority of unsecured deposits fixed by status at time of actual closing of bank when court adjudges it insolvent and orders liquidation. State ex rel. Sorensen v. Thurston State Bank, 121 Neb. 407, 237 N.W. 293 (1931).

Under this and other sections cited, the Department of Banking is vested with general supervision and control of state banks with authority to do all things reasonably necessary for protection of depositors therein. Brownell v. Adams, 121 Neb. 304, 236 N.W. 750 (1931).

This section gives to depositors of a failed bank a lien only on the assets of the bank. State ex rel. Spillman v. Citizens State Bank of Royal, 118 Neb. 337, 224 N.W. 868 (1929).

This section is referred to as showing that some form of deposits was contemplated as an integral part of the business of banks. Gamble v. Daniel, 39 F.2d 451 (8th Cir. 1930), appeal dismissed 281 U.S. 705 (1930).

8-1,111 Insolvent banks; priority; not affected by federal deposit insurance.

When a bank whose deposits are insured by the Federal Deposit Insurance Corporation becomes insolvent, neither the deposits therein nor the exchange thereof shall be deemed to be otherwise secured by reason of such insurance for purposes of section 8-1,110.

Source: Laws 1935, c. 16, § 2, p. 91; C.S.Supp.,1941, § 8-1,102; R.S.1943, § 8-197; Laws 1963, c. 29, § 111, p. 181.

8-1,112 Insolvent banks; Director of Banking and Finance; payment of dividends.

At any time after the expiration of the date fixed for the presentation of claims, the district court may, upon the application of the director, by order authorize the director to declare out of the funds remaining in his hands, after the payment of expenses, one or more dividends, and at the earliest possible date the director shall declare a final dividend as may be directed by the district court of the county in which the principal office of such bank is located.

Source: Laws 1933, c. 18, § 69, p. 170; C.S.Supp.,1941, § 8-1,133; R.S. 1943, § 8-198; Laws 1963, c. 29, § 112, p. 181.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,113 Insolvent banks; liquidation expenses; allocation; certification.

The director shall from time to time allocate to the various banks in liquidation the expenses of the department by reason of such liquidation, other than the compensation and expense of the special deputy or assistant in charge and the fees for legal services directly incident to the bank in liquidation, and certify to the various district courts of the counties in which the banks in process of liquidation are located the amount so allocated, which shall be taxed and paid as costs in the liquidation.

Source: Laws 1933, c. 18, § 57, p. 164; C.S.Supp.,1941, § 8-1,128; R.S. 1943, § 8-199; Laws 1963, c. 29, § 113, p. 181.

8-1,114 Repealed. Laws 1973, LB 164, § 25.

8-1,115 Insolvent banks; liquidation; reports to district court; dissolution of bank; cancellation of certificate and charter.

The director shall from time to time make and file with the clerk of the district court of the county in which the insolvent bank is located, a report of his acts of liquidation of each insolvent bank. He shall, upon the completion of the liquidation, file a final report, notice of which shall be given as the court may direct, and on hearing thereon and approval thereof by the court such

liquidation shall be declared closed and the corporation dissolved. The director shall then cancel the certificate and charter issued to such bank pursuant to sections 8-121 and 8-122.

Source: Laws 1933, c. 18, § 68, p. 170; C.S.Supp.,1941, § 8-1,132; R.S. 1943, § 8-1,101; Laws 1963, c. 29, § 115, p. 182.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,116 Insolvent banks; stockholders; restoration of solvency; conditions.

After the department has taken possession of any bank under the Nebraska Banking Act, the stockholders thereof may repair its credit, restore or substitute its reserves, and otherwise place it in safe condition, but such bank shall not be permitted to reopen its business until the department, after careful investigation of its affairs, is of the opinion that its stockholders have complied with the law, that the bank's credit and funds are in all respects repaired, that its reserves are restored or are sufficiently substituted, and that it should be permitted again to reopen for business, whereupon the department may issue written permission for resumption of business under its charter.

Source: Laws 1909, c. 10, § 50, p. 91; R.S.1913, § 330; Laws 1919, c. 190, tit. V, art. XVI, § 51, p. 706; Laws 1921, c. 297, § 5, p. 951; C.S.1922, § 8031; C.S.1929, § 8-197; Laws 1931, c. 20, § 1, p. 92; Laws 1933, c. 18, § 61, p. 166; Laws 1941, c. 14, § 2, p. 93; C.S.Supp.,1941, § 8-197; R.S.1943, § 8-1,102; Laws 1963, c. 29, § 116, p. 182; Laws 1987, LB 2, § 18; Laws 1998, LB 1321, § 24.

Under this section, power to assess fully paid-up capital stock of a state bank to recoup losses or to restore depleted capital was committed to the directors of the bank upon authority from the stockholders, and fund voluntarily raised by stockholders and used by a holding company in eliminating bad paper and maintaining reserve is not an assessment. State ex rel. Spillman v. Citizens State Bank of Chadron, 115 Neb. 776, 214 N.W. 933 (1927).

Directors are not empowered to levy assessment where bank not taken over by Department of Banking, and stockholders have not authorized same. McMillan v. Chadron State Bank, 115 Neb. 767, 214 N.W. 931 (1927).

Directors have power to levy assessment only where stockholders have exercised their option to repair capital, restore reserves, and continue business, rather than to liquidate. Citizens State Bank of Stratton v. Strayer, 114 Neb. 567, 208 N.W. 662 (1926).

8-1,117 Banks; impaired capital; assessments on stock to restore; preferred stock excepted.

If the capital of a bank becomes impaired, whether the department shall or shall not have taken possession of the bank, whenever stockholders representing eighty-five percent or more of the common capital stock of the bank, with a view of restoring the impaired capital, shall with the approval of the department authorize the directors of the bank to levy and collect assessments on the common capital stock in such amount as they may determine necessary for such purpose, the directors shall levy the assessments so authorized and shall notify all common stockholders of record thereof by either registered or certified mail. If any common stockholder shall fail to pay his assessment within three weeks from the date of mailing such notice, the pro rata amount of such assessment shall be a lien upon his common capital stock, and the directors shall forthwith sell such shares of common capital stock at public or private sale without further notice and apply the proceeds thereof to the payment of such assessment, and the balance, if any, shall be paid to the delinquent shareholder. Nothing in this section shall be construed to authorize

the levy and collections of assessments on the preferred capital stock of the bank.

Source: Laws 1909, c. 10, § 50, p. 91; R.S.1913, § 330; Laws 1919, c. 190, tit. V, art. XVI, § 51, p. 706; Laws 1921, c. 297, § 5, p. 951; C.S.1922, § 8031; C.S.1929, § 8-197; Laws 1931, c. 20, § 1, p. 92; Laws 1933, c. 18, § 61, p. 166; Laws 1941, c. 14, § 2, p. 93; C.S.Supp.,1941, § 8-197; R.S.1943, § 8-1,103; Laws 1963, c. 29, § 117, p. 182.

8-1,118 Insolvent banks; restoration of solvency; reopening for limited business; conditions; costs; new deposits treated as a trust fund; expenses.

If the director, with a view to restoring the solvency of any bank which the department has taken charge of pursuant to law, shall approve a contract or plan whereby the bank is permitted to receive deposits and pay checks and do a limited banking business, entered into between the unsecured depositors and unsecured creditors representing eighty-five percent or more of the total amount of deposits and unsecured claims of such bank on the one hand and the bank or its board of directors on the other, all other depositors and unsecured creditors shall be held subject to such agreement to the same extent and with the same effect as if they had joined in the execution thereof, and their claims shall be treated in all other respects as if they had joined in the execution of such agreement in the event such bank is permitted to reopen for business as limited by such contract. All deposits received after the adoption of such plan and the assets of the bank created thereby, and before the restoration of the bank to solvency, shall be a trust fund for the security and the repayment of the deposits so received and shall not be subject to the payment of any deposit, debt, claim, or demand of the bank previously created. Such money and assets shall be kept and invested in the manner directed by the director. Section 8-138 does not apply to banks operating under this section. Any county, city, village, township, or school district through its governing body, and the state through the Governor, may enter into such contract except when the funds of such county, city, village, township, or school district are adequately secured. Whenever a bank is permitted to operate under the provisions of this section, such bank shall pay all costs incurred by the department in the approval of such plan, including examiners' expenses, attorneys' fees, and clerk hire, and incurred in special examinations required by the director.

Source: Laws 1933, c. 16, § 1, p. 128; C.S.Supp.,1941, § 8-1,121; R.S. 1943, § 8-1,110; Laws 1963, c. 29, § 118, p. 183; Laws 2003, LB 217, § 8.

Judicial notice taken of general condition existing which, by this act, was sought to be remedied. State ex rel. Nebraska State Bar Assn. v. Bachelor, 139 Neb. 253, 297 N.W. 138 (1941).

Approval of plan of restricted operation does not restrict right of Department of Banking to liquidate insolvent bank. Farmers State Bank of Clarks v. Luikart, 131 Neb. 692, 269 N.W. 627 (1936).

Status of claim of sureties for village deposit made in bank prior to being allowed to reopen for a limited banking business under this section discussed. Shumway v. Department of Banking, 131 Neb. 246, 267 N.W. 469 (1936).

8-1,119 Violations; general penalty.

Where no other punishment is provided in the Nebraska Banking Act, any person violating any of the provisions of the act shall be guilty of a Class III misdemeanor.

Source: Laws 1909, c. 10, § 61, p. 95; R.S.1913, § 341; Laws 1919, c. 190, tit. V, art. XVI, § 61, p. 710; C.S.1922, § 8041; C.S.1929,

§ 8-1,104; R.S.1943, § 8-1,107; Laws 1963, c. 29, § 119, p. 184; Laws 1977, LB 40, § 53; Laws 1987, LB 2, § 19; Laws 1998, LB 1321, § 25.

8-1,120 Violators; apprehension and conviction; rewards.

The department may offer and pay out of the funds appropriated to it rewards for the apprehension and conviction of any person or persons violating the Nebraska Banking Act, but such rewards shall not exceed two hundred fifty dollars in any one case.

Source: Laws 1909, c. 10, § 60, p. 95; R.S.1913, § 340; Laws 1919, c. 190, tit. V, art. XVI, § 60, p. 710; C.S.1922, § 8040; C.S.1929, § 8-1,103; Laws 1933, c. 18, § 70, p. 170; C.S.Supp.,1941, § 8-1,103; R.S.1943, § 8-1,108; Laws 1963, c. 29, § 120, p. 184; Laws 1987, LB 2, § 20; Laws 1998, LB 1321, § 26.

8-1,121 Fugitive violators; rewards.

If any person against whom has been entered any indictment, complaint, or information charging a violation of the statutes of this state relating to banks and banking, which charged violation is a felony, shall be a fugitive from justice, the county attorney of the county wherein such indictment, complaint, or information was entered, shall promptly inform the Governor of the fact, and the Governor may thereupon make public proclamation that a reward of not more than twenty-five hundred dollars will be paid for information resulting in the apprehension of such fugitive. Such reward shall not be paid unless the fugitive is finally convicted of the violation charged by such indictment, complaint, or information, or of some similar violation growing out of the same transaction or out of his connection with the same bank, nor until such conviction shall become final. Upon the finality of such conviction, the county attorney shall certify the fact to the Governor, designating the person or persons entitled to any such reward. Thereupon the Governor shall order the Director of Administrative Services to draw his warrant for the amount of such reward payable to the person or persons entitled thereto, which warrant shall be drawn upon any money in the General Fund of the state treasury not otherwise appropriated, and the State Treasurer shall pay all such warrants.

Source: Laws 1929, c. 42, § 1, p. 184; C.S.1929, § 8-1,119; R.S.1943, § 8-1,109; Laws 1963, c. 29, § 121, p. 185.

8-1,122 Repealed. Laws 1987, LB 2, § 22.

8-1,123 Repealed. Laws 2007, LB 124, § 77.

8-1,124 Emergencies; terms, defined.

As used in sections 8-1,124 to 8-1,129, unless the context otherwise requires:

(1) Director shall mean the Director of Banking and Finance;

(2) Bank shall mean commercial banks, or any office or facility thereof, and, to the extent that the provisions of sections 8-1,124 to 8-1,129 are not inconsistent with and do not infringe upon paramount federal law, national banks;

(3) Officers shall mean the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for such bank to carry out the provisions of sections 8-1,124 to 8-1,129 or, in the

absence of any such designation or of such officer or officers, the president or any other officer in charge of such bank or of such office or offices;

(4) Office shall mean any place at which a bank transacts its business or conducts operations related to its business; and

(5) Emergency shall mean any condition or occurrence which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both, including but not limited to fire, flood, earthquake, hurricanes, wind, rain, snow storms, labor disputes and strikes, power failures, transportation failures, interruption of communication facilities, shortages of fuel, housing, food, transportation or labor, robbery or attempted robbery, actual or threatened enemy attack, epidemics or other catastrophes, riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

Source: Laws 1971, LB 523, § 1.

8-1,125 Emergencies; proclamation; Director of Banking and Finance; effect.

Whenever the director is of the opinion that an emergency exists, or is impending, in this state or in any part of this state, he may, by proclamation, authorize any bank located in such affected area to close any or all of its offices. In addition, if the director is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank, or a particular office thereof, but not banks located in the area generally, he may authorize the particular bank or office so affected to close. Any office so closed shall remain closed until the director proclaims that the emergency has ended, or until such time as the officers of the bank determine that one or more offices, theretofore closed because of the emergency, should reopen, whichever occurs first, and, in either event, for such further time thereafter as may reasonably be required to reopen.

Source: Laws 1971, LB 523, § 2.

8-1,126 Emergencies; officers; powers.

Whenever the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, one or more or all of a bank's offices, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one or more or all of such offices on any business or banking day or, if having opened, to close any one or more or all of such offices during the continuation of such emergency, even if the director has not issued and does not issue a proclamation of emergency. Any such closed office may remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen; *Provided*, in no case shall such office remain closed for more than forty-eight consecutive hours, excluding other legal holidays, without requesting the approval of the director.

Source: Laws 1971, LB 523, § 3.

8-1,127 Emergency; proclamation; President of United States; Governor; effect.

The officers of a bank may close any one or all of the bank's offices on any day, designated by proclamation of the President of the United States or the Governor, as a day or days of mourning, rejoicing, or other special observance.

Source: Laws 1971, LB 523, § 4.

8-1,128 Emergency; closing; notice; contents.

A bank closing an office pursuant to the authority granted under section 8-1,126 shall give as prompt notice of its action as conditions will permit and by any means available, to the director, or in the case of a national bank, to the Comptroller of the Currency.

Source: Laws 1971, LB 523, § 5.

8-1,129 Emergencies; laws applicable.

Any day on which a bank, or any one or more of its offices, is closed during all or any part of its normal banking hours pursuant to the authorization granted under sections 8-1,124 to 8-1,129 shall be, with respect to such bank or, if not all of its offices are closed, with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by sections 8-1,124 to 8-1,129.

The provisions of sections 8-1,124 to 8-1,129 shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this state or of the United States authorizing the closing of a bank or excusing delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond its control or otherwise.

Source: Laws 1971, LB 523, § 6.

Cross References

Bank holidays, see sections 62-301 and 62-301.01.

8-1,130 Investments in savings accounts in name of fiduciary; open account; withdrawal; death of fiduciary; effect.

Any bank, building and loan association, or savings and loan association may accept investments in savings accounts or shares in the name of any administrator, personal representative, custodian, conservator, guardian, trustee, or other fiduciary for a named beneficiary or beneficiaries. Any such fiduciary shall have the power to open, make additions to, and withdraw any such account, in whole or in part, or to purchase such shares, purchase additional shares, or sell all or any part of such shares, and any such fiduciary who is the owner of shares shall have power to vote as a member as if the membership were held absolutely. The withdrawal value of any such account or shares, and earnings thereon, or other rights relating thereto may be paid or delivered, in whole or in part, to such fiduciary without regard to any notice to the contrary as long as such fiduciary is living. The payment or delivery to any such fiduciary or a receipt or acquittance signed by any such fiduciary to whom any such payment or any such delivery of right is made shall be a valid and sufficient release and discharge of the bank or association for the payment or delivery so made. Whenever a person holding an account or shares in a fiduciary capacity dies and no written notice of the revocation or termination of

the fiduciary relationship has been given to the bank or association and the bank or association has no written notice of any other disposition of the beneficial estate, the withdrawal value of such account or shares, and earnings thereon, or other rights relating thereto may, at the option of the bank or association, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries. Whenever an account or share shall be designated by any person describing himself or herself in opening such account or acquiring such share as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description has been given in writing to the bank or association, or whenever an account is opened or shares are acquired specifically designated as a trust account or share held in trust and which contains a trust agreement as a part thereof, in the event of the death of the person so described as trustee, the withdrawal value of such account or shares or any part thereof, together with the earnings thereon, may be paid to the person for whom the account or shares are so described. The payment or delivery to any such beneficiary, beneficiaries, or designated person or a receipt or acquittance signed by any such beneficiary, beneficiaries, or designated person for any such payment or delivery shall be a valid and sufficient release and discharge of the bank or association for the payment or delivery so made. No bank or association paying any such fiduciary, beneficiary, or designated person in accordance with this section shall thereby be liable for any estate, inheritance, or succession taxes which may be due this state.

Source: Laws 1974, LB 912, § 1; Laws 1986, LB 909, § 2.

8-1,131 Retirement plan, medical savings account, or health savings account, investments; bank as trustee or custodian; powers and duties; account, how treated.

(1) All banks chartered under the laws of Nebraska are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, 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 bank or in other banks. If any such retirement plan, within the judgment of the bank, constitutes a qualified plan under 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 and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and 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 bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(2)(a) All banks 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. If any such medical savings account or health savings account, within the judg-

ment of the bank, constitutes a medical savings account under section 220 of the Internal Revenue Code or a health savings account under section 223 of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a medical savings account or health savings account, in whole or in part, the bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the account holder. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(b) 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.

Source: Laws 1975, LB 208, § 1; Laws 1995, LB 574, § 2; Laws 1997, LB 753, § 1; Laws 1999, LB 396, § 11; Laws 2005, LB 465, § 1.

8-1,132 Repealed. Laws 1987, LB 2, § 22.

8-1,133 Bank; business of leasing personal property; subject to rules and regulations.

Any bank may engage, directly or indirectly, in the business of leasing personal property subject to rules and regulations of the Department of Banking and Finance.

Source: Laws 1977, LB 506, § 1.

8-1,134 Violations; director; powers; fines; notice; hearing; closure; emergency powers; service; procedures.

(1) Whenever the Director of Banking and Finance has reason to believe that a violation of any provision of Chapter 8 or of the Credit Union Act or any rule, regulation, or order of the Department of Banking and Finance has occurred, he or she may cause a written complaint to be served upon the alleged violator. The complaint shall specify the statutory provision or rule, regulation, or order alleged to have been violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final as to any person named in the order unless such person requests, in writing, a hearing before the director no later than ten days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charge complained of. The notice shall be delivered to the alleged violator or violators in accordance with subsection (4) of this section not less than ten days before the time set for the hearing.

(2) The director shall provide an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification of the notice. On the basis of the evidence produced at the hearing, the director shall

make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of Chapter 8 or the Credit Union Act and the rules, regulations, and orders of the department. Written notice of such order shall be given to the alleged violator and to any other person who appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the district court of Lancaster County as provided in section 8-1,135. As part of such order, the director may impose a fine, in addition to the costs of the investigation, upon a person found to have violated any provision of Chapter 8, the Credit Union Act, or the rules, regulations, or orders of the department. The fine shall not exceed ten thousand dollars per violation for the first offense and twenty-five thousand dollars per violation for a second or subsequent offense involving a violation of the same provision of Chapter 8, the Credit Union Act, the rules and regulations of the department, or the same order of the department. The fines and costs shall be in addition to all other penalties imposed by the laws of this state, shall be collected by the director, and shall be remitted to the State Treasurer. Costs shall be credited to the Financial Institution Assessment Cash Fund, and fines shall be credited to the permanent school fund. If a person fails to pay the fine or costs of the investigation, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the safety and soundness of the institutions under the supervision and control of the department, the director may, without notice or hearing, issue an order reciting the existence of an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by the affected person. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. This subsection shall not apply to a determination of necessary acquisition made by the department pursuant to sections 8-1506 to 8-1510.

(4) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby either personally or by certified mail, return receipt requested. Proof of service shall be filed in the office of the director.

Every certificate or affidavit of service made and filed as provided in this subsection shall be prima facie evidence of the facts stated in the certificate or

affidavit, and a certified copy shall have the same force and effect as the original.

(5) Any hearing provided for in this section may be conducted by the director, or by any member of the department acting in his or her behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by the director or hearing officer. The director may subpoena witnesses, and any witness who is subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 81-1176. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the district court of Lancaster County shall have jurisdiction, upon application of the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court may be punished by such court as contempt.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court, furnish a certified transcript of all or any part of the stenographer's notes to any party to the action requiring and requesting such notes.

(6) The director may close to the public the hearing, or any portion of the hearing, provided for in this section when he or she finds that the closure is (a) necessary to protect any person, or any financial institution or entity under the department's jurisdiction, against unwarranted injury or (b) in the public interest. The director shall close no more of the public hearing than is necessary to attain the objectives of this subsection.

Source: Laws 1984, LB 1039, § 1; Laws 1986, LB 908, § 1; Laws 1996, LB 948, § 118; Laws 1996, LB 1053, § 6; Laws 1997, LB 137, § 8.

Cross References

Credit Union Act, see section 21-1701.
Financial Institution Assessment Cash Fund, purposes, see sections 8-601 and 8-604.

8-1,135 Appeal; procedure.

Any person aggrieved by a final order of the Director of Banking and Finance made pursuant to section 8-1,134 may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 1039, § 2; Laws 1988, LB 352, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

8-1,136 Action to enjoin and enforce compliance.

Whenever it appears to the Director of Banking and Finance that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Chapter 8 or the Credit Union Act, he or she may bring an action in the name of the director and the Department of Banking and Finance in any court of competent jurisdiction to enjoin any such acts or practices and

to enforce compliance with the provisions of Chapter 8 or the Credit Union Act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. The director shall not be required to post a bond.

Source: Laws 1984, LB 1039, § 3; Laws 1986, LB 908, § 2; Laws 1996, LB 948, § 119.

Cross References

Credit Union Act, see section 21-1701.

8-1,137 Evidence of violation; refer to prosecuting attorney.

The Director of Banking and Finance may refer such evidence as may be available concerning violations of the Nebraska Criminal Code or of any rule, regulation, or order under Chapter 8 or under the Credit Union Act to the Attorney General or the proper county attorney. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay.

Source: Laws 1984, LB 1039, § 4; Laws 1986, LB 908, § 3; Laws 1996, LB 948, § 120.

Cross References

Credit Union Act, see section 21-1701.
Nebraska Criminal Code, see sections 28-101 to 28-1350.

8-1,138 Violation of final order; liability; penalty.

Any person who violates any of the provisions of a final order issued by the Director of Banking and Finance shall be liable to any person or entity who suffers damage proximately caused by such violation. Any person who knowingly violates any final order issued by the Director of Banking and Finance pursuant to section 8-1,134 shall be guilty of a Class I misdemeanor.

Source: Laws 1984, LB 1039, § 5.

8-1,139 Misapplication of funds or assets; penalty.

An officer, director, agent, or employee of a bank, trust company, building and loan association, cooperative credit union, credit union, or other similar entity which is licensed, regulated, or examined by the Department of Banking and Finance who willfully misapplies any of the money, funds, or credits of any such entity or any money, funds, assets, or securities entrusted to the care or custody of such entity or the custody or care of any such officer, director, agent, or employee shall be guilty of a Class IV felony.

Source: Laws 1984, LB 1039, § 6; Laws 2003, LB 131, § 5.

8-1,140 Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of March 20, 2007, by a federally

chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6.

ARTICLE 2

TRUST COMPANIES

Cross References

Charitable Gift Annuity Act, see section 59-1801.
For provisions relating to disclosure of confidential information, see section 8-1401.

Section

Section

8-201 Charter required; exception; powers of Department of Banking and Finance; rules and regulations; fee.

The Director of Banking and Finance shall have the power to issue to corporations desiring to transact business as trust companies charters of authority to transact trust company business as defined in the Nebraska Trust Company Act. He or she shall have general supervision and control over such trust companies. Any three or more persons may adopt articles of incorporation and become a body corporate for the purpose of engaging in and conducting the business of a trust company, upon complying with the requirements of the act and the general laws of this state relating to the organization of corporations and upon obtaining a charter to transact business as a trust company from the director.

Every corporation organized for and desiring to transact a trust company business shall, before commencing such business, make under oath and transmit to the Department of Banking and Finance a complete statement including:

(1) The name of the proposed trust company;

(2) A certified copy of the articles of incorporation;

(3) The names of the stockholders;

(4) The name of the county, city, or village in which the trust company is located;

(5) The amount of paid-up capital stock; and

(6) A statement sworn to by the president and secretary that the capital stock has been paid in as provided for.

The corporation shall also pay the fee prescribed by section 8-602 for investigation of such statement.

If upon investigation the department is satisfied that the parties requesting the charter are parties of integrity and responsibility, that the corporation will apply safe and sound methods for the purpose of carrying out trust company duties, and that the public necessity, convenience, and advantage will be promoted by permitting the corporation to transact business as a trust company, the department shall issue to the corporation a charter entitling it to transact the business provided for in the act. Upon payment of the required fees, the pledging of assets required by section 8-209, and the receipt of the charter, the corporation may begin to transact business as a trust company. It shall be unlawful for any corporation, except a foreign corporate trustee to the extent authorized under section 30-3820, to engage in business as a trust

company or to act in any other fiduciary capacity unless it has first obtained from the Department of Banking and Finance a charter of authority to do business.

The Department of Banking and Finance may adopt and promulgate rules and regulations to carry out the governance of trust companies under its supervision.

Source: Laws 1911, c. 31, § 1, p. 187; R.S.1913, § 738; Laws 1919, c. 190, tit. V, art. XVIII, § 1, p. 718; C.S.1922, § 8063; Laws 1927, c. 35, § 1, p. 159; C.S.1929, § 8-201; Laws 1933, c. 18, § 73, p. 171; Laws 1937, c. 20, § 3, p. 130; C.S.Supp.,1941, § 8-201; R.S.1943, § 8-201; Laws 1957, c. 10, § 2, p. 129; Laws 1975, LB 481, § 1; Laws 1993, LB 81, § 14; Laws 1998, LB 1321, § 33; Laws 2003, LB 130, § 111.

Corporations organized under this article were empowered to accept and execute trusts and to discharge the duties imposed thereby. First Trust Company v. Airedale Ranch & Cattle Company, 136 Neb. 521, 286 N.W. 766 (1939).

The officers of a trust company are responsible for the fraudulent acts of the corporation in which they participate. Wells v. Carlsen, 130 Neb. 773, 266 N.W. 618 (1936).

Contract of trust company for handling and payment of life insurance premiums did not create trust relationship. Crancer v. Reichenbach, 130 Neb. 645, 266 N.W. 57 (1936).

Individuals who are permitted to create trust companies to handle other people's money must use the same fidelity that one uses in his own business to see that the trust company does not defraud the public. Masonic Bldg. Corporation v. Carlsen, 128 Neb. 108, 258 N.W. 44 (1934).

Trust company organized under state law is not "banking corporation" within meaning of state law or of bankruptcy law, and is subject to bankruptcy. Gamble v. Daniel, 39 F.2d 447 (8th Cir. 1930), appeal dismissed 281 U.S. 705 (1930).

8-201.01 Act, how cited.

Sections 8-201 to 8-235 shall be known and may be cited as the Nebraska Trust Company Act.

Source: Laws 1998, LB 1321, § 34.

8-202 Articles of incorporation; filing.

The articles of incorporation shall be filed in the office of the Secretary of State, and a certified copy shall be filed and recorded in the office of the county clerk of the county in which the corporation has its principal office. Articles of incorporation and other records relating to the corporate existence of the trust company shall be maintained as a permanent record of the trust company.

Source: Laws 1911, c. 31, § 2, p. 188; R.S.1913, p. 739; Laws 1919, c. 190, tit. V, art. XVIII, § 2, p. 718; C.S.1922, § 8064; C.S.1929, § 8-202; R.S.1943, § 8-202; Laws 1993, LB 81, § 15.

8-203 General powers.

The trust company shall have power:

(1) To have a corporate name;

(2) To have a corporate seal;

(3) To sue and be sued and complain and defend in all courts of law and equity;

(4) To receive reasonable compensation for all services performed by it under the Nebraska Trust Company Act;

(5) To make bylaws not inconsistent with the act or its articles of incorporation for the management of its affairs; and

(6) To appoint or elect such officers and agents as the business of the corporation may require.

Source: Laws 1911, c. 31, § 2, p. 188; R.S.1913, § 740; Laws 1919, c. 190, tit. V, art. XVIII, § 4, p. 718; C.S.1922, § 8065; C.S.1929, § 8-203; R.S.1943, § 8-203; Laws 1993, LB 81, § 16; Laws 1998, LB 1321, § 35.

8-204 Directors; qualifications; duties; vacancies.

The control of the business affairs of a trust company shall be vested in a board of directors of not less than five persons, all of whom shall be elected by and from its stockholders. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy leaves a minimum of five directors, appointment shall be optional. The board shall select from among its number a president and secretary and shall appoint trust officers and committees as it deems necessary. The officers and committee members shall hold their positions at the discretion of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter and shall prepare and maintain complete and accurate minutes of the proceedings at such meetings.

The board of directors shall make or cause to be made each year a thorough examination of the books, records, funds, and securities held for the trust company and customer accounts. The examination may be conducted by the members of the board of directors or the board may accept an annual audit by an accountant or accounting firm approved by the Department of Banking and Finance. Any such examination or audit must comply in scope with minimum standards established by the department.

Unless the department otherwise approves, a majority of the members of the board of directors of any trust company shall be residents of this state. Reasonable efforts shall be made to acquire members of the board of directors from the county in which the trust company is located. Every director shall own at least one share of paid-up capital stock of the trust company or its holding company, if any, in his or her name and right. Directors of trust companies shall be persons of good moral character and known integrity, business experience, and responsibility. No person shall act as such member of the board of directors of any trust company until the corporation applies for and obtains approval from the Department of Banking and Finance.

Source: Laws 1911, c. 31, § 4, p. 188; R.S.1913, § 741; Laws 1919, c. 190, tit. V, art. XVIII, § 4, p. 718; C.S.1922, § 8065; C.S.1929, § 8-203; R.S.1943, § 8-204; Laws 1993, LB 81, § 17.

Control of business of a trust company is vested under this section in the board of directors. First Trust Company v. Airedale Ranch & Cattle Company, 136 Neb. 521, 286 N.W. 766 (1939).

8-205 Capital stock; amount required; exception; impairment of capital stock; department; powers.

(1) No corporation, except a bank authorized by the Director of Banking and Finance to operate a trust department, shall be authorized to transact business as a trust company under the Nebraska Trust Company Act on or after August 1, 2000, unless it has capital stock of at least five hundred thousand dollars, all of which shall be fully paid up in cash before the corporation is authorized to commence business.

(2)(a) Corporations, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, shall, on or after such date, maintain a capital stock of at least two hundred thousand dollars in cities of one hundred thousand inhabitants or more, one hundred thousand dollars in cities of fifty thousand and less than one hundred thousand inhabitants, fifty thousand dollars in cities of more than ten thousand and less than fifty thousand inhabitants, and twenty-five thousand dollars in cities and villages having ten thousand inhabitants or less. The population of a city for purposes of this subsection shall be the population as determined by the most recent federal decennial census.

(b) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, subject to the capital stock requirement of subdivision (2)(a) of this section, which complies with the capital stock requirement of subsection (1) of this section, shall be subject to the capital stock requirement of subsection (1) of this section and shall maintain a capital stock of at least the minimum amount required by subsection (1) of this section.

(c) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, subject to the capital stock requirement of subdivision (2)(a) of this section, which complies with the capital stock requirement of a corporation located in a larger city pursuant to subdivision (2)(a) of this section, shall be subject to the capital stock requirement of such a corporation located in a larger city pursuant to subdivision (2)(a) of this section and shall maintain a capital stock of at least the minimum amount required for such a corporation located in a larger city pursuant to subdivision (2)(a) of this section.

(d) A capital stock requirement once attained by a corporation pursuant to either this subsection or subsection (1) of this section shall not be reduced.

(3) If at any time the department determines that the capital stock of a trust company is impaired, it may require the shareholders of the trust company to make up the capital stock impairment.

Source: Laws 1911, c. 31, § 5, p. 188; R.S.1913, § 742; Laws 1919, c. 190, tit. V, art. XVIII, § 5, p. 719; C.S.1922, § 8067; C.S.1929, § 8-205; R.S.1943, § 8-205; Laws 1959, c. 19, § 5, p. 144; Laws 1961, c. 14, § 8, p. 109; Laws 1993, LB 81, § 18; Laws 1998, LB 1321, § 36; Laws 2000, LB 932, § 5.

8-205.01 Fidelity bond; requirements; director; powers and duties.

Each trust company doing business under the Nebraska Trust Company Act shall obtain a fidelity bond, naming the trust company as obligee, in an amount to be fixed by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the trust company from loss of money or other personal property, including that for which the trust company is responsible, which it may sustain through or by reason of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or other dishonest or criminal act of or by any of its officers or employees. The bond may contain a deductible clause in an amount to be approved by the Director of Banking and Finance. 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. 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. 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 trust company involved.

Source: Laws 1990, LB 956, § 5; Laws 1993, LB 81, § 19; Laws 1998, LB 1321, § 37.

8-206 Specific powers.

A trust company created under the Nebraska Trust Company Act shall have power:

(1) To receive trust funds for investment or in trust upon such terms and conditions as may be agreed upon and to purchase, hold, and lease fireproof and burglar-proof and other vaults and safes from which revenue may be derived;

(2) To accept and execute all such trusts as may be committed to it by any corporation, person, or persons, act as assignee, receiver, trustee, and depositor, and accept and execute all such trusts as may be committed or referred to it by order, judgment, or decree of any court of record;

(3) To take, accept, and hold by the order, judgment, or decree of any such court or by gift, grant, assignment, transfer, devise, or bequest any real or personal property in trust, to care for, manage, and convey the same in accordance with such trusts, and to execute and perform any and all such trusts;

(4) To act as attorney in fact for any person or corporation, public or private;

(5) To act either by itself or jointly with any natural person or persons or with any other trust company or state or national bank doing business in this state as administrator of the estate of any deceased person, as personal representative, or as conservator or guardian of the estate of any incapacitated person;

(6) To act 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;

(7) To act as agent or in an agency capacity for any person or entity, public or private;

(8) To loan money upon real estate and upon collateral security when the collateral would of itself be a legal investment for such corporation;

(9) To buy, hold, own, and sell securities issued or guaranteed by the United States Government or any authorized agency thereof, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, or securities secured by obligations of any of the foregoing, securities of any state or political subdivision thereof which possesses general powers of taxation, stock, warrants, bills of exchange, notes, mortgages, banker's acceptances, certificates of deposit in institutions whose accounts are insured by the Federal Deposit Insurance Corporation, securities issued pursuant to the Nebraska Business Development Corporation Act, and other investment securities, nego-

tiable and nonnegotiable, except stock or other securities of any corporation organized under the Nebraska Trust Company Act;

(10) To purchase, own, or rent real estate needed in the conduct of the business and to erect thereon buildings deemed expedient and necessary, the cost of such real estate and buildings not to exceed one hundred percent of the paid-up capital stock, and to purchase, own, and improve such other real estate as it may be required to bid in under foreclosure or in payment of other debts;

(11) To borrow money, to execute and issue its notes payable at a future date, and to pledge its real estate, mortgages, or other securities therefor. With the approval of the Director of Banking and Finance, any trust company may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of trustors and beneficiaries of estates and trusts and may be subordinated and subject to the claims of other creditors. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the trust company and shall not be held liable for assessments to restore impairments in the capital of the trust company as may be from time to time determined by the director; and

(12) To perform all acts and exercise all powers connected with, belonging to or incident to, or necessary for the full and complete exercise and discharge of the rights, powers, and responsibilities granted in the Nebraska Trust Company Act, and all provisions of the act shall be liberally construed. None of the powers hereby granted shall extend to or be construed to authorize any such corporation to accept deposits or conduct the business of banking as defined in the Nebraska Banking Act.

Source: Laws 1911, c. 31, § 6, p. 189; R.S.1913, § 743; Laws 1919, c. 190, tit. V, art. XVIII, § 6, p. 719; C.S.1922, § 8068; Laws 1927, c. 35, § 2, p. 160; C.S.1929, § 8-206; Laws 1933, c. 18, § 74, p. 172; C.S.Supp.,1941, § 8-206; R.S.1943, § 8-206; Laws 1959, c. 263, § 1, p. 919; Laws 1967, c. 22, § 1, p. 124; Laws 1986, LB 909, § 3; Laws 1986, LB 1177, § 1; Laws 1993, LB 81, § 20; Laws 1998, LB 1321, § 38; Laws 2005, LB 533, § 12.

Cross References

Nebraska Banking Act, see section 8-101.01.
Nebraska Business Development Corporation Act, see section 21-2101.

A loan by a trust company to one of its managing officers is prohibited by this section. Burke v. Munger, 138 Neb. 74, 292 N.W. 53 (1940).

Under this section, trust companies organized under this article were empowered to accept and execute trusts and to discharge the duties imposed thereby. First Trust Company v. Airedale Ranch & Cattle Company, 136 Neb. 521, 286 N.W. 766 (1939).

In criminal prosecution of officer of trust company for embezzlement of trust funds, court properly instructed jury that trust company had no power to assent to a loan to one of its officers. Buckley v. State, 131 Neb. 752, 269 N.W. 892 (1936).

Power of petitioner as trustee, upon the death of the insured, to accept and receive the proceeds of the life insurance policy payable to it as trustee, plainly conferred hereunder. Federal Trust Co. v. Damron, 124 Neb. 655, 247 N.W. 589 (1933).

Under terms of debenture, trust company empowered, under subdivision 7 hereof, to substitute, for farm mortgages originally deposited with it, stocks, bonds, etc., and obligation fulfilled by safely holding same. Myers v. Union Nat. Bank of Fremont, 115 Neb. 49, 211 N.W. 343 (1926).

Where the next of kin disagree as to who shall be appointed, county court has power to appoint duly authorized trust company as administrator. In re Estate of Anderson, 102 Neb. 170, 166 N.W. 261 (1918).

8-207 Appointment as fiduciary, authorized; oath.

Courts of this state may appoint a trust company receiver, assignee, trustee, guardian, conservator, personal representative, custodian, or administrator. When a trust company is so appointed and an oath is required to be made,

whether in order to qualify or for any other purpose, the president, vice president, secretary, or trust officer may, on behalf of the trust company, make and subscribe the required oath.

Source: Laws 1911, c. 31, § 7, p. 191; R.S.1913, § 744; Laws 1919, c. 190, tit. V, art. XVIII, § 7, p. 720; C.S.1922, § 8069; C.S.1929, § 8-207; R.S.1943, § 8-207; Laws 1947, c. 13, § 4, p. 78; Laws 1986, LB 909, § 4; Laws 1993, LB 81, § 21.

8-207.01 Repealed. Laws 1988, LB 795, § 8.

8-208 Conveyances; execution.

All conveyance of or other instruments affecting real estate owned or held in trust by a trust company shall be authorized, prior to or within ninety days after the conveyance or execution of an instrument affecting real estate owned or held in trust, by a resolution of the board of directors or a committee appointed by the board of directors and signed in the name of the trust company by its president or vice president.

Source: Laws 1911, c. 31, § 8, p. 192; R.S.1913, § 745; Laws 1919, c. 190, tit. V, art. XVIII, § 8, p. 721; C.S.1922, § 8070; C.S.1929, § 8-208; R.S.1943, § 8-208; Laws 1993, LB 81, § 22; Laws 2001, LB 53, § 3.

8-209 Pledge of securities with Department of Banking and Finance; amount required.

Any corporation organized to do business as a trust company under the Nebraska Trust Company Act shall make a pledge with the Department of Banking and Finance of approved securities in the amount of one hundred thousand dollars in par value. If at any time the market value of pledged assets is determined to have depreciated to less than ninety percent of par value or the trust company has trust funds deposited with itself or its supporting commercial bank in excess of those deposits referred to by section 8-212, the Director of Banking and Finance may require additional pledges in amounts deemed necessary to fully secure pledging requirements or excessive trust fund depository balances.

Any national bank authorized by the Office of the Comptroller of the Currency or the Board of Governors of the Federal Reserve System to act in a fiduciary capacity in this state, any federal savings association authorized by the Director of the Office of Thrift Supervision to act in a fiduciary capacity in this state, any federally chartered trust company, and any out-of-state trust company authorized under the Interstate Trust Company Office Act shall make similar pledges with the department, and all such deposits of national banks held by the department shall be considered as having been lawfully so pledged and subject to the Nebraska Trust Company Act.

Source: Laws 1911, c. 31, § 9, p. 192; R.S.1913, § 746; Laws 1919, c. 190, tit. V, art. XVIII, § 9, p. 721; C.S.1922, § 8071; C.S.1929, § 8-209; Laws 1933, c. 18, § 75, p. 174; Laws 1939, c. 3, § 1, p. 59; C.S.Supp.,1941, § 8-209; R.S.1943, § 8-209; Laws 1993, LB 81, § 23; Laws 1998, LB 1321, § 39.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-210 Securities; kinds authorized; pledge with Department of Banking and Finance.

Such securities shall consist of any securities which constitute a legal investment for the trust company except for bills of exchange, notes, mortgages, banker's acceptances, or certificates of deposit. State, county, municipal, and corporate bond issues must be of investment quality and be rated in the three top categories of investment by at least one nationally recognized rating service, except that all issues of counties and municipalities of Nebraska shall be acceptable.

Such securities shall not be accepted for purpose of pledge at a rate above par value and if their market value is less than par value they shall not be accepted for such purpose above their actual market value. The safekeeping of such securities and all other expenses incidental to the pledging of such securities shall be at the expense of the trust company.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 10, p. 721; C.S.1922, § 8072; C.S.1929, § 8-210; Laws 1933, c. 18, § 76, p. 175; C.S.Supp.,1941, § 8-210; R.S.1943, § 8-210; Laws 1957, c. 13, § 1, p. 136; Laws 1959, c. 263, § 2, p. 922; Laws 1967, c. 23, § 1, p. 127; Laws 1993, LB 81, § 24.

8-211 Pledge of securities with Department of Banking and Finance; certificate of compliance; effect on obligation to furnish bond as fiduciary.

The required pledges having been made, the Department of Banking and Finance shall issue a receipt and a certificate showing that the trust company has complied with the Nebraska Trust Company Act. Having thus qualified, the trust company may be permitted to act as assignee, receiver, trustee, either by appointment of court or under will, or depository of money in court without bond. Upon presentation of the certificate that the trust company has complied with the act and has made a pledge as provided in section 8-209, the court or other officer charged with the duty of making such appointment or of approving bonds may, in his or her discretion, make the appointment and permit the trust company to qualify without bond or require such bond as is required from natural persons.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 11, p. 721; C.S.1922, § 8073; C.S.1929, § 8-211; Laws 1933, c. 18, § 77, p. 175; C.S.Supp.,1941, § 8-211; R.S.1943, § 8-211; Laws 1993, LB 81, § 25; Laws 1998, LB 1321, § 40.

The fact that trust company has given general bond does not prevent county court from requiring another bond as testamentary trustee. In re Estate of Grainger, 151 Neb. 555, 38 N.W.2d 435 (1949).

8-212 Pledged securities; primarily liable for trust obligations and losses.

Securities pledged as provided in section 8-209 shall be primarily liable for the obligations of the trust company, state or national bank, federal savings association, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act incurred while acting in any fiduciary capacity, for depository of money in court, and for losses arising from trust funds deposited with failed financial institutions in excess of

deposit insurance limits and shall not be liable for any other debt or obligation of the trust company until all such trust liabilities have been discharged.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 12, p. 722; C.S.1922, § 8074; C.S.1929, § 8-212; Laws 1933, c. 20, § 1, p. 190; Laws 1933, c. 18, § 78, p. 176; Laws 1939, c. 3, § 2, p. 60; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-212; Laws 1993, LB 81, § 26; Laws 1998, LB 1321, § 41.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-213 Pledged securities of insolvent trust companies; transfer to fiduciary; conditions.

In the case of national banks and federal savings associations doing business as trust companies, trust companies, federally chartered trust companies, and out-of-state trust companies authorized under the Interstate Trust Company Office Act which upon insolvency are not liquidated by the Department of Banking and Finance, upon the appointment of a receiver, trustee in bankruptcy, or other liquidating agent, the department shall turn over to the receiver, trustee in bankruptcy, or other liquidating agent any securities pledged to it by the national bank, federal savings association, trust company, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act upon:

(1) The entry of an order by a court having jurisdiction over a receiver, trustee in bankruptcy, or other liquidating agent of the national bank, federal savings association, trust company, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act ordering the department to turn over to a receiver, trustee in bankruptcy, or other liquidating agent the securities pledged to the department; and

(2) The publication of a notice for three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the national bank, federal savings association, trust company, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act is located that all claims for the trust liabilities must be filed with the receiver, trustee in bankruptcy, or other liquidating agent within thirty days. In the case of national banks the notice provided for in 12 U.S.C. 193, and in the case of trust companies liquidated in bankruptcy court, the notice provided for in 11 U.S.C. 94(b), shall be sufficient without further notice being given and shall be in lieu of the notice required in this subdivision. In the case of out-of-state trust companies authorized under the Interstate Trust Company Office Act, an additional notice shall be published in each county in Nebraska where the out-of-state trust company maintains an office or maintained an office within one year prior to the insolvency.

Source: Laws 1933, c. 20, § 1, p. 190; Laws 1939, c. 3, § 2, p. 60; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-213; Laws 1986, LB 960, § 2; Laws 1993, LB 81, § 27; Laws 1998, LB 1321, § 42; Laws 2005, LB 533, § 13.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-214 Pledged securities; release upon surrender of fiduciary powers; conditions.

Any national bank, federal savings association, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act which has surrendered its right to exercise such fiduciary powers in this state may have its pledged securities released to it upon furnishing to the Department of Banking and Finance a certificate by its primary financial institution regulator that such national bank, federal savings association, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act is no longer authorized to exercise such powers and has been relieved, in accordance with the laws of this state, of all duties and obligations as assignee, receiver, or trustee, either by appointment of court or under will, and for depository of money in court.

Source: Laws 1939, c. 3, § 2, p. 60; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-214; Laws 1993, LB 81, § 28; Laws 1998, LB 1321, § 43.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-215 Pledged securities; release upon liquidation; conditions.

Any trust company, state or national bank or federal savings association with a trust department, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act doing business in this state, upon liquidating its business and affairs for reasons other than insolvency, may have its pledged securities released to it upon satisfying the Department of Banking and Finance that it has been lawfully relieved of all its duties and obligations as assignee, receiver, or trustee, either by appointment of court or under will, and for depository of money in court, after first having published notice three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the trust company, trust department of a state or national bank or federal savings association, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act is located that all claims against such securities, whether absolute or contingent, must be filed with the department by a day certain, not less than thirty days after the last publication of such notice.

Source: Laws 1939, c. 3, § 2, p. 61; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-215; Laws 1986, LB 960, § 3; Laws 1993, LB 81, § 29; Laws 1998, LB 1321, § 44.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

Department of Banking, as liquidating agent for trust company by proceedings hereunder, is not ''adverse holder'', and is required to obey summary order to turn over property to bankruptcy receiver. Gamble v. Daniel, 39 F.2d 447 (8th Cir 1930), appeal dismissed 281 U.S. 705 (1930).

8-216 Pledged securities; interest; company's right to collect.

The trust company may collect and retain the interest of all securities pledged as provided in section 8-209.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 13, p. 722; C.S.1922, § 8075; C.S.1929, § 8-213; Laws 1933, c. 18, § 79, p. 176; C.S.Supp.,1941, § 8-213; R.S.1943, § 8-216; Laws 1993, LB 81, § 30.

8-217 Pledged securities; substitute; when required.

If the interest on any security pledged as provided in section 8-209 remains unpaid for thirty days after maturity, the trust company shall substitute other securities therefor.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 14, p. 722; C.S.1922, § 8076; C.S.1929, § 8-214; Laws 1933, c. 18, § 80, p. 176; C.S.Supp.,1941, § 8-214; R.S.1943, § 8-217; Laws 1993, LB 81, § 31.

8-218 Examination; powers and duties of Department of Banking and Finance.

The Department of Banking and Finance or any duly appointed examiner authorized by it may make a full examination into all the books, papers, and affairs of any trust company doing business under the Nebraska Trust Company Act as often as deemed necessary. In so doing, the department shall have power to administer oaths and affirmations and to examine on oath or affirmation the officers, agents, and clerks of the trust company, touching the matter which they may be authorized to inquire into and examine, and to summon and by subpoena compel the attendance of any person or persons in this state to testify under oath in relation to the affairs of the trust company. In lieu of any examination authorized by the laws of this state, the Director of Banking and Finance may accept, in his or her discretion, a report of an examination made of a trust company by the Federal Deposit Insurance Corporation, the Federal Reserve Bank, or the Office of Thrift Supervision or he or she may examine any such trust company jointly with any such federal agency.

Source: Laws 1911, c. 31, § 9, p. 193; R.S.1913, § 747; Laws 1919, c. 190, tit. V, art. XVIII, § 15, p. 722; C.S.1922, § 8077; Laws 1927, c. 35, § 3, p. 162; Laws 1929, c. 38, § 6, p. 158; C.S.1929, § 8-215; Laws 1933, c. 18, § 81, p. 176; C.S.Supp.,1941, § 8-215; R.S. 1943, § 8-218; Laws 1993, LB 81, § 32; Laws 1998, LB 1321, § 45.

8-218.01 Inactive company; charter revoked; when; release of assets.

Any trust company which fails to exercise trust powers for three years or which voluntarily surrenders duties associated with fiduciary accounts so that no activity is reported for a period of three years, as determined by the consecutive annual reports submitted to the Department of Banking and Finance, shall be deemed inactive. Trust charters determined to be inactive as described in this section shall be revoked and the pledged assets released in accordance with section 8-215.

Source: Laws 1993, LB 81, § 33.

8-219 Liquidation; reorganization; adjudication of insolvency; grounds; powers and duties of Department of Banking and Finance.

Whenever (1) it appears to the Department of Banking and Finance from any examination or report provided for by the Nebraska Trust Company Act that the capital stock of any trust company transacting business under the act is impaired, or that the trust company is conducting its business in an unsafe or unauthorized manner, or that the trust company is endangering the interest of the beneficiaries for whom it holds property in trust, (2) the officers or employees of the trust company refuse to submit its books, papers, and affairs to the inspection of any examiner, (3) any officer thereof refuses to be examined upon oath touching the affairs of the trust company, or (4) from any examination or report provided for by law, the department has reason to conclude that the trust company is in an unsafe or unsound condition to transact the business for which it is organized or that it is unsafe and inexpedient for it to continue its business, the department shall take charge of the trust company and proceed to reorganize or to liquidate the trust company in the manner provided for the liquidation of insolvent banks. If the trust company neglects or refuses to observe any lawful order of the department, then the department may cause a suit to be brought in the name of the State of Nebraska upon the relation of the Department of Banking and Finance against the trust company in the district court of the county in which the trust company is chartered for the purpose of having the trust company adjudged insolvent and its business wound up.

Source: Laws 1927, c. 35, § 3, p. 163; Laws 1929, c. 38, § 6, p. 159; C.S.1929, § 8-215; Laws 1933, c. 18, § 81, p. 177; C.S.Supp.,1941, § 8-215; R.S.1943, § 8-219; Laws 1993, LB 81, § 34; Laws 1998, LB 1321, § 46.

8-220 Liquidation; adjudication of insolvency; procedure; powers of district court; liens dissolved.

The suit referred to in section 8-219 shall be conducted as a civil action under the laws of Nebraska. If in the suit the court finds that the trust company is insolvent, it shall enter a judgment of insolvency and order that the business of the trust company shall be wound up. The court or any judge thereof may, after notice to the trust company, enjoin the trust company from continuing to transact business pending the hearing and entry of a judgment in the case. If the court finds and adjudges that the trust company is insolvent, the Department of Banking and Finance shall thereupon become the liquidating agent to wind up the business of the trust company, and the department shall be vested with the title to all of the assets and the property of the trust company wherever such property may be situated and whatever the kind and character of the assets and property may be, as of the date of the filing of the petition in court. Any attachment lien against the property of the trust company, acquired within sixty days next preceding the filing of the suit, shall be thereby released and dissolved.

Source: Laws 1927, c. 35, § 3, p. 163; Laws 1929, c. 38, § 6, p. 159; C.S.1929, § 8-215; Laws 1933, c. 18, § 81, p. 177; C.S.Supp.,1941, § 8-215; R.S.1943, § 8-220; Laws 1993, LB 81, § 35.

8-221 Liquidation; insolvency; injunction to prevent transaction of business.

If the judge of the district court of the county where the suit is filed is absent therefrom, any judge of the Court of Appeals or Supreme Court may grant the injunction as provided in section 8-220 with the same force and effect as if it had been granted by the district judge. All the proceedings for the conduct of the suit and an entry of judgment shall be conducted in the district court of the county where the trust company was chartered. If the trust company is adjudged insolvent, its affairs shall be wound up by the Department of Banking and Finance under and subject to the order of the district court in the manner provided in the case of insolvent banks.

Source: Laws 1927, c. 35, § 3, p. 164; Laws 1929, c. 38, § 6, p. 160; C.S.1929, § 8-215; Laws 1933, c. 18, § 81, p. 178; C.S.Supp.,1941, § 8-215; R.S.1943, § 8-221; Laws 1991, LB 732, § 14; Laws 1993, LB 81, § 36.

8-222 Maximum liability.

The maximum liability which may be incurred by any trust company organized under the Nebraska Trust Company Act, exclusive of money or properties held in trust and exclusive of money borrowed for investment and actually invested in real estate mortgages and other securities in which trust companies are authorized to invest under the act, shall not exceed one hundred percent of the paid-up capital stock.

Source: Laws 1911, c. 31, § 10, p. 194; R.S.1913, § 748; Laws 1919, c. 190, tit. V, art. XVIII, § 16, p. 723; C.S.1922, § 8078; Laws 1923, c. 32, § 1, p. 142; C.S.1929, § 8-217; R.S.1943, § 8-222; Laws 1993, LB 81, § 37; Laws 1998, LB 1321, § 47.

8-223 Statements required; when; annual report, defined; penalty.

(1) The trust company shall file with the Department of Banking and Finance during the months of January and July of each year a statement under oath of the condition of the trust company on the last business day of the preceding December and June in the manner and form required by the department. For purposes of the Nebraska Trust Company Act, the trust company's annual report shall be deemed to be the report filed with the Department of Banking and Finance during the month of January.

(2) Any trust company that fails, neglects, or refuses to make or furnish any report or any published statement required by the Nebraska Trust Company Act shall pay to the department fifty dollars for each day such failure continues, unless the department extends the time for filing such report.

Source: Laws 1911, c. 31, § 11, p. 194; R.S.1913, § 749; Laws 1919, c. 190, tit. V, art. XVIII, § 17, p. 723; C.S.1922, § 8079; C.S.1929, § 8-218; Laws 1933, c. 18, § 82, p. 178; C.S.Supp.,1941, § 8-218; R.S.1943, § 8-223; Laws 1993, LB 81, § 38; Laws 1998, LB 1321, § 48; Laws 2000, LB 932, § 6.

8-224 Reports; form; publication.

The reports required by section 8-223 shall be verified by one of the managing officers, and a summary of the annual report, in a form prescribed by the Department of Banking and Finance, shall, within thirty days after the filing of the statement with the department, be published in a newspaper of general circulation in the county where the trust company is chartered. The publication

required by this section shall not apply to reports of the trust department of a bank.

Source: Laws 1911, c. 31, § 12, p. 194; R.S.1913, § 750; Laws 1919, c. 190, tit. V, art. XVIII, § 18, p. 723; C.S.1922, § 8080; C.S.1929, § 8-219; Laws 1933, c. 18, § 83, p. 178; C.S.Supp.,1941, § 8-219; R.S.1943, § 8-224; Laws 1993, LB 81, § 39; Laws 1997, LB 137, § 9.

8-224.01 Prohibited acts; violation; penalties.

(1) No charge shall be allowed against an estate or trust for legal services performed by an attorney who is a salaried employee of the trust company or when a portion of the charge for legal service is retained by the trust company. Any officer or employee of the trust company causing or consenting to such division of fee for legal service shall be guilty of a Class I misdemeanor. No investments of an estate or trust shall be made in the capital stock or securities of the trust company, in the stock or securities of its affiliated companies, or in obligations, either direct or indirect, of any director, officer, or employee of the trust company. The trust company shall not substitute any of the assets of an estate or trust under its control for securities of the trust company. A trust company may administer, in a fiduciary capacity, an estate or trust which contains such capital stock, securities, or obligations as part of its assets if such assets are received in kind from the grantor of the estate or trust and retention of such capital stock, securities, or obligations is properly authorized by the terms of the governing document. Any officer or employee of the trust company making such an investment or consenting to such an investment or causing such substitution or consenting to such substitution shall be guilty of a Class III felony.

(2) No loan of the assets of the trust company shall be made to any officer or director of such corporation. No trust company shall cause or allow funds of any account entrusted to the trust company to be loaned, directly or indirectly, to any director, officer, or employee of the trust company except when the director, officer, or employee has a specific beneficial interest in the account and such loans are allowed in governing account documents and are not prohibited by other state or federal law. Any director, officer, or employee of the trust company causing, consenting to, or receiving funds from a loan made in violation of this section shall be guilty of a Class III felony.

Source: Laws 1993, LB 81, § 40; Laws 1993, LB 423, § 3.

8-225 False statement or book entry; destruction or secretion of records; penalty.

Any person who swears to any of the statements required by the Nebraska Trust Company Act, knowing them to be false, who subscribes to, makes, or causes to be made any false statement or false entry in the books of any trust company transacting a business under the act, who subscribes to or exhibits false papers or fails to make true and correct entry in the books and records of the trust company of its business and transactions in the manner and form prescribed by the Department of Banking and Finance, who mutilates, alters, destroys, secretes, or removes any of the books or records of the trust company without the written consent of the Director of Banking and Finance, or who

makes, states, or publishes any false statement of the amount of the assets or liabilities of the trust company shall be guilty of a Class IV felony.

Source: Laws 1911, c. 31, § 13, p. 195; R.S.1913, § 751; Laws 1919, c. 190, tit. V, art. XVIII, § 19, p. 723; C.S.1922, § 8081; C.S.1929, § 8-220; Laws 1933, c. 18, § 84, p. 179; C.S.Supp.,1941, § 8-220; R.S.1943, § 8-225; Laws 1977, LB 40, § 54; Laws 1993, LB 81, § 41; Laws 1998, LB 1321, § 49.

8-226 Trust terms; use restricted; penalty.

(1) No individual, firm, corporation, or association doing business directly or indirectly in the State of Nebraska shall use the words trust, trust company, trust association, or trust fund as any part of its title except:

(a) A trust company as defined in section 8-230;

(b) A trust company chartered and supervised under the laws of the United States or any other state;

(c) A bank or savings association chartered and supervised under the laws of the United States or any other state, if such bank or savings association has been further chartered to conduct a trust company business;

(d) A limited partnership to the extent authorized by subdivision (5) of section 67-234;

(e) An entity required by any other law to use such words; or

(f) Except as provided in subsection (2) of this section.

(2) Notwithstanding the provisions of subsection (1) of this section:

(a) An organization described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the code may use the words trust or trust fund;

(b) A trust created by a testamentary or fiduciary document may use the word trust; and

(c) An account in a financial institution established by or on behalf of trusts referenced in subdivision (b) of this subsection may use the words trust or trust fund.

(3) A violation of this section is a Class V misdemeanor.

Source: Laws 1911, c. 31, § 13, p. 195; R.S.1913, § 752; Laws 1919, c. 190, tit. V, art. XVIII, § 20, p. 723; C.S.1922, § 8082; C.S.1929, § 8-221; R.S.1943, § 8-226; Laws 1977, LB 40, § 55; Laws 1993, LB 81, § 42; Laws 1996, LB 1268, § 1; Laws 1997, LB 44, § 1.

8-227 State trust company; merger or consolidation with national banking association; procedure.

Any state trust company, with the approval of the Department of Banking and Finance, may, upon a vote of the holders of at least two-thirds of its capital stock, merge or consolidate with a national banking association, as provided by federal law, by causing a certificate to be filed with the Department of Banking and Finance setting forth the resolution of the stockholders of the state trust company and that the resolution has been duly adopted by the holders of at least two-thirds of the capital stock of the trust company.

Source: Laws 1959, c. 20, § 1, p. 145; Laws 1993, LB 81, § 43.

8-228 State trust company; merger or consolidation with a national bank; effect.

When a state trust company has merged or consolidated with a national bank, the resulting national bank and trust company shall be considered the same business and corporate entity as the former national bank and the former trust company and as a continuation thereof and the ownership and title to all properties, assets, obligations, and liabilities of the merging or consolidating trust company shall automatically pass to and become the properties, assets, obligations, and liabilities of the resulting national bank and trust company and shall be deemed to be transferred to and vested in the resulting national bank and trust company without any deed or other transfer. The resulting national bank and trust company, by virtue of such consolidation or merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, personal representative, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such merging or consolidating trust company at the time of such merger or consolidation. Upon the merger or consolidation, the state charter of the merging or consolidating state trust company shall automatically terminate and the charter shall be returned to the Department of Banking and Finance. Securities pledged to the department in accordance with section 8-209 shall be transferred to the name of the resulting national bank and trust company.

Source: Laws 1959, c. 20, § 2, p. 146; Laws 1986, LB 909, § 6; Laws 1993, LB 81, § 44.

8-229 State trust company; merger or consolidation with a national bank; redemption of stock; when; value, how determined.

When the merger or consolidation becomes effective, the owner of shares of a state trust company which were voted against a merger or consolidation with a national bank shall be entitled to receive the value of the stock in cash from the assets of the state trust company when the merger or consolidation becomes effective, upon written demand made to the resulting national bank and trust company at any time within thirty days after the effective date of the merger or consolidation, accompanied by the surrender of the stock certificates. The value of the shares shall be determined as of the date of the shareholders' meeting approving the merger or consolidation, by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the merger or consolidation, one by the board of directors of the resulting national bank and trust company, and the third by the two so chosen. If the appraisal is not completed within sixty days after the merger or consolidation becomes effective, the Department of Banking and Finance may cause an appraisal to be made and the resulting appraisal shall then govern. The expenses of the appraisal caused to be made by the department shall be paid by the resulting national bank and trust company.

Source: Laws 1959, c. 20, § 3, p. 146; Laws 1993, LB 81, § 45.

8-229.01 State trust company; merger or consolidation with state bank; procedure.

Any state trust company, with the approval of the Department of Banking and Finance, may, upon a vote of the holders of at least two-thirds of its capital stock, merge or consolidate with any state bank which has obtained powers to conduct a trust business pursuant to the Nebraska Trust Company Act. The merging trust company must file with the department a certificate of the stockholders of the trust company that the resolution to merge or consolidate has been duly adopted by the holders of at least two-thirds of the capital stock of the trust company.

Source: Laws 1993, LB 81, § 46; Laws 1998, LB 1321, § 50.

8-229.02 State trust company; merger or consolidation with a state bank; effect.

When a state trust company has merged or consolidated with a state bank, the resulting state bank and trust company shall be considered the same business and corporate entity as the former state bank and the former trust company and as a continuation thereof. The ownership and title to all properties, assets, obligations, and liabilities of the merging or consolidating trust company shall automatically pass to and become the properties, assets, obligations, and liabilities of the resulting state bank and trust company and shall be deemed to be transferred to and vested in the resulting state bank and trust company without any deed or other transfer. The resulting state bank and trust company, by virtue of such consolidation or merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all right of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, personal representative, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such merging or consolidating trust company at the time of such merger or consolidation. Upon the merger or consolidation, the state charter of the merging or consolidating state trust company shall automatically be transferred to the resulting state bank and trust company.

Source: Laws 1993, LB 81, § 47.

8-229.03 State trust company; merger or consolidation with a state bank; redemption of stock; when; value, how determined.

When the merger or consolidation becomes effective, the owner of shares of a trust company which were voted against a merger or consolidation with a state bank shall be entitled to receive the value of the stock in cash from the assets of the state trust company upon written demand made to the resulting state bank and trust company at any time within thirty days after the effective date of the merger or consolidation accompanied by the surrender of the stock certificates. The value of the shares shall be determined as of the date of the shareholders' meeting approving the merger or consolidation. An appraisal shall be conducted by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the merger or consolidation, one by the board of directors of the resulting state bank and trust company, and the third by the two so

chosen. If the appraisal is not completed within sixty days after the merger or consolidation becomes effective, the Department of Banking and Finance may cause an appraisal to be made and the resulting appraisal shall then govern. The expenses of the appraisal caused to be made by the department shall be paid by the resulting state bank and trust company.

Source: Laws 1993, LB 81, § 48.

8-230 Terms, defined.

For purposes of the Nebraska Trust Company Act, unless the context otherwise requires:

(1) Agency capacity means a capacity resulting from a trust company undertaking to act alone or jointly with others primarily as agent for another in all matters connected with its undertaking, including the capacities of registrar, paying agent, or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of any corporation, association, municipality, state, or public authority, escrow agent, or agent for the investment of money or any other similar capacity;

(2) Branch trust office means an office of a trust company, other than the main or principal office of a trust company, at which a trust company may act in any fiduciary capacity or conduct any activity permitted under the Nebraska Trust Company Act;

(3) Fiduciary capacity means a capacity resulting from a trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with the undertaking and includes the capacities of trustee, including trustee of a common trust fund, administrator, personal representative, guardian of an estate, conservator, receiver, attorney in fact, and custodian and any other similar capacity;

(4) Representative trust office means an office at which a trust company does not act in any fiduciary capacity or conduct or engage in any activity related to its fiduciary capacities but may otherwise engage in any other activity permitted under the Nebraska Trust Company Act; and

(5) Trust company means any trust company which is incorporated under the laws of this state, any national banking association having its principal office in this state and authorized to conduct a trust company business as defined in the Nebraska Trust Company Act, any bank authorized to conduct a trust company business in a trust department pursuant to sections 8-159 to 8-162, any federal savings association authorized to conduct a trust company business, and any federally chartered trust company.

Source: Laws 1977, LB 338, § 1; Laws 1986, LB 909, § 7; Laws 1993, LB 81, § 49; Laws 1998, LB 1321, § 51.

8-231 Trust company; substituted in fiduciary capacity for affiliated bank; application; court order; filing.

(1) Any trust company which has been duly authorized to commence the business for which it is organized and which has made the pledge of securities required by sections 8-209 and 8-210 may file an application in the county court of the county in which an affiliated bank is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank specified in the application, and such

specified affiliated bank shall join in such application. Such application may be made by the trust company seeking substitution and need not list the fiduciary capacities in which substitution is proposed to be made. For purposes of this section, affiliated bank with respect to a trust company shall mean any bank incorporated under the laws of this state and any national banking association having its principal office in this state, more than fifty percent of the voting stock of which is owned directly or indirectly by the same bank holding company as defined in the United States Bank Holding Company Act, as amended, that owns directly or indirectly more than fifty percent of the voting stock of such trust company. The county court may require such notice as it deems necessary.

(2) When the county court finds that such trust company has been duly authorized to commence the business for which it is organized and that it has made a pledge of securities in accordance with sections 8-209 and 8-210, the county court may enter an order substituting such trust company in every fiduciary capacity for the specified affiliated bank except as may be otherwise specified in the application.

(3) Upon entry of such order, such trust company shall, without further act, be substituted in every such fiduciary capacity, and such application may be evidenced by filing a copy of the order with the clerk of any county court in this state.

Source: Laws 1977, LB 338, § 2; Laws 1993, LB 81, § 50.

8-232 Designation of bank as fiduciary in a will or other instrument; effect.

Each designation in a will or other instrument executed either before, on, or after September 9, 1993, in which a bank is designated as fiduciary shall be deemed a designation of the trust company substituted for the bank pursuant to sections 8-230 to 8-233 except when the will or other instrument is executed after such substitution. Any grant in a will or other instrument of any discretionary power shall be deemed conferred upon the trust company deemed designated as the fiduciary pursuant to this section.

Source: Laws 1977, LB 338, § 3; Laws 1993, LB 81, § 51.

8-233 Trust company; substituted as fiduciary; accounting; transfer of assets.

A bank shall account jointly with the trust company which has been substituted as fiduciary for the bank pursuant to sections 8-230 to 8-233 for the accounting period during which the trust company is initially so substituted. Upon substitution pursuant to sections 8-230 to 8-233, the bank shall deliver to the trust company all assets held by the bank as fiduciary, except assets held for accounts with respect to which there has been no substitution pursuant to sections 8-230 to 8-233, and upon substitution all the assets shall become the property of the trust company without the necessity of any instrument of transfer or conveyance.

Source: Laws 1977, LB 338, § 4; Laws 1993, LB 81, § 52.

8-234 Branch trust offices authorized; procedure.

(1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Compa-

ny Act may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a branch trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Upon receipt of a substantially complete application, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the corporation organized to do business as a trust company warrants a hearing. If the director determines that the condition of the corporation organized to do business as a trust company 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 trust office would be located, the expense of which shall be paid by the corporation organized to do business as a trust company, and (b) give notice of such application for a branch trust office to all financial institutions within the county where the proposed branch trust office would be located and to such other interested parties as the director may determine. The director shall send the notice to financial institutions 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. If the director receives a substantive objection to the proposed branch trust office 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 trust office would be located. The expense of any publication and certified mailing required by this section shall be paid by the applicant. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty-one days after the last publication of notice of hearing. The costs of the hearing shall be assessed in accordance with the rules and regulations of the Department of Banking and Finance.

(3) The director shall approve the application for a branch trust office if he or she finds that (a) the establishment of the branch trust office would not adversely affect the financial condition of the corporation organized to do business as a trust company, (b) there is a need in the community for the branch trust office, and (c) establishment of the branch trust office would be in the public interest.

(4) With the approval of the director, a state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303. The procedure for the establishment of any branch trust office under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the branch trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, and the general business of banking shall not be conducted at the branch trust office. Nothing in this subsection is intended to prohibit the establishment of a branch pursuant to section 8-157 at which trust business may be conducted.

(5) A branch trust office of a corporation organized to do business as a trust company or of a state-chartered bank shall not be closed without the prior written approval of the director.

Source: Laws 1998, LB 1321, § 52; Laws 2002, LB 1089, § 5; Laws 2003, LB 217, § 10; Laws 2005, LB 533, § 14.

8-235 Representative trust offices authorized; procedure.

(1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain representative trust offices within this state and in any other state pursuant to section 8-2304.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a representative trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Within sixty days after receipt of a substantially complete application, the director shall notify the trust company of his or her decision on the application. If the director does not act on the application, the application shall be deemed approved on the sixty-first day after receipt of a substantially complete application.

(3) The director shall approve the application for a representative trust office if he or she finds that:

(a) The establishment of the representative trust office would not adversely affect the financial condition of the trust company;

(b) The activities at the representative trust office will be limited to nonfiduciary trust activities; and

(c) Establishment of the representative trust office would be in the public interest.

(4) A state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain representative trust offices within this state and in any other state pursuant to section 8-2304. The procedure for the establishment of any representative trust offices under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the representative trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, except that no fiduciary activities may be conducted at the representative trust offices. The general business of banking shall not be conducted at the representative trust offices.

(5) A representative trust office shall not be closed unless the trust company or state-chartered bank provides sixty days' prior written notice to the director.

Source: Laws 1998, LB 1321, § 53.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.
Penalty for misapplication of funds or assets, see section 8-1,139.

Section

Section

8-301 Supervision and control; powers of Department of Banking and Finance.

The Department of Banking and Finance shall have power to issue permits to and shall have general supervision and control of all building and loan associations as defined in sections 8-301 to 8-340.01.

Source: Laws 1919, c. 190, tit. V, art. XIX, § 1, p. 723; C.S.1922, § 8083; C.S.1929, § 8-301; R.S.1943, § 8-301; Laws 2000, LB 932, § 7.

Supervision and control extends to branches. First Fed. Sav. & Loan Assn. v. Department of Banking, 187 Neb. 562, 192 N.W.2d 736 (1971).

8-301.01 Repealed. Laws 1984, LB 899, § 7.

8-302 Power to require and receive payments from members; limitations.

Any association of not less than five persons, which shall be organized within this state for the purpose of raising money to be loaned among its members, shall be authorized and empowered to levy, assess and collect from its members such sums of money by rates of stated dues, fines, interest and premiums on loans, as the corporation may provide in its articles of incorporation or bylaws, and to exercise such other powers as are hereinafter conferred. Every such corporation may, however, receive payments from its members in any amount, which together with the balance, if any, formerly to the credit of the member thus paying, upon the books of the corporation, shall not exceed the par value of the shares of stock held by him.

Source: Laws 1899, c. 17, § 1, p. 84; R.S.1913, § 485; Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 125; C.S.Supp.,1941, § 8-302; R.S.1943, § 8-302; Laws 1978, LB 717, § 1.

Failure of foreign association to renew its authority to transact business in this state does not invalidate prior contracts. Eastern B. & L. Assn. v. Tonkinson, 76 Neb. 470, 107 N.W. 762 (1906).

A building and loan association may deduct from a loan made to one of its members the premium bid for the right of precedence in taking a loan, provided such loan was made under a system of open competitive bidding. South Omaha L. & B. Assn. v. Wirrick, 63 Neb. 598, 88 N.W. 694 (1902).

Section held constitutional. Nebraska L. & B. Assn. v. Perkins, 61 Neb. 254, 85 N.W. 67 (1901); Livingston L. & B. Assn. v. Drummond, 49 Neb. 200, 68 N.W. 375 (1896).

Stockholder cannot rescind, recover money paid for stock and repudiate obligations assumed, on account of mismanagement of officers. American B. & L. Assn. v. Bear, 48 Neb. 455, 67 N.W. 500 (1896).

Act cannot affect contracts made before its passage. American B. & L. Assn. v. Rainbolt, 48 Neb. 434, 67 N.W. 493 (1896).

Subscribers seeking rescission of contract must return stock as condition to right to rescind. Building & L. Assn. of Dakota v. Cameron, 48 Neb. 124, 66 N.W. 1109 (1896).

Corporations, not building and loan associations, though similar in character, may incorporate under general law. York Park Bldg. Assn. v. Barnes, 39 Neb. 834, 58 N.W. 440 (1894).

Company will be bound by that construction of the contract which it understood and knew the other party placed upon it, by which the other party was induced to enter into contract. People's B. L. & S. Assn. v. Klauber, 1 Neb. Unof. 676, 95 N.W. 1072 (1901).

8-303 Stock; ownership; limit; investment shares; loans.

(1) No person shall hold in his own right, or jointly with others, a total of withdrawal value of investment stock of more than sixty thousand dollars or an amount representing two percent of the total assets of the association, whichever is greater, except that investment shares which, when issued by an association, are within the limits prescribed in this subsection, may continue to be lawfully held irrespective of any shrinkage in the assets of the association.

(2) In any association, borrowing members may hold stock to the amount of sixty thousand dollars or an amount equal to five percent of the assets of the association, whichever amount is greater, except that (a) no borrowing member may hold stock in excess of one hundred thousand dollars unless that association has a reserve fund of at least five percent of the total assets of the association; and (b) if stock held by borrowing members which, when issued by an association, is within the limits prescribed in this subsection, it shall continue to be lawfully held irrespective of any shrinkage in the assets of the association.

(3) Notwithstanding the provision of this section, an association may issue any investment shares and make any loan to borrowing members which is or may be permitted to a federal association doing business in this state.

Source: Laws 1899, c. 17, § 1, p. 84; R.S.1913, § 485; Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 125; C.S.Supp.,1941, § 8-302; R.S.1943, § 8-303; Laws 1945, c. 9, § 1, p. 106; Laws 1953, c. 8, § 1, p. 72; Laws 1955, c. 10, § 1, p. 76; Laws 1959, c. 21, § 1, p. 147; Laws 1969, c. 37, § 1, p. 244.

8-304 Stockholders; voting; limitations.

Subject to the limitations set forth in section 8-303, each investing member shall be permitted to cast one vote for each hundred dollars of withdrawal value of his stock. Each borrowing member shall be permitted as a borrower to cast one vote, or to cast one vote for each one hundred dollars of the credit value of his stock. Fifteen or more members present at a regular or special meeting of members constitute a quorum. Voting may be by proxy if the instrument authorizing the proxy to vote shall have been executed by a member.

Source: Laws 1899, c. 17, § 1, p. 84; R.S.1913, § 485; Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 125; C.S.Supp.,1941, § 8-302; R.S.1943, § 8-304; Laws 1945, c. 9, § 2, p. 107; Laws 1953, c. 9, § 1, p. 74.

8-305 Corporate name; requirements; penalty.

The words loan and building association, building association, building and loan association, savings and loan association, or loan and savings association, shall form part of the corporate name of every such corporation. No individual, firm, company, corporation, or association operating in the State of Nebraska, unless (1) organized under authority of the federal government, (2) organized as a building and loan association under the authority of any foreign state and complying with the provisions of the Nebraska statutes, (3) organized and incorporated under and in accordance with the provisions of sections 8-301 to 8-384, or (4) having been in existence and doing business in Nebraska under its present name for a period of ten years prior to January 1, 1949, shall, after August 27, 1949, use in its name the words loan and building association, building and loan association, savings and loan association, loan and savings association, loan and building, building and loan, savings and loan, loan and savings, building and savings, or savings and building, in combination with any other word or words. Any person, firm, company, corporation, or association violating this section shall be guilty of a Class V misdemeanor for each offense. Each day such person, firm, or corporation shall use any such prohibited words shall be deemed a separate and distinct offense in violation of this section.

Source: Laws 1899, c. 17, § 1, p. 84; R.S.1913, § 485; Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 126; C.S.Supp.,1941, § 8-302; R.S.1943, § 8-305; Laws 1949, c. 9, § 1, p. 69; Laws 1977, LB 40, § 56; Laws 2000, LB 932, § 8; Laws 2005, LB 533, § 15.

8-306 Capital stock; amount; articles of incorporation; filing fees.

The capital stock of an association is not limited and shall consist of the aggregate of payments made by its members and dividends credited thereon, less withdrawals, and shall be represented by shares. It shall not be necessary for any association organized in and operating under the laws of the State of Nebraska to state in its articles of incorporation, or an amendment or amendments thereto, any amount of authorized capital stock. Upon the filing of articles of incorporation, or an amendment or amendments thereto, an association shall pay a filing fee of twenty-five dollars to the Secretary of State.

Source: Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 126; C.S.Supp., 1941, § 8-302; R.S.1943, § 8-306; Laws 1953, c. 10, § 1, p. 75.

Under prior law, law required building and loan association to file articles with Secretary of State and pay filing fee in advance based upon authorized capital stock. State ex rel. Equitable Bldg. L. & S. Assn. v. Amsberry, 104 Neb. 843, 178 N.W. 828 (1920).

8-307 Repealed. Laws 1978, LB 717, § 7.

8-307.01 Pensions and retirement plans; adoption.

A building and loan association may provide for pensions, retirement plans, and other benefits for its officers and employees, and may contribute to the cost thereof in accordance with the plan adopted by a two-thirds vote of the board of directors, and approved by a vote of a majority of all the stockholders represented at an annual meeting of such association upon written notice mailed ten days prior to the annual meeting to the last-known address of each stockholder as shown by the books of the association that a pension or retirement plan, or other plan for benefits for its officers and employees will be presented at such meeting, and approved by the Department of Banking and Finance.

Source: Laws 1953, c. 14, § 1, p. 80.

8-308 Stock; credit value; right of shareholder to withdraw; conditions; withdrawal notice; exception for liquidation.

Any shareholder of an association shall be permitted to withdraw any or all of the credit value of his or her stock as shown by the books of the association, provided such stock is not pledged as security for a loan, by giving written notice of such intention to the secretary or managing officer of the association, and, at the expiration of thirty days following such notice, the member so withdrawing, or, if deceased, his legal representative, shall be entitled to receive the credit value of the stock at the time such notice was given, together with such proportion of the net profits accruing since the last dividend date, if the bylaws so provide and determine, less the admission fee, if any, or other just and lawful charges; *Provided*, the right to so withdraw shall not apply to shareholders of an association in process of liquidation.

Source: Laws 1899, c. 17, § 3, p. 85; R.S.1913, § 488; Laws 1919, c. 190, tit. V, art. XIX, § 4, p. 724; C.S.1922, § 8086; C.S.1929, § 8-304; Laws 1941, c. 12, § 1, p. 84; C.S.Supp.,1941, § 8-304.

8-309 Stock; withdrawal; limit; funds applicable.

At no time shall more than one-half of the unloaned funds in the treasury of the association and one-half of the accumulations thereto be applicable to the demands of the withdrawing shareholders without the consent by resolution of

the board of directors. If there is delay in meeting payment to withdrawing members due to insufficient funds applicable to such purpose, such members shall be paid, and their stock thus repurchased retired, in the order of the filing of their withdrawal notices as funds applicable therefor are available.

Source: Laws 1899, c. 17, § 3, p. 86; R.S.1913, § 488; Laws 1919, c. 190, tit. V, art. XIX, § 4, p. 725; C.S.1922, § 8086; C.S.1929, § 8-304; Laws 1941, c. 12, § 1, p. 84; C.S.Supp.,1941, § 8-304.

8-310 Stock; withdrawal; insufficient funds to meet notices; limit of loans; requirements.

So long as any association is delayed in meeting payment to withdrawing members due to insufficient funds applicable to such purpose, any loan made to a member shall be from funds not applicable for payment to withdrawing members, and shall not exceed one-half of the credit value of the member's stock unless secured also by the pledge of real estate. If the only security for such a loan be a pledge of the member's stock, the association shall take from the borrower a note for the payment thereof with interest, payable on demand, and a notice for withdrawal of sufficient of the stock to pay such note and interest unless such notice is already on file, and the association shall not demand payment of such note until it has funds available for the payment of the withdrawal notice in the sequence of its filing.

Source: Laws 1941, c. 12, § 1, p. 84; C.S.Supp.,1941, § 8-304.

8-311 Stock; withdrawals by borrowing members; funds applicable.

Withdrawals by a borrowing member from credits on stock pledged as security in connection with a real estate loan made by the association shall be permitted only at the discretion of the association, and if the association is delayed in meeting payments to withdrawing members due to insufficient funds applicable to such purpose, withdrawals permitted to such a borrowing member shall be paid only out of the funds of the association available for the making of real estate loans.

Source: Laws 1941, c. 12, § 1, p. 84; C.S.Supp.,1941, § 8-304.

8-312 Stock; enforcement of withdrawals by directors.

If the association has funds applicable for withdrawals and more than needed to retire the shares of members who have given written notice of an intention to withdraw, the directors may, if in their discretion it shall be for the best interests of the association, retire any unpledged shares by enforcing withdrawals of the same, subject to the approval and consent of the Department of Banking and Finance, and the owner or owners shall be paid the full credit value of such shares, which shall be the total of payments and dividends credited thereon less prior withdrawals, if any.

Source: Laws 1899, c. 17, § 3, p. 86; R.S.1913, § 488; Laws 1919, c. 190, tit. V, art. XIX, § 4, p. 725; C.S.1922, § 8086; C.S.1929, § 8-304; Laws 1941, c. 12, § 1, p. 85; C.S.Supp.,1941, § 8-304.

8-313 Stock; enforced withdrawal; time; notice of intention.

Such retirements, if made, shall be made immediately after a period fixed by the bylaws of the association for the declaration and payment of dividends of

earnings, and the association shall, at least sixty days before so retiring any shares, send written notice to each person shown by the books of the association to be an owner of such shares, mailed to such person's last-known address, which notice shall inform such persons of the intent of the association to make the retirement on a designated date.

Source: Laws 1941, c. 12, § 1, p. 85; C.S.Supp.,1941, § 8-304.

8-314 Stock; enforced withdrawal; notice of intention; contents.

The association shall without delay, upon so retiring shares by order of its board of directors, send a written notice to each person shown by the books of the association to be an owner of shares thus retired, mailed to such person's last-known address, which notice shall contain information of the retirement of the shares and of the number of the certificate representing said shares, and of the amount to be paid to such owner upon delivery to the association of said certificate.

Source: Laws 1941, c. 12, § 1, p. 85; C.S.Supp.,1941, § 8-304.

8-315 Loans; prepayment; required provisions; procedure.

The bylaws shall also contain equitable provisions permitting the payment of loans before maturity, as follows: The borrower shall be charged with the full amount of his loan, together with all arrearages due thereon or on the shares pledged, or appertaining to the security given, and shall thereupon be allowed, as a credit, the withdrawal value of the shares pledged as security together with an equitable share of the premium, if any, paid in advance, and such other credits as may be returnable on account thereof, and the balance shall be received by the association in full settlement and discharge of such loan. The credits on shares pledged in connection with a loan secured by mortgage on real estate, may at any time, and in whole or in part, be appropriated by any association and applied in reduction of such loan. The withdrawal value of shares pledged as a part of a loan transaction, where such loan is secured by mortgage on real estate, shall be the total amount of the payments on such shares as shown by the books of the association, together with such proportionate share of the earnings as the borrower may be entitled to under the bylaws of the association, less the amounts of previous appropriations and applications on the loan and withdrawals, if any. The association shall not directly or indirectly charge any membership, admission, withdrawal, or any other fee or sum of money for the privilege of becoming, remaining, or ceasing to be a member of the association, except charges upon the making or modification of a loan authorized by section 8-330. Except as authorized by this section and section 8-316, the association shall not charge any member any sum of money by way of fine or penalty for any cause. Payments on real estate loans shall be applied first to the payment of interest on the unpaid balance of the loan and the remainder on the reduction of principal. Any delinquent real estate taxes, both regular and special, which become a prior lien to the association's mortgage, may be paid by the association and added to the unpaid balance of the loan.

Source: Laws 1899, c. 17, § 4, p. 86; R.S.1913, § 489; Laws 1919, c. 190, tit. V, art. XIX, § 5, p. 725; C.S.1922, § 8087; C.S.1929, § 8-305; Laws 1935, c. 14, § 1, p. 83; C.S.Supp.,1941, § 8-305; R.S.1943, § 8-315; Laws 1967, c. 24, § 1, p. 129; Laws 1978, LB 717, § 2.

8-316 Loans; delinquency; required provisions; association's rights; computation of balance due.

The bylaws shall further provide that if any member has become delinquent in his payment on any shares pledged for the security of any loan from the association, which delinquency shall include delinquent real estate taxes both regular or special irrespective of whether paid by the association and charged to principal or unpaid and a prior lien on the property, and such delinquency represents more than two monthly payments, such shares may be canceled, and he shall, as to such shares, cease to be a member of the association, and the withdrawal value, if any, of such shares at the date of cancellation, shall be credited on his loan. If, after the aforesaid credits, or other credits, a balance remains due the association on account of said loan, it may recover the balance either by the foreclosure and sale of the security given or by an action at law upon the evidence of indebtedness. The withdrawal value of shares pledged as a part of a loan transaction, where such loan is secured by mortgage on real estate, shall be the total amount of the payments on such shares as shown by the books of the association, together with such proportionate share of earnings as the borrower may be entitled to under the bylaws of the association, less the amounts of previous appropriations and applications on the loan and withdrawals, if any.

Source: Laws 1899, c. 17, § 5, p. 87; R.S.1913, § 490; Laws 1919, c. 190, tit. V, art. XIX, § 6, p. 726; C.S.1922, § 8088; C.S.1929, § 8-306; Laws 1935, c. 14, § 2, p. 83; C.S.Supp.,1941, § 8-306; R.S.1943, § 8-316; Laws 1967, c. 24, § 2, p. 130; Laws 1978, LB 717, § 3.

Receiver of insolvent association can recover from member amount loaned, with interest at legal rate, less amount paid on interest and premium, with interest from date of the several payments. Anselme v. American S. & L. Assn., 63 Neb. 525, 88 N.W. 665 (1902).

Mortgage stipulating that borrower should receive credits for withdrawal value of shares in case of foreclosure, gives right to have same fixed and credited according to contract. Equitable B. & L. Assn. v. Bidwell, 60 Neb. 169, 82 N.W. 384 (1900).

8-317 Certificates of stock; records; payments; matured stock; right to withdraw.

Certificates of stock or other written evidence thereof shall be issued for each account in conformity with sections 8-301 to 8-340.01 and the bylaws. Every stockholder shall receive credit on the books of the association for all amounts paid by the stockholder upon the stockholder's subscription for stock, together with the stockholder's pro rata share of all dividends declared, as hereinafter provided, and when the sum of such payments and dividends, less all fines or other charges, equal the par value of the shares of stock held by the stockholder, the stockholder shall be entitled to receive such par value, with such interest not exceeding the legal rate, as the directors may determine, from the time of maturity until paid. Holders of stock thus matured and members desiring to withdraw before such maturity shall be paid the value of their stock in the order of the maturity of or notice of withdrawal of such stock. At no time shall more than two-thirds of the unloaned funds in the treasury of the association, inclusive of such funds applicable to the demands of withdrawing stockholders, as hereinbefore provided, be applicable to the demands of holders of matured stock without the consent of the board of directors.

Source: Laws 1899, c. 17, § 6, p. 87; R.S.1913, § 491; Laws 1919, c. 190, tit. V, art. XIX, § 7, p. 726; C.S.1922, § 8089; C.S.1929, § 8-307; R.S.1943, § 8-317; Laws 1947, c. 14, § 1, p. 79; Laws 1975, LB 481, § 2; Laws 1975, LB 508, § 1; Laws 1978, LB 717, § 4; Laws 2000, LB 932, § 9.

This section only fixes property rights of persons named; strangers to deposit allowed to establish oral trust in the account. Eden v. Eden, 182 Neb. 768, 157 N.W.2d 543 (1968).

Certificates issued by building and loan association to two or more persons are payable to any one of them. Rose v. Hooper, 175 Neb. 645, 122 N.W.2d 753 (1963).

Joint tenancy as to building and loan shares of stock is controlled by this section. Kindler v. Kindler, 169 Neb. 153, 98 N.W.2d 881 (1959).

When building and loan stock certificate is made to the joint account of two or more persons, the survivor or survivors are entitled to the full title thereto. Tobas v. Mutual Building & Loan Assn., 147 Neb. 676, 24 N.W.2d 870 (1946).

8-318 Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.

(1)(a) Shares of stock in any association, or in any federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act of 1933, with its principal office and place of business in this state, may be subscribed for, held, transferred, surrendered, withdrawn, and forfeited and payments thereon received and receipted for by any person, regardless of age, in the same manner and with the same binding effect as though such person were of the age of majority, except that a minor or his or her estate shall not be bound on his or her subscription to stock except to the extent of payments actually made thereon.

(b) Whenever a share account is accepted by any building and loan association in the name of any person, regardless of age, the deposit may be withdrawn by the shareholder by any of the following methods:

(i) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the shareholder and constitutes a valid release in discharge to the building and loan association for all payments so made; or

(ii) Electronic means through:

(A) Preauthorized direct withdrawal;

(B) An automatic teller machine;

(C) A debit card;

(D) A transfer by telephone;

(E) A network, including the Internet; or

(F) Any electronic terminal, computer, magnetic tape, or other electronic means.

(c) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as it existed on September 4, 2005, and shall not affect the legal relationships between a minor and any person other than the building and loan association.

(2) All trustees, guardians, personal representatives, administrators, and conservators appointed by the courts of this state may invest and reinvest in, acquire, make withdrawals in whole or in part, hold, transfer, or make new or additional investments in or transfers of shares of stock in any (a) building and loan association organized under the laws of the State of Nebraska or (b) federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act of 1933, having its principal office and place of business in this state, without an order of approval from any court.

(3) Trustees created solely by the terms of a trust instrument may invest in, acquire, hold, and transfer such shares, and make withdrawals, in whole or in

part, therefrom, without any order of court, unless expressly limited, restricted, or prohibited therefrom by the terms of such trust instrument.

(4) All building and loan associations referred to in this section are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, 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 association or in other associations. If any such retirement plan, within the judgment of the association, constitutes a qualified plan under 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, and the regulations promulgated thereunder at the time the trust was established and accepted by the association, 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 association may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No association, in respect to savings made under this section, shall be required to segregate such savings from other assets of the association. The association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

Source: Laws 1899, c. 17, § 7, p. 88; R.S.1913, § 492; Laws 1919, c. 190, tit. V, art. XIX, § 8, p. 726; C.S.1922, § 8090; C.S.1929, § 8-308; Laws 1939, c. 4, § 1, p. 62; C.S.Supp.,1941, § 8-308; R.S.1943, § 8-318; Laws 1953, c. 11, § 1, p. 76; Laws 1955, c. 11, § 1, p. 77; Laws 1971, LB 375, § 1; Laws 1975, LB 208, § 2; Laws 1986, LB 909, § 8; Laws 1995, LB 574, § 3; Laws 2005, LB 533, § 16.

8-319 Loans; restricted to members; secured and unsecured; purposes; limit; parity with federal associations; security; participation in other loans; exceptions; educational loans.

(1) No loan shall be made by such association except to its own members, and no loan shall be made to any member for any sum in excess of the par value of his or her stock. The borrower shall pledge to the association, as security for the loan, shares of a maturity value equal to the principal of the loan and, except as otherwise provided in this section, ample security by mortgage or deeds of trust on real estate. For purposes of this section, real property and real estate shall include a leasehold or subleasehold estate in real property under a lease or sublease the term of which does not expire, or which is renewable automatically or at the option of the holder or of the association so as not to expire for at least five years beyond the maturity of the debt. Loans made upon improved real estate, except as otherwise provided in this section, shall not exceed ninety-five percent of the reasonable normal cash value thereof, and all loans made on any other real estate shall not exceed three-fourths of the reasonable normal cash value thereof.

(2) An association may make a loan or loans in an amount exceeding ninety-five percent of the reasonable normal cash value of the real estate security (a) if such loan or loans are made to a veteran in accord with the provisions of 38 U.S.C., as now existing or as hereafter amended, (b) if the proceeds of the loan or loans are to be used in purchasing residential property or in constructing a

dwelling on unimproved property owned by such veteran to be occupied as his or her home, used for the purpose of making repairs, alterations, or improvements in or paying delinquent indebtedness, taxes, or special assessments on residential property owned by the veteran and used by him or her as his or her home, or used in purchasing any land and buildings to be used by the applicant in pursuing a gainful occupation other than farming, and (c) if the Secretary of Veterans Affairs guarantees that portion of such loan or loans in excess of ninety-five percent of the reasonable normal cash value of the real estate security.

(3) An association is authorized to obtain insurance of its loans by the Federal Housing Administrator under Title II of the National Housing Act, as amended, and such loans so made upon improved real estate and so insured shall not be subject to the restrictions set forth in this section with reference to the maximum authorized amount of a loan.

(4) An association may make unsecured loans to its members if such loans (a) are insured under Title I and Title II of the National Housing Act, as amended, or (b) are for property alterations, repair, or improvements. The aggregate amount of loans made under subdivisions (a) and (b) of this subsection shall not at any time exceed twenty percent of the association's assets. Each loan made under subdivision (b) of this subsection shall be repayable in regular monthly installments within a period of twenty years and shall be supported by a written property statement on forms to be prescribed by the Department of Banking and Finance. An association may make secured loans to its members and may make loans under 38 U.S.C., as amended, under Chapter V, subchapter C of the Home Owners' Loan Act of 1933, as amended (12 U.S.C.), and on the security of mobile homes.

(5) The stock of such association may be accepted as security for a loan of the amount of the withdrawal value of such stock without other security.

(6) An association when so licensed may make loans to its own members upon the terms and security set forth in the Nebraska Installment Loan Act.

(7) Any provisions of this section to the contrary notwithstanding, an association may make any loan that a federal savings and loan association doing business in this state is or may be authorized to make.

(8) An association may invest in loans, obligations, and advances of credit, all of which are referred to in this subsection as loans, made for the payment of expenses of business school, technical training school, college, or university education, but no association shall make any investment in loans under this subsection if the principal amount of its investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, would thereupon exceed five percent of its assets. Such loans may be secured, partly secured, or unsecured, and the association may require a comaker or comakers, insurance, guaranty under a governmental student loan guarantee plan, or other protection against contingencies. The borrower shall certify to the association that the proceeds of the loan are to be used by a full-time student solely for the payment of expenses of business, technical training school, college, or university education.

(9) An association may participate with other lenders in making loans of any type that an association may otherwise make if (a) each of the lenders is either an instrumentality of the United States Government or is insured by the Federal Deposit Insurance Corporation or, in the case of another lender, the interest of

the association in such loan is superior to the participating interests of the other participants and (b) an association whose accounts are insured by the Federal Deposit Insurance Corporation which may be a federal association or an association chartered by this state, or another association chartered by this state which is not so insured, has otherwise complied with subsection (1) of this section with respect to loans to members.

(10) An association may sell to or purchase from any institution which is a savings association chartered by this state or the accounts of which are insured by the Federal Deposit Insurance Corporation a participating interest in any loan, whether or not, in the case of a purchase, the security is located within the association's regular lending area.

Source: Laws 1899, c. 17, § 8, p. 88; R.S.1913, § 493; Laws 1917, c. 10, § 3, p. 67; Laws 1919, c. 190, tit. V, art. XIX, § 9, p. 727; C.S.1922, § 8091; C.S.1929, § 8-309; Laws 1933, c. 25, § 1, p. 197; Laws 1935, c. 14, § 3, p. 84; Laws 1937, c. 14, § 1, p. 118; Laws 1941, c. 90, § 32, p. 358; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(1), p. 78; R.S.1943, § 8-319; Laws 1945, c. 10, § 1, p. 108; Laws 1951, c. 12, § 1, p. 86; Laws 1955, c. 12, § 1, p. 79; Laws 1959, c. 21, § 2, p. 149; Laws 1965, c. 29, § 1, p. 204; Laws 1967, c. 25, § 1, p. 131; Laws 1971, LB 375, § 2; Laws 1976, LB 219, § 1; Laws 1979, LB 154, § 1; Laws 1980, LB 903, § 1; Laws 1991, LB 2, § 1; Laws 1992, LB 757, § 4; Laws 1997, LB 555, § 1; Laws 2001, LB 53, § 4.

Cross Reference

Nebraska Installment Loan Act, see section 45-1001.

8-320 Reserve funds; idle funds; investments authorized; deposit of funds in banks.

Any association may invest its reserve fund for the payment of contingent losses, any reserve fund created to protect against any other contingency, and any portion of its idle funds, not immediately needed to carry on its proper functions, as follows:

(1) In bonds, notes, warrants, or other direct obligations of the United States or of any city, village, county, township, or school, road, water, sewer, paving, drainage, or sanitary and improvement district or any other political subdivision of the State of Nebraska;

(2) In any securities and obligations issued by the Federal Home Loan Bank, the Federal National Mortgage Association, or successor corporations, 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, and securities of any other federal agency corporation; and

(3) In securities issued pursuant to the Nebraska Business Development Corporation Act.

Any provision of this section to the contrary notwithstanding, an association may make any investment that a federal savings and loan association doing business in this state is or may be authorized to make.

Any association may deposit its funds, or any part thereof, in any national or state bank insured by the Federal Deposit Insurance Corporation or any

corporation successor thereto and receive therefor certificates of time or savings deposit or the usual bank passbook credit subject to check or in share accounts of any state or federal savings and loan association the accounts of which are insured by the Federal Deposit Insurance Corporation or any corporation successor thereto.

Source: Laws 1917, c. 10, § 3, p. 68; Laws 1919, c. 190, tit. V, art. XIX, § 9, p. 727; C.S.1922, § 8091; C.S.1929, § 8-309; Laws 1933, c. 25, § 1, p. 197; Laws 1935, c. 14, § 3, p. 84; Laws 1937, c. 14, § 1, p. 119; Laws 1941, c. 90, § 32, p. 358; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(2), p. 79; R.S.1943, § 8-320; Laws 1955, c. 13, § 1, p. 81; Laws 1959, c. 263, § 3, p. 922; Laws 1963, c. 32, § 1, p. 192; Laws 1992, LB 757, § 5; Laws 2005, LB 533, § 17.

Cross References

Nebraska Business Development Corporation Act, see section 21-2101.

8-320.01 Investments; service corporations.

An association organized under the provisions of Chapter 8, article 3, may purchase, hold, and sell stock in any service corporation organized under the laws of the State of Nebraska whose stock is owned exclusively by building and loan associations whose operations are subject to audit by the Department of Banking and Finance and, if insured, by the Federal Home Loan Bank Board and whose activities are restricted to:

(1) The providing of clerical, bookkeeping, accounting, statistical, and data processing services primarily for building and loan associations;

(2) The purchase, development, and conveyance of real estate for the purpose of renovating and rehabilitating substandard housing including enrollment in state and federal programs in connection therewith, and for other lawful purposes;

(3) The servicing, purchasing, selling, and making of loans upon real estate and participating interests therein; and

(4) The investment in corporations whose principal activities are community development, urban renewal and industrial development.

Source: Laws 1969, c. 44, § 1, p. 256.

8-321 Loans; evidence of indebtedness; form; parity with federal associations.

No evidence of indebtedness taken by said association for the return of any loan shall be negotiable in form, and whatever be its form, every such evidence of indebtedness shall be nonnegotiable in law, except as hereinafter provided, and no such debt or evidence of debt shall be assignable or transferable in any manner so as to prevent the discharge thereof by payments to the association, except as hereinafter provided, except that bonds and interest-bearing obligations, in which temporary investments may be made as hereinbefore provided, may be converted into cash in due course.

Notwithstanding the provision of this section, an association may sell or purchase such loans, and enter into such participation loans, as are or may be permitted to federal savings and loan associations doing business in this state

Source: Laws 1899, c. 17, § 8, p. 89; R.S.1913, § 493; Laws 1917, c. 10, § 3, p. 68; Laws 1919, c. 190, tit. V, art. XIX, § 9, p. 728; C.S.1922, § 8091; C.S.1929, § 8-309; Laws 1933, c. 25; § 1, p. 198; Laws 1935, c. 14, § 3, p. 85; Laws 1937, c. 14, § 1, p. 119; Laws 1941, c. 90, § 32, p. 358; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(3), p. 79; R.S.1943, § 8-321; Laws 1959, c. 21, § 3, p. 150.

Provision hereof against assigning or transferring evidence of debt was inserted for protection of borrowing member and does not prevent equitable transfer by association. Nebraska Central B. & L. Assn. v. H. J. Hughes & Co., 121 Neb. 266, 236 N.W. 699 (1931).

8-322 Membership in Federal Home Loan Bank authorized; power to utilize federal agencies; power to obtain advances; use of funds.

Any building and loan association is hereby authorized (1) to subscribe for the stock of and to become a member of the Federal Home Loan Bank for the district in which it may be located or for the stock of a Federal Home Loan Bank of an adjoining district if demanded by convenience; (2) to obtain advances from the Federal Home Loan Bank System, under the rules and regulations promulgated by the bank of which the association is a member, to obtain advances from any other corporation or agency established by or under authority of the United States Government, and to assign its mortgages or such other assets as may be required as security therefor; and (3) to do and perform such acts as may be necessary and required to avail to it all the advantages and privileges offered by the Federal Home Loan Bank or offered by any other corporation or agency established under the authority of the United States Government or any instrumentality of the United States Government.

Source: Laws 1933, c. 25, § 1, p. 198; Laws 1935, c. 14, § 3, p. 85; Laws 1937, c. 14, § 1, p. 120; Laws 1941, c. 90, § 32, p. 359; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(4), p. 79; R.S. 1943, § 8-322; Laws 1957, c. 14, § 1, p. 137.

8-323 Mortgages; assignment to Home Owners' Loan Corporation authorized; condition.

Any building and loan association is hereby authorized, with the approval of its board of directors, to assign its mortgages and the evidence of debt secured thereby to the Home Owners' Loan Corporation created by act of Congress of the United States under the act cited as the Home Owners' Loan Act of 1933, or such other corporation as may be created by authority of the United States Government, or as an instrumentality of the United States Government, and to accept as consideration for such assignment, cash or bonds of such Home Owners' Loan Corporation or such other corporation as may be created by authority of the United States Government, or as an instrumentality of the United States Government; *Provided*, that no mortgage given by any member of such association shall be so assigned without the written consent of the borrowing member.

Source: Laws 1933, c. 25, § 1, p. 198; Laws 1935, c. 14, § 3, p. 85; Laws 1937, c. 14, § 1, p. 120; C.S.Supp.,1939, § 8-309; Laws 1941, c. 90, § 32, p. 359; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(5), p. 80.

8-324 Stock; availability for purchase of real estate or payment of loan.

Any association, at the discretion of its officers and directors, and with the consent and approval of the Department of Banking and Finance, may accept its stock at the withdrawal value of such shares, to apply on the purchase at its fair market value, of any real estate owned by such association, or to apply in payment or reduction of any loans or contracts of sale on which, in the judgment of the officers and directors, there may be an eventual loss, whether or not notice for withdrawal of such shares shall have been filed, and such action shall not be considered prejudicial to the rights of any stockholders to whom payment on withdrawal notices is being delayed.

Source: Laws 1933, c. 25, § 1, p. 199; Laws 1935, c. 14, § 3, p. 86; Laws 1937, c. 14, § 1, p. 120; Laws 1941, c. 90, § 32, p. 359; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(6), p. 80.

8-325 Real estate; acquisition and disposal; powers; limitations.

Such association may purchase, hold, lease and convey real estate or stock for the following purposes and no others:

(1) Such real estate as it may need to occupy as a place of business;

(2) Such as shall in good faith be conveyed to it in satisfaction of debts contracted in the ordinary course of business;

(3) Such as it shall purchase at sales under judgments, decrees or mortgages held by the association, or shall purchase in good faith to secure debts due;

(4) Such as it shall in good faith acquire as a part of the consideration for the sale or exchange of real estate owned by it;

(5) Such as shall be acquired in salvaging the value of property owned by the association; and

(6) Such as is permitted building and loan service corporations under section 8-320.01. Nothing in this section shall be construed to forbid the mortgaging of real estate to such associations.

Source: Laws 1899, c. 17, § 9, p. 89; R.S.1913, § 494; Laws 1919, c. 190, tit. V, art. XIX, § 10, p. 728; C.S.1922, § 8092; C.S.1929, § 8-310; Laws 1935, c. 11, § 1, p. 80; C.S.Supp.,1941, § 8-310; R.S.1943, § 8-325; Laws 1969, c. 38, § 1, p. 246.

Association must dispose of title and possession to property held for five years. State ex rel. Johnson v. Conservative Savings and Loan Assn., 143 Neb. 805, 11 N.W.2d 89 (1943).

8-326 Reserve fund; requirements; replenishment; increase; reduction; division for federal tax purposes; special increase; approval by department.

Every association organized under the laws of this state for the purposes set forth in section 8-302, except such associations as are conducted upon the serial plan and in which the various series are operated wholly separate and distinct from each other, shall provide a reserve fund for the payment of contingent losses, by setting aside at least five percent of the net earnings for each year to such fund until it reaches at least five percent of the total assets of the association exclusive of cash on hand. Any credit to a reserve account required by any federal agency shall be considered to apply to the reserve fund requirement of this section.

All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in the fund falls below five percent of the total assets, it shall be replenished by annual appropriations of at least five percent of the net earnings until it again reaches the amount. The board of directors shall have power to increase the reserve above five percent, but not to exceed twelve percent, if determined that it is to the best interest of the association and its shareholders. An association may establish such other and additional undivided profits accounts or special reserves as may be ordered by its board of directors. The board of directors may, for federal tax purposes, divide the reserve fund, surplus account, and undivided profits account, in accordance with the provisions of the Internal Revenue Code and regulations adopted pursuant thereto. If, in the opinion of a majority of the board of directors of any such association, a reserve fund of twelve percent is insufficient at any time to cover the probable losses among the assets, or if for other good and sufficient reason they determine it to be for the best interests of the association and its shareholders that the reserve fund be maintained or increased, they shall have power to maintain or increase the fund from the net earnings to an amount not greater than the sum of such probable losses or greater than sufficient to best serve the interest of the association and its shareholders as by them determined. Such special increase of the reserve fund shall first be approved by the Department of Banking and Finance, and if, in the opinion of the department after an examination, such special increase of the reserve fund is deemed necessary or advisable for the protection of stockholders, the department may order such reserve fund increased in like manner and within the same limits as aforesaid. Such reserve fund may at any time, with the consent of the department, be reduced to not less than five percent of the assets.

Source: Laws 1899, c. 17, § 10, p. 89; R.S.1913, § 495; Laws 1919, c. 190, tit. V, art. XIX, § 11, p. 728; C.S.1922, § 8093; C.S.1929, § 8-311; Laws 1937, c. 19, § 2, p. 126; C.S.Supp.,1941, § 8-311; R.S.1943, § 8-326; Laws 1963, c. 33, § 1, p. 193; Laws 1995, LB 574, § 4.

8-327 Dividends; how and when paid.

Every association of the character defined in section 8-326, shall be required, at least annually, to transfer the residue of earnings, after paying expenses and setting aside a sum for the reserve funds as herein provided, as a dividend to members holding share accounts. All such members shall participate in earnings pro rata to the withdrawal value of their respective accounts, except that an association may classify its share accounts according to the character, amount, or duration thereof, or regularity of additions thereto, and may agree in advance to pay an additional rate of earnings, over and above the minimum rate of earnings paid on share accounts, on accounts based on such classifications, and shall regulate such earnings in such manner that each share account in the same classification shall receive the same ratable portion of such additional earnings. Earnings may be declared on the withdrawal value of each share account at the beginning of the accounting period, plus additions thereto made during the period, less amounts previously withdrawn and amounts covered by notice for withdrawal which for earnings purposes shall be deducted from the latest previous additions thereto, computed at the declared rate for the time the funds have been invested determined as next provided. The date of investment shall be the date of actual receipt by the association of an account or an addition to an account, except that if the board of directors shall so

determine, accounts in one or more classifications or additions thereto received by the association on or before a date not later than the twentieth day of the month, unless the day determined is not a business day and in such case it may be the next succeeding business day, shall receive earnings as if invested on the first day of the month in which such payments were received; and if the board shall make such determination, it also shall determine that payments received subsequent to such determination date shall either (1) receive earnings as if invested on the first day of the next succeeding month, or (2) receive earnings from the date of actual receipt by the association. The directors shall determine by resolution the method of calculating the amount of any earnings on share accounts as herein provided, and the time or times when earnings are to be declared, paid, or credited, but the association shall not be required to credit or pay dividends on inactive share accounts of fifty dollars or less.

Source: Laws 1899, c. 17, § 11, p. 90; R.S.1913, § 496; Laws 1919, c. 190, tit. V, art. XIX, § 12, p. 729; C.S.1922, § 8094; C.S.1929, § 8-312; Laws 1941, c. 12, § 2, p. 85; C.S.Supp.,1941, § 8-312; R.S.1943, § 8-327; Laws 1967, c. 26, § 1, p. 135.

8-328 Records; requirements.

(1) Complete and adequate records of all accounts and of all minutes of proceedings of the members, directors and executive committee shall be maintained at all times at the office of the association. Records may be kept by hand, mechanical or electronic means.

(2) Every association shall maintain membership records, which shall show the name and address of the member, whether the member is a share account holder, or a borrower, or a share account holder and borrower, and the date of membership thereof. In the case of account-holding members, the association shall obtain a card containing the signature of the owner of such account or his duly authorized representative and shall preserve such signature card in the records of the association.

(3) Associations shall not be required to preserve or keep their records or files for a longer period than five years next after the first day of January of the year following the payment in full of a mortgage or other loan or the closing of a savings or investment account or the final closing or completion of any other contract or transaction; *Provided*, that ledger sheets showing unpaid accounts in favor of members of such savings and loan associations shall not be destroyed.

(4) No liability shall accrue against any association destroying any such records after the expiration of the time provided in subsection (3) of this section, and in any cause or proceedings in which any such records or files may be called in question or be demanded of the association or any officer or employee thereof, a showing that such records and files have been destroyed in accordance with the terms of subsection (3) of this section shall be a sufficient excuse for the failure to produce them.

(5) All causes of action against an association based upon a claim or claims inconsistent with an entry or entries in any savings and loan association record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of five years from the date of such accrual.

(6) The provisions of this section, so far as applicable, shall apply to the records of federal savings and loan associations.

(7) Any association may cause any or all records kept by such association to be copied or reproduced by any photostatic, photographic or microfilming process which correctly and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material and such association may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original.

Source: Laws 1899, c. 17, § 12, p. 91; R.S.1913, § 497; Laws 1919, c. 190, tit. V, art. XIX, § 13, p. 729; C.S.1922, § 8095; C.S.1929, § 8-313; R.S.1943, § 8-328; Laws 1963, c. 34, § 1, p. 195.

8-329 Taxation; real estate.

The real estate of such associations shall be subject to taxation in the same manner as provided by law in the case of other corporations and individuals.

Source: Laws 1899, c. 17, § 14, p. 91; R.S.1913, § 498; Laws 1919, c. 190, tit. V, art. XIX, § 14, p. 730; C.S.1922, § 8096; C.S.1929, § 8-314; R.S.1943, § 8-329; Laws 1959, c. 22, § 1, p. 152; Laws 1971, LB 3, § 1.

8-330 Loans; charges authorized; statement; interest rate.

Every association may require borrowing members to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of real estate loans. Such expenses may include abstract, recording, and registration fees, title examinations, survey, escrow services, and taxes or charges imposed upon or in connection with the making and recording of any mortgage. Such reasonable charges may be collected by the association from the borrower and shall not be considered interest or a charge for the use of the money loaned. A charge not exceeding one percent or that allowed a federally chartered association for the premature prepayment may be made. The rate of interest on any loan of money shall be determined and computed upon the assumption that the debt will be paid according to the agreed terms and in the event the loan is paid or collected by court action prior to the term of the loan, any payment charged, received, or taken as an advance or forbearance which is in the nature of and taken into account in the calculation of interest, shall be spread over the stated term of the loan for the purpose of determining the rate of interest. Any amounts paid or contracted to be paid by persons other than the borrower shall not be considered interest and shall not be taken into account in the calculation of interest. Interest may be paid on escrow accounts held for the payment of taxes, insurance, and similar payments, if agreed to in writing by the borrower and association. Loans may be made by an association under a license granted it pursuant to the Nebraska Installment Loan Act, to borrowing members whose loans are secured by real estate, to the same extent and in the same amount as such loans may lawfully be made to nonborrowing members. The association shall furnish a loan

settlement statement to each borrower, indicating in detail the charges and fees such borrower has paid or obligated himself or herself to pay to the association or to any other person in connection with such loan. A copy of such statement shall be retained in the records of the association.

An association may charge and receive interest, on property improvement loans including loans made under Title I of the National Housing Act, as amended, and unsecured loans authorized in section 5(c) of the Home Owners' Loan Act, as amended.

Source: Laws 1899, c. 17, § 14, p. 91; R.S.1913, § 499; Laws 1919, c. 190, tit. V, art. XIX, § 15, p. 730; C.S.1922, § 8097; C.S.1929, § 8-315; Laws 1933, c. 25, § 2, p. 199; C.S.Supp.,1941, § 8-315; R.S.1943, § 8-330; Laws 1961, c. 17, § 1, p. 117; Laws 1969, c. 39, § 1, p. 247; Laws 1971, LB 374, § 1; Laws 2001, LB 53, § 5.

Cross References

Nebraska Installment Loan Act, see section 45-1001.

Payments contracted for as interest and premium on loan only are to be considered in determining usury. Eastern B. & L. Assn. v. Tonkinson, 76 Neb. 470, 107 N.W. 762 (1906).

Foreign associations doing business in this state are subject to penalties against usury. Anselme v. American S. & L. Assn., 66 Neb. 520, 92 N.W. 745 (1902); People's B. L. & S. Assn. v. Parish, 1 Neb. Unof. 505, 96 N.W. 243 (1901).

Under former act, section was only applicable to domestic associations, and foreign associations were governed by general usury statute. National Mut. B. & L. Assn. of New York v. Keeney, 57 Neb. 94, 77 N.W. 442 (1898).

Interest may be reserved at highest rate permitted by law on face of loan, premiums deducted from that, and difference only paid to borrower. Livingston L. & B. Assn. v. Drummond, 49 Neb. 200, 68 N.W. 375 (1896).

8-331 Articles of incorporation; bylaws; filing; certificate of approval; application; contents; approval by Department of Banking and Finance.

Every association shall adopt articles of incorporation and bylaws. A copy of the articles of incorporation and bylaws of every such association shall be filed in the office of the Department of Banking and Finance, together with an application for a certificate of approval and payment of the examination fee prescribed by section 8-602. The application shall furnish and set forth facts and information desired by the Department of Banking and Finance. The department, upon completion of its investigations and its examination of the articles, bylaws, and application for certificate of approval, shall issue a certificate of approval of the association and articles of incorporation and bylaws, but no such certificate of approval shall be issued unless and until the department has determined:

(1) That the articles of incorporation and bylaws conform to the requirements of sections 8-301 to 8-384 and contain a just and equitable plan for the management of the association's business;

(2) That the persons organizing the association are of good character and responsibility;

(3) That in its judgment a need exists for such an institution in the community to be served;

(4) That there is a reasonable probability of its usefulness and success; and

(5) That the same can be established without undue injury to properly conducted existing local building and loan associations.

No such association shall transact any business, except the execution of its articles of incorporation, the adoption of bylaws, and the election of directors and officers, until it has procured a certificate of approval under this section.

No amendment of the articles of incorporation or bylaws of any such association shall become operative until a copy of the amendment has been filed and a certificate of approval obtained under this section in regard to the original articles of incorporation and bylaws.

Source: Laws 1899, c. 17, § 15, p. 92; R.S.1913, § 500; Laws 1919, c. 190, tit. V, art. XIX, § 16, p. 730; C.S.1922, § 8098; C.S.1929, § 8-136; R.S.1943, § 8-331; Laws 1949, c. 11, § 1, p. 72; Laws 1957, c. 10, § 3, p. 130; Laws 1978, LB 717, § 5; Laws 2000, LB 932, § 10; Laws 2005, LB 533, § 18.

Requirements hereof apply to application for branch office. First Fed. Sav. & Loan Assn. v. Department of Banking, 187 Neb. 562, 192 N.W.2d 736 (1971).

8-332 Annual statement; publication; special reports; violation; penalty.

Every such association shall, at the close of business on June 30 of each year and at such other times as required by the Department of Banking and Finance, file in the office of the department, within thirty days after the receipt of a request for a requisition therefor, a statement verified by the oath of its president or secretary and approved by three of its directors in such form as may be prescribed by the department, setting forth its actual financial condition and the amount of its assets and liabilities and furnishing such other information as to its affairs as the department may require. A copy of such annual statement shall be published in a newspaper of general circulation, in the county where such association is located, three consecutive times, and due proof of such publication, by affidavit, shall be filed with the department. The department may call for special reports from any such association whenever in its judgment such reports may be necessary or advisable, but no other or further notice or statement of the amount of the existing debts of such corporation shall be required to be published than that on June 30. Any association failing to comply with this section shall pay to the department fifty dollars for each day such noncompliance continues unless the department extends the filing deadlines for such reports and proofs of publication.

Source: Laws 1899, c. 17, § 16, p. 93; R.S.1913, § 501; Laws 1919, c. 190, tit. V, art. XIX, § 17, p. 731; C.S.1922, § 8099; C.S.1929, § 8-317; R.S.1943, § 8-332; Laws 1988, LB 993, § 1.

A false entry under this section is one that is knowingly made with intent to deceive examiner, and an incorrect entry made to correct a mistake in bookkeeping and to make account more nearly speak the truth is not made criminal. Fricke v. State, 112 Neb. 767, 201 N.W. 667 (1924).

8-333 False statement or book entry; penalty.

Every person who shall willfully or knowingly subscribe, or make, or cause to be made, any false statement or any false entries in any book of any association organized for the purpose set forth in section 8-302, or exhibit any false paper with the intent to deceive any person authorized to examine into the affairs of such association, or shall make, state or publish any false statement of the financial condition of such association, shall be guilty of a Class IV felony.

Source: Laws 1899, c. 17, § 17, p. 93; R.S.1913, § 502; Laws 1919, c. 190, tit. V, art. XIX, § 18, p. 731; C.S.1922, § 8100; C.S.1929, § 8-318; R.S.1943, § 8-333; Laws 1977, LB 40, § 57.

8-334 Liquidation; insolvency; powers and duties of Department of Banking and Finance; writs of assistance.

Whenever it appears to the Department of Banking and Finance that the assets of any association or corporation organized under the laws of this state for the purpose set forth in section 8-302 do not equal the liabilities, that it is conducting its business in an unsafe or unauthorized manner, that it is jeopardizing the interest of its members, or that it is unsafe for such association or corporation to transact business, the department shall take possession of the books, records, and assets of every description of such association or corporation, and the department shall have full authority to retain such possession as against any mesne or final process issued by any court against such association or corporation whose property has been taken possession of by the department, pending the further proceedings specified in sections 8-301 to 8-340.01. If such possession is refused by the secretary, managing officer, or person in charge of such association or corporation, the department shall communicate such fact to the Attorney General together with a copy of such order of possession and it shall become the duty of the Attorney General to apply to the Court of Appeals or to the district court or county court of the county where such association or corporation is located or to a judge of any such court for a writ of assistance in placing the department in immediate possession of such association or corporation. It shall be sufficient to authorize the issuance of the writ and the taking possession of such association or corporation under the writ if it is made to appear that possession was refused.

Source: Laws 1899, c. 17, § 19a, p. 94; R.S.1913, § 504; Laws 1919, c. 190, tit. V, art. XIX, § 20, p. 732; C.S.1922, § 8102; C.S.1929, § 8-319; R.S.1943, § 8-334; Laws 1991, LB 732, § 15; Laws 2000, LB 932, § 11.

A borrowing member upon insolvency is required to repay what he actually received, with interest, and is entitled, after debts are paid, to a pro rata dividend with nonborrowing member for what he has paid. Saunders v. State Savings & Loan Assn., 121 Neb. 473, 237 N.W. 572 (1931).

Alleged sovereign right of city of Lincoln to priority of payment out of assets of bankrupt trust company is inconsistent with Nebraska legislation and not within the common law of the state. City of Lincoln, Neb. v. Ricketts, 84 F.2d 795 (8th Cir. 1936).

8-335 Liquidation; insolvency; special shareholders' meeting; report of department.

The Department of Banking and Finance shall, within ten days next after acquiring possession of such association, convene a special meeting of the shareholders. Notice of such special meeting shall be given by publication in a newspaper of general circulation in the county where such association is located and by written or printed notice posted in a conspicuous place in the office or place of business of the association. At such meeting the department shall present a full report of the affairs and condition of such association as found by its examination thereof.

Source: Laws 1899, c. 17, § 19b, p. 95; R.S.1913, § 505; Laws 1919, c. 190, tit. V, art. XIX, § 21, p. 733; C.S.1922, § 8103; C.S.1929, § 8-320.

8-336 Liquidation; insolvency; inventory; collection of assets; expenses.

The Department of Banking and Finance, or any person authorized by it, shall, after having taken possession of the association under section 8-334, and pending the further proceedings specified in sections 8-301 to 8-340.01, prepare, or have prepared, a full and true exhibit of the affairs, property, and condition of such association, including an itemized statement of all its assets and liabilities. The department shall also receive and collect all debts, dues, and

claims belonging to it, pay the immediate and reasonable expense of its trust, receive and receipt for all monthly payments becoming due after the date of coming into possession of the association, and keep the same separate and apart from the other money and effects of such association.

Source: Laws 1899, c. 17, § 19c, p. 96; R.S.1913, § 506; Laws 1919, c. 190, tit. V, art. XIX, § 22, p. 733; C.S.1922, § 8104; C.S.1929, § 8-321; R.S.1943, § 8-336; Laws 2000, LB 932, § 12.

8-337 Insolvency; reorganization; surrender of assets by Department of Banking and Finance.

If at the special meeting of the shareholders they shall vote to reorganize such association, the Department of Banking and Finance, upon the consummation of the reorganization thereof, and the approval of the department, shall turn over to the new management all the books, papers and effects of every description in its hands belonging to such association.

Source: Laws 1899, c. 17, § 19d, p. 96; R.S.1913, § 507; Laws 1919, c. 190, tit. V, art. XIX, § 23, p. 733; C.S.1922, § 8105; C.S.1929, § 8-322.

8-338 Voluntary liquidation; disposition of payments, other property; duty of Department of Banking and Finance.

If at the special meeting of the shareholders they shall vote to go into voluntary liquidation or to otherwise close up or discontinue the business of such association, the Department of Banking and Finance shall return to the shareholders all monthly payments and other payments on subscriptions for stock received and receipted for by it, and which became due and payable after the date of taking possession. All books, papers and effects of every description in its hands, belonging to such association not so returnable, shall be turned over and delivered to the person or persons entitled thereto.

Source: Laws 1899, c. 17, § 19e, p. 96; R.S.1913, § 508; Laws 1919, c. 190, tit. V, art. XIX, § 24, p. 733; C.S.1922, § 8106; C.S.1929, § 8-323.

Borrowing member is entitled to pro rata dividend on shares after assets reduced to money and debts paid. Saunders v. State Savings & Loan Assn., 121 Neb. 473, 237 N.W. 572 (1931).

8-339 Involuntary liquidation; duty of Department of Banking and Finance.

If the Department of Banking and Finance after having called a meeting of the shareholders as herein provided, shall find that the association cannot be reorganized or that voluntary liquidation by the shareholders cannot be had or consummated, the department shall take charge of such building and loan association and proceed to liquidate such association in the manner provided for the liquidation of insolvent banks.

Source: Laws 1899, c. 17, § 19f, p. 97; R.S.1913, § 509; Laws 1919, c. 190, tit. V, art. XIX, § 25, p. 734; C.S.1922, § 8107; C.S.1929, § 8-324; Laws 1933, c. 18, § 85, p. 179; C.S.Supp.,1941, § 8-324.

Alleged sovereign right to city of Lincoln to priority of payment out of assets of bankrupt trust company is inconsistent with Nebraska legislation and not within the common law of the state. City of Lincoln, Neb. v. Ricketts, 84 F.2d 795 (8th Cir. 1936).

8-340 Rules and regulations.

The Department of Banking and Finance has power to make such rules and regulations for the government of all associations of the character defined in sections 8-301 to 8-340.01 as may, in its judgment, seem wise and expedient.

Source: Laws 1899, c. 17, § 20, p. 98; R.S.1913, § 510; Laws 1919, c. 190, tit. V, art. XIX, § 26, p. 734; C.S.1922, § 8108; C.S.1929, § 8-325; R.S.1943, § 8-340; Laws 2000, LB 932, § 13.

Cross References

For adoption and promulgation of administrative rules, see Chapter 84, article 9.

8-340.01 Executive officers and employees; bonding requirements.

Each and every executive officer and such other employees as the Department of Banking and Finance deems necessary of each building and loan association shall execute to such association and to the State of Nebraska, jointly, a corporate surety bond in an amount fixed by the department, said amount to be equal or uniform as to all associations in accordance with their size. In lieu of individual corporate surety bonds, the Director of Banking and Finance may accept a blanket corporate surety bond. All surety bonds shall be conditioned to protect and indemnify the association from any and all pecuniary loss, which the association may sustain, of money or other personal property, including that for which the association 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 said executive officers or employees of the association. Such bond or bonds shall be filed with and approved by the director, remain a part of the records of the department, and be open to public inspection during the office hours of the department.

Source: Laws 1953, c. 13, § 1, p. 79.

8-341 Repealed. Laws 1949, c. 9, § 2.

8-342 Repealed. Laws 2000, LB 932, § 56.

8-343 Repealed. Laws 2000, LB 932, § 56.

8-344 Repealed. Laws 2000, LB 932, § 56.

8-345 Repealed. Laws 2000, LB 932, § 56.

8-345.01 Automatic teller machines; authorized.

Nothing in section 8-157 shall prohibit building and loan associations as defined in sections 8-301 to 8-340.01 from establishing and operating new automatic teller machines for the purpose of transmitting savings and loan transactions.

Source: Laws 1975, LB 508, § 2; Laws 1993, LB 81, § 53; Laws 2000, LB 932, § 14; Laws 2003, LB 131, § 6.

8-345.02 New branch; limitation.

No building and loan association organized under the provisions of Chapter 8, article 3, shall establish any new branch on or after March 26, 1992, except to the extent provided for banks in section 8-157.

Source: Laws 1992, LB 470, § 3; Laws 2002, LB 1089, § 6.

8-346 Books; examination.

(1) The Director of Banking and Finance, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, records, business, and affairs of every building and loan association organized under the laws of this state as often as deemed necessary. The director may accept in his or her discretion, in lieu of any examination authorized by the laws of this state, a report of an examination made of a building and loan association by the Federal Deposit Insurance Corporation or the Office of Thrift Supervision, or the director may examine any such association jointly with either of these federal agencies.

(2) The director may, at his or her discretion, make available to the Federal Deposit Insurance Corporation or the Office of Thrift Supervision copies of reports of any such examination or any information furnished to or obtained by him or her in such examination. The rights, powers, duties, and privileges of the director, his or her deputy, or any duly appointed examiner in connection with such examinations shall be the same as is or may be provided by law in reference to the examinations of banks.

Source: Laws 1935, c. 13, § 1, p. 82; C.S.Supp.,1941, § 8-331; R.S.1943, § 8-346; Laws 1953, c. 12, § 1, p. 78; Laws 1992, LB 757, § 8; Laws 2000, LB 932, § 15.

8-347 State association; conversion into federal savings and loan association; procedure.

Any building and loan association or other home financing organization by whatever name or style it may be designated, eligible to become a federal savings and loan association, may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders of any such association or at any special meeting of the shareholders of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders by an affirmative record vote of the shareholders owning and voting two-thirds of the total number of shares outstanding, present in person or by proxy, may declare by resolution the determination to convert said association into a federal savings and loan association;

(2) A copy of the minutes of such meeting of the shareholders verified by the affidavit of the president or vice president and the secretary of the meeting, shall be filed within ten days after said meeting in the office or department of this state having supervision of such association; and such verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting;

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, such association shall take such action as may be necessary to make it a federal savings and loan association, and within ten days after receipt of the federal charter there shall be filed in the office or department of this state having supervision of such association, a copy of the charter issued to such association by the Federal Home Loan Bank Board or a certificate showing the organization of such association as a federal savings and loan association certified by, or on behalf of, the Federal Home Loan Bank Board. Upon the filing of such instrument such association shall

cease to be a state association and shall thereafter be a federal savings and loan association.

Source: Laws 1935, c. 15, § 1, p. 86; C.S.Supp.,1941, § 8-332.

8-348 State association; conversion into federal association; transfer of supervision; status of property owned; continuation of association.

At the time when such conversion becomes effective as provided in section 8-347, such association shall cease to be supervised by this state and all of the property of such association, including all of its right, title and interest in and to all property of every kind and character whether real, personal or mixed, shall immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed, continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction. Said federal savings and loan association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state association, and said federal savings and loan association at the time of the taking effect of such conversion shall continue responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place. It is hereby expressly declared that the said federal savings and loan association shall be merely a continuation of the said state association under a new name and new jurisdiction and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction.

Source: Laws 1935, c. 15, § 2, p. 87; C.S.Supp.,1941, § 8-333.

8-349 State associations; consolidation or merger; procedure; powers and duties of Department of Banking and Finance.

When any savings and loan association or building and loan association organized under the laws of this state shall, by its duly qualified officers and board of directors, propose to consolidate or merge with any other savings and loan association or building and loan association or associations, each such association shall present the proposed plan of consolidation or merger, together with a statement of the condition of the affairs of such association to the Department of Banking and Finance for its approval. Should the plan be approved by the department, the same shall be submitted to a regular or special meeting of the shareholders of each such association; and notice of such meeting shall be given as the department may direct. Such plan for consolidation or merger may include and provide for a reduction in the capital stock of the association or associations and of the nominal or book value of the shares, thereof, for the issuance of new certificates in lieu thereof, and for the distribution of any part of the assets of such association among its shareholders. If, at such meeting of the shareholders of any such association, not less than one-third of the shareholders vote affirmatively, either in person or by proxy, to adopt the proposed plan, as the same is approved and submitted by the Department of Banking and Finance, the department shall, upon notice of the favorable result of the shareholders meeting, direct each of such associations to put into effect the plan of consolidation or merger so approved; and such plan shall be in force and effect from and after the date of such order; *Provided*, that such consolidation or merger shall not be approved and put into effect unless

approved by a majority of those voting on the consolidation or merger. There is hereby vested in the Department of Banking and Finance full power and authority to issue and enforce such orders having to do with carrying out of the plan of consolidation or merger adopted as shall be necessary and requisite for the protection of the shareholders, and distribution of the assets of the associations involved in the consolidation or merger.

Source: Laws 1937, c. 21, § 1, p. 132; C.S.Supp.,1941, § 8-335; R.S.1943, § 8-349; Laws 1969, c. 40, § 1, p. 248.

8-350 Federal savings and loan association; conversion into state association; procedure.

Any federal savings and loan association, having its principal place of business and home office in the State of Nebraska, if permitted by federal law, may convert itself into a state association under Chapter 8, article 3, and amendments thereto, in accordance with the following procedure:

(1) At any regular meeting of the shareholders of any such association, or at any special meeting of the shareholders of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders by an affirmative record vote of the shareholders owning and voting two-thirds of the total number of shares outstanding, present in person or by proxy, may declare by resolution the determination to convert said association into a state association as provided in Chapter 8, article 3, and amendments thereto.

(2) A copy of the minutes of such meeting of the shareholders certified by the president or vice president and the secretary of the meeting, shall be filed within ten days after such meeting in the office of the Department of Banking and Finance, and a copy shall be mailed to the Federal Home Loan Bank Board, Washington, D.C., within ten days after such meeting. Such certified copy of the minutes of such meeting when so filed in the office of the Department of Banking and Finance shall be presumptive evidence that such meeting was held and that it took the action therein set forth.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, such association shall take all necessary action to comply with requirements of the federal law for conversion to a state association.

(4) At the meeting at which conversion is voted upon, the members shall vote upon and elect in the usual manner the persons who shall be the directors of the state association as provided by sections 8-350 to 8-353; and shall by a majority vote adopt proposed articles of incorporation, constitution, and bylaws to be effective upon conversion into a state-chartered association. The elected directors within a reasonable time and without any unnecessary delay shall sign and acknowledge said proposed articles of incorporation, constitution, and bylaws as subscribers thereto, which shall be filed in the office of the Department of Banking and Finance in compliance with Chapter 8, article 3, and amendments thereto.

(5) The Department of Banking and Finance within a reasonable time following receipt of a verified copy of the minutes of said meeting, and said proposed articles of incorporation, constitution, and bylaws, shall examine the same carefully, and if it finds that the requirements of the provisions of sections 8-350 to 8-353 are satisfied, that said articles of incorporation, constitution, and

bylaws conform to the requirements of Chapter 8, article 3, and amendments thereto, and contain a just and equitable plan for the management of the association's business, it shall issue to such association a certificate of its approval of such articles of incorporation, constitution, and bylaws; *Provided*, that no such certificate of approval shall be issued until a thorough examination into all the books, papers, and affairs of such association has been made by the Director of Banking and Finance, his deputies, or duly appointed examiners and the director, after a careful consideration of such examination, has found said association (a) to be in sound condition, (b) to be conducting its business in a manner conforming to the laws of Nebraska governing state-chartered building and loan associations, (c) is not committed to any obligations or liabilities which a similar association chartered under the laws of Nebraska might not properly incur, and (d) does not carry as assets on its books any assets which a similar association chartered under the laws of Nebraska could not properly so carry. The department shall charge such federal savings and loan association for such examination upon the same basis as charges are made for examination of state associations.

Source: Laws 1949, c. 7, § 1, p. 65.

8-351 Federal savings and loan association; conversion into state association; certificate of approval; supervision.

Upon the issuance by the Department of Banking and Finance of a certificate of its approval of said articles of incorporation, constitution, and bylaws, the conversion of any such federal savings and loan association into a state association shall become effective, and said association shall thereupon be subject to the exclusive supervision and control of the department as provided in Chapter 8, article 3, and amendments thereto.

Source: Laws 1949, c. 7, § 2(1), p. 67.

8-352 Federal savings and loan association; conversion into state association; status of property owned; obligation.

All of the property of such association, including all of its right, title, and interest in and to all property of every kind and character whether real, personal, or mixed, shall immediately, by operation of law, without any conveyance or transfer whatsoever, and without any further act or deed, continue to be vested in said association under its new name and style as a state association and under its new jurisdiction. Such state association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by it as a federal savings and loan association. The said state association at the time of the taking effect of such conversion shall continue to be responsible for all the obligations of said federal savings and loan association to the same extent as though said conversion had not taken place.

Source: Laws 1949, c. 7, § 2(2), p. 67.

8-353 Federal savings and loan association; conversion into state association; effect.

It is hereby expressly declared that said state association shall be merely a continuation of said federal savings and loan association under a new name

and new jurisdiction, and such revision of its corporate structure as may be considered necessary for its proper operation under said state jurisdiction.

Source: Laws 1949, c. 7, § 2(3), p. 67.

8-354 Repealed. Laws 1975, LB 58, § 1.

8-355 Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of March 20, 2007, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1; Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws 1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws 1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7.

8-356 Capital stock savings and loan association, defined; capital stock; how treated.

(1) A capital stock savings and loan association, referred to in sections 8-356 to 8-384 as a capital stock association, shall mean a financial institution incorporated under sections 8-356 to 8-384 having for its purposes the encouragement of home financing, the accumulation of capital through the issuance and sale of its stock, the acceptance of such accounts, referred to in sections 8-356 to 8-384 as deposits, as may be authorized for mutual savings and loan associations, and the lending of funds so accumulated in accordance with the powers conveyed to mutual associations by Chapter 8, article 3. A capital stock association shall issue a class of stock known as capital stock. The par value shall be stated in the articles of association and bylaws and approved by the Department of Banking and Finance. The consideration for capital stock which has a par value shall be credited to the capital stock account at its par value and any excess shall be credited to paid-in surplus and both shall be maintained as the fixed and permanent capital of the association. Participation in the management of the association shall be limited to the holders of capital stock.

(2) Capital stock shall be a reserve to absorb losses after all surplus, undivided profits, and other reserves available for losses have been depleted.

(3) Capital stock shall not be subject to redemption except on dissolution and shall then be eligible for redemption only after all accounts, deposits, and other creditors, including the Federal Deposit Insurance Corporation in the case of an insured institution, have been paid in full, together with accrued interest.

Source: Laws 1981, LB 500, § 1; Laws 1992, LB 757, § 9.

8-357 Definitions, sections found.

For purposes of sections 8-356 to 8-384, unless the context otherwise requires, the definitions found in sections 8-358 to 8-370 shall be used.

Source: Laws 1981, LB 500, § 2.

8-358 Association, defined.

Association shall mean a savings and loan association, referred to as a building and loan association, or loan and building association, building association, savings and loan association, or loan and savings association, incorporated and now existing under the laws of this state or incorporated under sections 8-356 to 8-384.

Source: Laws 1981, LB 500, § 3.

8-359 Department, defined.

Department shall mean the Department of Banking and Finance.

Source: Laws 1981, LB 500, § 4.

8-360 Capital accounts, defined.

Capital accounts shall mean capital stock, undivided profits, surplus, and reserves.

Source: Laws 1981, LB 500, § 5.

8-361 Certificate of approval, defined.

Certificate of approval shall mean a certificate issued by the Department of Banking and Finance and approved by the director.

Source: Laws 1981, LB 500, § 6.

8-362 Director, defined.

Director shall mean the Director of Banking and Finance.

Source: Laws 1981, LB 500, § 7.

8-363 Existing mutual association, defined.

Existing mutual association shall mean a mutual association which was authorized to do business in Nebraska on August 30, 1981.

Source: Laws 1981, LB 500, § 8.

8-364 Foreign association, defined.

Foreign association shall mean any firm, company, association, partnership, limited liability company, or corporation actually engaged in the business of a

savings and loan association which is not organized under the laws of this state or of the United States.

Source: Laws 1981, LB 500, § 9; Laws 1993, LB 121, § 89.

8-365 Net worth of a stock association, defined.

Net worth of a stock association shall mean the aggregate of the capital stock account, paid-in surplus, earned surplus, legal and federal insurance reserves, and undivided profits.

Source: Laws 1981, LB 500, § 10.

8-366 Capital stock, defined.

Capital stock shall mean that part of the capital or liabilities of an association representing ownership of the association and which is not subject to being withdrawn or the value paid to the holder of such stock until all other liabilities of the association have been fully liquidated and paid.

Source: Laws 1981, LB 500, § 11.

8-367 Savings deposit, defined.

Savings deposit shall mean a savings account in an association qualified to accept deposits and on which the association pays interest or dividends, whether at a fixed or indeterminate rate.

Source: Laws 1981, LB 500, § 12.

8-368 Stockholder, defined.

Stockholder shall mean a person who is a holder of record of shares in a corporation.

Source: Laws 1981, LB 500, § 13.

8-369 Withdrawable account, defined.

Withdrawable account shall mean a savings deposit or other authorized account or deposit of an association which does not represent capital stock.

Source: Laws 1981, LB 500, § 14.

8-370 Withdrawal value, defined.

Withdrawal value shall mean the amount paid to an association on a savings deposit plus earnings credited to such account or deposit less lawful deductions.

Source: Laws 1981, LB 500, § 15.

8-371 Capital stock association; organization; prerequisites.

No capital stock association may be organized unless, prior to the filing of its articles of incorporation and bylaws, such amounts of its capital stock set forth in department rules and regulations or as the director shall deem adequate, shall have been subscribed for and paid into the association. Every stock association shall also obtain insurance of accounts from an agency of the federal government prior to commencing operation.

Source: Laws 1981, LB 500, § 16.

8-372 Capital stock association; application; contents.

Every corporation organized for and desiring to conduct a capital stock association shall make under oath and transmit to the department a complete detailed application, giving the name of the proposed capital stock association, a certified copy of the articles of incorporation, the names of the stockholders, the county, city, or village and the exact location within such city or village where such association is proposed to be located, the nature of the proposed capital stock association business, the proposed amounts of capital stock, surplus, and undivided profits, and the items of actual cash and property, as reported and approved at a meeting of the stockholders.

Source: Laws 1981, LB 500, § 17.

8-373 Capital stock association; articles of incorporation; application; file information with department; examination fee.

A copy of the articles of incorporation and bylaws of every association applying under section 8-372 shall be filed with the department together with an application for a certificate of approval and payment of the examination fee prescribed by section 8-602. The application shall furnish and set forth information as may be required by the department's rules and regulations and the information required by sections 8-356 to 8-384.

Source: Laws 1981, LB 500, § 18; Laws 2003, LB 217, § 12.

8-374 Department; hearing on application; notice; purpose.

Prior to issuing a certificate of approval, the department, upon receiving an application for a stock savings and loan association, shall publish notice of filing of the application for a period of three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the savings and loan association. The expense of the publication shall be paid by the applicant. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after filing the application and not less than thirty days after the last publication of notice. Such hearing shall be held to determine:

(1) Whether the articles of incorporation and bylaws conform to the requirements of sections 8-356 to 8-384 and contain a just and equitable plan for the management of the association's business;

(2) Whether the persons organizing such association are of good character and responsibility;

(3) Whether in the department's judgment a need exists for such an institution in the community to be served;

(4) Whether there is a reasonable probability of its usefulness and success; and

(5) Whether the same can be established without undue injury to properly conducted existing local savings and loan associations, whether mutual or capital stock in formation.

Source: Laws 1981, LB 500, § 19.

8-375 Department; issue certificate of approval; when.

If the department, upon completion of its investigation and the public hearing of the application, is satisfied that such corporation has complied with the requirements of sections 8-356 to 8-384 and department rules and regulations, it shall issue a certificate of approval stating that such corporation has complied with the laws of this state, and granting such savings and loan association the authority to commence business.

Source: Laws 1981, LB 500, § 20.

8-376 Capital stock association; transaction of business; conditions.

No capital stock association shall transact any business, except the execution of its articles of incorporation, the adoption of the bylaws, and the election of directors and officers, until such association has been approved by the department and such association has submitted to the department evidence of insurance of accounts by an agency of the federal government. This section shall not apply to existing mutual associations operating without such insurance as of August 30, 1981, if they continue to operate as mutual associations.

Source: Laws 1981, LB 500, § 21.

8-377 Payment to person selling stock prohibited; exception.

No corporation organized for the purpose of conducting a savings and loan association under the laws of this state shall be granted a certificate of approval if there have been any premium, bonus, commission, compensation, reward, salary, or other forms of remuneration paid or promised to be paid, to any person for selling the stock of such corporation, except that reasonable compensation in the form of commissions may be paid to persons or organizations authorized by law to act as brokers of stock for acting in such capacity.

Source: Laws 1981, LB 500, § 22.

8-378 Mutual association; conversion to capital stock association; authorized; plan of conversion; approval required.

(1) Any state or federal mutual association, if substantial business benefit to the applicant will result, and if otherwise permitted by federal law and regulations, may apply to convert to a state or federal capital stock association, in accordance with the provisions set forth in sections 8-356 to 8-384 and in any rules and regulations that may be adopted or promulgated by the Department of Banking and Finance.

(2) Any applicant subject to subsection (1) of this section seeking to convert its corporate form pursuant to this section shall first obtain approval of a plan of conversion by resolution adopted by not less than a two-thirds majority vote of the total number of directors authorized.

(3) Upon approval of a plan of conversion by the board of directors, such plan and the resolution approving it shall be submitted to the department. The department may approve or disapprove the plan of conversion in its discretion, but shall not approve the plan unless a finding is made, after appropriate examination, that substantial business benefit to the applicant will result, that the plan of conversion is fair and equitable, that the interests of the applicant, its members or stockholders, its savings account holders and the public are adequately protected, and that the converting applicant has complied with the requirements of this section. If the department approves the plan of conversion,

the approval, which shall be in writing and sent to the home office of the converting applicant, may prescribe terms and conditions to be fulfilled either before or after the conversion to cause the applicant to conform with the requirements of sections 8-356 to 8-384. If the department disapproves the plan of conversion, the objections shall be stated in writing and sent to the home office of the converting applicant, and the applicant afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. In the event that the department disapproves the plan after such resubmission, written notice of such final disapproval shall be sent by certified mail to the applicant's home office.

Source: Laws 1981, LB 500, § 23; Laws 2003, LB 217, § 13.

8-379 Mutual association; conversion to capital stock association; plan of conversion; approval of members or stockholders; procedure.

If the department approves a plan to conversion in accordance with section 8-378, such plan shall be submitted for adoption to the members or stockholders of the converting association by vote at an annual or special meeting called to consider such action. At least three weeks prior to such meeting, a copy of the plan, together with an accurate summary plan description explaining the operation of the plan and the rights, duties, obligations, liabilities, conditions, and requirements which may be imposed upon such members or stockholders and the converted association as a result of the adoption of such plan, shall be mailed to each member or stockholder eligible to vote at such meeting. The plan of conversion must be approved by not less than sixty percent of the total outstanding shares, which may be voted by proxy or in person at the meeting called to consider such a conversion. If such plan is so approved, action shall be taken to obtain a charter, articles of incorporation, articles of association, or similar instrument, adopt bylaws, elect directors and officers and take such other action as is prescribed or appropriate for the type of corporation into which the converting applicant will be converted. A certified report of the proceedings at such meeting shall be filed promptly with the department.

Source: Laws 1981, LB 500, § 24.

8-380 Conversion; plan of conversion; requirements.

In any plan of conversion from a capital stock form of organization to a mutual form:

(1) Each savings account holder shall receive without payment a withdrawable account of the same general class in the converted institution equal in amount and equal in time tenure to his or her withdrawable account in the converting capital stock institution;

(2) The plan shall specify how and in what amount the return of capital to each class of stockholder in the form of an exchange of stock for savings accounts shall be effectuated;

(3) The plan shall provide for allocation of voting rights to the holders of savings accounts and the manner of exercise thereof; and

(4) The plan shall provide for evidence of insurance of deposits and other accounts of a withdrawable type by an agency of the federal government.

Source: Laws 1981, LB 500, § 25.

8-381 Mutual association; conversion; certificate of conversion; issuance; when effective.

If the department finds that a conversion proceeding has been completed in accordance with the requirements of sections 8-378 to 8-380 and any other applicable law and regulations, the department shall issue to the applicant a certificate of conversion, attaching as a part of such certificate a copy of the charter, articles of incorporation, articles of association, or similar instrument. Such conversion shall not become effective until the issuance of the certificate as provided in this section.

Source: Laws 1981, LB 500, § 26.

8-382 Mutual association; conversion; effect.

Upon the issuance to any applicant of a certificate of conversion as provided in section 8-381, the corporate existence of the converting association shall not terminate, but such association shall be a continuation of the entity so converted and all property of the converted association, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, immediately, by operation of law and without any conveyance or transfer and without any further act or deed, shall vest in and remain the property of such converted applicant, and the same shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting applicant, and such converted association, upon issuance of the certificate of such conversion, shall continue to have and succeed to all the rights, obligations, and relations of the converting association. All pending actions and other judicial proceedings to which the converting association is a party shall not be abated or discontinued by reason of such conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion had not been made, and such converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the converting applicant theretofore involved in the proceedings.

Source: Laws 1981, LB 500, § 27.

8-383 State associations; consolidation or merger; procedure; proposed plan; approval; department; powers.

When any savings and loan association or building and loan association organized under the laws of this state shall, by its duly qualified officers and board of directors, propose to consolidate or merge with any other savings and loan association or building and loan association or associations, each such association shall present the proposed plan of consolidation or merger, together with a statement of the condition of the affairs of such association to the department for its approval. Should the plan be approved by the department, the same shall be submitted to a regular or special meeting of the shareholders of each such association and notice of such meeting shall be given as the department may direct. If, at such meeting of the shareholders of any such association, not less than fifty-one percent of the shareholders vote affirmatively, either in person or by proxy, to adopt the proposed plan, as the same is

approved and submitted by the department, the department shall, upon notice of the favorable result of the shareholders' meeting, direct each of such associations to put into effect the plan of consolidation or merger so approved. Such plan shall be in force and effect from and after the date of such order, except that such consolidation or merger shall not be approved and put into effect unless approved by a majority of those voting on the consolidation or merger. There is hereby vested in the department full power and authority to issue and enforce such orders having to do with carrying out the plan of consolidation or merger adopted as shall be necessary for the protection of the shareholders and distribution of the assets of the associations involved in the consolidation or merger.

Source: Laws 1981, LB 500, § 28.

8-384 Sections, how construed.

In the event of an inconsistency between the provisions of sections 8-356 to 8-384 and the provisions of Chapter 8, article 3, such other provisions shall, to the extent of the inconsistency, be construed to be applicable to mutual associations only and not to the capital stock association.

Source: Laws 1981, LB 500, § 29.

8-385 Repealed. Laws 2005, LB 533, § 70.

ARTICLE 4
INDUSTRIAL LOAN AND INVESTMENT COMPANIES

(a) GENERAL PROVISIONS

Section	
8-401.	Repealed. Laws 2003, LB 131, § 40.
8-401.01.	Repealed. Laws 2003, LB 131, § 40.
8-401.02.	Repealed. Laws 2003, LB 131, § 40.
8-402.	Repealed. Laws 2003, LB 131, § 40.
8-403.	Repealed. Laws 2003, LB 131, § 40.
8-403.01.	Repealed. Laws 2003, LB 131, § 40.
8-403.02.	Repealed. Laws 2003, LB 131, § 40.
8-403.03.	Repealed. Laws 2003, LB 131, § 40.
8-403.04.	Repealed. Laws 2003, LB 131, § 40.
8-403.05.	Repealed. Laws 2003, LB 131, § 40.
8-404.	Repealed. Laws 2003, LB 131, § 40.
8-404.01.	Repealed. Laws 2003, LB 131, § 40.
8-404.02.	Repealed. Laws 2003, LB 131, § 40.
8-405.	Transferred to section 8-403.01.
8-406.	Repealed. Laws 2003, LB 131, § 40.
8-407.	Repealed. Laws 2003, LB 131, § 40.
8-407.01.	Repealed. Laws 2003, LB 131, § 40.
8-407.02.	Repealed. Laws 2003, LB 131, § 40.
8-407.03.	Repealed. Laws 2003, LB 131, § 40.
8-408.	Repealed. Laws 2003, LB 131, § 40.
8-408.01.	Repealed. Laws 2003, LB 131, § 40.
8-408.02.	Repealed. Laws 2003, LB 131, § 40.
8-408.03.	Repealed. Laws 2003, LB 131, § 40.
8-409.	Repealed. Laws 2003, LB 131, § 40.
8-409.01.	Repealed. Laws 2003, LB 131, § 40.
8-409.02.	Repealed. Laws 2003, LB 131, § 40.
8-409.03.	Repealed. Laws 2003, LB 131, § 40.
8-409.04.	Repealed. Laws 2003, LB 131, § 40.
8-409.05.	Repealed. Laws 2003, LB 131, § 40.
8-409.06.	Repealed. Laws 2003, LB 131, § 40.

Section
8-410. Repealed. Laws 2003, LB 131, § 40.
8-410.01. Repealed. Laws 1974, LB 354, § 316.
8-410.02. Repealed. Laws 2003, LB 131, § 40.
8-410.03. Repealed. Laws 2003, LB 131, § 40.
8-411. Repealed. Laws 2003, LB 131, § 40.
8-412. Repealed. Laws 2003, LB 131, § 40.
8-413. Repealed. Laws 2003, LB 131, § 40.
8-414. Repealed. Laws 2003, LB 131, § 40.
8-415. Repealed. Laws 2003, LB 131, § 40.
8-416. Repealed. Laws 2003, LB 131, § 40.
8-417. Repealed. Laws 2003, LB 131, § 40.
8-417.01. Repealed. Laws 2003, LB 131, § 40.

(b) INSTALLMENT LOANS

8-418. Repealed. Laws 1965, c. 30, § 18.
8-419. Repealed. Laws 1965, c. 30, § 18.
8-420. Repealed. Laws 1965, c. 30, § 18.
8-421. Repealed. Laws 1965, c. 30, § 18.
8-422. Repealed. Laws 1965, c. 30, § 18.
8-423. Repealed. Laws 1965, c. 30, § 18.
8-424. Repealed. Laws 1965, c. 30, § 18.
8-425. Repealed. Laws 1965, c. 30, § 18.
8-426. Repealed. Laws 1965, c. 30, § 18.
8-427. Repealed. Laws 1965, c. 30, § 18.
8-428. Repealed. Laws 1965, c. 30, § 18.
8-429. Repealed. Laws 1965, c. 30, § 18.
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8-431. Repealed. Laws 1965, c. 30, § 18.
8-432. Repealed. Laws 1965, c. 30, § 18.
8-433. Repealed. Laws 1965, c. 30, § 18.
8-434. Repealed. Laws 1965, c. 30, § 18.
8-435. Repealed. Laws 2003, LB 131, § 40.
8-436. Repealed. Laws 2003, LB 131, § 40.
8-437. Repealed. Laws 2003, LB 131, § 40.
8-438. Repealed. Laws 2003, LB 131, § 40.
8-439. Repealed. Laws 2003, LB 131, § 40.
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8-442. Repealed. Laws 2003, LB 131, § 40.
8-443. Repealed. Laws 2003, LB 131, § 40.
8-444. Repealed. Laws 2003, LB 131, § 40.
8-445. Repealed. Laws 2003, LB 131, § 40.
8-446. Repealed. Laws 2003, LB 131, § 40.
8-447. Repealed. Laws 2003, LB 131, § 40.
8-448. Repealed. Laws 2003, LB 131, § 40.
8-449. Repealed. Laws 2003, LB 131, § 40.
8-450. Repealed. Laws 2003, LB 131, § 40.
8-451. Transferred to section 8-410.02.

(a) GENERAL PROVISIONS

8-401 Repealed. Laws 2003, LB 131, § 40.

8-401.01 Repealed. Laws 2003, LB 131, § 40.

8-401.02 Repealed. Laws 2003, LB 131, § 40.

8-402 Repealed. Laws 2003, LB 131, § 40.

8-403 Repealed. Laws 2003, LB 131, § 40.

8-403.01 Repealed. Laws 2003, LB 131, § 40.

8-403.02 Repealed. Laws 2003, LB 131, § 40.

8-403.03 Repealed. Laws 2003, LB 131, § 40.

8-403.04 Repealed. Laws 2003, LB 131, § 40.

8-403.05 Repealed. Laws 2003, LB 131, § 40.

8-404 Repealed. Laws 2003, LB 131, § 40.

8-404.01 Repealed. Laws 2003, LB 131, § 40.

8-404.02 Repealed. Laws 2003, LB 131, § 40.

8-405 Transferred to section 8-403.01.

8-406 Repealed. Laws 2003, LB 131, § 40.

8-407 Repealed. Laws 2003, LB 131, § 40.

8-407.01 Repealed. Laws 2003, LB 131, § 40.

8-407.02 Repealed. Laws 2003, LB 131, § 40.

8-407.03 Repealed. Laws 2003, LB 131, § 40.

8-408 Repealed. Laws 2003, LB 131, § 40.

8-408.01 Repealed. Laws 2003, LB 131, § 40.

8-408.02 Repealed. Laws 2003, LB 131, § 40.

8-408.03 Repealed. Laws 2003, LB 131, § 40.

8-409 Repealed. Laws 2003, LB 131, § 40.

8-409.01 Repealed. Laws 2003, LB 131, § 40.

8-409.02 Repealed. Laws 2003, LB 131, § 40.

8-409.03 Repealed. Laws 2003, LB 131, § 40.

8-409.04 Repealed. Laws 2003, LB 131, § 40.

8-409.05 Repealed. Laws 2003, LB 131, § 40.

8-409.06 Repealed. Laws 2003, LB 131, § 40.

8-410 Repealed. Laws 2003, LB 131, § 40.

8-410.01 Repealed. Laws 1974, LB 354, § 316.

8-410.02 Repealed. Laws 2003, LB 131, § 40.

8-410.03 Repealed. Laws 2003, LB 131, § 40.

8-411 Repealed. Laws 2003, LB 131, § 40.

8-412 Repealed. Laws 2003, LB 131, § 40.

8-413 Repealed. Laws 2003, LB 131, § 40.

8-414 Repealed. Laws 2003, LB 131, § 40.

8-415 Repealed. Laws 2003, LB 131, § 40.

8-416 Repealed. Laws 2003, LB 131, § 40.

8-417 Repealed. Laws 2003, LB 131, § 40.

8-417.01 Repealed. Laws 2003, LB 131, § 40.

(b) INSTALLMENT LOANS

8-418 Repealed. Laws 1965, c. 30, § 18.

8-419 Repealed. Laws 1965, c. 30, § 18.

8-420 Repealed. Laws 1965, c. 30, § 18.

8-421 Repealed. Laws 1965, c. 30, § 18.

8-422 Repealed. Laws 1965, c. 30, § 18.

8-423 Repealed. Laws 1965, c. 30, § 18.

8-424 Repealed. Laws 1965, c. 30, § 18.

8-425 Repealed. Laws 1965, c. 30, § 18.

8-426 Repealed. Laws 1965, c. 30, § 18.

8-427 Repealed. Laws 1965, c. 30, § 18.

8-428 Repealed. Laws 1965, c. 30, § 18.

8-429 Repealed. Laws 1965, c. 30, § 18.

8-430 Repealed. Laws 1965, c. 30, § 18.

8-431 Repealed. Laws 1965, c. 30, § 18.

8-432 Repealed. Laws 1965, c. 30, § 18.

8-433 Repealed. Laws 1965, c. 30, § 18.

8-434 Repealed. Laws 1965, c. 30, § 18.

8-435 Repealed. Laws 2003, LB 131, § 40.

8-436 Repealed. Laws 2003, LB 131, § 40.

8-437 Repealed. Laws 2003, LB 131, § 40.

8-438 Repealed. Laws 2003, LB 131, § 40.

8-439 Repealed. Laws 2003, LB 131, § 40.

8-440 Repealed. Laws 2003, LB 131, § 40.

8-441 Repealed. Laws 2003, LB 131, § 40.

8-442 Repealed. Laws 2003, LB 131, § 40.

8-443 Repealed. Laws 2003, LB 131, § 40.

8-444 Repealed. Laws 2003, LB 131, § 40.

8-445 Repealed. Laws 2003, LB 131, § 40.

8-446 Repealed. Laws 2003, LB 131, § 40.

8-447 Repealed. Laws 2003, LB 131, § 40.

8-448 Repealed. Laws 2003, LB 131, § 40.

8-449 Repealed. Laws 2003, LB 131, § 40.

8-450 Repealed. Laws 2003, LB 131, § 40.

8-451 Transferred to section 8-410.02.

ARTICLE 5
SAFETY DEPOSIT BOXES

Cross References

Credit union safety deposit box service, see section 21-1741.

Section
8-501. Limitation of liability by contract; lease agreement; limitation of amount; assumption of risk; limitation of use; burden of proof.
8-502. Liability; determination of applicable law.

8-501 Limitation of liability by contract; lease agreement; limitation of amount; assumption of risk; limitation of use; burden of proof.

Any corporation, partnership, limited liability company, or person engaged in the business of maintaining and operating safety deposit boxes for storage or deposit for safekeeping of securities or valuables within this state may, in any written lease or contract governing or regulating the use of any such box or boxes by any user or customer, create either the relationship of lessor and lessee or the relationship of bailor and bailee, and to the relationship so created the general laws of the state applicable thereto shall apply, except that where the relationship of lessor and lessee is created the liability of the lessor may be limited in any or all of the following particulars:

(1) By limitation of liability for any loss to the lessee for and on account of negligence on the part of the lessor, his, her, or its agents or servants, to such maximum amount as may be stipulated, not less, however, than three hundred times the annual rental of such box or boxes;

(2) By limitation of the use of such safety deposit box or boxes to exclude therefrom money, currency, jewelry, or securities payable to bearer and other tangible property of value and choses in action and to provide that if any such money, currency, jewelry, securities payable to bearer, or other tangible property of value or choses in action are placed therein by the lessee, the lessee shall assume the entire risk of loss thereof or damage thereto without any liability on the part of the lessor for any such loss or damage in any event or for any cause whatsoever;

(3) By stipulation by the parties that evidence tending to prove that property left in any such safety deposit box upon the last entry by the lessee or his or her authorized agent or any part thereof was found missing upon subsequent entry shall not raise any presumption that the same was lost by any negligence or wrongdoing on the part of the lessor, his, her, or its agents or servants or to put

upon the lessor of such safety deposit box the burden of proof that such alleged loss was not the fault of the lessor.

Source: Laws 1941, c. 8, § 1, p. 77; C.S.Supp.,1941, § 8-801; R.S.1943, § 8-501; Laws 1993, LB 121, § 91.

8-502 Liability; determination of applicable law.

The liabilities of the parties to any such contract shall in all other respects be governed either by the law applicable to lessor and lessee or the law applicable to bailor and bailee, whichever basis is stipulated in the contract between the owner of the safety deposit box and the user or customer thereof.

Source: Laws 1941, c. 8, § 2, p. 78; C.S.Supp.,1941, § 8-802.

ARTICLE 6

ASSESSMENTS AND FEES

Section

8-601 Director of Banking and Finance; employees; financial institutions; levy of assessment authorized.

The Director of Banking and Finance may employ deputies, examiners, attorneys, and other assistants as may be necessary for the administration of the provisions and purposes of Chapter 8, articles 1, 2, 3, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 19, 20, 21, 23, 24, and 25; Chapter 21, article 17; and Chapter 45, articles 1, 2, 3, 7, 9, and 10. The director may levy upon financial institutions, namely, the banks, trust companies, building and loan associations, savings and loan associations, savings banks, and credit unions, organized under the laws of this state, and holding companies, if any, of such financial institutions, an assessment each year based upon the asset size of the financial institution, except that in determining the asset size of a holding company, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded. The assessment shall be a sum determined by the director in accordance with section 8-606 and approved by the Governor.

Source: Laws 1937, c. 20, § 1, p. 128; C.S.Supp.,1941, § 8-701; R.S.1943, § 8-601; Laws 1955, c. 15, § 1, p. 83; Laws 1973, LB 164, § 20; Laws 1976, LB 561, § 2; Laws 1980, LB 966, § 2; Laws 1986, LB 910, § 1; Laws 2002, LB 1094, § 6; Laws 2003, LB 131, § 7; Laws 2007, LB124, § 8.

8-602 Department of Banking and Finance; services; schedule of fees.

The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, articles of association, and bylaws, except credit unions, one hundred dollars, and for credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars;

(4) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter;

(5) For affixing certificate and seal, five dollars;

(6) For making a photostatic copy of instruments, documents, or any other departmental records and for providing a computer-generated document, one dollar and fifty cents per page;

(7) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(8) For issuing a certificate of approval to a credit union, ten dollars;

(9) For investigating the applications required by sections 8-120 and 8-331 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-120 and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(10) For registering a statement of intention to engage in the business of making personal loans pursuant to section 8-816, fifty dollars;

(11) For the handling of pledged securities as provided in sections 8-210 and 8-1006, at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the company, national bank, federal savings association, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act, or state-chartered bank pledging the securities;

(12) For investigating an application to move its location within the city or village limits of its original license or charter for banks, trust companies, and building and loan associations, two hundred fifty dollars;

(13) For investigating an application under subdivision (6) of section 8-115.01, five hundred dollars;

(14) For investigating an application for approval to establish or acquire a branch or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

(15) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

(16) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

(17) For investigating an application for a merger of two state banks or a merger of a state bank and a national bank in which the state bank is the surviving entity, five hundred dollars;

(18) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

(19) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

(20) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars; and

(21) For investigating an applicant under section 8-1513, five thousand dollars.

Source: Laws 1937, c. 20, § 2, p. 129; C.S.Supp.,1941, § 8-702; R.S.1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB124, § 9.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-603 Assessments, fees, and money collected by Director of Banking and Finance; use.

The assessments referred to in sections 8-605 and 8-606, examination fees, investigation fees, filing fees, registration fees, licensing fees, and all other fees and money, except fines, collected by or paid to the Director of Banking and Finance under any of the laws specified in section 8-601, shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

Source: Laws 2007, LB124, § 10.

8-604 Financial Institution Assessment Cash Fund; created; use; investment.

(1) The Financial Institution Assessment Cash Fund is hereby created. The fund shall be used solely for the purposes of administering and enforcing the laws specified in section 8-601.

(2) 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 2007, LB124, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

8-605 Director of Banking and Finance; assessment; proration; special assessment.

(1) As soon as reasonably possible after June 30 of each year, the Director of Banking and Finance shall estimate the total sum required for the purposes set forth in section 8-604 for the succeeding fiscal year. The director shall also estimate the total sum expected to be collected pursuant to section 8-603. The director shall use the difference between the estimate of the total sum required and the estimate of the total sum to be collected as the basis for the assessment to be levied.

(2) The assessment upon each financial institution shall be based upon the total assets of each financial institution, as reported in each financial institution's report of condition prepared for the period ending June 30 of each year, and, after June 30, 2009, may further be based upon the total amount of fiduciary and related assets and the total amount of off-balance-sheet receivables as reported in each financial institution's report of condition prepared for the period ending June 30 of each year.

(3) The director shall have the authority to prorate the assessment for any financial institution or entity which surrenders its charter or license or receives its charter or license during the assessment period. Proration shall be based on the number of months the financial institution held its charter or license. Any portion of a month shall be counted as one month.

(4) If the estimated sum levied and collected is insufficient to defray the expenditures for the fiscal year for which it was made, a special assessment may be levied and collected in like manner for the balance of the fiscal year.

Source: Laws 2007, LB124, § 12.

8-606 Department of Banking and Finance; costs of examination of financial institution or entity; billing; travel costs.

(1) As soon as reasonably possible following the examination of a financial institution or entity pursuant to the laws specified in section 8-601, the Department of Banking and Finance shall bill the financial institution or entity the costs of the examination. Such costs may include an hourly fee for examiner time, which shall be determined once each year by the Director of Banking and Finance, with the approval of the Governor, and which shall take into consideration whether the financial institution or entity is subject to the assessment.

(2) In case an extra examination or an investigation of any financial institution or entity becomes necessary and is made pursuant to the laws specified in section 8-601, the costs thereof shall be paid by the financial institution or entity examined or investigated.

(3) In the case of a financial institution or entity organized under the law of a state other than this state or a financial institution or entity organized under the

law of this state but which maintains an office in another state or states, travel expenses involved in conducting an examination or investigation may also be billed to the financial institution or entity, if the examination or investigation involves travel outside this state.

Source: Laws 2007, LB124, § 13.

8-607 Failure to pay assessment, fee, or cost; Department of Banking and Finance; collection procedures; suspension or revocation of charter or license.

(1) If a financial institution or entity fails to pay an annual assessment, special assessment, examination fee, examination cost, investigation fee, investigation cost, or travel expense by a date specified by the Department of Banking and Finance, which shall be not less than thirty days from the date of billing, the department may, following notice and opportunity for hearing pursuant to the Administrative Procedure Act, impose a fine in accordance with section 8-1,134 for each day the financial institution or entity is in arrears.

(2) If the financial institution or entity is in arrears for sixty days or more, the department may, in addition to any fine imposed under this section, following notice and opportunity for hearing pursuant to the Administrative Procedure Act, suspend or revoke the charter or license of any financial institution or entity or the license or authority of any person responsible for such failure.

(3) The Director of Banking and Finance may, in his or her discretion and for good cause shown, permit the payment of any annual assessment, special assessment, examination fee, examination cost, investigation fee, investigation cost, travel expense, or fine, in installments.

Source: Laws 2007, LB124, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 7
STATE-FEDERAL COOPERATION ACTS; CAPITAL NOTES

(a) FEDERAL BANKING ACT OF 1933

Section
8-701. Banking institution; definition.
8-702. Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of Banking and Finance; automatic forfeiture of charter.
8-703. Insolvent banks; appointment of Federal Deposit Insurance Corporation as receiver or liquidator.
8-704. Insolvent banks; Federal Deposit Insurance Corporation subrogated to depositors' rights.
8-705. Examinations, reports of other examiners; Director of Banking and Finance may accept.
8-706. Examinations, reports of Director of Banking and Finance; may be furnished to other examiners.
8-707. Insolvent banks; loans from Federal Deposit Insurance Corporation; security; sale of assets to corporation; conditions.
8-708. Insolvent bank; Federal Deposit Insurance Corporation as receiver or liquidator; title to property.
8-709. Insolvent bank; Federal Deposit Insurance Corporation as receiver or liquidator; enforcement of stockholders' liability.
8-710. Transferred to section 8-116.01.

(b) NATIONAL HOUSING ACT

8-711. Banks, trust companies, insurance companies; loans under National Housing Act; authority to make.

(a) FEDERAL BANKING ACT OF 1933

8-701 Banking institution; definition.

For purposes of sections 8-701 to 8-709, banking institution shall be construed to mean any bank, stock savings bank, mutual savings bank, building and loan association, or savings and loan association, which is now or may hereafter be organized under the laws of this state.

Source: Laws 1935, c. 8, § 1, p. 72; C.S.Supp.,1941, § 8-401; Laws 2003, LB 217, § 15; Laws 2005, LB 533, § 21.

A state bank which becomes a member of Federal Deposit Insurance Corporation thereby becomes an instrumentality of the United States, and federal statute forbidding embezzlement of funds of member bank applies to officer of such bank. United States v. Doherty, 18 F.Supp. 793 (D. Neb. 1937), affirmed, 94 F.2d 495 (8th Cir. 1938).

8-702 Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of Banking and Finance; automatic forfeiture of charter.

(1) Except as provided in subsection (2) of this section, any banking institution organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2) A banking institution which has not complied with subsection (1) of this section and which was in operation on September 4, 2005, may continue to operate if it provides notice to depositors and holders of savings certificates, certificates of indebtedness, or other similar instruments that such deposits or instruments are not insured. Such notice shall be given (a) on the date any such deposit, savings certificate, certificate of indebtedness, or similar instrument is created for deposits made and instruments created on or after October 1, 1984, and (b) annually on October 1 thereafter as follows: AS PROVIDED BY THE LAWS OF THE STATE OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS CERTIFICATE, CERTIFICATE OF INDEBTED-

NESS, OR OTHER SIMILAR INSTRUMENT IS NOT INSURED. Any advertising conducted by such banking institution shall in each case state: THE DEPOSITS, SAVINGS CERTIFICATES, CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS INSTITUTION ARE NOT INSURED. The banking institution shall also display such notice in one or more prominent places in all facilities in which the institution operates. All such notices and statements shall be given in large or contrasting type in such a manner that such notices shall be conspicuous. Each willful failure to give the notice prescribed in this subsection shall constitute a Class II misdemeanor. All officers and directors of any such banking institution shall be jointly and severally responsible for the issuance of the notices described in this subsection in the form and manner described. The banking institution shall annually by November 1 file proof of compliance with this subsection with the Department of Banking and Finance.

(3) The charter of any banking institution which fails to comply with the provisions of this section shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, shall be subject to the penalties provided by law for illegally engaging in the business of banking.

Source: Laws 1935, c. 8, § 2, p. 73; C.S.Supp.,1941, § 8-402; R.S.1943, § 8-702; Laws 1963, c. 31, § 2, p. 190; Laws 1983, LB 252, § 5; Laws 1984, LB 899, § 3; Laws 2005, LB 533, § 22.

8-703 Insolvent banks; appointment of Federal Deposit Insurance Corporation as receiver or liquidator.

The Federal Deposit Insurance Corporation created by section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) is hereby authorized and empowered to be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its depositors. The appropriate state authority, having the right to appoint a receiver or liquidator of a banking institution, may, in the event of such closing, tender to said corporation the appointment as receiver or liquidator of such banking institution, and, if the corporation accepts such appointment, the corporation shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator respectively of a banking institution, its depositors and other creditors, and be subject to all the duties of such receiver or liquidator except insofar as such powers, privileges or duties are in conflict with the provisions of subsection (1) of section 12B of the Federal Reserve Act, as amended (section 8 of the Banking Act of 1933).

Source: Laws 1935, c. 8, § 3, p. 73; C.S.Supp.,1941, § 8-403.

Where the FDIC is acting as a receiver of a state-chartered banking institution, in dealing with the rights or obligations of depositors, creditors, or stockholders, its powers, privileges, and duties are controlled by state law. Northern Bank v. Federal Dep. Ins. Corp., 242 Neb. 591, 496 N.W.2d 459 (1993).

8-704 Insolvent banks; Federal Deposit Insurance Corporation subrogated to depositors' rights.

Whenever any banking institution shall have been closed as aforesaid, and the Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the corporation, whether or not it shall have become receiver or liquidator of such closed banking institution as herein provided, shall be subrogated to all rights against such closed banking institution of the owners of such deposits in the same manner and to the same extent as subrogation of the corporation is provided for in subsection (1) of section 12B of the Federal Reserve Act, as amended (being section 8, of the Banking Act of 1933) in the case of the closing of a national bank; *Provided*, that the rights of depositors and other creditors of such closed institution shall be determined in accordance with the applicable provisions of the laws of this state.

Source: Laws 1935, c. 8, § 4, p. 74; C.S.Supp.,1941, § 8-404.

8-705 Examinations, reports of other examiners; Director of Banking and Finance may accept.

The Director of Banking and Finance is authorized to accept in his or her discretion, in lieu of any examination authorized by the laws of this state to be conducted by his or her department of a banking institution, the examination that may have been made such banking institution within a reasonable period by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency if a copy of the examination is furnished to the director. The director may also in his or her discretion accept any report relative to the condition of a banking institution which may have been obtained by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency within a reasonable period in lieu of a report authorized by the laws of this state to be required of such institution by his or her department if a copy of such report is furnished to the director.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 5, p. 74; C.S.Supp.,1941, § 8-405; R.S.1943, § 8-705; Laws 1988, LB 375, § 4.

8-706 Examinations, reports of Director of Banking and Finance; may be furnished to other examiners.

The Director of Banking and Finance may furnish to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institution and of any or all reports made by it and shall give access and disclose to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency, or to any official or examiner thereof, any and all information possessed by the office of the director with reference to the conditions or affairs of any such insured institution. Nothing in this section shall be construed to limit the duty of any banking institution in this

state, deposits in which are to any extent insured under the provisions of section 8 of the Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended), or of any amendment of or substitution for the same, to comply with the provisions of such act, its amendments or substitutions, or the requirements of the Federal Deposit Insurance Corporation relative to examinations and reports, nor to limit the powers of the director with reference to examinations and reports under existing law.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 6, p. 74; C.S.Supp.,1941, § 8-406; R.S.1943, § 8-706; Laws 1988, LB 375, § 5.

8-707 Insolvent banks; loans from Federal Deposit Insurance Corporation; security; sale of assets to corporation; conditions.

With respect to any banking institution which is now or may hereafter be closed on account of inability to meet the demands of its depositors, or by action of the Director of Banking and Finance, or of a court, or by action of its directors, or in the event of its insolvency or suspension, the Director of Banking and Finance, or the receiver or liquidator of such institution with the permission of the Director of Banking and Finance may borrow from the Federal Deposit Insurance Corporation and furnish any part or all of the assets of said institution to the corporation as security for a loan from the same; *Provided*, that where the corporation is acting as such receiver or liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. The Director of Banking and Finance, upon the order of a court of record of competent jurisdiction, and upon a like order and with the permission of the Director of Banking and Finance the receiver or liquidator of any such institution, may sell to the corporation any part or all of the assets of such institution. The provisions of this section shall not be construed to limit the power of any banking institution, the Director of Banking and Finance, or receivers or liquidators, to pledge or sell assets in accordance with any existing law.

Source: Laws 1935, c. 8, § 7, p. 75; C.S.Supp.,1941, § 8-407.

8-708 Insolvent bank; Federal Deposit Insurance Corporation as receiver or liquidator; title to property.

Upon the acceptance of the appointment of receiver or liquidator aforesaid by the Federal Deposit Insurance Corporation, the possession of and title to all the assets, business and property of such banking institution of every kind and nature shall pass to and vest in said corporation and without the execution of any instruments of conveyance, assignment, transfer or endorsement.

Source: Laws 1935, c. 8, § 8, p. 75; C.S.Supp.,1941, § 8-408.

8-709 Insolvent bank; Federal Deposit Insurance Corporation as receiver or liquidator; enforcement of stockholders' liability.

Among its other powers, the Federal Deposit Insurance Corporation in the performance of its powers and duties as such receiver or liquidator, shall have the right and power upon the order of a court of record of competent jurisdiction to enforce the individual liability of the stockholders and directors of any such banking institution.

Source: Laws 1935, c. 8, § 9, p. 76; C.S.Supp.,1941, § 8-409.

8-710 Transferred to section 8-116.01.

(b) NATIONAL HOUSING ACT

8-711 Banks, trust companies, insurance companies; loans under National Housing Act; authority to make.

Notwithstanding any more general or special law of the State of Nebraska to the contrary, banks, savings banks, trust companies and insurance companies are authorized (1) to make such loans and advances of credit, and purchases of obligations representing loans and advances of credit, as are eligible for insurance by the Federal Housing Administrator, and to obtain such insurance; and (2) to make such loans, secured by real property or leasehold, as the Federal Housing Administrator insures or makes a commitment to insure, and to obtain such insurance.

Source: Laws 1935, c. 17, § 1, p. 92; Laws 1937, c. 13, § 1, p. 117; C.S.Supp.,1941, § 8-501.

Insurance company upon becoming member of Federal Home Loan Bank may make loans insured by Federal Housing Administration. Service Life Ins. Co. v. United States, 189 F.Supp. 282 (D. Neb. 1960).

8-712 Banks, trust companies, insurance companies, fiduciaries; investments in National Housing Act securities; authority to make.

It shall be lawful for banks, savings banks, trust companies, insurance companies, personal representatives, administrators, guardians, trustees, and other fiduciaries, the State of Nebraska and its political subdivisions, and institutions and agencies thereof, to invest their funds and the money in their custody or possession, eligible for investment, in bonds or notes secured by mortgages insured by the Federal Housing Administrator, in debentures issued by the Federal Housing Administrator, and in securities issued by national mortgage associations.

Source: Laws 1935, c. 17, § 2, p. 92; Laws 1937, c. 13, § 2, p. 117; C.S.Supp.,1941, § 8-502; R.S.1943, § 8-712; Laws 1986, LB 909, § 10.

8-713 Investments in National Housing Act securities; general laws not applicable.

No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments, or prescribing or limiting the periods for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to sections 8-711 and 8-712.

Source: Laws 1935, c. 17, § 3, p. 93; C.S.Supp.,1941, § 8-503.

(c) FEDERAL HOME LOAN BANK ACT

8-714 Federal Home Loan Bank; members authorized.

In addition to all other powers and investments authorized by law, every institution incorporated under the laws of this state and eligible for membership in a Federal Home Loan Bank may become a member of a Federal Home Loan Bank, as permitted by and in accordance with the Federal Home Loan Bank Act.

Source: Laws 1937, c. 51, § 1, p. 214; C.S.Supp.,1941, § 8-601; R.S.1943, § 8-714; Laws 1991, LB 77, § 1.

8-715 Federal Home Loan Bank members; powers.

In addition to all other powers and investments authorized by law, any institution, upon becoming a member of a Federal Home Loan Bank, may (1) purchase stock in, (2) obtain advances from, (3) pledge collateral to, and (4) perform such acts which are necessary and required to make available to it all the advantages and privileges offered by such Federal Home Loan Bank to the extent provided by and in accordance with the Federal Home Loan Bank Act.

Source: Laws 1937, c. 51, § 2, p. 214; C.S.Supp.,1941, § 8-602; R.S.1943, § 8-715; Laws 1991, LB 77, § 2.

8-716 Federal Home Loan Bank members; tax exemption prohibited.

No institution incorporated under the laws of this state which is or becomes a member of a Federal Home Loan Bank shall be exempt from any taxes of this state, including any contributions required to be paid under sections 48-648 to 48-654.

Source: Laws 1937, c. 51, § 3, p. 214; C.S.Supp.,1941, § 8-603; R.S.1943, § 8-716; Laws 1991, LB 77, § 3.

ARTICLE 8
PERSONAL LOANS BY BANKS AND TRUST COMPANIES

Section

Section
8-822. Personal loans; method of computation; prepayment; refunds; rebates; delinquency charges.
8-823. Personal loans; when repayable; exception; confession of judgment, power of attorney, and agreements; prohibited.
8-824. Repealed. Laws 1969, c. 45, § 3.
8-825. Repealed. Laws 1978, LB 641, § 4.
8-826. Personal loans; duties of department.
8-827. Violations; termination of registration.
8-828. Personal loans; registered bank; purchasing and discounting commercial, negotiable, or installment paper.
8-829. Violations; penalty.

8-801 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-802 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-803 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-804 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-805 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-806 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-807 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-808 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-809 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-810 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-811 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-812 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-813 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-814 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-815 Terms, defined.

As used in sections 8-815 to 8-829, unless the context otherwise requires:

(1) Department shall mean the Department of Banking and Finance;

(2) Bank shall mean the banks and trust companies organized under the laws of this state, and national banking associations doing business in this state and shall include national banking associations;

(3) Registered bank shall mean any bank which has in effect a registration under section 8-816;

(4) Unregistered bank shall mean any bank which has not registered under section 8-816 or the registration of which is not in effect because of action taken under section 8-827;

(5) Personal loan shall mean a loan, and the contract evidencing the same, which is repayable, pursuant to a contract or understanding, in two or more equal or unequal installments, and within one hundred forty-five months, but shall not include any loan on which the interest does not exceed sixteen percent per annum. Personal loan shall include loans for the purchase of mobile homes

even though the loan is not repayable within one hundred forty-five months. Personal loan shall include loans or advances initiated by credit card or other type of transaction card, including, but not limited to, those loan transactions initiated through electronic impulse; and

(6) Transaction card shall mean a device or means used to access a prearranged revolving credit plan account.

Source: Laws 1965, c. 31, § 1, p. 213; Laws 1973, LB 141, § 1; Laws 1974, LB 721, § 4; Laws 1980, LB 276, § 3; Laws 1981, LB 214, § 3; Laws 1987, LB 332, § 1; Laws 2002, LB 1094, § 8; Laws 2003, LB 217, § 16.

8-816 Personal loans; registration by bank; payment of fee.

Any bank which has registered with the department a statement of intention to engage in the business of making personal loans and has paid the fee prescribed in section 8-602 may exercise, subject to sections 8-815 to 8-829, the privileges conferred by section 8-820. Such registration shall be in form prescribed by the department and shall contain an agreement to comply with the provisions and accept the conditions of sections 8-815 to 8-829.

Source: Laws 1965, c. 31, § 2, p. 214; Laws 1973, LB 164, § 22; Laws 1987, LB 642, § 2.

8-817 Transferred to section 45-115.

8-818 Personal loans; rate of interest allowed.

Except as provided in section 8-820, no bank shall contract for or receive on or in connection with any personal loan a higher rate of interest than would otherwise be permitted by law, whether such rate is obtained by making charges on discounts without due allowance for partial repayments of principal, by taking deposits in lieu of repayments or by imposing fees or charges pretended to be for investigation, brokerage, service, other subterfuge or by any other device or means.

Source: Laws 1965, c. 31, § 4, p. 214.

8-819 Personal loans; unregistered banks; costs of suit; attorney's fees.

If, in any court proceeding involving or arising out of a personal loan made after May 24, 1965, by any unregistered bank, the party alleged or purported to be obligated on account of the loan is the prevailing party in asserting any right or defense relating to such loan, he shall be entitled to recover from the opposing party, in addition to taxable costs and expenses to which he would otherwise be entitled, all other costs of litigation, including attorney's fees, actually paid or incurred in asserting or defending his rights on the issues with respect to which he was the prevailing party in whatever amounts the court may find to be reasonable, to be taxed as costs.

Source: Laws 1965, c. 31, § 5, p. 214.

8-820 Personal loans; credit cards; interest; service fee; fee in lieu of interest.

Subject to the provisions of sections 8-815 to 8-829, any registered bank may contract for and receive, on any personal loan, charges at a rate not exceeding

nineteen percent simple interest per year. In the case of loans initiated by credit card or other type of transaction card, the rate may be any amount agreed to by the parties. Any registered bank or bank acquired pursuant to sections 8-1512 and 8-1513 may also charge commercially reasonable fees for service and use of a credit card or other type of transaction card on a per transaction and monthly or annual basis. For purposes of this section, section 85 of the National Bank Act, 12 U.S.C. 85, and sections 521 and 522 of the Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. 1730g and 1831d, all interest, charges, fees, and other amounts permitted under sections 8-815 to 8-829 for loans initiated by credit card or other type of transaction card shall be deemed to be, and may be charged and collected as, interest by the bank, and all other terms and conditions of the agreement between the bank and the borrower that are not prohibited by such sections shall be deemed material to the determination of interest. Notwithstanding the provisions of this section, in the case of loans not initiated by credit card or other type of transaction card, a bank may charge a minimum fee of up to seven dollars and fifty cents in lieu of interest on personal loans and reasonable loan service costs as defined in subdivision (2) of section 45-101.02. Such loan service costs shall not be construed as interest.

Source: Laws 1965, c. 31, § 6, p. 214; Laws 1973, LB 164, § 23; Laws 1980, LB 276, § 4; Laws 1981, LB 150, § 1; Laws 1983, LB 454, § 1; Laws 1984, LB 1076, § 1; Laws 1988, LB 913, § 1; Laws 1993, LB 423, § 4.

Notwithstanding interest rate limits under Nebraska statutes, national bank in Nebraska can legally charge, on credit card transactions, same rates allowed by section 45-114 et seq. Fisher v. First Nat. Bank of Omaha, 548 F.2d 255 (8th Cir. 1977).

8-820.01 Bank credit cards; federal most-favored-lender doctrine; public policy declaration.

It is hereby declared to be the public policy of the State of Nebraska that for purposes of applying the federal most-favored-lender doctrine, the bank credit card rate contained in section 8-820 is not comparable or analogous to the small loan rate found in sections 45-1024 and 45-1025. The Legislature finds that the institutions making small loans and the institutions administering a bank credit card are categorically different. The transactions carried on by these institutions are categorically different. The Legislature finds that small loan borrowers and bank credit card users are not synonymous or comparable. In establishing a small loan rate, the Legislature has recognized a risk factor that is different and greater than other financial transactions and therefor justifies the charging of a higher interest rate than installment loans, personal loans, retail revolving credit plans, or bank credit card interest rates.

Source: Laws 1981, LB 150, § 2; Laws 2001, LB 53, § 7.

8-821 Personal loans; additional charges.

In addition to the charges permitted by section 8-820, no further amount or exaction shall be directly or indirectly contracted for or received, except:

(1) Lawful fees actually and necessarily paid to a public officer for filing, recording, or releasing an instrument securing the loan;

(2) Taxable costs to which the bank is adjudged to be entitled in judicial proceedings instituted to collect the loan;

(3) Premiums paid for insurance policies covering tangible personal property securing the loan. Such insurance shall be only in such amount and nature as is customary and reasonable, having regard to all the circumstances of the loan, and the premium shall not exceed standard rates. If insurance is procured by or through the bank, an executed copy of the insurance policy or certificate of insurance shall be delivered to the borrower within fifteen days;

(4) Premiums paid for insurance policies covering tangible personal property acquired, in whole or in part, with the proceeds of the loan;

(5) The actual costs of nonfiling insurance;

(6) Premiums paid for credit life, health, disability, sickness and accident, or involuntary unemployment or job protection insurance policies or any one or more of them;

(7) Charges permitted by section 8-822;

(8) Fees agreed to by the parties for loan service costs for exceeding authorized limits, replacing lost cards, returning checks, or delinquency on the account; and

(9) In the case of loans initiated by credit card or other type of transaction card, any other fees agreed to by the parties.

Source: Laws 1965, c. 31, § 7, p. 215; Laws 1973, LB 142, § 1; Laws 1974, LB 695, § 1; Laws 1987, LB 332, § 2; Laws 1995, LB 384, § 9; Laws 2000, LB 1125, § 1.

Notwithstanding interest rate limits under Nebraska statutes, national bank in Nebraska can legally charge, on credit card transactions, same rates allowed by section 45-114 et seq. Fisher v. First Nat. Bank of Omaha, 548 F.2d 255 (8th Cir. 1977).

8-822 Personal loans; method of computation; prepayment; refunds; rebates; delinquency charges.

(1) Charges under section 8-820 shall be computed by application of the rate charged to the outstanding principal balance for the number of days actually elapsed without adding any additional charges, except that at the time the loan is made charges may be computed as a percentage per month of unpaid principal balances for the number of days elapsed on the assumption that the unpaid principal balance will be reduced, as provided in the loan contract, and such charges may be included in the scheduled installments. In the case of loans initiated by credit card or other type of transaction card, charges may be computed in any other manner agreed to by the parties and may include compounding of fees and charges.

(2) For any loan contract entered into prior to October 1, 1981, the provisions of this subsection may be used or the provisions of subsection (3) of this section may be used. If the loan is repaid in whole or in part prior to the due date unearned charges shall be refunded or credited to the borrower in full, but such refund need not be made until final payment of the loan contract. Such refund shall be at least as great a proportion of the total charges as the sum of the remaining monthly balances of the principal and interest combined scheduled to follow the date of prepayment bears to the sum of all the monthly balances of principal and interest combined originally scheduled by the contract. For the purpose of computing the refund, any prepayment in full made on or before the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately preceding the date of prepayment in full, and any prepayment in full made after such fifteenth day

shall be deemed to have been made on the installment date immediately following the date of prepayment in full. No refund shall be required for any partial prepayment. No refund of less than one dollar need be made.

(3) For any loan contract entered into on or after October 1, 1981, the provisions of this subsection shall apply. If the loan is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which shall be not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the annual percentage rate previously stated to the borrower pursuant to the federal Consumer Credit Protection Act. The licensee may round the annual percentage rate to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained.

(4) The charges retained by the bank may be increased to the extent that delinquency charges are computed on earned charges in accordance with the next succeeding sentence. Delinquency charges on any scheduled installment or portion thereof, if contracted for, may be taken, or in lieu thereof, interest after maturity on each such installment not exceeding the highest permissible interest rate.

Source: Laws 1965, c. 31, § 8, p. 215; Laws 1973, LB 164, § 24; Laws 1974, LB 626, § 2; Laws 1980, LB 279, § 2; Laws 1981, LB 214, § 4; Laws 1997, LB 137, § 10; Laws 2000, LB 1125, § 2.

8-823 Personal loans; when repayable; exception; confession of judgment, power of attorney, and agreements; prohibited. The following provisions shall apply to loans made under section 8-820:

(1) With the exception of loans for mobile homes, every such loan shall be repayable within a period of one hundred forty-five months and may be prepaid in whole or in part at any time. One or more of the installments may be accelerated or deferred when the borrower's chief source of income makes such arrangement necessary, if the note or contract so provides;

(2) The bank shall give the borrower a receipt showing the date and amount of each payment made on account of any such loan; and

(3) No bank shall take, in connection with any such loan, any confession of judgment, power of attorney to confess judgment, power of attorney to appear for a borrower in a judicial proceeding, or agreement to pay the costs of collection or the attorney's fees.

Source: Laws 1937, c. 110, § 8, p. 409; C.S.Supp.,1941, § 81-7308; R.S.1943, § 8-823; Laws 1981, LB 214, § 5; Laws 1982, LB 779, § 4.

8-824 Repealed. Laws 1969, c. 45, § 3.

8-825 Repealed. Laws 1978, LB 641, § 4.

8-826 Personal loans; duties of department.

The department shall:

(1) Be responsible for obtaining proper administration of sections 8-815 to 8-829 and take or cause to be taken such lawful steps as may be necessary and appropriate for the enforcement thereof;

(2) Have authority to make regulations, in addition to and not inconsistent with the provisions of sections 8-815 to 8-829, for the administration thereof and obtaining compliance therewith; and

(3) Arrange for investigation and examination of the papers and records, pertaining to loans made under section 8-820, for the purpose of discovering violations of sections 8-815 to 8-829 or securing information lawfully required under it.

Source: Laws 1965, c. 31, § 12, p. 218; Laws 1978, LB 641, § 3.

8-827 Violations; termination of registration.

If any registered bank persists in violating any of the provisions of sections 8-815 to 8-828, after having had prior violations thereof brought to its attention in writing by the department, the department shall, upon ten days' written notice stating the contemplated action and the grounds therefor and after reasonable opportunity to be heard, declare the registration of such bank to be terminated and no longer in effect, whereupon the authority of such bank to make loans under section 8-820 shall cease. Such bank may not reregister for thirty days after the first termination nor for six months after any subsequent termination. No termination shall impair the obligation of any preexisting lawful contract.

Source: Laws 1965, c. 31, § 13, p. 218.

8-828 Personal loans; registered bank; purchasing and discounting commercial, negotiable, or installment paper.

Nothing contained in sections 8-815 to 8-827 shall be construed as preventing a registered bank from purchasing or discounting from established business concerns any commercial, negotiable or installment paper, or as preventing any such bank from accepting from, or requiring such persons selling or offering to discount such instruments to execute, contracts guaranteeing the ultimate collection of all of such items so sold or discounted or requiring such persons to assume the burden of making collections of the individual items so sold as agent of the bank.

Source: Laws 1965, c. 31, § 14, p. 218.

8-829 Violations; penalty.

If a bank violates any provision of sections 8-820 to 8-823 in making or collecting any loan made under section 8-820, no charges of any kind shall be collected on such loan. If any charges have been collected, the bank shall forfeit to the borrower all interest collected on the loan involved and a sum equal thereto. The bank so offending shall be guilty of a Class V misdemeanor.

Source: Laws 1965, c. 31, § 15, p. 219; Laws 1977, LB 40, § 62.

ARTICLE 9
BANK HOLDING COMPANIES

Section
8-901. Repealed. Laws 1995, LB 384, § 35.
8-902. Repealed. Laws 1995, LB 384, § 35.
8-902.01. Repealed. Laws 1995, LB 384, § 35.
8-902.02. Repealed. Laws 1995, LB 384, § 35.
8-902.03. Repealed. Laws 1995, LB 384, § 35.
8-902.04. Repealed. Laws 1995, LB 384, § 35.
8-902.05. Repealed. Laws 1995, LB 384, § 35.
8-903. Repealed. Laws 1995, LB 384, § 35.
8-904. Repealed. Laws 1995, LB 384, § 35.
8-905. Transferred to section 8-1512.
8-906. Transferred to section 8-1513.
8-907. Transferred to section 8-1514.
8-908. Act, how cited.
8-909. Terms, defined.
8-910. Unlawful acts; authorized ownership or control of banks; limitation.
8-911. Out-of-state bank holding company; acquisition of banks; conditions.
8-912. Ownership, acquisition, or control of subsidiary in foreign state; when.
8-913. Bank holding company; registration required; when.
8-914. Reports required.
8-915. Examinations; costs; reports in lieu of examination; director; powers.
8-916. Bank subsidiary; powers; depository institution; limitations; agency relationship; limitations.
8-917. Rules and regulations.

8-901 Repealed. Laws 1995, LB 384, § 35.

8-902 Repealed. Laws 1995, LB 384, § 35.

8-902.01 Repealed. Laws 1995, LB 384, § 35.

8-902.02 Repealed. Laws 1995, LB 384, § 35.

8-902.03 Repealed. Laws 1995, LB 384, § 35.

8-902.04 Repealed. Laws 1995, LB 384, § 35.

8-902.05 Repealed. Laws 1995, LB 384, § 35.

8-903 Repealed. Laws 1995, LB 384, § 35.

8-904 Repealed. Laws 1995, LB 384, § 35.

8-905 Transferred to section 8-1512.

8-906 Transferred to section 8-1513.

8-907 Transferred to section 8-1514.

8-908 Act, how cited.

Sections 8-908 to 8-917 shall be known and may be cited as the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 19.

8-909 Terms, defined.

For purposes of the Nebraska Bank Holding Company Act of 1995, unless the context otherwise requires:

(1) Bank means any bank which is chartered to conduct a bank in this state pursuant to the Nebraska Banking Act or any national bank authorized to do business in this state;

(2) Company means any corporation, partnership, limited liability company, business trust, association, or similar organization or entity, but does not include:

(a) An individual; or

(b) Any corporation, the majority of the shares of which are owned by the United States or by any state;

(3)(a) Bank holding company means any company, including an out-of-state bank holding company, which, except as provided in subdivision (b) of this subdivision:

(i) Directly or indirectly owns or controls twenty-five percent or more of the voting shares of any bank;

(ii) Controls in any manner the election of the majority of the directors of any bank; or

(iii) For the benefit of whose shareholders or members twenty-five percent or more of the voting shares of any bank or bank holding company are held by trustees.

(b)(i) No estate, trust, guardianship, or conservatorship or fiduciary thereof shall be a bank holding company by virtue of its ownership or control of a bank or banks if such trust is not a business trust or voting trust. It shall be unlawful for any such estate, trust, guardianship, or conservatorship to acquire, by purchase, ownership, or control, twenty-five percent of the shares of any additional bank;

(ii) No company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of bank shares and which are held only for such period of time as will permit the sale thereof on a reasonable basis; and

(iii) No company shall be a bank holding company by virtue of its ownership or control of shares acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith, except that such shares shall be disposed of within a period of two years from the date on which they were acquired, unless the director, upon good cause shown, extends the two-year period. Any extensions granted by the director shall be for no more than one year at a time and, in the aggregate, for no more than three years;

(4) Adequately capitalized means a level of capitalization which meets or exceeds all applicable federal regulatory capital standards;

(5) Department means the Department of Banking and Finance;

(6) Director means the Director of Banking and Finance;

(7) Foreign state means any state of the United States other than Nebraska, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the District of Columbia;

(8) Home state means, with respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the

largest on the later of: (a) July 1, 1966; or (b) the date on which the company becomes a bank holding company under 12 U.S.C. 1842;

(9) Out-of-state bank holding company means a bank holding company whose home state is a foreign state, except an out-of-state bank holding company, as defined in 12 U.S.C. 1842(d) as it existed on August 26, 1983, which owned at least two banks in Nebraska as of March 12, 1963; and

(10) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any state of the United States other than Nebraska, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1995, LB 384, § 20; Laws 1998, LB 1321, § 69.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-910 Unlawful acts; authorized ownership or control of banks; limitation.

(1) It shall be unlawful, except as provided in this section, for:

(a) Any action to be taken that causes any company to become a bank holding company;

(b) Any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(c) Any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than twenty-five percent of the voting shares of such bank;

(d) Any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or

(e) Any bank holding company to merge or consolidate with any other bank holding company.

(2) The prohibition set forth in subsection (1) of this section shall not apply if:

(a)(i) The bank holding company is registered with the department as of September 29, 1995, as a bank holding company for any bank or banks; or (ii) the bank holding company registers with the department in accordance with the provisions of section 8-913 as a bank holding company;

(b) The bank holding company does not have a name deceptively similar to an existing unaffiliated bank or bank holding company located in Nebraska;

(c) Upon any action referred to in subsection (1) of this section and subject to subsection (3) of this section, the bank or banks so owned or controlled would have deposits in Nebraska in an amount no greater than twenty-two percent of the total deposits of all banks in Nebraska plus the total deposits, savings accounts, passbook accounts, and shares in savings and loan associations and building and loan associations in Nebraska as determined by the director on the basis of the most recent midyear reports, except as provided in subsections (4) and (5) of this section;

(d) The bank holding company is adequately capitalized and adequately managed;

(e) The bank holding company complies with sections 8-1501 to 8-1505 if the bank or banks to be acquired are chartered in this state under the Nebraska Banking Act; and

(f) The bank holding company, if an out-of-state bank holding company, complies with the limitations of section 8-911.

(3) If any person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any bank holding company acquiring a bank and any such person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any other bank or bank holding company in Nebraska, then the total deposits of such other bank or banks and of all banks in Nebraska owned or controlled by such bank holding company shall be included in the computation of the total deposits of a bank holding company acquiring a bank.

(4) A bank or bank holding company which acquires and holds all or substantially all of the voting stock of one credit card bank under sections 8-1512 and 8-1513 shall not have such acquisition count against the limitations set forth in subdivision (2)(c) of this section.

(5) A bank holding company which acquired an institution or which formed a bank which acquired an institution under sections 8-1506 to 8-1510 or which acquired any assets and liabilities from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation prior to January 1, 1994, shall not have such acquisition or formation count against the limitations set forth in subdivision (2)(c) of this section.

Source: Laws 1995, LB 384, § 21; Laws 1998, LB 1321, § 70; Laws 2000, LB 932, § 18; Laws 2002, LB 1089, § 8; Laws 2004, LB 999, § 6.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-911 Out-of-state bank holding company; acquisition of banks; conditions.

(1) Upon compliance with all other provisions of the Nebraska Bank Holding Company Act of 1995 and any other applicable law, an out-of-state bank holding company may acquire a bank or banks under the act only if the bank or banks to be acquired have been chartered for five years or more.

(2) An out-of-state bank holding company shall not, directly or indirectly, form, charter, or establish a bank in Nebraska or cause a bank in Nebraska to be formed, chartered, or established unless (a) the bank is formed, chartered, or established solely for the purpose of acquiring all or substantially all of the assets of a bank which has been chartered for five years or more and (b) the bank does not open for business prior to such acquisition.

Source: Laws 1995, LB 384, § 22; Laws 1998, LB 1321, § 71.

8-912 Ownership, acquisition, or control of subsidiary in foreign state; when.

Upon approval of the Federal Reserve Board and upon compliance with section 8-913, a bank holding company whose home state is Nebraska may own, acquire, or control a depository institution subsidiary in any foreign state.

Source: Laws 1995, LB 384, § 23.

8-913 Bank holding company; registration required; when.

Every bank holding company shall register with the department within thirty days after the consummation of an action set forth in section 8-910 on forms provided by the department. The forms provided by the department shall include such information with respect to the financial condition, operations, management, and intercompany relationship of the bank holding company and its subsidiaries and related matters, as the director may deem necessary or appropriate to carry out the purposes of the Nebraska Bank Holding Company Act of 1995. Upon good cause shown, the director may, in his or her discretion, extend the time within which a bank holding company shall register. A bank holding company shall amend its registration within thirty days after any additional action under section 8-910, 8-911, or 8-912.

Source: Laws 1995, LB 384, § 24.

8-914 Reports required.

The director may require reports made under oath to be filed in the department to keep it informed as to the operation of any bank holding company.

Source: Laws 1995, LB 384, § 25.

8-915 Examinations; costs; reports in lieu of examination; director; powers.

The director may make examinations of any bank holding company with one or more state-chartered bank subsidiaries and each state-chartered bank subsidiary thereof, the cost of which shall be assessed, in the manner set forth in sections 8-605 and 8-606, against and paid for by such bank holding company. The director may accept reports of examination made by the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or a foreign state agency in lieu of making an examination by the department. The director may provide reports of examination conducted by the department or other confidential information to any of such regulatory entities. The director may contract with any of such regulatory entities to conduct and pay for such an examination for the department. The director may contract with any of such regulatory entities to conduct and receive payment for such an examination for any of such regulatory entities. The director may enter into cooperative agreements with any or all of such regulatory entities to foster the purposes of the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 26; Laws 2007, LB124, § 15.

8-916 Bank subsidiary; powers; depository institution; limitations; agency relationship; limitations.

(1) Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution without regard to the location of the depository institution.

(2) Notwithstanding any other provision of law, a bank acting as an agent in accordance with this section for another depository institution shall not be considered to be a branch of the other depository institution.

(3) A depository institution shall not:

(a) Conduct any activity as an agent under subsection (1) or (6) of this section which such institution is prohibited from conducting as a principal under any applicable law; or

(b) As a principal, have an agent conduct any activity under subsection (1) or (6) of this section which the institution is prohibited from conducting under any applicable law.

(4) No provision of this section shall be construed as affecting:

(a) The authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(b) Whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other depository institution.

(5) An agency relationship between depository institutions under subsection (1) or (6) of this section shall be on terms that are consistent with safe and sound banking practices and all applicable rules and regulations of the department, any appropriate federal banking regulatory agency, and, if applicable, any foreign state agency.

(6) A savings association insured by the Federal Deposit Insurance Corporation which was an affiliate of a bank on or before July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as an agent for such bank under this section to the extent such activities are conducted only in:

(a) Nebraska or any foreign state in which:

(i) The bank is not prohibited from operating a branch under any provision of law; and

(ii) The savings association maintained an office or branch and conducted business on or before July 1, 1994; or

(b) Nebraska or any foreign state in which:

(i) The bank is not expressly prohibited from operating a branch under applicable Nebraska or foreign state law; and

(ii) The savings association maintained a main office and conducted business on or before July 1, 1994.

(7) For purposes of this section:

(a) Bank means any bank, in addition to those defined in section 8-909, chartered by the United States or by any foreign state agency and insured by the Federal Deposit Insurance Corporation;

(b) Savings institution means any savings and loan association, building and loan association, capital stock savings association, savings bank, or similar entity, chartered under Chapter 8, article 3, chartered by the United States, or chartered by any foreign state agency and insured by the Federal Deposit Insurance Corporation;

(c) Depository institution means either a bank as defined in subdivision (a) of this subsection or a savings institution as defined in subdivision (b) of this subsection;

(d) Affiliate means any entity that controls, is controlled by, or is under common control with another entity; and

(e) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, savings institution, or holding company or to control in any manner the election of the majority of directors of any bank, savings institution, or holding company.

Source: Laws 1995, LB 384, § 27; Laws 2003, LB 217, § 17.

8-917 Rules and regulations.

The department may adopt and promulgate rules and regulations to administer and to carry out the purposes of the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 28.

ARTICLE 10

NEBRASKA SALE OF CHECKS AND FUNDS TRANSMISSION ACT

Section
8-1001. Terms, defined.
8-1001.01. Act, how cited.
8-1002. Sale of checks; license required.
8-1003. Act; applicability.
8-1004. Applicant for license; qualifications.
8-1005. Application; contents.
8-1006. Application; fee; financial statement; surety bond; conditions.
8-1007. Investigation; issuance of license.
8-1008. Licensee; bond; requirements.
8-1009. Annual license fee.
8-1010. Licensee; places of business.
8-1011. Licensee; name imprinted on checks.
8-1012. License; suspension or revocation; conditions; procedure.
8-1012.01. Director; powers; costs; penalty.
8-1013. Sale of checks; license; revocation; notice; hearing; appeal.
8-1014. Violations; penalty.
8-1015. Transferred to section 8-1001.01.
8-1016. Violation; cease and desist order; department; powers; review.
8-1017. Investigation or proceeding; enforcement of act; director; powers; failure to comply with act; effect.

8-1001 Terms, defined.

For purposes of the Nebraska Sale of Checks and Funds Transmission Act, unless the context otherwise requires:

(1) Person means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation, but does not include the United States Government or the government of the State of Nebraska;

(2) Licensee means any person duly licensed pursuant to the act;

(3) Check means any check, draft, money order, personal money order, or other instrument, order, or instruction for the transmission or payment of money;

(4) Personal money order means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission, or handling of money, whether such instrument is signed by the seller, by the purchaser or remitter, or by some other person;

(5) Director means the Director of Banking and Finance;

(6) Financial institution has the same meaning as in section 8-101; and

(7) Transmission means a transfer by oral, written, or electronic means or instruction.

Source: Laws 1965, c. 26, § 1, p. 192; Laws 1993, LB 121, § 94; Laws 2001, LB 53, § 8; Laws 2003, LB 217, § 18; Laws 2004, LB 999, § 7.

8-1001.01 Act, how cited.

Sections 8-1001 to 8-1017 shall be known and may be cited as the Nebraska Sale of Checks and Funds Transmission Act.

Source: Laws 1965, c. 26, § 16, p. 198; Laws 2001, LB 53, § 18; R.S.Supp.,2002, § 8-1015; Laws 2003, LB 217, § 19; Laws 2006, LB 876, § 14.

8-1002 Sale of checks; license required.

No person shall engage in the business of selling checks, as a service or for a fee or other consideration, without having first obtained a license under the Nebraska Sale of Checks and Funds Transmission Act.

Source: Laws 1965, c. 26, § 2, p. 192; Laws 1988, LB 795, § 2; Laws 2001, LB 53, § 9.

8-1003 Act; applicability.

(1) Nothing in the Nebraska Sale of Checks and Funds Transmission Act shall apply to the sale or issuance of checks or the transmission of money by:

(a) Departments or agencies of the United States or of any state or municipal government; or

(b) Financial institutions.

(2) The act shall not apply to the receipt of money by an incorporated telegraph company as described in section 86-601 at any office of such company for immediate transmission by telegraph if the business of such company is not limited solely to the transmission of money.

Source: Laws 1965, c. 26, § 3, p. 193; Laws 1994, LB 877, § 1; Laws 2001, LB 53, § 10; Laws 2003, LB 217, § 20; Laws 2004, LB 999, § 8.

8-1004 Applicant for license; qualifications.

To qualify for a license under the Nebraska Sale of Checks and Funds Transmission Act, an applicant shall meet the following requirements:

(1) The applicant shall have a net worth of at least fifty thousand dollars computed according to generally accepted accounting principles; and

(2) The financing responsibility, financial condition, business experience, character, and general fitness of the applicant shall be such as reasonably to warrant the belief that applicant's business will be conducted honestly, carefully, and efficiently. To the extent deemed advisable by him or her, the director may investigate and consider the qualifications of officers and directors of an applicant in determining whether this qualification has been met.

Source: Laws 1965, c. 26, § 4, p. 193; Laws 2001, LB 53, § 11.

8-1005 Application; contents.

Each application for such license shall be made in writing, under oath, to the director in such form as he or she may prescribe. The application shall state the full name and business address of:

(1) The proprietor, if the applicant is an individual;

(2) Every member, if the applicant is a partnership, limited liability company, or association, except that if the applicant is a joint-stock association having fifty or more members, the name and business address need be given only of the association and each officer and director thereof;

(3) Every trustee and officer if the applicant is a trust; or

(4) The corporation and each officer and director thereof, if the applicant is a corporation.

Source: Laws 1965, c. 26, § 5, p. 193; Laws 1993, LB 121, § 95.

8-1006 Application; fee; financial statement; surety bond; conditions.

(1) Each application for a license shall be accompanied by:

(a) An application fee of one thousand dollars which shall not be subject to refund but which, if the license be granted, shall constitute the license fee for the first license year or part thereof;

(b) Financial statements, reasonably satisfactory to the director, showing that the applicant's net worth exceeds fifty thousand dollars; and

(c) Except as otherwise provided in subsection (2) of this section, a surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of one hundred thousand dollars and in an additional principal sum of five thousand dollars for each location, in excess of one, at which the applicant proposes to sell checks in this state, but in no event shall the bond be required to be in excess of two hundred fifty thousand dollars. The bond shall be in form satisfactory to the director and shall run to the state for the benefit of any claimants against the applicant or its agents to secure the faithful performance of the obligations of the applicant and its agents with respect to the receipt, handling, transmission, and payment of money in connection with the sale of checks. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The bond shall remain in force and effect until the surety is released from liability by the director or until the bond is canceled by the surety, which cancellation may be had only upon thirty days' written notice to the director. Such cancellation shall not affect any liability incurred or accrued prior to the termination of the thirty-day period.

(2) In lieu of the corporate surety bond or bonds required by subdivision (1)(c) of this section, or of any portion of the principal thereof as required by such subdivision, the applicant may deposit, with the director or with such state banks or trust companies or national banks in this state as such applicant may designate and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and

held to secure the same obligations as would the surety bond. The depositor shall have the right, with the approval of the director, to substitute other securities for those deposited and shall be required to do so on written order of the director made for good cause shown. The depositor shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the licensee so depositing shall continue solvent, and is not in violation of the Nebraska Sale of Checks and Funds Transmission Act, such licensee shall be permitted to receive the interest or dividends on such deposit. The director shall provide for custody of such securities by a qualified trust company or bank located in the State of Nebraska or by any federal reserve bank. The compensation, if any, of the custodian for acting as such under the provisions of this section shall be paid by the depositing licensee. All such securities shall be subject to sale and transfer and to the disposal of the proceeds by the director only on the order of a court of competent jurisdiction.

Source: Laws 1965, c. 26, § 6, p. 194; Laws 2001, LB 53, § 12; Laws 2004, LB 999, § 9; Laws 2005, LB 533, § 23.

8-1007 Investigation; issuance of license.

Upon the filing of an application in due form, accompanied by the fee and documents mentioned in section 8-1006, the director shall investigate to ascertain whether the qualifications prescribed by section 8-1004 have been met. If the director approves such documents and finds that the bond is in the prescribed amount, he or she shall issue to the applicant a license to engage in the business of selling checks in this state pursuant to the Nebraska Sale of Checks and Funds Transmission Act.

Source: Laws 1965, c. 26, § 7, p. 195; Laws 2001, LB 53, § 13.

8-1008 Licensee; bond; requirements.

After a license has been granted, the licensee shall maintain the bond or securities in the amount prescribed by section 8-1006, as follows:

(1) Each licensee who does not have on file or deposit a bond or securities in the undiminished sum of two hundred fifty thousand dollars shall file semiannual reports with the director setting forth the locations at which the licensee sells checks in this state as of January 1 and July 1 in each year with the report for each such date being due on or before the fifteenth day thereafter. The licensee shall not be required to list on such reports those agents which are exempted by the provisions of section 8-1003. Within ten days following the filing of such reports, the principal sum of the bond or securities shall be increased to reflect any increase in the number of locations and may be decreased to reflect any decrease in the number of locations; and

(2) If the director finds at any time that any bond required by the Nebraska Sale of Checks and Funds Transmission Act is insecure, insufficient, or exhausted, an additional bond to be approved by the director shall be filed by the licensee within ten days after written demand therefor by the director.

Source: Laws 1965, c. 26, § 8, p. 196; Laws 2001, LB 53, § 14; Laws 2004, LB 999, § 10; Laws 2006, LB 876, § 15.

8-1009 Annual license fee.

Each licensee shall, annually on or before July 1 of each year, file a license renewal application and pay to the director a license fee of two hundred fifty dollars.

Source: Laws 1965, c. 26, § 9, p. 196; Laws 2004, LB 999, § 11.

8-1010 Licensee; places of business.

Each licensee may conduct business at one or more locations within this state and through or by means of such employees, agents, or representatives as the licensee may designate and appoint from time to time. In addition to any reports which may be required by subdivision (1) of section 8-1008, each licensee shall notify the Department of Banking and Finance annually on or before July 1 of each year of all such locations except for agents which are exempted under section 8-1003. No license under the Nebraska Sale of Checks and Funds Transmission Act shall be required of any employee, agent, or representative who is acting for or in behalf of a licensee in the sale of checks of which the licensee is the issuer.

Source: Laws 1965, c. 26, § 10, p. 196; Laws 2001, LB 53, § 15; Laws 2004, LB 999, § 12; Laws 2006, LB 876, § 16.

8-1011 Licensee; name imprinted on checks.

Every check sold by a licensee, directly or through an agent, shall bear the name of the licensee clearly imprinted thereon.

Source: Laws 1965, c. 26, § 11, p. 197.

8-1012 License; suspension or revocation; conditions; procedure.

(1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke a license issued under the Nebraska Sale of Checks and Funds Transmission Act on any ground on which he or she may refuse to grant a license or for violation of the act, for failure to pay an annual fee, or for the failure or refusal of a licensee to comply with any order, decision, or finding of the director made pursuant to the act. In furtherance of the provisions of this section, the director, if he or she has reasonable cause to believe that the grounds for revocation exist, may investigate the business, books, and records of the licensee.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members for acts committed before the surrender.

(4)(a) If a licensee fails to renew its license as required by section 8-1009 and does not voluntarily surrender the license pursuant to this section, the Department of Banking and Finance may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 8-1008, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 1965, c. 26, § 12, p. 197; Laws 2001, LB 53, § 16; Laws 2006, LB 876, § 17.

Cross References

Administrative Procedure Act, see section 84-920.

8-1012.01 Director; powers; costs; penalty.

(1) The director may examine the books, accounts, and records of each licensee.

(2) The director may contract with other state or federal regulatory agencies to conduct examinations of licensees if the licensee's principal place of business is outside of the State of Nebraska.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other governmental agency that has similar supervision in this or any other state.

(4) The director may enter into joint examinations or joint enforcement actions with any other governmental agency that has similar supervision in this or any other state over any licensee.

(5) The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the Nebraska Sale of Checks and Funds Transmission Act or to ensure compliance with Nebraska law.

(6) The cost of any examination conducted under this section shall be paid by the licensee.

(7) The director may request information from a licensee regarding the conduct of its business or matters incidental to the business. A licensee receiving such a request for information has twenty-one calendar days from receipt of such request in which to submit a response. The director may assess a penalty up to one thousand dollars per day for each day a licensee fails to respond.

Source: Laws 2003, LB 217, § 21; Laws 2004, LB 999, § 13.

8-1013 Sale of checks; license; revocation; notice; hearing; appeal.

No license shall be denied or revoked except on twenty days' notice to the applicant or licensee setting forth in writing the reasons therefor. Within five days of receipt of the notice, the applicant or licensee may make written demand for hearing. The director shall, with reasonable promptness, grant a hearing to any such applicant or licensee making written demand therefor and shall give the applicant or licensee at least twenty days' written notice of the time and place of such hearing by registered or certified mail addressed to the

principal place of business of such applicant or licensee. The director's decision thereon shall be rendered in writing after the close of the hearing and may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1965, c. 26, § 13, p. 197; Laws 1988, LB 352, § 11; Laws 2003, LB 217, § 22.

Cross References

Administrative Procedure Act, see section 84-920.

8-1014 Violations; penalty.

If any person to whom the Nebraska Sale of Checks and Funds Transmission Act applies, or any agent or representative of such person, violates any provision of the act or attempts to transact the business of selling or issuing checks without having first obtained a license from the director pursuant to the act, such person and each such agent or representative shall be guilty of a Class III misdemeanor. Each transaction in violation of the act and each day that a violation continues shall be a separate offense.

Source: Laws 1965, c. 26, § 14, p. 197; Laws 1977, LB 40, § 64; Laws 2001, LB 53, § 17.

8-1015 Transferred to section 8-1001.01.

8-1016 Violation; cease and desist order; department; powers; review.

(1) The Department of Banking and Finance may order any person to cease and desist whenever the department determines that the person has violated any provision of the Nebraska Sale of Checks and Funds Transmission Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of written request from the affected person a hearing will be scheduled within thirty business days after the date of receipt of the written request, unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for enforcement of the cease and desist order.

Source: Laws 2006, LB 876, § 18.

Cross References

Administrative Procedure Act, see section 84-920.

8-1017 Investigation or proceeding; enforcement of act; director; powers; failure to comply with act; effect.

(1) For the purpose of any investigation or proceeding under the Nebraska Sale of Checks and Funds Transmission Act, the director or any officer

designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

(2) The director may request the Attorney General to enforce the act. A civil enforcement action by the Attorney General may be filed in the district court of Lancaster County. A civil enforcement action by the Attorney General may seek temporary and permanent injunctive relief, restitution for a customer aggrieved by a violation of the act, and costs for the investigation and prosecution of the enforcement action.

(3) Failure to comply with the act shall not affect the validity or enforceability of any transaction. A person entering into a transaction pursuant to the act is not required to ascertain the extent of compliance with the act.

(4) Nothing in the act shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the sale of checks or funds transmission business or the right of the state to punish any person for any violation of law.

Source: Laws 2006, LB 876, § 19.

ARTICLE 11

SECURITIES ACT OF NEBRASKA

Section

8-1101 Terms, defined.

For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6), (7), or (8) of section 8-1110, (ii) effecting certain transactions exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section;

(3) Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is (a) registered under section 203 of the Investment Advisers Act of 1940 or (b) is excluded from the definition of investment adviser under section 202 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations promulgated thereunder;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser, or (i) such other persons not within the intent of this subdivision as the director may by rule, regulation, or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells

investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued and (b) with respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, issuer means the person effecting a transaction with a purchaser of such contract;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Advisers Act of 1940, Investment Company Act of 1940, and Commodity Exchange Act means the federal statutes of those names as amended on or before December 31, 2000;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in

payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company. Security also does not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company;

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico; and

(17) Viatical settlement contract means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. Viatical settlement contract does not include (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act, (b) the assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law.

Source: Laws 1965, c. 549, § 1, p. 1763; Laws 1973, LB 167, § 1; Laws 1977, LB 263, § 1; Laws 1978, LB 760, § 1; Laws 1989, LB 60, § 1; Laws 1991, LB 305, § 2; Laws 1993, LB 216, § 1; Laws 1993, LB 121, § 96; Laws 1994, LB 884, § 10; Laws 1995, LB 119, § 1; Laws 1996, LB 1053, § 7; Laws 1997, LB 335, § 1; Laws 2001, LB 52, § 43; Laws 2001, LB 53, § 19.

Cross References

Viatical Settlements Act, see section 44-1101.

Pursuant to subsection (15) of this section, in order to constitute an ''investment contract'', it is not required that the profits be derived solely from the entrepreneurial or managerial efforts of others. State v. Irons, 254 Neb. 18, 574 N.W.2d 144 (1998).

An ordinary certificate of deposit with a fixed interest rate, issued by a heavily regulated and federally insured bank, which involves little risk of loss and virtually guaranteed payment, does not constitute a ''security'' as defined by subsection (12) (now subsection (15) of this section) of this section. Wrede v. Exchange Bank of Gibbon, 247 Neb. 907, 531 N.W.2d 523 (1995).

Under subsection (12) of this section (now subsection (15) of this section), ''share'' means a part or definite portion of a thing owned by a number of persons in common, contemplates something owned in common by two or more persons, and has reference to that part of the undivided interest which belongs to some one of them. A share is a unit of stock representing ownership in a corporation. State v. Jones, 235 Neb. 1, 453 N.W.2d 447 (1990).

In suit by customer against brokerage firm for damages from stock speculations, the questions of fraud and arrangement of credit were fact questions for the trial court. Shull v. Dain, Kalman & Quail, Inc., 561 F.2d 152 (8th Cir. 1977).

8-1102 Fraudulent and other prohibited practices.

(1) It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud any person;

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(c) To knowingly sell any security to or purchase any security from a client while acting as principal for his or her own account, act as a broker for a person other than the client, or knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client to the transaction. This subdivision shall not apply to any transaction involving a broker-dealer's client if the broker-dealer is not acting as an investment adviser in the transaction;

(d) To engage in dishonest or unethical practices as the director may define by rule, regulation, or order; or

(e) In the solicitation of advisory clients, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(3) Except as may be permitted by rule, regulation, or order of the director, it shall be unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew any investment advisory contract:

(a) Which provides for the compensation of the investment adviser or investment adviser representative on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of any client;

(b) Unless the investment advisory contract prohibits in writing the assignment of the contract by the investment adviser or investment adviser representative without the consent of the other party to the contract; and

(c) Unless the investment advisory contract provides in writing that if the investment adviser is a partnership or a limited liability company, the other party to the contract shall be notified of any change in the membership of the partnership or limited liability company within a reasonable time after the change.

(4) Subdivision (3)(a) of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. Assignment, as used in subdivision (3)(b) of this section, shall include any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, except that if the investment adviser is a partnership or a limited liability company, no assignment of an investment advisory contract shall be considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after

admission, will be only a minority of the members and will have only a minority interest in the business.

(5) It shall be unlawful for any investment adviser or investment adviser representative to take or have custody of any securities or funds of any client if:

(a) The director by rule, regulation, or order prohibits the taking or custody; or

(b) In the absence of any rule, regulation, or order by the director, the investment adviser or investment adviser representative fails to notify the director that he or she has or may have custody.

(6) The director may by rule, regulation, or order adopt and promulgate exemptions from subdivisions (2)(c), (3)(a), (3)(b), and (3)(c) of this section when the exemptions are consistent with the public interest and are within the purposes fairly intended by the Securities Act of Nebraska.

Source: Laws 1965, c. 549, § 2, p. 1766; Laws 1990, LB 938, § 1; Laws 1993, LB 216, § 2; Laws 1994, LB 884, § 11.

Proof of specific intent, evil motive, or knowledge that the law was being violated is not required to sustain a conviction under the Securities Act of Nebraska. State v. Jones, 235 Neb. 1, 453 N.W.2d 447 (1990).

8-1103 Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; director; bar person from engaging in securities business; when.

(1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. The registration of an agent shall not be effective unless the agent is employed by a broker-dealer or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.

(2)(a) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he or she is registered under the act.

(b) Except with respect to federal covered advisers whose only clients are those described in subdivision (7)(g)(i) of section 8-1101, it shall be unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the director the documents which are filed with the Securities and Exchange Commission, as the director may by rule and regulation or order require, a consent to service of process, and a two-hundred-dollar filing fee prior to acting as a federal covered adviser in this state.

(c)(i) It shall be unlawful for any investment adviser required to be registered under the Securities Act of Nebraska to employ an investment adviser representative unless the investment adviser representative is registered under the act.

(ii) It shall be unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of

business located in this state unless such investment adviser representative is registered under the Securities Act of Nebraska or is exempt from registration.

(d) The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser or a federal covered adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the director.

(3) A broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the director an application and payment of the fee prescribed in subsection (6) of this section. If the applicant is an individual, the application shall include the applicant's social security number. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, limited liability company members, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, limited liability company member, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection (9) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization;

(b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(e) The applicant's financial condition and history; and

(f) Information to be furnished or disseminated to any client or prospective client if the applicant is an investment adviser.

(4)(a) If no denial order is in effect and no proceeding is pending under subsection (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date.

(b) The director shall require as conditions of registration:

(i) That the applicant, except for renewal, and, in the case of a corporation, partnership, or limited liability company, the officers, directors, partners, or limited liability company members pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the Department of Banking and Finance. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily

passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director;

(iii) That an issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require an issuer-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118;

(iv) That a broker-dealer have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations provided in section 15 of the Securities Exchange Act of 1934. In lieu of any such minimum net capital requirement, the director may by rule and regulation or order require a broker-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 15 of the Securities Exchange Act of 1934. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118; and

(v) That an investment adviser have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities and those investment advisers who do not. In lieu of any such minimum net capital requirement, the director may require by rule and regulation or order an investment adviser to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 222 of the Investment Advisers Act of 1940. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer, agent, investment adviser, and investment adviser representative shall be effective for a period of not more than one year and shall expire on December 31 unless renewed. Registration of an issuer-dealer shall be effective for a period of not more than one year and may be renewed as provided in this section. Notice filings by a federal covered adviser shall be effective for a period of not more than one year and shall expire on December 31 unless renewed.

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the Securities Act of Nebraska.

(5) Registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the director or with a registration depository designated by the director prior to the expiration date such information as the director by rule, regulation, or order may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative previously filed with the director by the applicant, and payment of the prescribed fee. A federal covered adviser may renew its notice filing by filing with the director prior to the expiration thereof the documents filed with the Securities and Exchange Commission, as the director by rule or regulation may require, a consent to service of process, and the prescribed fee.

(6) The fee for initial or renewal registration shall be two hundred fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one hundred dollars for an issuer-dealer, forty dollars for an agent, and forty dollars for an investment adviser representative. The fee for initial or renewal filings for a federal covered adviser shall be two hundred dollars. When an application is denied or withdrawn, the director shall retain all of the fee.

(7)(a) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the director prescribes by rule and regulation or order, except as provided by section 15 of the Securities Exchange Act of 1934, in connection with broker-dealers, and section 222 of the Investment Advisers Act of 1940, in connection with investment advisers. All records so required shall be preserved for such period as the director prescribes by rule and regulation or order.

(b) All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. For the purpose of avoiding unnecessary duplication of examinations, the director, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Costs of such examinations shall be borne by the registrant.

(c) Every registered broker-dealer, except as provided in section 15 of the Securities Exchange Act of 1934, and investment adviser, except as provided by section 222 of the Investment Advisers Act of 1940, shall file such financial reports as the director may prescribe by rule and regulation or order.

(d) If any information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall promptly file a correcting amendment or a federal covered adviser shall file a correcting amendment when such amendment is required to be filed with the Securities and Exchange Commission.

(8) With respect to investment advisers, the director may require that certain information be furnished or disseminated to clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the director in his or her discretion, information furnished to clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules and regulations under such act may be used in whole or in part to satisfy the information requirement prescribed in this subsection.

(9)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar, censure, or impose a fine pursuant to subsection (4) of section 8-1108.01 on any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or a predecessor act or any rule, regulation, or order adopted and promulgated pursuant to the act or a predecessor act;

(iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or commodity or any aspect of the securities or commodities business or any felony;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business;

(v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative;

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(vii) Has engaged in dishonest or unethical practices in the securities or commodities business;

(viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(ix) Has not complied with a condition imposed by the director under subsection (4) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected;

(xi) Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska; or

(xii) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in an investment-related industry has been revoked by any other state, federal, or foreign governmental agency or self-regulatory organization for cause, or the person has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the law of any state, federal, or foreign governmental unit.

(b) The director may by order bar any person from engaging in the securities business in this state if the director finds that the order is in the public interest and that the person has:

(i) Willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or a predecessor act or any rule, regulation, or order adopted and promulgated pursuant to the act or a predecessor act; or

(ii) Engaged in dishonest or unethical practices in the securities business, which activity at the time was subject to regulation by the Securities Act of Nebraska.

(c)(i) The director may not institute a proceeding under this section on the basis of a final judicial or administrative order made known to him or her by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. For purposes of this subdivision, a final judicial or administrative order does not include an order that is stayed or subject to further review or appeal. This subdivision shall not apply to renewed registrations.

(ii) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for

hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

(d) If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within a shorter period of time as the director may determine unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a revocation or suspension proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the director shall order.

Source: Laws 1965, c. 549, § 3, p. 1768; Laws 1973, LB 167, § 2; Laws 1977, LB 263, § 2; Laws 1989, LB 60, § 2; Laws 1990, LB 956, § 7; Laws 1991, LB 305, § 3; Laws 1993, LB 216, § 3; Laws 1993, LB 121, § 97; Laws 1994, LB 884, § 12; Laws 1997, LB 335, § 2; Laws 1997, LB 752, § 60; Laws 2000, LB 932, § 19; Laws 2001, LB 53, § 20; Laws 2003, LB 217, § 23.

An agent is no longer registered when the issuer-dealer's registration has been revoked. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

8-1103.01 Repealed. Laws 2003, LB 217, § 50.

8-1104 Registration of securities; exceptions.

It shall be unlawful for any person to offer or sell any security in this state unless (1) such security is registered by notification under section 8-1105, by coordination under section 8-1106, or by qualification under section 8-1107, (2) the security is exempt under section 8-1110 or is sold in a transaction exempt under section 8-1111, or (3) the security is a federal covered security.

Source: Laws 1965, c. 549, § 4, p. 1773; Laws 1997, LB 335, § 3.

It is unlawful to offer or sell unregistered securities which are not exempt from registration or unless the securities are sold in an exempt transaction. Labenz v. Labenz, 198 Neb. 548, 253 N.W.2d 855 (1977).

8-1105 Registration by notification.

(1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 8-1106:

(a) Any security whose issuer and any predecessors have been in continuous operation for at least five years if:

(i) There has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any

security of the issuer or any predecessor with a fixed maturity or a fixed interest or dividend provision; and

(ii) The issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which equal at least five percent of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed, as measured by the maximum offering price or the market price on a day selected by the registrant within thirty days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety days of the date of filing the registration statement, or if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three full fiscal years, equal to at least five percent of the amount, as measured by the maximum public offering price, of such securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued; and

(b) Any security, other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if any security of the same class has ever been registered under the Securities Act of Nebraska or a predecessor act, or the security being registered was originally issued pursuant to an exemption under the Securities Act of Nebraska or a predecessor act.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) A statement demonstrating eligibility for registration by notification;

(b) With respect to the issuer: Its name, address, and form of organization; the state or foreign jurisdiction and the date of its organization; and the general character and location of its business;

(c) A description of the securities being registered;

(d) Total amount of securities to be offered and amount of securities to be offered in this state;

(e) The price at which the securities are to be offered for sale to the public; any variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees including cash, securities, or anything else of value;

(f) Names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) Description of any security options outstanding or to be created in connection with the offering;

(h) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(i) A copy of any offering circular or prospectus to be used in connection with the offering; and

(j) In the case of any registration under subdivision (1)(b) of this section which does not also satisfy the conditions of subdivision (1)(a) of this section, a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two years.

(3) If no stop order is in effect and no proceeding is pending under section 8-1109, a registration statement under this section shall automatically become effective at 3 o'clock Central Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment or at such earlier time as the director shall determine.

Source: Laws 1965, c. 549, § 5, p. 1773; Laws 1973, LB 167, § 3; Laws 1998, LB 894, § 1.

8-1106 Registration by coordination.

(1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) Three copies of the prospectus filed under the Securities Act of 1933 together with all amendments thereto;

(b) The amount of securities to be offered in this state;

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(e) If the director by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the director requests, any other information or copies of any other documents filed under the Securities Act of 1933; and

(g) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section shall automatically become effective at the moment the federal registration statement or qualification becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under the Securities Act of 1933, as amended, or under section 8-1109;

(b) The registration statement has been on file with the director for at least ten days; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been filed and the offering is made within those limitations. The registrant shall promptly notify the director by facsimile transmission or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. Price amendment shall mean the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there has been compliance with this subsection, if he or she promptly notifies the registrant by telephone or telegram and promptly confirms by letter or telegram when he or she notifies by telephone of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order shall be void as of the time of its entry. The director may by rule or otherwise waive either or both of the conditions specified in subsections (2) and (3) of this section. If the federal registration statement or qualification becomes effective before all these conditions have been satisfied and they are not waived, the registration statement shall automatically become effective as soon as all the conditions have been satisfied.

Source: Laws 1965, c. 549, § 6, p. 1776; Laws 1967, c. 29, § 1, p. 142; Laws 1977, LB 263, § 3; Laws 1988, LB 795, § 3; Laws 1993, LB 216, § 4.

8-1107 Registration by qualification.

(1) Any security may be registered by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) With respect to the issuer and any significant subsidiary, its name, address, and form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions, his name, address, and principal occupation for the past five years, the amount of securities of the issuer held by him as of a specified date within ninety days of the filing of the registration statement, the remuneration paid to all such persons in the aggre-

gate during the past twelve months, and estimated to be paid during the next twelve months, directly or indirectly, by the issuer together with all predecessors, parents and subsidiaries;

(c) With respect to any person not named in subdivision (e) of this subsection, owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b) of this subsection other than his occupation;

(d) With respect to every promoter, not named in subdivision (b) of this subsection, if the issuer was organized within the past three years, the information specified in subdivision (b) of this subsection, any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;

(e) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration whether in the form of cash, physical assets, services, patents, goodwill, or anything else for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(f) The kind and amount of securities to be offered, the amount to be offered in this state, the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions, the estimated aggregate underwriting and selling discounts or commissions and finders' fees including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering, the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering, the name and address of every underwriter and every recipient of a finders' fee, a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the order or priority in which the proceeds will be used for the purposes stated, the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivision (b), (c), (d), (e) or (g) of this subsection and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(i) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission, and

a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets including any such litigation or proceeding known to be contemplated by governmental authorities;

(k) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws, as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered; and

(n) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(3) A registration statement under this section shall become effective when the director so orders. The director shall require as a condition of registration under this section that a prospectus containing substantially the information specified in subdivisions (a) to (h) of subsection (2) of this section be sent or given to each person to whom an offer is made before or concurrently with the first written offer made to him otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, the confirmation of any sale made by or for the account of any such person, payment pursuant to any such sale, or delivery of the security pursuant to any such sale, whichever first occurs, but the director shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

Source: Laws 1965, c. 549, § 7, p. 1778.

8-1108 Registration of securities; requirements; fees; effective date; reports; director, powers.

(1) A registration statement may be filed by the issuer, by any other person on whose behalf the offering is to be made, or by a registered broker-dealer. Any document filed under the Securities Act of Nebraska or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The director may by rule and regulation or order permit the omission of any item of information or document from any registration statement.

(2) The director may require as a condition of registration by qualification (a) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, (b) that the applicant comply with the federal Securities Act of 1933 if it appears to the director to be in the public interest or that the registered security is or will be offered in such manner as to be subject to such act, (c) such reasonable conditions, restrictions, or limitations upon the offering as may be in the public interest, or (d) that any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash, be delivered in escrow to him or her or to some other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the director to have been actually earned on the investment in any common stock so held. The director shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(3) For the registration of securities by notification, coordination, or qualification, there shall be paid to the director a registration fee of one-tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the fee shall in no case be less than one hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 8-1109, the director shall retain one hundred dollars of the fee. Any issuer who sells securities in this state in excess of the aggregate amount of securities registered may, at the discretion of the director and while such registration is still effective, apply to register the excess securities sold to persons within this state by paying a registration fee of three-tenths of one percent for the difference between the initial fee paid and the fee required in this subsection. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

(4) When securities are registered by notification, coordination, or qualification, they may be offered and sold by a registered broker-dealer. Every registration shall remain effective for one year or until sooner revoked by the director or sooner terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security shall be considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

(5) The director may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which are being offered and sold directly by or for the account of the issuer.

(6) A registration of securities shall be effective for a period of one year or such shorter period as the director may determine.

Source: Laws 1965, c. 549, § 8, p. 1781; Laws 1988, LB 1157, § 1; Laws 1991, LB 305, § 4; Laws 1997, LB 335, § 4.

8-1108.01 Securities; sale without registration; cease and desist order; fine; hearing.

(1) Whenever it appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it appears to the director that any person is acting as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative without registration as such or acting as a federal covered adviser without making a notice filing under the act, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such or has made the required notice filing under the act.

(3) Whenever it appears to the director that any person is violating section 8-1102, he or she may order the person to cease and desist from such activity.

(4) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the act or any rule, regulation, or order issued under the act. The fine and costs shall be in addition to all other penalties imposed by the laws of this state, shall be collected by the director, and shall be remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(5) After such an order has been made under subsection (1), (2), (3), or (4) of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within thirty business days after receipt of the request, unless both parties consent to a later date or the hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his

or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

Source: Laws 1974, LB 721, § 5; Laws 1987, LB 650, § 1; Laws 1990, LB 956, § 8; Laws 1993, LB 216, § 5; Laws 1997, LB 335, § 5; Laws 2001, LB 53, § 21.

8-1108.02 Federal covered security; filing; director; powers; sales; requirements.

(1) The director, by rule and regulation or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a filing fee as prescribed by section 8-1108.03;

(b) After the initial offer of such federal covered security in this state, all documents which are part of any amendment to the federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(c) A sales report of the total amount of such federal covered securities offered or sold in this state, together with the filing fee prescribed by section 8-1108.03.

(2) With respect to any security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, the director, by rule and regulation or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than fifteen days after the first sale of such federal covered security in this state, together with a filing fee of two hundred dollars.

(3) The director, by rule and regulation or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or (4)(A), (B), and (C) of the Securities Act of 1933, together with a filing fee of two hundred dollars.

(4) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that (a) the order is in the public interest and (b) there is a failure to comply with any condition established under this section or with any other applicable provision of the Securities Act of Nebraska.

(5) The director, by rule and regulation or order, may waive any or all of the provisions of this section, except that the director does not have the authority to waive the payment of fees as required by this section.

(6) No person may bring an action pursuant to section 8-1118 based on the failure of an issuer to file any notice or pay any fee required by this section.

(7) All federal covered securities offered or sold in this state must be sold through a registered agent of a broker-dealer registered under the Securities Act of Nebraska or by persons duly exempted or excluded from such registration, except that this subsection shall not apply to the offer or sale of a federal

covered security under section 18(b)(4)(D) of the Securities Act of 1933 if no commission or other remuneration is paid directly or indirectly for soliciting any prospective buyer.

Source: Laws 1997, LB 335, § 9.

8-1108.03 Federal covered security; filing fee; notice; open-end management company, face-amount certificate company, or unit investment trust; issue indefinite amount of securities; when.

(1) Except as provided in subsections (2) and (3) of this section, there shall be paid to the director a filing fee of one-tenth of one percent of the aggregate offering price of the federal covered securities under section 18(b)(2) of the Securities Act of 1933 which are to be offered in this state, but the filing fee shall in no case be less than one hundred dollars. If an issuer of securities covered by section 8-1108.02 sells securities in this state in excess of the aggregate amount of securities for which a filing fee has been paid, the director may allow the issuer to amend its filing to include the excess securities sold to persons within this state if the issuer pays a filing fee of three-tenths of one percent for the difference between the initial filing fee paid and the filing fee required under this section for the total amount of securities sold. Any such amendment of a filing to cover the excess securities, if granted, shall be effective retroactively to the date of the existing filing.

Any notice filed pursuant to this section shall be effective for a period of one year from the date received by the director or from such later date as indicated on the notice unless sooner terminated by the issuer. Notice filings must be renewed annually. Notices may be amended by submitting an amended notice filing indicating any material changes and paying any fees, pursuant to this section, that may be required by an increase in the amount of securities covered by the notice.

(2) An open-end management company or a face-amount certificate company, as those terms are defined in the Investment Company Act of 1940, may choose to issue an indefinite amount of securities, if the following conditions are met:

(a) The filing made pursuant to subsection (1) of section 8-1108.02 states the company intends to issue an indefinite amount of securities in this state and is accompanied by a filing fee of one thousand dollars;

(b) Within ninety calendar days after the expiration of the notice, the company files a sales report containing the actual sales that occurred in this state for the one-year notice period just expired. During such ninety-day period, the notice filing shall be considered continuous;

(c) If the sales report required by subdivision (b) of this subsection shows that the company sold securities in excess of the amount of securities for which the filing fee was paid, the company must pay an additional fee to be calculated as follows: One-tenth of one percent of the aggregate amount of securities sold up to the first ten million dollars; and one-twentieth of one percent of the remainder of the aggregate amount of securities sold. The initial filing fee of one thousand dollars shall be deducted from the fee required to be paid pursuant to such subdivision. If this calculation results in a negative amount, no payment shall be made and no credit or refund shall be allowed or returned for such negative amount;

(d) A company may continue the effectiveness of its notice to issue an indefinite amount of securities for another notification period if, upon the filing of a sales report required by subdivision (b) of this subsection, the company pays the renewal filing fee of one thousand dollars pursuant to subdivision (a) of this subsection, plus any additional fee which may be owed pursuant to subdivision (c) of this subsection;

(e) The notification shall be effective for a period of one year beginning on the date the notice is received by the director unless a later date is indicated on the notice; and

(f) Failure to file the sales report and pay any additional fees owed shall be cause for the director to issue an order suspending sales of the securities for which the sales report has not been filed and the appropriate fee has not been paid.

(3) A unit investment trust, as that term is defined in the Investment Company Act of 1940, may choose to issue an indefinite amount of securities for a period of one year or less if the following conditions are met:

(a) The unit investment trust issuer electing to offer an indefinite amount of securities files a notice pursuant to subsection (1) of section 8-1108.02, stating that it intends to issue an indefinite amount of securities for a period of one year or less in this state, and pays an initial filing fee of one hundred dollars with the notice filing;

(b) Within ninety calendar days after the occurrence of the earlier of the expiration of the trust's notice filing period, the termination of the offering by the issuer, or the completion of the offering, each trust files a sales report containing the total aggregate offering price of the securities sold in this state for the offering period just expired or terminated;

(c) If the sales report required by subdivision (b) of this subsection shows that the trust sold securities in excess of the amount of securities for which the filing fee was paid, the trust must pay an additional fee of one-tenth of one percent of the aggregate offering price of the excess securities sold. The initial fee of one hundred dollars shall be deducted from the filing fee paid pursuant to this subdivision. If this calculation results in a negative amount, no payment need be made and no credit or refund shall be allowed or returned for that negative amount; and

(d) Failure to file the sales report and pay any additional fees owed shall be cause for the director to issue an order suspending sales of the securities for which the sales report has not been filed and the appropriate fee has not been paid.

Source: Laws 1997, LB 335, § 10.

8-1109 Registration of securities; denial, suspension, or revocation; grounds.

The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register securities by notification or coordination if he or she finds that the order is in the public interest and that:

(1) Any such registration statement registering securities, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the

light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of the Securities Act of Nebraska or any rule, order, or condition lawfully imposed under the act has been violated, in connection with the offering by the person filing the registration statement, the issuer, any partner, limited liability company member, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer or any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering. The director may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on, and he or she may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless the injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) When a security is sought to be registered by notification, it is not eligible for such registration;

(5) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (2)(g) of section 8-1106;

(6) The applicant or registrant has failed to pay the proper registration fee. The director may enter only a denial order under this subdivision and shall vacate any such order when the deficiency has been corrected. The director may not enter an order against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective;

(7) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(8) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(9) All or substantially all the enterprise or business of the issuer, promoter, or guarantor has been found to be unlawful by a final order of a court or administrative agency of competent jurisdiction; or

(10) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director.

Source: Laws 1965, c. 549, § 9, p. 1783; Laws 1967, c. 29, § 2, p. 144; Laws 1973, LB 167, § 4; Laws 1977, LB 263, § 4; Laws 1987, LB 27, § 1; Laws 1993, LB 121, § 98; Laws 1994, LB 884, § 13.

8-1109.01 Registration of securities; denial, suspension, revocation; additional grounds.

The director may issue an order denying effectiveness to, or suspend or revoke the effectiveness of, a registration statement to register securities by qualification if he or she finds that the conditions in subdivision (1) of section 8-1109, or if he or she finds that any of the following conditions exist:

(1) Such order is in the public interest;

(2) The issuer's plan of business, or the plan of financing is either unfair, unjust, inequitable, dishonest, oppressive, or fraudulent or would tend to work a fraud upon the purchaser;

(3) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(4) The securities offered or to be offered, or issued or to be issued, in payment for property, patents, formulas, goodwill, promotion, or intangible assets, are in excess of the reasonable value thereof, or the offering has been, or would be, made with unreasonable amounts of options;

(5) The offering has been or would be made with unreasonable amounts of underwriters' or sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options. However, in an application to register the securities for a holding company which is organized for one of its purposes to acquire or start an insurance company, the total commissions, organization and promotion expenses shall not exceed ten percent of the money paid upon stock subscriptions;

(6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(7) The enterprise or business of the issuer, promoter, or guarantor is unlawful;

(8) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director;

(9) There has been a violation of the Securities Act of Nebraska or of the orders of the director of which such issuer or registrant has notice;

(10) There has been a failure to keep and maintain sufficient records to permit an audit satisfactorily disclosing to the director the true situation or condition of such issuer;

(11) The applicant or registrant has failed to pay the proper registration, filing, or investigation fee;

(12) Any registration statement registering securities by qualification, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(13) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering.

Source: Laws 1967, c. 29, § 3, p. 145; Laws 2002, LB 857, § 1.

8-1109.02 Registration of securities; order of denial, suspension, or revocation; notice; request for hearing; modification of order.

Upon the entry of an order denying effectiveness to or suspending or revoking the effectiveness of a registration statement to register securities under any part of section 8-1109 or 8-1109.01, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that any person to whom the order is directed may request a hearing within fifteen business days after the issuance of

the order. Upon receipt of a written request the matter will be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. The director may modify or vacate a stop order if he or she finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Source: Laws 1967, c. 29, § 4, p. 146; Laws 1990, LB 956, § 9; Laws 2001, LB 53, § 22.

Failure of the Department of Banking and Finance to produce certified mail receipt is not conclusive proof that no notice was given. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

The alleged failure of the department to comply with the hearing requirements of this section were collateral matters in this criminal action and could not be raised on appeal. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

8-1110 Securities exempt from registration.

Sections 8-1104 to 8-1109 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the State of Nebraska, any political subdivision, or any agency or corporate or other instrumentality thereof or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state;

(4) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is: (a) Subject to the jurisdiction of the Interstate Commerce Commission; (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(5)(a) Any security listed on the Chicago Stock Exchange, the Chicago Board Options Exchange, Tier I of the Pacific Stock Exchange, Tier I of the Philadelphia Stock Exchange, or any other stock exchange or market system approved by the director, if, in each case, quotations have been available and public trading has taken place for such class of security prior to the offer or sale of that security in reliance on the exemption; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to

purchase or subscribe to any of the foregoing or to any security listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation National Market System.

(b) The issuer of any security which has been approved for listing or designation on notice of issuance on such exchanges or market systems, and for which no quotations have been available and no public trading has taken place for any of such issuer's securities, may rely upon the exemption stated in subdivision (5)(a) of this section, if a notice is filed with the director, together with a filing fee of two hundred dollars, prior to first use of a disclosure document covering such securities in this state, except that failure to file such notice in a timely manner may be cured by the director in his or her discretion.

(c) The director may adopt and promulgate rules and regulations which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from the exemption stated in subdivision (5)(a) of this section if the director finds that the listing requirements or market surveillance of such exchange or market system is such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(6) Any security which meets all of the following conditions:

(a) The issuer is organized under the laws of the United States or a state or has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the three years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or during the issuer's existence if such existence is less than seven years, in the payment of (i) principal, interest, dividends, or sinking-fund installments on preferred stock or indebtedness for borrowed money or (ii) rentals under leases with terms of three or more years;

(d) The issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. However, if the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision: (i) Last fiscal year means the most recent year for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering; (ii) finance company means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring; and (iii) liquid assets means (A)

cash, (B) receivables payable on demand or not more than twelve months following the close of the company's last fiscal year less applicable reserves and unearned income, and (C) readily marketable securities less applicable reserves and unearned income;

(e) If the offering is of stock or shares other than preferred stock or shares, such securities have voting rights which include (i) the right to have at least as many votes per share and (ii) the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(f) If the offering is of stock or shares other than preferred stock or shares, such securities are owned beneficially or of record on any date within six months prior to the commencement of the offering by at least one thousand two hundred persons, and on such date there are at least seven hundred fifty thousand such shares outstanding with an aggregate market value of at least three million seven hundred fifty thousand dollars based on the average bid price for such day. When determining the number of persons who are beneficial owners of the stock or shares of an issuer, for purposes of this subdivision, the issuer or broker-dealer may rely in good faith upon written information furnished by the record owners;

(7) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member; or

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, as a chamber of commerce, or as a trade or professional association.

Source: Laws 1965, c. 549, § 10, p. 1785; Laws 1973, LB 167, § 5; Laws 1980, LB 912, § 1; Laws 1989, LB 391, § 1; Laws 1992, LB 758, § 1; Laws 1993, LB 216, § 6; Laws 1994, LB 942, § 1; Laws 1996, LB 1053, § 8; Laws 1997, LB 335, § 6; Laws 2001, LB 53, § 23; Laws 2003, LB 131, § 9.

8-1111 Transactions exempt from registration.

Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule or regulation require that the customer acknowledge

upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as the act existed on July 20, 2002;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, to an individual accredited investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. For purposes of this subdivision, the term ''individual accredited investor'' means (a) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (b) any manager of a limited liability company that is the issuer of the securities being offered or sold, (c) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, or (d) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (a) the seller reasonably believes that all the buyers are purchasing for investment, (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) no general or public advertisements or solicitations are made;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401 if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under

sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

(17) The issuance of any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing;

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

(21) Any transaction by a person who is an organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 involving an offering of interests in a fund described in section 3(c)(10)(B) of the Investment Company Act of 1940 solely to persons who are organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 when (a) there is no general or public advertising or solicitation, (b) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the

seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (c) any such transaction is effected by a trustee, director, officer, employee, or volunteer of the seller who is either a volunteer or is engaged in the overall fundraising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of interests sold in the fund; or

(22) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(a) Sales of such securities are made only to the following purchasers:

(i) A natural person who, either individually or jointly with the person's spouse, (A) has a minimum net worth of two hundred fifty thousand dollars and had taxable income in excess of one hundred twenty-five thousand dollars in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year or (B) has a minimum net worth of five hundred thousand dollars. Net worth shall be determined exclusive of home, home furnishings, and automobiles;

(ii) A corporation, partnership, or other organization specifically formed for the purpose of acquiring securities offered by the issuer in reliance upon this exemption if each equity owner of the corporation, partnership, or other organization is a person described in subdivision (22) of this section;

(iii) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons described in subdivision (22) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of the securities described in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule of the director; and

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the Department of Banking and Finance before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(g) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(h) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under the act, the burden of proving an exemption from a definition shall be upon the person claiming it.

Source: Laws 1965, c. 549, § 11, p. 1787; Laws 1973, LB 167, § 6; Laws 1977, LB 263, § 5; Laws 1978, LB 760, § 2; Laws 1980, LB 496, § 1; Laws 1986, LB 909, § 11; Laws 1987, LB 93, § 1; Laws 1989, LB 60, § 3; Laws 1990, LB 956, § 10; Laws 1991, LB 305, § 5; Laws 1992, LB 758, § 2; Laws 1993, LB 216, § 7; Laws 1994, LB 1241, § 1; Laws 1995, LB 96, § 1; Laws 1996, LB 1053, § 9; Laws 1997, LB 335, § 7; Laws 2000, LB 932, § 20; Laws 2001, LB 52, § 44; Laws 2002, LB 957, § 9; Laws 2006, LB 876, § 20.

Exemption for a transaction under subsection (9) of this section contemplates only a situation where no remuneration in any form is to be given the offeror of the stock. Labenz v. Labenz, 198 Neb. 548, 253 N.W.2d 855 (1977).

8-1112 Registrant; subject to personal jurisdiction.

Registering as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative under the Securities Act of Nebraska or

directly or indirectly offering a security or investment adviser services in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such a person in any action which arises under the act.

Source: Laws 1965, c. 549, § 12, p. 1790; Laws 1973, LB 167, § 7; Laws 1983, LB 447, § 1; Laws 1993, LB 216, § 8.

8-1113 False or misleading filings; unlawful.

It shall be unlawful for any person to make or cause to be made, in any document filed with the director or in any proceeding under the Securities Act of Nebraska, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Source: Laws 1965, c. 549, § 13, p. 1790; Laws 1998, LB 894, § 2.

8-1114 Unlawful representation concerning merits of registration or exemption.

Neither the fact that an application for registration or notice filing under section 8-1103, a notice filing under section 8-1108.02, or a registration statement under section 8-1105, 8-1106, or 8-1107 has been filed, nor the fact that a person or security is effectively registered, shall constitute a finding by the director that any document filed under the Securities Act of Nebraska is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction shall mean that the director has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It shall be unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

Source: Laws 1965, c. 549, § 14, p. 1790; Laws 1997, LB 335, § 8.

8-1115 Investigations; subpoena; director; powers.

(1) The director in his or her discretion (a) may make such public or private investigations within or without this state as he or she deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate the Securities Act of Nebraska or any rule, regulation, or order under the act or to aid in the enforcement of the act or in the adopting and promulgating of rules, regulations, and forms under the act, (b) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and (c) may publish information concerning any violation of the act or any rule, regulation, or order under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the applicant or person who is the subject of the investigation.

(2) For the purpose of any investigation or proceeding under the Securities Act of Nebraska, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(3) At the request of an administrator responsible for enforcement of the securities laws of another state, the director may issue subpoenas to compel the attendance of any person or require the production of records in this state if the alleged violation being investigated would be a violation of the Securities Act of Nebraska if the activities had occurred in this state.

(4) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to such person an order requiring him or her to appear before the director, or the officer designated by the director, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

Source: Laws 1965, c. 549, § 15, p. 1791; Laws 1987, LB 497, § 1.

8-1116 Violations; injunction; receiver; appointment.

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Securities Act of Nebraska or any rule or order under the act, the director may in his or her discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the Securities Act of Nebraska or any rule or order under the act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. The director may not be required to post a bond.

Source: Laws 1965, c. 549, § 16, p. 1792; Laws 1998, LB 894, § 3.

8-1117 Violations; penalty.

(1) Any person who willfully violates any provision of the Securities Act of Nebraska except section 8-1113, or who willfully violates any rule or order under the act, or who willfully violates the provisions of section 8-1113 knowing the statement made to be false or misleading in any material respect shall be guilty of a Class IV felony. No indictment may be returned or information filed under the act more than five years after the alleged violation.

(2) The director may refer such evidence as may be available concerning violations of the act or of any rule or order under the act to the Attorney General or the proper county attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under the act.

(3) Nothing in the act shall limit the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Source: Laws 1965, c. 549, § 17, p. 1792; Laws 1977, LB 40, § 65; Laws 1998, LB 894, § 4.

To sustain a conviction under either the fraud or registration provisions of the Uniform Securities Act, specific intent need not be proved, and ''willful'' may mean no more than that the actor was aware of what he or she was doing. State v. Irons, 254 Neb. 18, 574 N.W.2d 144 (1998).

Proof of a specific intent, evil motive, or knowledge that the law was being violated is not required to sustain conviction of willful violation of the securities act. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

8-1118 Violations; damages; statute of limitations.

(1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or

any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Any investment adviser who provides investment adviser services to another person which results in a willful violation of subsection (2), (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or section 8-1114 or any investment adviser who employs any device, scheme, or artifice to defraud such person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such person shall be liable to such person. Such person may sue either at law or in equity to recover the consideration paid for the investment adviser services and any loss due to such investment adviser services, together with interest at six percent per annum from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such investment adviser services and any other economic benefit.

(3) Every person who directly or indirectly controls a person liable under subsections (1) and (2) of this section, including every partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or employee of such person who materially aids in the conduct giving rise to liability, and every broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(4) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under the Securities Act of Nebraska shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale or the rendering of investment advice. No person may sue under this section (a) if the buyer received a written offer, before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before suit and at a time when he or she did not own the security, unless the buyer rejected the offer in writing within thirty days of its receipt.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of the act or any rule or order under the act, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of the act or any rule or order under the act shall be void.

Source: Laws 1965, c. 549, § 18, p. 1793; Laws 1973, LB 167, § 8; Laws 1993, LB 216, § 9; Laws 1993, LB 121, § 99; Laws 1994, LB 884, § 14.

Liability under the Securities Act of Nebraska extends only to a person who successfully solicits purchase of securities, motivated at least in part by desire to serve his or her own financial interests or those of the securities owner. Wilson v. Misko, 244 Neb. 526, 508 N.W.2d 238 (1993).

Person who offers or sells security in violation of section 8-1104 shall be liable to buyer of security, who may recover consideration paid, together with interest, costs, and attorneys' fees. Labenz v. Labenz, 198 Neb. 548, 253 N.W.2d 855 (1977).

8-1119 Appeal; procedure.

Any person aggrieved by a final order of the director may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1965, c. 549, § 19, p. 1794; Laws 1988, LB 352, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

8-1120 Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; document filed, when.

(1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such assistants or counsel as may be reasonably necessary for the purpose thereof and who may designate one of such assistants as an assistant director. The director may delegate to such assistant director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act, except that security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(2) It shall be unlawful for the director or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. No provision of the act shall authorize the director or any of his or her officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under the act. No provision of the act shall either create or derogate from any privilege which exists at common law or

otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her officers or employees.

(3) The director may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the act. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act.

In prescribing rules and forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the director shall be published and made available to any person upon request.

(4) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(5) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(6) The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature and, for the calendar years of 2000 and 2001, two million dollars shall be transferred in each year to the Affordable Housing Trust Fund. All of such money is appropriated and shall be appropriated for such purposes. Any money in the Securities Act Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such conditions as the director may prescribe.

(8) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(9) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

Source: Laws 1965, c. 549, § 20, p. 1795; Laws 1969, c. 584, § 33, p. 2361; Laws 1973, LB 167, § 9; Laws 1983, LB 469, § 1; Laws 1995, LB 7, § 27; Laws 1997, LB 864, § 1; Laws 2000, LB 932, § 21; Laws 2003, LB 217, § 24.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

8-1121 Exemption or exception; burden of proof.

In any proceeding under the Securities Act of Nebraska, the burden of proving an exemption or an exception from a definition shall be upon the person claiming it.

Source: Laws 1965, c. 549, § 21, p. 1797; Laws 1998, LB 894, § 5.

Defendant bears the burden of proving a claim of exemption when raising the issue as a defense to a charge of unlawful sale of unregistered securities. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

8-1122 Act; how construed.

The Securities Act of Nebraska shall be construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of the act with the related federal regulation.

Source: Laws 1965, c. 549, § 22, p. 1797; Laws 1998, LB 894, § 6.

8-1122.01 Federal limits rejected.

The federal limits on the registration of securities, dealers, brokers, broker-dealers, agents, and investment advisers as provided in the Philanthropy Protection Act of 1995, Public Law 104-62, shall not apply in Nebraska and are hereby rejected by the State of Nebraska pursuant to section 6(c) of such act. The State of Nebraska elects to retain the authority to require or not require such registration under the Securities Act of Nebraska and to retain the authority to have such registration requirements apply in all administrative and judicial actions commenced after July 15, 1998.

Source: Laws 1998, LB 1180, § 1.

8-1123 Act, how cited.

Sections 8-1101 to 8-1123 shall be known and may be cited as the Securities Act of Nebraska.

Source: Laws 1965, c. 549, § 23, p. 1797; Laws 1997, LB 335, § 11; Laws 1998, LB 1180, § 2; Laws 2002, LB 957, § 11.

8-1124 Repealed. Laws 1988, LB 795, § 8.

ARTICLE 12
ONE BANK HOLDING COMPANY ACT OF 1973

Section
8-1201. Repealed. Laws 1995, LB 384, § 35.

Section
8-1202. Repealed. Laws 1995, LB 384, § 35.
8-1203. Repealed. Laws 1995, LB 384, § 35.
8-1204. Repealed. Laws 1995, LB 384, § 35.
8-1205. Repealed. Laws 1995, LB 384, § 35.
8-1206. Repealed. Laws 1995, LB 384, § 35.

8-1201 Repealed. Laws 1995, LB 384, § 35.

8-1202 Repealed. Laws 1995, LB 384, § 35.

8-1203 Repealed. Laws 1995, LB 384, § 35.

8-1204 Repealed. Laws 1995, LB 384, § 35.

8-1205 Repealed. Laws 1995, LB 384, § 35.

8-1206 Repealed. Laws 1995, LB 384, § 35.

ARTICLE 13

DEPOSIT OF SECURITIES

Section
8-1301. Terms, defined.
8-1302. Deposit in a clearing corporation; procedure; rules and regulations; applicability.
8-1303. Deposit of United States Government securities with a federal reserve bank; procedure; rules and regulations; applicability.

8-1301 Terms, defined.

For the purposes of sections 8-1302 and 8-1303, unless the context otherwise requires:

(1) Fiduciary shall mean a trustee under any trust, expressed, implied, resulting, or constructive, personal representative, administrator, guardian, committee, conservator, curator, tutor, custodian, nominee, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, member, agent, officer of any corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate; and

(2) Person shall mean any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, two or more persons having a joint or common interest, or other legal or commercial entity.

Source: Laws 1977, LB 500, § 2; Laws 1986, LB 909, § 12; Laws 1993, LB 121, § 101.

8-1302 Deposit in a clearing corporation; procedure; rules and regulations; applicability.

(1) Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities in a clearing corporation, as defined in section 8-102, Uniform Commercial Code, or with any other agency or organization. When such securities are so deposited, certificates representing securities of the same

class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation, agency or other organization with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities. Certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as custodian, as managing agent, or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation, agency or other organization without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of state-chartered institutions, the Director of Banking and Finance or, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company in such clearing corporation, agency or other organization for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation, agency or other organization for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on September 2, 1977, or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

Source: Laws 1977, LB 500, § 3; Laws 1978, LB 763, § 1.

8-1303 Deposit of United States Government securities with a federal reserve bank; procedure; rules and regulations; applicability.

(1) Notwithstanding any other provision of law, any bank or trust company, when acting as a fiduciary and any bank or trust company, when holding securities as custodian for a fiduciary, is authorized to deposit, or arrange for the deposit, with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of such federal reserve bank in the name of such bank or trust company, to be designated fiduciary or safekeeping accounts, to which account other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case of state-chartered institutions, the Director of Banking and Finance or, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. The records of such bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books

of such federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company with such federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary with such federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries, and custodians for fiduciaries, acting on September 2, 1977, or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

Source: Laws 1977, LB 500, § 4.

ARTICLE 14

DISCLOSURE OF CONFIDENTIAL INFORMATION

Section
8-1401. Disclosure of confidential records or information; court order; not applicable, when; immunity.
8-1402. Provide records or information; costs.
8-1403. Terms, defined.

8-1401 Disclosure of confidential records or information; court order; not applicable, when; immunity.

(1) No person organized under the Business Corporation Act, the Credit Union Act, the Nebraska Banking Act, the Nebraska Industrial Development Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Trust Company Act, or Chapter 8, article 3, or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States, shall be required to disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person with which it is doing business to any person, party, agency, or organization, unless:

(a) The disclosure relates to a lawyers trust account and is required to be made to the Counsel for Discipline of the Nebraska Supreme Court pursuant to a rule adopted by the Nebraska Supreme Court;

(b) The disclosure is governed by rules for discovery promulgated pursuant to section 25-1273.01;

(c) The request for disclosure is made by a law enforcement agency regarding a crime, a fraud, or any other unlawful activity in which the person to whom the request for disclosure is made is or may be a victim of such crime, fraud, or unlawful activity;

(d) The request for disclosure is made by a governmental agency which is a duly constituted supervisory regulatory agency of the person to whom the request for disclosure is made and the disclosure relates to examinations, audits, investigations, or inquiries of such persons;

(e) The request for disclosure is made pursuant to subpoena issued under the laws of this state by a governmental agency exercising investigatory or adjudicative functions with respect to a matter within the agency's jurisdiction;

(f) The production of records is pursuant to a written demand of the Tax Commissioner under section 77-375;

(g) There is first presented to such person a subpoena, summons, or warrant issued by a court of competent jurisdiction;

(h) A statute by its terms or rules and regulations adopted and promulgated thereunder requires the disclosure, other than by subpoena, summons, warrant, or court order;

(i) There is presented to such person an order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order; or

(j) There is first presented to such person the written permission of the person about whom records or information is being sought authorizing the release of the requested records or information.

(2) Any person who makes a disclosure of records or information as required by this section shall not be held civilly or criminally liable for such disclosure in the absence of malice, bad faith, intent to deceive, or gross negligence.

Source: Laws 1977, LB 384, § 1; Laws 1979, LB 216, § 1; Laws 1986, LB 529, § 1; Laws 1995, LB 109, § 193; Laws 1996, LB 681, § 178; Laws 1996, LB 948, § 121; Laws 1998, LB 1104, § 1; Laws 2002, LB 857, § 2; Laws 2002, LB 957, § 12; Laws 2003, LB 131, § 10; Laws 2003, LB 156, § 1.

Cross References

Business Corporation Act, see section 21-2001.
Credit Union Act, see section 21-1701.
Nebraska Banking Act, see section 8-101.01.
Nebraska Industrial Development Corporation Act, see section 21-2318.
Nebraska Nonprofit Corporation Act, see section 21-1901.
Nebraska Professional Corporation Act, see section 21-2201.
Nebraska Trust Company Act, see section 8-201.01.

8-1402 Provide records or information; costs.

(1) Any person, party, agency, or organization requesting disclosure of records or information pursuant to section 8-1401 shall pay the costs of providing such records or information, unless:

(a) The request for disclosure is made pursuant to subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court rule provides for the method of payment;

(b) The request is made pursuant to subdivision (1)(b) of section 8-1401 and the rules for discovery provide for the method of payment;

(c) The request for disclosure is made pursuant to subdivision (1)(c) or (1)(d) of section 8-1401;

(d) Otherwise ordered by a court of competent jurisdiction; or

(e) The person making the disclosure waives any or all of the costs.

(2) The requesting person, party, agency, or organization shall pay five dollars per hour per person for the time actually spent on the service or, if such person can show that its actual expense in providing the records or information was greater than five dollars per hour per person, it shall be paid the actual cost of providing the records or information.

(3) No person authorized to receive payment pursuant to subsection (1) of this section has an obligation to provide any records or information pursuant to

section 8-1401 until assurances are received that the costs due under this section will be paid, except for requests made pursuant to subdivisions (1)(c), (1)(d), (1)(e), and (1)(f) of section 8-1401.

Source: Laws 1979, LB 216, § 2; Laws 1995, LB 384, § 11; Laws 1998, LB 1104, § 2; Laws 2002, LB 957, § 13; Laws 2003, LB 156, § 2.

8-1403 Terms, defined.

For purposes of sections 8-1401 and 8-1402:

(1) Governmental agency means any agency, department, or commission of this state or any authorized officer, employee, or agent of such agency, department, or commission;

(2) Law enforcement agency means an agency or department of this state or of any political subdivision of this state that obtains, serves, and enforces arrest warrants or that conducts or engages in prosecutions for violations of the law; and

(3) Person means any individual, corporation, partnership, limited liability company, association, joint stock association, trust, unincorporated organization, and any other legal entity.

Source: Laws 2003, LB 156, § 3.

ARTICLE 15

ACQUISITION OR MERGER OF FINANCIAL INSTITUTIONS

(a) STATE-CHARTERED BANKS AND INDUSTRIAL LOAN AND INVESTMENT COMPANIES

8-1501 Terms, defined.

For purposes of sections 8-1501 to 8-1505, unless the context otherwise requires:

(1) Person means an individual, corporation, partnership, limited liability company, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or other form of entity not specifically listed in this subdivision; and

(2) Control means to own directly or indirectly or to control in any manner twenty-five percent or more of the voting shares of any bank, trust company, or holding company or to control in any manner the election of the majority of directors of any bank, trust company, or holding company.

Source: Laws 1983, LB 240, § 1; Laws 1993, LB 121, § 102; Laws 1995, LB 599, § 5; Laws 2003, LB 131, § 11.

8-1502 Acquisition; notice required; exception; Director of Banking and Finance; duties.

(1) Except as provided in subsection (2) of this section, no person acting personally or as agent shall acquire control of any state-chartered bank or trust company without first giving sixty days' notice to the Department of Banking and Finance on forms provided by the department of such proposed acquisition. The Director of Banking and Finance, upon receipt of such notice, shall act upon it within thirty days, and, unless he or she disapproves the proposed acquisition within that period of time, it may become effective on the sixty-first day after receipt without his or her approval, except that the director may extend the thirty-day period an additional thirty days if in his or her judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by sections 8-1501 to 8-1505 or by the director.

An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

Within three days after his or her decision to disapprove any proposed acquisition, the director shall notify the acquiring party in writing of the disapproval. The notice shall provide a statement of the basis for the disapproval.

(2) The notice requirements of subsection (1) of this section shall not apply when:

(a) Shares of a state-chartered bank or trust company are acquired by a person in the regular course of securing or collecting a debt previously contracted in good faith or through inheritance or a bona fide gift if notice of such acquisition is given to the department, on forms provided by the department, within ten days after the acquisition; or

(b) The director, the Governor, and the Secretary of State jointly determine that an emergency exists which requires expeditious action or that the department must act immediately to prevent probable failure of the institution to be acquired.

Source: Laws 1983, LB 240, § 2; Laws 1986, LB 907, § 1; Laws 1987, LB 531, § 1; Laws 1995, LB 599, § 6; Laws 2000, LB 932, § 22; Laws 2003, LB 131, § 12.

8-1503 Acquisition; hearing; when required; procedure.

Within ten days after receipt of notice of disapproval pursuant to section 8-1502, the acquiring party may request an agency hearing on the proposed acquisition. At such hearing, all issues shall be determined on the record pursuant to the administrative rules of procedure and the rules and regulations as may be issued by the Department of Banking and Finance in accordance with the Administrative Procedure Act. At the conclusion of such hearing, the Director of Banking and Finance shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

Source: Laws 1983, LB 240, § 3; Laws 2003, LB 217, § 25.

Cross References

Administrative Procedure Act, see section 84-920.

8-1504 Acquisition; notice; contents.

Except as otherwise provided by rule and regulation of the department, a notice filed pursuant to section 8-1502 shall contain the following information:

(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his or her material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he or she is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year immediately preceding the date of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank or trust company, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his or her behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(7) Copies of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) Any additional relevant information in such form as the Director of Banking and Finance may require by rule and regulation or by specific request in connection with any particular notice.

Source: Laws 1983, LB 240, § 4; Laws 1995, LB 599, § 7; Laws 1999, LB 396, § 14; Laws 2003, LB 131, § 13.

8-1505 Acquisition; disapproval; grounds.

The Director of Banking and Finance may disapprove any proposed acquisition if:

(1) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or trust company or prejudice the interests of the depositors of the bank or trust company;

(2) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank or trust company or in the interest of the public to permit such person to control the bank or trust company; or

(3) Any acquiring person neglects, fails, or refuses to furnish the Director of Banking and Finance all the information required by him or her.

Source: Laws 1983, LB 240, § 5; Laws 1995, LB 599, § 8; Laws 2003, LB 131, § 14.

(b) ACQUISITION OR MERGER OF FAILING FINANCIAL INSTITUTION

8-1506 Failing financial institution; Director of Banking and Finance; powers; hearing; order; appeal.

(1) Whenever the Department of Banking and Finance determines the acquisition of any financial institution is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interest of depositors or savers, the Director of Banking and Finance may take immediate action in the case of an emergency so declared by the Governor, the Secretary of State, and the Director of Banking and Finance, without the benefit of a hearing, to convert or merge the charter, form of ownership or operating powers, some or all of the assets and liabilities, or one or more of the branches of the financial institution into the charter, form of ownership, or operating powers of one or more financial institutions to facilitate the acquisition. In the case of a financial institution chartered under the laws of Nebraska, such immediate action may include the ability by the director to take possession of the institution.

(2) Any stockholder, depositor, or creditor of any state-chartered financial institution shall, upon application to the director within five days of the entry of the order, be afforded a hearing relating to the department's order and determination not later than ten days after such application has been filed. On the basis of such hearing, the director shall enter a final order which may continue the original order in effect, revoke it, or modify it. Any person aggrieved by a final order of the director made pursuant to this section may appeal the order by filing, within ten days after the entry of the final order, a written petition praying that the final order be modified or set aside in whole or in part. Upon service of the petition, the director shall within fifteen days certify and file in such court a copy of the original order, the application for hearing, all exhibits and testimony, and the final order from which the appeal is taken. Such appeal shall otherwise be governed by the Administrative Procedure Act.

Source: Laws 1983, LB 241, § 1; Laws 1985, LB 653, § 10; Laws 1988, LB 352, § 13; Laws 1990, LB 956, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

8-1506.01 Financial institution, defined.

For purposes of sections 8-1506 to 8-1510, financial institution shall mean a bank, savings bank, savings and loan association, building and loan association, trust company, or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Source: Laws 1990, LB 956, § 11; Laws 2003, LB 131, § 15.

8-1507 Cross-industry acquisition; acquisition and operation as bank subsidiary; when authorized.

Pursuant to section 8-1506, the Department of Banking and Finance may permit cross-industry acquisition of any failing financial institution or permit acquisition and operation of such financial institution as a bank subsidiary by a bank holding company when the department determines the acquisition of any of the financial institutions is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interests of depositors or savers. If the acquiring institution is a bank, it may continue to operate such financial institution in its original form notwithstanding its denomination as a bank subsidiary. Acquisitions by any financial institution under sections 8-1506 to 8-1510 or section 8-1516 shall be deemed to be of the same nature as an acquisition of a state-chartered bank and shall follow such rules or regulations as may be established by the Director of Banking and Finance for acquisition of state-chartered banks by a bank holding company.

Source: Laws 1983, LB 241, § 2; Laws 1983, LB 239, § 4; Laws 1990, LB 956, § 13; Laws 1995, LB 456, § 2; Laws 1996, LB 1275, § 4; Laws 2002, LB 1089, § 9; Laws 2003, LB 217, § 26.

8-1508 Application by bank or bank holding company; terms and conditions.

Whenever an application by a bank or a bank holding company is received by the Department of Banking and Finance to acquire any other financial institution, the following terms and conditions shall be met and such acquisitions shall be valid only when and for as long as these conditions are satisfied:

(1) The acquiring bank holding company may not apply for and it shall not operate such a financial institution as a nonbank subsidiary under section 4 of the federal Bank Holding Company Act of 1956, as such act existed on July 20, 2002, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as such act existed on July 20, 2002;

(2) The financial institution to be acquired by a bank or a bank holding company shall be subject to the conditions upon which a bank incorporated under the laws of this state may establish, maintain, relocate, or close any of its offices pursuant to the Nebraska Banking Act, but nothing in sections 8-1506 to 8-1510 or any other provision of law shall require divestiture of any branch or office in operation at the time of acquisition; and

(3) A financial institution to be acquired by a bank holding company shall be subject to the provisions of section 3 of the federal Bank Holding Company Act of 1956, as such act existed on July 20, 2002, and those rules and regulations that apply to bank subsidiaries of bank holding companies as are or may be

established by both the Board of Governors of the Federal Reserve System and the Director of Banking and Finance.

Source: Laws 1983, LB 241, § 3; Laws 1983, LB 239, § 5; Laws 1988, LB 795, § 4; Laws 1990, LB 956, § 14; Laws 2002, LB 857, § 3.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-1509 Acquisition by bank holding company; prohibited; exceptions.

A bank holding company shall not acquire, hold, or operate a financial institution acquired under sections 8-1506 to 8-1510 or section 8-1516 located in this state as a nonbank subsidiary under section 4 of the federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as amended. The Director of Banking and Finance shall not either accept or approve an application for acquisition under sections 8-1506 to 8-1510 or section 8-1516 which contains as a term or condition thereof the approval of the Board of Governors of the Federal Reserve System under section 4(c)(8) of the federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as amended.

Source: Laws 1983, LB 241, § 4; Laws 1990, LB 956, § 15; Laws 1996, LB 1275, § 5.

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION

8-1510 Cross-industry acquisition or merger; application; notice; hearing.

(1) The Director of Banking and Finance may permit cross-industry acquisition or merger of one or more financial institutions under its supervision upon the application of such institutions to the Department of Banking and Finance. The application shall be made on forms prescribed by the department.

(2) Except as provided for in subsection (3) of this section, when an application is made for such an acquisition or merger, notice of the filing of the application shall be published by the department three weeks in a legal newspaper in or of general circulation in the county where the applicant proposes to operate the acquired or merged financial institution. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, is satisfied that the stockholders and officers of the financial institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger.

(3) When application is made for cross-industry acquisition or merger and the director determines, in his or her discretion, that the financial condition of

the financial institution surviving the acquisition or merger is such as to indicate that a hearing on the application would not be necessary, then the hearing requirement of subsection (2) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county or counties where the offices of the financial institution to be merged or acquired are located and (b) after giving notice by certified mail to all financial institutions located within such county or counties, the director receives a substantive objection to the application within fifteen days after the first day of publication.

(4) The expense of any publication and certified mailing required by this section shall be paid by the applicant.

Source: Laws 1983, LB 241, § 5; Laws 1990, LB 956, § 16; Laws 2003, LB 217, § 27.

(d) ACQUISITION OF NEWLY ESTABLISHED BANK

8-1511 Terms, defined.

For purposes of sections 8-1511 to 8-1513, unless the context otherwise requires:

(1) Affiliated bank or thrift institution means (a) if the bank or thrift institution is a subsidiary of a state bank, national banking association, or thrift institution, the parent bank or thrift institution as the case may be and (b) if the bank or thrift institution is a subsidiary of a bank or thrift institution holding company, the principal subsidiary of the holding company which is a bank or thrift institution as the case may be;

(2) Association of banks or thrift institutions means two or more banks or thrift institutions formed for the purpose of acquiring and holding all or substantially all of the voting stock of one credit card bank pursuant to sections 8-1512 and 8-1513;

(3) Bank or banking corporation means the principal office of (a) any national bank doing business in this state, (b) any corporation which is chartered to conduct a bank in this state as provided in the Nebraska Banking Act, (c) any association of banks, (d) a bank holding company as defined in the Nebraska Bank Holding Company Act of 1995, or (e) an out-of-state bank holding company as defined in the Nebraska Bank Holding Company Act of 1995;

(4) Qualifying association means an association, corporation, partnership, limited liability company, or other entity which at all times maintains an office in this state at which it employs at least fifty persons in this state and which pursuant to contract or otherwise offers at least the following services to banks: (a) The distribution, as agent for a bank, of credit cards or transaction cards; (b) the preparation of periodic statements of amounts due under such account; (c) the receipt from credit card or transaction card holders of amounts paid on or with respect to such accounts; and (d) the maintenance of financial records reflecting the status of such accounts from time to time;

(5) Thrift institution means (a) any corporation which is chartered as a building and loan association, savings and loan association, savings bank, or credit union under the laws of the United States, any other state, or the District of Columbia and whose operations are principally conducted outside of Nebraska, (b) any holding company of a thrift institution with subsidiaries whose

operations are principally conducted outside of Nebraska, or (c) any association of thrift institutions; and

(6) Transaction card means a device or means used to access a prearranged revolving credit plan account.

Source: Laws 1984, LB 1076, § 5; Laws 1987, LB 332, § 3; Laws 1993, LB 121, § 103; Laws 1995, LB 384, § 12; Laws 2002, LB 857, § 4; Laws 2002, LB 1094, § 9; Laws 2004, LB 999, § 14.

Cross References

Nebraska Bank Holding Company Act of 1995, see section 8-908.
Nebraska Banking Act, see section 8-101.01.

8-1512 Bank or thrift institution; acquire credit card bank; conditions; sections, how construed.

(1) Notwithstanding any other provisions of law and subject to the provisions of this section and to the approval of the Director of Banking and Finance, any bank or thrift institution may acquire and hold all or substantially all of the voting stock of one credit card bank located in this state when and so long as the credit card bank meets the conditions set forth in section 8-2401.

(2) Sections 8-1511 to 8-1513 and 8-2401 to 8-2403 shall not be construed so as to limit the acquisition or ownership of a credit card bank to banks or thrift institutions.

Source: Laws 1983, LB 454, § 2; R.S.Supp.,1983, § 8-905; Laws 1984, LB 1076, § 3; Laws 1987, LB 332, § 4; Laws 2004, LB 999, § 15.

8-1513 Application; contents; approval; considerations; director; powers and duties.

(1) Any bank or thrift institution proposing any acquisition pursuant to section 8-1512 shall file an application with the Department of Banking and Finance for approval to make the acquisition. The application shall contain such information as the Director of Banking and Finance may by regulation require and shall specifically acknowledge the applicant's agreement to be bound by the conditions set forth in section 8-2401. In addition, the application shall designate a resident of this state as the applicant's agent for the service of any paper, notice, or legal process upon the applicant in connection with the matters arising out of the laws of this state and shall be accompanied by the filing fee provided in section 8-602.

(2) In determining whether to approve an acquisition by a bank or thrift institution of any voting stock of a credit card bank located in this state, the director shall consider: (a) The financial and managerial resources of such bank or thrift institution; (b) whether the acquisition may result in undue concentration of resources or substantial lessening of competition; and (c) whether the convenience and benefit to the public outweigh any adverse competitive effects.

(3) Any approval granted to a bank or thrift institution by the director is subject to such reasonable conditions as the director deems necessary and to the director's continuing authority to ascertain such financial institution's compliance with the provisions of the laws of this state and the conditions of approval.

(4) Whenever the director determines after notice and hearing that any bank or thrift institution is not in compliance with the laws of this state or the

conditions of approval, the director shall order such bank or thrift institution to divest itself of all stock of the credit card bank acquired pursuant to section 8-1512 and such bank or thrift institution shall be liable for a penalty of ten thousand dollars per day from the date such divestiture is ordered until it is completed.

Source: Laws 1983, LB 454, § 3; R.S.Supp.,1983, § 8-906; Laws 1984, LB 1076, § 4; Laws 1987, LB 332, § 5; Laws 2004, LB 999, § 16.

8-1514 Repealed. Laws 1995, LB 384, § 35.

(e) ACQUISITION OF ELIGIBLE SAVINGS ASSOCIATION

8-1515 Repealed. Laws 2002, LB 1089, § 14.

(f) ACQUISITIONS

8-1516 Bank; purchase or merger; financial institution; cross-industry merger or acquisition; when.

(1)(a) With the approval of the director, a bank may only acquire another bank in Nebraska as a result of a purchase or merger if the acquired bank and its branches are converted to branches of the acquiring bank.

(b) With the approval of the director, a financial institution may only acquire another financial institution in Nebraska as a result of a cross-industry merger or acquisition under section 8-1510 if (i) the acquired financial institution and its branches are converted to branches of the acquiring financial institution and (ii) section 8-1510 has been satisfied.

(2) For purposes of this section:

(a) Bank means a bank organized under the laws of this state or organized under the laws of the United States to do business in this state; and

(b) Financial institution means a bank, savings bank, savings and loan association, building and loan association, trust company, or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Source: Laws 1996, LB 1275, § 1; Laws 2002, LB 1089, § 10; Laws 2003, LB 131, § 16.

ARTICLE 16

BANKERS BANKS

Section
8-1601. Terms, defined.
8-1602. Formation of bankers bank; requirements.
8-1603. Provisions applicable.
8-1604. Repurchase of capital stock; limitation.
8-1605. Acquisition of stock; limitation.

8-1601 Terms, defined.

For purposes of sections 8-1601 to 8-1605, unless the context otherwise requires:

(1) Bank has the same meaning as in section 8-909;

(2) Bank holding company has the same meaning as in section 8-909;

(3) Bankers bank means a bank formed pursuant to section 8-1602;

(4) Department means the Department of Banking and Finance;

(5) Foreign bank holding company has the same meaning as out-of-state bank holding company in section 8-909;

(6) Foreign bankers bank means a bank which is chartered in a foreign state and which is:

(a) Insured by the Federal Deposit Insurance Corporation;

(b) Owned substantially by banks in the state in which the bank was chartered; and

(c) Directly and through its subsidiaries engaged exclusively in providing services for other banks and their officers, directors, and employees;

(7) Foreign state means any state of the United States other than the State of Nebraska, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the District of Columbia; and

(8) Owned substantially means at least eighty percent of the outstanding voting stock is owned.

Source: Laws 1986, LB 1123, § 1; Laws 1999, LB 396, § 15; Laws 2006, LB 876, § 21.

8-1602 Formation of bankers bank; requirements.

A bankers bank may be formed with the approval of the department and subject to requirements and procedures for the issuance of a new bank charter or the transfer of an existing bank charter as provided in the Nebraska Banking Act. A bankers bank shall be a bank which is:

(1) Insured by the Federal Deposit Insurance Corporation;

(2) Owned substantially by other Nebraska banks, bank holding companies, foreign bank holding companies, or a combination of such entities; and

(3) Directly and through all its subsidiaries engaged exclusively in providing services for other banks and their officers, directors, and employees.

Source: Laws 1986, LB 1123, § 2; Laws 1998, LB 1321, § 72; Laws 1999, LB 396, § 16; Laws 2006, LB 876, § 22.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-1603 Provisions applicable.

A bankers bank shall be subject to the Nebraska Banking Act and any rules and regulations adopted and promulgated by the department.

Source: Laws 1986, LB 1123, § 3; Laws 1998, LB 1321, § 73; Laws 2003, LB 217, § 28.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-1604 Repurchase of capital stock; limitation.

A bankers bank may repurchase, for its own account, shares of its own capital stock, but the outstanding capital stock may not be reduced below the minimum required by law.

Source: Laws 1986, LB 1123, § 4.

8-1605 Acquisition of stock; limitation.

A bank may subscribe to, invest in, buy, or own voting stock of one or more bankers banks, foreign bankers banks, bank holding companies, or foreign bank holding companies of such bankers bank or foreign bankers bank in an amount not to exceed five percent of any class of voting stock of each such bankers bank, foreign bankers bank, bank holding company, or foreign bank holding company of such bankers bank or foreign bankers bank. In no event shall such bank's holdings of the stock of a bankers bank, foreign bankers bank, bank holding company, or foreign bank holding company of such bankers bank or foreign bankers bank exceed ten percent of the capital stock and paid-in and unimpaired surplus of the bank holding such stock.

Source: Laws 1986, LB 1123, § 5; Laws 1999, LB 396, § 17; Laws 2006, LB 876, § 23.

ARTICLE 17

COMMODITY CODE

Section
8-1701. Code, how cited.
8-1702. Definitions, sections found.
8-1703. Board of trade, defined.
8-1704. CFTC rule, defined.
8-1705. Commodity, defined.
8-1706. Commodity contract, defined.
8-1707. Commodity Exchange Act, defined.
8-1708. Commodity Futures Trading Commission, defined.
8-1709. Commodity merchant, defined.
8-1710. Commodity option, defined.
8-1711. Director, defined.
8-1712. Financial institution, defined.
8-1713. Offer, defined.
8-1714. Person, defined.
8-1715. Precious metal, defined.
8-1716. Sale or sell, defined.
8-1717. Sale or purchase of commodity; prohibited; exception.
8-1717.01. Failure to make physical delivery; defense.
8-1718. Transactions; authorized purchaser or seller.
8-1719. Transaction; accounts or contracts authorized; director; adopt rules and regulations.
8-1720. Commodity merchant; board of trade; requirements.
8-1721. Prohibited acts.
8-1721.01. Cause of action under commodity contract authorized; exception; statute of limitations; waiver of compliance with code; void.
8-1722. Liability; joint and several.
8-1723. Securities Act of Nebraska; applicability of code.
8-1724. Code, how construed.
8-1725. Director; investigation; enforcement; powers.
8-1726. Violations of code; director; powers.
8-1727. Violations of code; civil remedies.
8-1728. Violations of commodity code of foreign state; remedies.
8-1729. Violations of code; criminal penalties; enforcement.

8-1701 Code, how cited.

Sections 8-1701 to 8-1737 shall be known and may be cited as the Commodity Code.

Source: Laws 1987, LB 575, § 1; Laws 1993, LB 283, § 1.

8-1702 Definitions, sections found.

For purposes of the Commodity Code, unless the context otherwise requires, the definitions found in sections 8-1703 to 8-1716 shall be used.

Source: Laws 1987, LB 575, § 2.

8-1703 Board of trade, defined.

Board of trade shall mean any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

Source: Laws 1987, LB 575, § 3.

8-1704 CFTC rule, defined.

CFTC rule shall mean any rule, regulation, or order of the Commodity Futures Trading Commission in effect on January 1, 1993.

Source: Laws 1987, LB 575, § 4; Laws 1993, LB 283, § 2.

8-1705 Commodity, defined.

(1) Commodity shall mean, except as otherwise specified by the director by rule, regulation, or order:

(a) Any agricultural, grain, or livestock product or byproduct;

(b) Any metal or mineral, including a precious metal;

(c) Any gem or gemstone, whether characterized as precious, semi-precious, or otherwise;

(d) Any fuel, whether liquid, gaseous, or otherwise;

(e) Any foreign currency; and

(f) All other goods, articles, products, or items of any kind.

(2) Commodity shall not include:

(a) A numismatic coin, the fair market value of which is at least fifteen percent higher than the value of the metal it contains;

(b) Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property; or

(c) Any work of art offered or sold by art dealers at public auction or offered or sold through a private sale by the owner of such work.

Source: Laws 1987, LB 575, § 5; Laws 1993, LB 283, § 3.

8-1706 Commodity contract, defined.

Commodity contract shall mean any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.

Source: Laws 1987, LB 575, § 6; Laws 1993, LB 283, § 4.

8-1707 Commodity Exchange Act, defined.

Commodity Exchange Act shall mean the act of Congress known as the Commodity Exchange Act, 7 U.S.C. 1, as amended on January 1, 1993.

Source: Laws 1987, LB 575, § 7; Laws 1993, LB 283, § 5.

8-1708 Commodity Futures Trading Commission, defined.

Commodity Futures Trading Commission shall mean the independent regulatory agency established by Congress to administer the Commodity Exchange Act.

Source: Laws 1987, LB 575, § 8.

8-1709 Commodity merchant, defined.

Commodity merchant shall mean any of the following, as defined or described in the Commodity Exchange Act or by CFTC rule:

(1) Futures commission merchant;

(2) Commodity pool operator;

(3) Commodity trading advisor;

(4) Introducing broker;

(5) Leverage transaction merchant;

(6) An associated person of any of the foregoing;

(7) Floor broker; and

(8) Any other person, other than a futures association, required to register with the Commodity Futures Trading Commission.

Source: Laws 1987, LB 575, § 9.

8-1710 Commodity option, defined.

Commodity option shall mean any account, agreement, or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise, but shall not include an option traded on a national securities exchange registered with the Securities and Exchange Commission.

Source: Laws 1987, LB 575, § 10.

8-1711 Director, defined.

Director shall mean the Director of Banking and Finance.

Source: Laws 1987, LB 575, § 11.

8-1712 Financial institution, defined.

Financial institution shall mean a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

Source: Laws 1987, LB 575, § 12.

8-1713 Offer, defined.

Offer shall mean every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

Source: Laws 1987, LB 575, § 13.

8-1714 Person, defined.

Person shall mean an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government, but shall not include a contract market designated by the Commodity Futures Trading Commission or any clearinghouse thereof or a national securities exchange registered with the Securities and Exchange Commission or any employee, officer, or director of such contract market, clearinghouse, or exchange acting solely in that capacity.

Source: Laws 1987, LB 575, § 14; Laws 1993, LB 121, § 104.

8-1715 Precious metal, defined.

Precious metal shall mean the following in either coin, bullion, or other form:

(1) Silver;

(2) Gold;

(3) Platinum;

(4) Palladium;

(5) Copper; and

(6) Such other items as the director may specify by rule, regulation, or order.

Source: Laws 1987, LB 575, § 15.

8-1716 Sale or sell, defined.

Sale or sell shall mean every sale, contract of sale, contract to sell, or disposition, for value.

Source: Laws 1987, LB 575, § 16.

8-1717 Sale or purchase of commodity; prohibited; exception.

Except as otherwise provided in section 8-1718 or 8-1719, no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

Source: Laws 1987, LB 575, § 17.

8-1717.01 Failure to make physical delivery; defense.

It shall be a defense in any complaint, information, indictment, writ, or proceeding brought under the Commodity Code alleging a violation of section 8-1717 based solely on the failure in an individual case to make physical delivery within the applicable time period under subdivisions (1)(b) and (e) of section 8-1719 if (1) the failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, limited liability company members, agents, servants, or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller or any of them, or the seller's affiliates, subsidiaries, or successors and (2) physical delivery was completed within a reasonable time under the applicable circumstances.

Source: Laws 1993, LB 283, § 11; Laws 1994, LB 884, § 15.

8-1718 Transactions; authorized purchaser or seller.

(1) Section 8-1717 shall not apply to any transaction offered by and in which any of the following persons, or any employee, officer, or director of such person acting solely in that capacity, is the purchaser or seller:

(a) A person registered with the Commodity Futures Trading Commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;

(b) A person registered with the Securities and Exchange Commission as a broker-dealer whose activities require such registration;

(c) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subdivision (1)(a) or (b) of this section;

(d) A person who is a member of a contract market designated by the Commodity Futures Trading Commission or any clearinghouse thereof;

(e) A financial institution; or

(f) A person registered under the laws of this state as a securities broker-dealer whose activities require such registration.

(2) This section shall not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

Source: Laws 1987, LB 575, § 18.

8-1719 Transaction; accounts or contracts authorized; director; adopt rules and regulations.

(1) Section 8-1717 shall not apply to the following:

(a) An account, agreement, or transaction within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted under the Commodity Exchange Act;

(b) A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment of any portion of the purchase price, physical delivery of the total quantity of the precious metals purchased. For purposes of this subsection, physical delivery shall be deemed to have occurred if, within such twenty-eight-day period, the total quantity of precious metals purchased is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is either (i) a financial institution, (ii) a depository, the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission, (iii) a storage facility licensed or regulated by the United States or any agency thereof, or (iv) a depository designated by the director, and such depository issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the total quantity of precious metals purchased has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(c) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants, each commodity subject to such contract or any byproduct of such commodity;

(d) A commodity contract under which the offeree or the purchaser is a person referred to in section 8-1718, an insurance company, an investment company as defined in the Investment Company Act of 1940, or an employee pension and profit-sharing or benefit plan other than a self-employed individual retirement plan or individual retirement account; or

(e) A commodity contract which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(2) The director may adopt and promulgate or issue rules, regulations, or orders prescribing the terms and conditions of all transactions and contracts covered by the Commodity Code, which are not within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted by the Commodity Exchange Act, exempting any person or transaction from any provision of the Commodity Code conditionally or unconditionally and otherwise implementing such code for the protection of purchasers and sellers of commodities.

Source: Laws 1987, LB 575, § 19; Laws 1993, LB 283, § 6.

8-1720 Commodity merchant; board of trade; requirements.

(1) No person shall engage in a trade or business or otherwise act as a commodity merchant unless such person (a) is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired or been suspended or revoked or (b) is exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.

(2) No board of trade shall trade or provide a place for the trading of any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation shall not have been vacated, suspended, or revoked.

Source: Laws 1987, LB 575, § 20.

8-1721 Prohibited acts.

(1) No person shall directly or indirectly (a) cheat, defraud, or attempt to cheat or defraud any other person or employ any device, scheme, or artifice to defraud any other person, (b) make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact, (c) engage in any transaction, act, practice, or course of business, including, but not limited to, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person, or (d) misappropriate or convert the funds, security, or property of any other person in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of any commodity contract or commodity option subject to section 8-1717 or 8-1718 or subdivision (1)(b) or (d) of section 8-1719.

(2) No person shall sell a commodity contract under the terms of which the purchaser, other than a person referred to in section 8-1718 or subdivision (1)(d) of section 8-1719, finances the transaction (a) through a lender affiliated with or related to the seller, (b) through a lender who directly supplies the seller with the contract documents used by the purchaser to evidence the loan and the seller has knowledge of the credit terms and participates in the preparation of the document, (c) through a lender who knowingly participates with the seller in the sale, or (d) under an agreement which conditions the granting of the loan on the purchase of the commodity from a particular seller.

Source: Laws 1987, LB 575, § 21; Laws 1993, LB 283, § 7.

8-1721.01 Cause of action under commodity contract authorized; exception; statute of limitations; waiver of compliance with code; void.

(1) Any person who violates section 8-1721 shall be liable to the purchaser who may sue either at law or in equity to recover the consideration paid under the commodity contract, including interest paid under a financing agreement in connection with the purchase, costs, and reasonable attorney's fees, less (a) the amount received upon the disposition of the commodity or (b) the value of the commodity on the date of the entry of judgment.

(2) Every cause of action under this section shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale. If the cause of action is not discovered and could not be reasonably discovered within the

three-year period, then the action may be commenced within two years from the date of the discovery or from the date of discovery of facts which would reasonably lead to the discovery, whichever is earlier. In no event may a person sue under this section more than five years after the contract of sale.

(3) No person who has made or engaged in the performance of any contract in violation of any provision of the Commodity Code or any rule or order under the code or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation of the code may base any suit on the contract. Any condition, stipulation, or provision purportedly binding any purchaser to waive compliance with any provision of the code or any rule or order under the code shall be void.

Source: Laws 1993, LB 283, § 10.

8-1722 Liability; joint and several.

(1) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, limited liability company, corporation, or trust within the scope of his or her employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, limited liability company, corporation, or trust as well as of such official, agent, or other person.

(2) Every person who directly or indirectly controls another person liable under any provision of the Commodity Code, every partner, member, officer, or director of such other person, every person occupying a similar status or performing similar functions, and every employee of such other person who materially aids in the violation shall also be liable jointly and severally with and to the same extent as such other person unless the person who is also liable by virtue of this section sustains the burden of proof that he or she did not know and in exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist.

Source: Laws 1987, LB 575, § 22; Laws 1993, LB 121, § 105.

8-1723 Securities Act of Nebraska; applicability of code.

Nothing in the Commodity Code shall impair, derogate, or otherwise affect the authority or powers of the director under the Securities Act of Nebraska or the application of any provision of the act to any person or transaction subject to such act.

Source: Laws 1987, LB 575, § 23.

Cross References

Securities Act of Nebraska, see section 8-1123.

8-1724 Code, how construed.

The Commodity Code may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts, and to maximize coordination with federal and other states' law and the administration and enforcement thereof.

Source: Laws 1987, LB 575, § 24; Laws 1993, LB 283, § 8.

8-1725 Director; investigation; enforcement; powers.

(1) The director may make investigations, within or without this state, as he or she finds necessary or appropriate to:

(a) Determine whether any person has violated or is about to violate any provision of the Commodity Code or any rule, regulation, or order of the director; or

(b) Aid in enforcement of the Commodity Code.

(2) The director may publish information concerning any violation of the code or any rule, regulation, or order of the director.

(3) For purposes of any investigation or proceeding under the Commodity Code, the director or any officer or employee designated by rule, regulation, or order may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director finds to be relevant or material to the inquiry.

(4)(a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him or her to appear before the director or the officer designated by the director to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(b) The request for order of compliance may be addressed to either (i) the district court of Lancaster County or the district court in the county where service may be obtained on the person refusing to testify or produce, if the person is within this state, or (ii) the appropriate district court of this state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

Source: Laws 1987, LB 575, § 25.

8-1726 Violations of code; director; powers.

(1) If the director believes, whether or not based upon an investigation conducted under section 8-1725, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Commodity Code or any rule, regulation, or order under the code, the director may:

(a) Issue a cease and desist order;

(b) Issue an order imposing a civil penalty in an amount which may not exceed twenty-five thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or

(c) Initiate any of the actions specified in subsection (2) of this section.

(2) The director may institute any of the following actions in the appropriate district court of this state or in the appropriate courts of another state in addition to any legal or equitable remedies otherwise available:

(a) An action for a declaratory judgment;

(b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with the Commodity Code or any rule, regulation, or order of the director;

(c) An action for disgorgement or restitution; or

(d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

(3)(a) Any fine and costs imposed under this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the director and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund.

(b) If a person fails to pay the administrative fine or investigation costs referred to in this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay such fine and costs shall constitute a separate violation of the code.

Source: Laws 1987, LB 575, § 26; Laws 1993, LB 283, § 9.

8-1727 Violations of code; civil remedies.

(1) Upon a proper showing by the director that a person has violated or is about to violate any provision of the Commodity Code or any rule, regulation, or order of the director, the court may grant appropriate legal or equitable remedies.

(2) Upon a showing of a violation of the Commodity Code or a rule, regulation, or order of the director, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

(a) Imposition of a civil penalty in an amount which may not exceed twenty-five thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;

(b) Disgorgement;

(c) Declaratory judgment;

(d) Restitution to investors wishing restitution; and

(e) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) Appropriate remedies when the defendant is shown only about to violate the Commodity Code or a rule, regulation, or order of the director shall be limited to:

(a) A temporary restraining order;

(b) A temporary or permanent injunction;

(c) A writ of prohibition or mandamus; or

(d) An order appointing a receiver or conservator for the defendant or the defendant's assets.

(4) The court shall not require the director to post a bond in any official action under the Commodity Code.

Source: Laws 1987, LB 575, § 27.

8-1728 Violations of commodity code of foreign state; remedies.

(1) Upon a proper showing by the director or securities or commodity agency of a foreign state that a person other than a government or governmental agency or instrumentality has violated or is about to violate any provision of the commodity code of such state or any rule, regulation, or order of the director or securities or commodity agency of the foreign state, the court may grant appropriate legal and equitable remedies.

(2) Upon a showing of a violation of the securities or commodity act of the foreign state or a rule, regulation, or order of the director or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

(a) Disgorgement; and

(b) Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

(3) Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule, regulation, or order of the director or securities or commodity agency of the foreign state shall be limited to:

(a) A temporary restraining order;

(b) A temporary or permanent injunction;

(c) A writ of prohibition or mandamus; or

(d) An order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

Source: Laws 1987, LB 575, § 28.

8-1729 Violations of code; criminal penalties; enforcement.

(1) Any person who willfully violates any provision of the Commodity Code or any rule, regulation, or order of the director under the code shall, upon conviction, be guilty of a Class IV felony.

(2) Any person convicted of violating a rule, regulation, or order under the code may be fined but may not be imprisoned if the person proves he or she had no knowledge of the rule, regulation, or order.

(3) The director may refer such evidence as is available concerning violations of the code or any rule, regulation, or order of the director to the Attorney General or county attorney who may, with or without reference from the director, initiate criminal proceedings pursuant to the code.

Source: Laws 1987, LB 575, § 29.

8-1730 Code; administration; use of information for personal gain or benefit prohibited; public information; confidentiality; privilege.

(1) The Commodity Code shall be administered by the Department of Banking and Finance. Neither the director nor any employees of the director shall use any information which is filed with or obtained by the director which is not public information for personal gain or benefit, nor shall the director or any employees of the director conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not

been a sufficient period of time for the securities or commodity markets to assimilate such information.

(2) Except as provided in subsection (3) of this section, all information collected, assembled, or maintained by the director shall be public information and shall be available for the examination of the public as provided by sections 84-712 to 84-712.09.

(3) The following information shall be deemed to be confidential:

(a) Information obtained in investigations pursuant to section 8-1725;

(b) Information made confidential by sections 84-712 to 84-712.09; or

(c) Information obtained from federal agencies which may not be disclosed under federal law.

(4) The director may disclose any information made confidential under subdivision (3)(a) of this section to persons identified in section 8-1731.

(5) No provision of the Commodity Code shall either create or derogate any privilege which exists at common law, by statute, or otherwise, when any documentary or other evidence is sought under subpoena directed to the director or any employee of the director.

Source: Laws 1987, LB 575, § 30.

8-1731 Uniform application and interpretation of code; securities regulation and enforcement; governmental cooperation; authorized.

(1) To encourage uniform application and interpretation of the Commodity Code and securities regulation and enforcement in general, the director and the employees of the director may cooperate, including bearing the expense of the cooperation, with the securities agencies or director of another jurisdiction, Canadian province, or territory or such other agencies administering its commodity code, the Commodity Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

(2) The cooperation authorized by subsection (1) of this section may include, but need not be limited to, the following:

(a) Making joint examinations or investigations;

(b) Holding joint administrative hearings;

(c) Filing and prosecuting joint litigation;

(d) Sharing and exchanging personnel;

(e) Sharing and exchanging information and documents;

(f) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases; and

(g) Issuing and enforcing subpoenas at the request of the agency administering such code in another jurisdiction, the securities agency of another jurisdiction, the Commodity Futures Trading Commission, or the Securities and Exchange Commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

Source: Laws 1987, LB 575, § 31; Laws 2003, LB 217, § 29.

8-1732 Director; adopt rules and regulations; standards.

(1) In addition to specific authority granted elsewhere in the Commodity Code, the director may adopt and promulgate rules, regulations, and orders as are necessary to carry out the code. Such rules and regulations shall include, but not be limited to, rules and regulations defining any terms, whether or not used in the code, insofar as the definitions are not inconsistent with the code. For the purpose of rules and regulations, the director may classify commodities and commodity contracts, persons, and matters within the director's jurisdiction.

(2) Unless specifically provided in the Commodity Code, no rule, regulation, or order may be adopted and promulgated unless the director finds that the action is:

(a) Necessary or appropriate in the public interest or for the protection of investors; and

(b) Consistent with the purposes fairly intended by the policy and provisions of the code.

(3) All rules and regulations of the director shall be published.

(4) No provision of the Commodity Code imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order adopted and promulgated by the director, notwithstanding that the rule, regulation, or order may later be amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Source: Laws 1987, LB 575, § 32.

8-1733 Service of process.

When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by the Commodity Code or any rule, regulation, or order of the director, the engaging in the conduct shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such a person in any action which arises under the Commodity Code. Service may be made by leaving a copy of the process in the office of the director, but it shall not be effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his or her last address on file with the director and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Source: Laws 1987, LB 575, § 33; Laws 1989, LB 20, § 1.

8-1734 Purchase, sale, or offer within state; laws applicable; exceptions.

(1) Sections 8-1717, 8-1720, and 8-1721 shall apply to persons who sell or offer to sell when (a) an offer to sell is made in this state or (b) an offer to buy is made and accepted in this state.

(2) Sections 8-1717, 8-1720, and 8-1721 shall apply to persons who buy or offer to buy when (a) an offer to buy is made in this state or (b) an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy shall be made in this state, whether or not either party is then present in this state, when the offer (a) originates from this state or (b) is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or to sell shall be accepted in this state when acceptance (a) is communicated to the offeror in this state and (b) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance shall be communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy shall not be made in this state when (a) the publisher circulates, or there is circulated on his or her behalf, in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months or (b) a radio or television program originating outside this state is received in this state.

Source: Laws 1987, LB 575, § 34.

8-1735 Administrative proceeding; notice of intent; summary order; notice; hearing.

(1) The director shall commence an administrative proceeding under the Commodity Code by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but shall be in writing.

(2) Upon entry of a notice of intent or summary order, the director shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, the director shall inform all interested parties of the date, time, and place set for the hearing on the notice. If the proceeding is pursuant to a summary order, the director shall inform all interested parties that they have fifteen business days from the entry of the order to file a written request for a hearing on the matter with the director and that the hearing will be scheduled to commence within thirty business days after the receipt of the written request, unless the parties consent to a later date or the hearing officer sets a later date for good cause.

(3) If the proceeding is pursuant to a summary order, the director, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the director's own motion.

(4) If no hearing is requested and none is ordered by the director, the summary order shall automatically become a final order after thirty business days.

(5) If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(6) No final order or order after hearing may be returned without (a) appropriate notice to all interested persons, (b) opportunity for hearing by all interested persons, and (c) entry of written findings of fact and conclusions of law.

(7) Every hearing in an administrative proceeding under the Commodity Code shall be public unless the director grants a request joined in by all the respondents that the hearing be conducted privately.

Source: Laws 1987, LB 575, § 35; Laws 2001, LB 53, § 24.

8-1736 Appeal; procedure.

(1) Any person aggrieved by a final order of the director may obtain a review of the order in the district court of Lancaster County by filing, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition for review shall be served upon the director.

(2) Upon the filing of a petition for review, except when the taking of additional evidence is ordered by the court pursuant to subsection (5) or (6) of this section, the court shall have exclusive jurisdiction of the matter, and the director may not modify or set aside the order in whole or in part.

(3) The filing of a petition for review under subsection (1) of this section shall not, unless specifically ordered by the court, operate as a stay of the director's order, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

(4) Upon receipt of the petition for review, the director shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final by operation of law under subsection (4) of section 8-1735, the director shall certify and file in court the summary order, evidence of its service upon the parties to it, and an affidavit certifying that no hearing has been held and the order became final pursuant to such section.

(5) If either the aggrieved party or the director applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the director or other good cause, the court may order the additional evidence to be taken by the director under such conditions as the court considers proper.

(6) If new evidence is ordered taken by the court, the director may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

(7) The court shall review de novo the petition based upon the original record before the director as amended under subsections (5) and (6) of this section. The findings of the director as to the facts, if supported by competent, material, and substantive evidence, shall be conclusive. Based upon such review, the court may affirm, modify, enforce, or set aside the order, in whole or in part.

(8) The judgment of the court may be appealed to the Court of Appeals.

Source: Laws 1987, LB 575, § 36; Laws 1988, LB 808, § 1; Laws 1991, LB 732, § 16; Laws 1992, LB 360, § 1.

8-1737 Exemption; burden of proof.

It shall not be necessary to refute the existence of any of the exemptions of the Commodity Code in any complaint, information, or indictment or any writ or proceeding brought under the code, and the burden of proof of any such exemption shall be upon the party claiming the same.

Source: Laws 1987, LB 575, § 37.

ARTICLE 18
CURRENCY TRANSACTIONS

Section
8-1801. Repealed. Laws 2004, LB 999, § 56.
8-1802. Repealed. Laws 2004, LB 999, § 56.
8-1803. Repealed. Laws 2004, LB 999, § 56.
8-1804. Repealed. Laws 2004, LB 999, § 56.
8-1805. Repealed. Laws 2004, LB 999, § 56.
8-1806. Repealed. Laws 2004, LB 999, § 56.
8-1807. Repealed. Laws 2004, LB 999, § 56.

8-1801 Repealed. Laws 2004, LB 999, § 56.

8-1802 Repealed. Laws 2004, LB 999, § 56.

8-1803 Repealed. Laws 2004, LB 999, § 56.

8-1804 Repealed. Laws 2004, LB 999, § 56.

8-1805 Repealed. Laws 2004, LB 999, § 56.

8-1806 Repealed. Laws 2004, LB 999, § 56.

8-1807 Repealed. Laws 2004, LB 999, § 56.

ARTICLE 19
NAMES

Section
8-1901. Terms, defined.
8-1902. Name of financial institution; use of similar names unlawful; power of department.
8-1903. Rules and regulations.

8-1901 Terms, defined.

For purposes of sections 8-1901 to 8-1903, unless the context otherwise requires:

(1) Department means the Department of Banking and Finance; and

(2) Financial institution means:

(a) A state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, credit union, or trust company;

(b) A subsidiary of a bank holding company or out-of-state bank holding company; or

(c) A branch of a financial institution described in subdivision (a) or (b) of this subdivision.

Source: Laws 1995, LB 384, § 6; Laws 2003, LB 131, § 17; Laws 2007, LB124, § 16.

8-1902 Name of financial institution; use of similar names unlawful; power of department.

It shall be unlawful for two or more financial institutions in the same city, village, or county in this state to have or use the same name or names so nearly alike as to cause confusion in transacting business. In all cases in which a similarity of names now exists, or may hereafter exist, a complaint may be made to the department. If in the judgment of the department a similarity does exist and creates confusion in conducting the business of either or both financial institutions, the department may by order require the financial institution which is junior in time in the use of its name in such city, village, or county to change or modify its name to prevent confusion. The change of name shall be approved by the department.

Source: Laws 1909, c. 10, § 31, p. 80; R.S.1913, § 310; Laws 1919, c. 190, tit. V, art. XVI, § 31, p. 697; C.S.1922, § 8011; C.S.1929, § 8-148; Laws 1933, c. 18, § 31, p. 150; C.S.Supp.,1941, § 8-148; R.S. 1943, § 8-148; Laws 1963, c. 29, § 23, p. 143; Laws 1979, LB 220, § 4; R.S.1943, (1991), § 8-123; Laws 1995, LB 384, § 7.

8-1903 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the purposes of sections 8-1901 and 8-1902.

Source: Laws 1995, LB 384, § 8.

ARTICLE 20

COMPLIANCE REVIEW

Section
8-2001. Terms, defined.
8-2002. Sections; applicability.
8-2003. Compliance review documents; confidentiality, exception; use in evidence.
8-2004. Compliance review documents; confidentiality; held by governmental agency; effect.
8-2005. Sections; how construed.

8-2001 Terms, defined.

For purposes of sections 8-2001 to 8-2005, the following definitions are used:

(1) Depository institution means a state-chartered or federally chartered financial institution located in this state that is authorized to maintain deposit accounts;

(2) Compliance review committee means:

(a) An audit, loan review, or compliance committee appointed by the board of directors of a depository institution; or

(b) Any other person to the extent the person acts in an investigatory capacity at the direction of a compliance review committee;

(3) Compliance review documents means written reports prepared for or created by a compliance review committee for the purpose of ascertaining compliance with federal or state statutory or regulatory requirements or for the performance of any function described in subdivisions (1) through (3) of section 8-2002, which is not a policy otherwise in violation of any other state or federal regulatory requirements;

(4) Loan review committee means a person or group of persons who, on behalf of a depository institution, reviews loans held by the depository institution for the purpose of assessing the credit quality of the loans, compliance with the depository institution's loan policies, and compliance with applicable laws and rules and regulations; and

(5) Person means an individual, group of individuals, board, committee, partnership, firm, association, corporation, limited liability company, or other entity.

Source: Laws 1995, LB 626, § 1.

8-2002 Sections; applicability.

Sections 8-2001 to 8-2005 apply to a compliance review committee whose functions are to evaluate and seek to improve:

(1) Loan underwriting standards;

(2) Asset quality;

(3) Financial reporting to federal or state regulatory agencies; or

(4) Compliance with federal or state statutory or regulatory requirements.

Source: Laws 1995, LB 626, § 2.

8-2003 Compliance review documents; confidentiality, exception; use in evidence.

Except as provided in section 8-2004:

(1) Compliance review documents are confidential and are not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee. Compliance review committee members shall treat compliance review documents and all proceedings of the compliance review committee as confidential and shall not be compelled to testify regarding such confidential documents or proceedings in any civil action arising out of matters evaluated by the compliance review committee, except that information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or admissibility in any civil action merely because such information, documents, or records were evaluated by the compliance review committee; and

(2) Compliance review documents delivered to a federal or state governmental agency are to remain confidential and are not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee.

Source: Laws 1995, LB 626, § 3.

8-2004 Compliance review documents; confidentiality; held by governmental agency; effect.

Section 8-2003 does not apply to any information required by statute or rule and regulation to be maintained by or provided to a governmental agency while the information is in the possession of the governmental agency to the extent applicable law expressly authorizes its disclosure.

Source: Laws 1995, LB 626, § 4.

8-2005 Sections; how construed.

Sections 8-2001 to 8-2004 are not to be construed to limit the discovery or admissibility in any civil action of any documents that are not compliance review documents and shall not preclude a depository institution's primary state or federal regulator from obtaining compliance review documents.

Source: Laws 1995, LB 626, § 5.

ARTICLE 21

INTERSTATE BRANCHING BY MERGER ACT OF 1997

Section
8-2101. Act, how cited.
8-2102. Terms, defined.
8-2103. Nebraska state chartered bank; powers.
8-2104. Interstate merger transaction; eligibility; powers and duties.
8-2105. Out-of-state bank; branches; limitation.
8-2106. Interstate merger transaction; when prohibited.
8-2107. Director; powers and duties; costs.
8-2108. Branch closing or disposal; act; how construed.

8-2101 Act, how cited.

Sections 8-2101 to 8-2108 shall be known and may be cited as the Interstate Branching By Merger Act of 1997.

Source: Laws 1997, LB 351, § 1.

8-2102 Terms, defined.

For purposes of the Interstate Branching By Merger Act of 1997, unless the context otherwise requires:

(1) Department means the Department of Banking and Finance;

(2) Director means the Director of Banking and Finance;

(3) Home state means (a) with respect to a state chartered bank, the state in which the bank is chartered and (b) with respect to a national bank, the state in which the main office of the bank is located;

(4) Home state regulator means, with respect to an out-of-state state chartered bank, the bank supervisory agency of the state in which such bank is chartered;

(5) Host state means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch;

(6) Interstate merger transaction means a merger or consolidation of two or more banks, at least one of which is a Nebraska bank and at least one of which is an out-of-state bank, and the conversion of the main office and the branches of any bank involved in such merger or consolidation into branches of the resulting bank;

(7) Nebraska bank means a bank whose home state is Nebraska;

(8) Nebraska state chartered bank means a corporation which is chartered to conduct a bank in this state pursuant to the Nebraska Banking Act;

(9) Out-of-state bank means a bank whose home state is a state other than Nebraska;

(10) Out-of-state state chartered bank means a bank chartered under the laws of any state other than Nebraska;

(11) Resulting bank means a bank that has resulted from an interstate merger transaction under the Interstate Branching By Merger Act of 1997; and

(12) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Source: Laws 1997, LB 351, § 2; Laws 1998, LB 1321, § 74.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-2103 Nebraska state chartered bank; powers.

(1) A Nebraska state chartered bank may engage in an interstate merger transaction and establish one or more branches in any other state in accordance with the laws of the other state and with the approval of the director.

(2) A Nebraska state chartered bank may conduct any activities at any branch outside the State of Nebraska that are permissible for a bank chartered by the host state where the branch is located.

Source: Laws 1997, LB 351, § 3.

8-2104 Interstate merger transaction; eligibility; powers and duties.

(1) A Nebraska bank which has been in existence for five years or more may be acquired by and engage in an interstate merger transaction with any out-of-state bank.

(2) A bank which is acquired and converted to a branch of an out-of-state bank pursuant to an interstate merger transaction shall have all the powers and be subject to the same limitations as any other branch located in this state.

(3) An out-of-state bank that has acquired a Nebraska bank under the Interstate Branching By Merger Act of 1997 may maintain and operate the branches of a Nebraska bank with which the out-of-state bank engaged in an interstate merger transaction, and may establish or acquire additional branches in this state, to the same extent that any Nebraska bank may establish or acquire a branch in Nebraska.

(4) All branches of an out-of-state bank shall comply with all applicable Nebraska laws and regulations in the conduct of their business in this state to the maximum extent authorized by federal law.

Source: Laws 1997, LB 351, § 4; Laws 2002, LB 1089, § 11.

8-2105 Out-of-state bank; branches; limitation.

No out-of-state bank shall be permitted to establish or acquire a branch located in this state without engaging in an interstate merger transaction or as provided in subsection (3) of section 8-2104.

Source: Laws 1997, LB 351, § 5.

8-2106 Interstate merger transaction; when prohibited.

An interstate merger transaction shall not be permitted if, upon consummation of such transaction, the resulting bank or its bank holding company would have direct or indirect ownership or control of deposits in Nebraska in excess of fourteen percent of the total deposits of all banks in Nebraska, plus the total

deposits, savings accounts, passbook accounts, and share accounts in savings and loan associations and building and loan associations in Nebraska, as determined by the director on the basis of the most recent calendar-year-end reports, except as provided in subsection (4) or (5) of section 8-910.

Source: Laws 1997, LB 351, § 6.

8-2107 Director; powers and duties; costs.

(1) The director may make such examinations of any branch established and maintained in this state by an out-of-state state chartered bank as the director may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices.

(2) The director may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in Nebraska pursuant to the Interstate Branching By Merger Act of 1997. Any reporting requirements prescribed by the director under this subsection shall be consistent with the reporting requirements applicable to Nebraska state banks and appropriate for the purpose of enabling the director to carry out his or her responsibilities under the act.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska state chartered bank in a host state, and the director may accept such reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(4) The director may enter into contracts with any bank supervisory agencies that have concurrent jurisdiction over a Nebraska state chartered bank or an out-of-state state chartered bank operating a branch in this state to engage the services of such agencies' examiners or to provide the services of department examiners to such agency.

(5) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska state chartered bank in any host state. The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the act or to ensure compliance with the laws of this state. In the case of an out-of-state state chartered bank, the director shall recognize the exclusive authority of the home state regulator over corporate government matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(6) The cost of any examination conducted under this section shall be assessed against such out-of-state state chartered bank in the manner set forth in sections 8-605 and 8-606 and paid for by such out-of-state state chartered bank.

Source: Laws 1997, LB 351, § 7; Laws 2007, LB124, § 17.

8-2108 Branch closing or disposal; act; how construed.

Nothing in the Interstate Branching By Merger Act of 1997 shall prevent the resulting bank in an interstate merger transaction from closing or disposing of any branches acquired in the transaction in accordance with state law subject to applicable federal law regarding branch closures.

Source: Laws 1997, LB 351, § 8.

ARTICLE 22

NEBRASKA UNIFORM PRUDENT INVESTOR ACT

Section
8-2201. Repealed. Laws 2003, LB 130, § 143.
8-2202. Transferred to section 30-3883.
8-2203. Transferred to section 30-3884.
8-2204. Transferred to section 30-3885.
8-2205. Transferred to section 30-3886.
8-2206. Repealed. Laws 2003, LB 130, § 143.
8-2207. Repealed. Laws 2003, LB 130, § 143.
8-2208. Repealed. Laws 2003, LB 130, § 143.
8-2209. Transferred to section 30-3887.
8-2210. Transferred to section 30-3888.
8-2211. Transferred to section 30-3889.
8-2212. Repealed. Laws 2003, LB 130, § 143.
8-2213. Repealed. Laws 2003, LB 130, § 143.

8-2201 Repealed. Laws 2003, LB 130, § 143.

8-2202 Transferred to section 30-3883.

8-2203 Transferred to section 30-3884.

8-2204 Transferred to section 30-3885.

8-2205 Transferred to section 30-3886.

8-2206 Repealed. Laws 2003, LB 130, § 143.

8-2207 Repealed. Laws 2003, LB 130, § 143.

8-2208 Repealed. Laws 2003, LB 130, § 143.

8-2209 Transferred to section 30-3887.

8-2210 Transferred to section 30-3888.

8-2211 Transferred to section 30-3889.

8-2212 Repealed. Laws 2003, LB 130, § 143.

8-2213 Repealed. Laws 2003, LB 130, § 143.

ARTICLE 23

INTERSTATE TRUST COMPANY OFFICE ACT

Section
8-2301. Act, how cited.
8-2302. Terms, defined.
8-2303. Nebraska state-chartered trust company; out-of-state branch trust offices; authorized.

Section

8-2301 Act, how cited.

Sections 8-2301 to 8-2313 shall be known and may be cited as the Interstate Trust Company Office Act.

Source: Laws 1998, LB 1321, § 54.

8-2302 Terms, defined.

For purposes of the Interstate Trust Company Office Act, unless the context otherwise requires:

(1) Branch trust office means an office of a trust company, other than the main or principal office of a trust company, at which a trust company may act in any fiduciary capacity or conduct any activity permitted under the Nebraska Trust Company Act;

(2) Department means the Department of Banking and Finance;

(3) Director means the Director of Banking and Finance;

(4) Fiduciary capacity means a capacity resulting from a trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with the undertaking and includes the capacities of trustee, including trustee of a common trust fund, administrator, personal representative, guardian of an estate, conservator, receiver, attorney in fact, and custodian and any other similar capacity;

(5) Home state means (a) with respect to a state-chartered trust company, the state in which the trust company is chartered, and (b) with respect to a federally chartered trust company, the state in which the main or principal office of the federally chartered trust company is located;

(6) Home state regulator means the supervisory agency with primary responsibility for chartering and supervising an out-of-state trust company;

(7) Host state means a state, other than the home state of a trust company, in which the trust company maintains, or seeks to establish and maintain, a branch trust office or a representative trust office;

(8) Nebraska state-chartered trust company means (a) a corporation which is chartered to conduct a trust company business and engage in any fiduciary capacity pursuant to the Nebraska Trust Company Act or (b) a corporation which is chartered to conduct a bank in this state pursuant to the Nebraska

Banking Act and which has been authorized to conduct a trust company business in the bank pursuant to sections 8-159 to 8-162;

(9) Nebraska trust company means a trust company whose home state is Nebraska;

(10) Out-of-state state trust company means a trust company chartered under the laws of any state other than Nebraska;

(11) Out-of-state trust company means a trust company whose home state is a state other than Nebraska;

(12) Representative trust office means an office at which a trust company does not act in any fiduciary capacity or conduct or engage in any activity related to its fiduciary capacities but may otherwise engage in any other activity permitted under the Nebraska Trust Company Act;

(13) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands; and

(14) Trust company means (a) a company chartered and supervised under the laws of any state or the United States to act in a fiduciary capacity, (b) a bank chartered and supervised under the laws of any state or the United States if such bank has been further chartered or authorized to conduct a trust company business within the bank, or (c) a savings association chartered and supervised under the laws of any state or the United States if such savings association has been further chartered or authorized to engage in a trust company business within the savings association.

Source: Laws 1998, LB 1321, § 55.

Cross References

Nebraska Banking Act, see section 8-101.01.
Nebraska Trust Company Act, see section 8-201.01.

8-2303 Nebraska state-chartered trust company; out-of-state branch trust offices; authorized.

A Nebraska state-chartered trust company may establish and maintain branch trust offices in any other state in accordance with the laws of the other state and with the prior approval of the director. A Nebraska state-chartered trust company may conduct any activities at any branch trust office outside the State of Nebraska that are permissible for a trust company chartered by the host state where the branch trust office is located or for a national bank authorized to conduct a trust company business within the host state.

Source: Laws 1998, LB 1321, § 56.

8-2304 Nebraska state-chartered trust company; out-of-state representative trust offices; authorized.

A Nebraska state-chartered trust company may establish and maintain representative trust offices in any other state in accordance with the laws of the other state and with the prior approval of the director. A Nebraska state-chartered trust company may not act in a fiduciary capacity but may conduct any other trust company activities at any representative trust office outside the State of Nebraska that are permissible for a representative trust office of a trust company chartered by the host state where the representative trust office is

located or for a national bank authorized to conduct a trust company business within the host state.

Source: Laws 1998, LB 1321, § 57.

8-2305 Out-of-state trust company; instate branch trust offices; authorized.

An out-of-state trust company may establish and maintain branch trust offices in Nebraska only if (1) the requirements of sections 8-2306 and 8-2307 are met and (2) the home state of the out-of-state trust company authorizes the establishment and maintenance of branch trust offices in that state by a Nebraska trust company under conditions no more restrictive than those imposed by the laws of Nebraska, as determined by the director.

Source: Laws 1998, LB 1321, § 58.

8-2306 Out-of-state trust company; instate branch trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain branch trust offices in Nebraska pursuant to section 8-2305, shall file written notice of the proposed transaction with the director on a form prescribed by the director on or after the date on which the out-of-state trust company applies to its home state regulator for approval to establish and maintain the branch trust office in this state. The notice shall include a copy of the application made to its home state regulator, a copy of a resolution of its board of directors authorizing the branch trust office, and the filing fee prescribed by section 8-602.

(2) An out-of-state trust company shall provide with the notice satisfactory evidence to the director of compliance with (a) any applicable requirements of the Business Corporation Act and (b) the applicable requirements of its home state regulator for establishing and maintaining a branch trust office.

(3) An out-of-state trust company shall provide with the notice an affidavit from its president stating that for as long as it maintains a branch trust office in this state the trust company will comply with Nebraska law.

(4) An out-of-state trust company shall obtain a fidelity bond in accordance with section 8-205.01. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries described in section 8-205.01 shall satisfy the requirements of this subsection. The bond or a substitute bond shall remain in effect during all periods in which the trust company conducts business in Nebraska.

Source: Laws 1998, LB 1321, § 59.

8-2307 Out-of-state trust company; instate branch trust offices; director; approval.

(1) The director shall act within ninety days after receipt of notice under section 8-2306. The director may extend the ninety-day period if he or she determines that the notice raises issues that require additional information or additional time for analysis.

(2) The director may deny approval of the proposed branch trust office if he or she finds that the out-of-state trust company lacks sufficient financial resources to establish the branch trust office without adversely affecting its safety or soundness or that the establishment of the proposed branch trust office would not be in the public interest.

(3) If the out-of-state trust company is not insured by an agency of the federal government, the director may condition his or her approval on the satisfaction by the out-of-state trust company of any requirement applicable to a Nebraska state-chartered trust company pursuant to the Nebraska Trust Company Act.

(4) If the director does not extend the ninety-day period pursuant to subsection (1) of this section, he or she shall certify his or her approval or denial of the notice to the out-of-state trust company's home state regulator on or before the ninetieth day after receipt of notice. If the director imposes conditions pursuant to subsection (3) of this section, the conditions shall be satisfied prior to the director's certification of approval. A copy of the certification of approval shall be sent to the out-of-state trust company. If the notice is approved, the out-of-state trust company may commence business at the branch trust office upon compliance with sections 8-209 and 8-210.

(5) If the director does extend the ninety-day period pursuant to subsection (1) of this section, he or she shall act on the notice as soon as reasonably possible. Upon reaching a decision on the notice, the director shall certify his or her approval or denial of the notice to the out-of-state trust company's home state regulator. If the director imposes conditions pursuant to subsection (3) of this section, the conditions shall be satisfied prior to the director's certification of approval. A copy of such certification shall be sent to the out-of-state trust company. If the notice is approved, the out-of-state trust company may commence business at the branch trust office upon compliance with sections 8-209 and 8-210.

Source: Laws 1998, LB 1321, § 60.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-2308 Out-of-state trust company with instate branch trust office; representative trust offices; authorized; when.

An out-of-state trust company which has established and maintains at least one branch trust office in this state pursuant to the Interstate Trust Company Office Act may establish and maintain representative trust offices in Nebraska only if (1) the requirements of section 8-2309 are met and (2) the home state of the out-of-state trust company authorizes the establishment and maintenance of representative trust offices in that state by a Nebraska trust company under conditions no more restrictive than those imposed by the laws of Nebraska, as determined by the director.

Source: Laws 1998, LB 1321, § 61.

8-2309 Out-of-state trust company with instate branch trust office; representative trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain representative trust offices in Nebraska pursuant to section 8-2308, shall file written notice of the proposed transaction with the director on a form prescribed by the director. The notice shall include a list of the proposed activities to be conducted at the representative trust office, procedures to ensure that no fiduciary activities will be conducted at the representative trust office, a copy of a resolution of its board of directors authorizing the representative trust office, satisfactory evidence that the bond required pursuant to subsection (4) of

section 8-2306 will cover the activities at the representative trust office, any other information which the director may require, and the filing fee prescribed by section 8-602.

(2) The director shall act within sixty days after receipt of the notice under subsection (1) of this section. The director may extend the sixty-day period if he or she determines that the notice raises issues that require additional information or additional time for analysis. If the sixty-day period is extended, the out-of-state trust company may establish a representative trust office only on prior written approval of the director.

(3) The director may deny approval of the proposed representative trust office if he or she finds that the trust company lacks sufficient financial resources to establish the representative trust office without adversely affecting its safety or soundness or that the establishment of the proposed representative trust office would not be in the public interest.

(4) If the director does not extend the sixty-day period pursuant to subsection (2) of this section and does not act within sixty days, the out-of-state trust company may establish representative trust offices on the sixty-first day following the director's receipt of notice.

Source: Laws 1998, LB 1321, § 62.

8-2310 Out-of-state trust company without instate branch trust office; representative trust offices; authorized; when.

An out-of-state trust company which has not established and does not maintain a branch trust office in this state may establish and maintain representative trust offices in Nebraska only if (1) the requirements of section 8-2311 are met and (2) the home state of the out-of-state trust company authorizes the establishment and maintenance of representative trust offices in that state by a Nebraska trust company under conditions no more restrictive than those imposed by the laws of Nebraska, as determined by the director.

Source: Laws 1998, LB 1321, § 63.

8-2311 Out-of-state trust company without instate branch trust office; representative trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain representative trust offices in Nebraska pursuant to section 8-2310, shall file written notice of the proposed transaction with the director on a form prescribed by the director. The notice shall include, in addition to the information and fee prescribed in subsection (1) of section 8-2309:

(a) Satisfactory evidence that the out-of-state trust company is a trust company;

(b) Satisfactory evidence of compliance with any applicable requirements of the Business Corporation Act;

(c) An affidavit from its president stating that for as long as it maintains a representative trust office in this state the trust company will comply with Nebraska law; and

(d) Submission of a fidelity bond in accordance with section 8-205.01. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries described in section 8-205.01 shall satisfy the requirements of this subdivision. The bond or a substitute bond

shall remain in effect during all periods in which the trust company conducts business in Nebraska.

(2) The director shall act within ninety days after receipt of notice under subsection (1) of this section. The director may extend the ninety-day period if he or she determines that the notice raises issues that require additional information or additional time for analysis. If the ninety-day period is extended, the out-of-state trust company may establish representative trust offices only on prior written approval of the director.

(3) The director may deny approval of the proposed representative trust office if he or she finds that the trust company lacks sufficient financial resources to establish the representative trust office without adversely affecting its safety or soundness, that the trust company does not have adequate fidelity bond coverage, or that the proposed representative trust office would not be in the public interest.

(4) If the director does not extend the ninety-day period pursuant to subsection (2) of this section and does not act within ninety days, the out-of-state trust company may, upon compliance with sections 8-209 and 8-210, establish representative trust offices on the ninety-first day following the director's receipt of notice.

Source: Laws 1998, LB 1321, § 64.

Cross References

Business Corporation Act, see section 21-2001.

8-2312 Branch trust office; representative trust office; director; powers.

(1) The director may examine any branch trust office or representative trust office established and maintained in this state by any out-of-state state trust company as he or she deems necessary to determine whether the branch trust office or representative trust office is being operated in compliance with Nebraska law and in accordance with safe and sound practices.

(2) The director may prescribe requirements for periodic reports by an out-of-state trust company that operates branch trust offices or representative trust offices pursuant to the Interstate Trust Company Office Act. Any such reporting requirements shall be consistent with the reporting requirements applicable to Nebraska trust companies and appropriate for the purpose of enabling the director to carry out his or her responsibilities under the act.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other trust company supervisory agency that has concurrent jurisdiction over a Nebraska state-chartered trust company or an out-of-state state trust company operating a branch trust office or representative trust office in this state to engage the services of such supervisory agency's examiners or to provide the services of department examiners to such supervisory agency.

(4) The director may enter into joint examinations or joint enforcement actions with other trust company supervisory agencies having concurrent jurisdiction over any branch trust office or representative trust office of an out-of-state state trust company or any branch trust office or representative trust office of a Nebraska state-chartered trust company in any host state. The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibili-

ties under the act or to ensure compliance with Nebraska law. In the case of an out-of-state state trust company, the director shall recognize the exclusive jurisdiction of the home state regulator over corporate government matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(5) The cost of any examination conducted under this section shall be assessed against the out-of-state state trust company in the manner set forth in sections 8-605 and 8-606 and paid for by the out-of-state state trust company.

Source: Laws 1998, LB 1321, § 65; Laws 2007, LB124, § 18.

8-2313 Act, how construed.

Nothing in the Interstate Trust Company Office Act shall be construed to authorize any Nebraska trust company or any out-of-state trust company to conduct the general business of banking at any branch trust office or representative trust office.

Source: Laws 1998, LB 1321, § 66.

ARTICLE 24
CREDIT CARD BANK

Section
8-2401. Formation; conditions.
8-2402. Charter; grant; when.
8-2403. Provisions applicable.

8-2401 Formation; conditions.

A credit card bank may be formed under the Nebraska Banking Act if all of the following conditions are met:

(1) A credit card bank shall not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties;

(2) A credit card bank may not accept any savings or time deposits of less than one hundred thousand dollars, except that savings or time deposits of any amount may be accepted from affiliated financial institutions;

(3) The services of a credit card bank shall be limited to the solicitation, processing, and making of loans instituted by credit card or transaction card and matters relating or incidental thereto;

(4) A credit card bank shall not make commercial loans;

(5) A credit card bank shall, on the date of commencement of banking business in this state, have a minimum capital stock and paid-in surplus of two million five hundred thousand dollars;

(6) A credit card bank shall (a) employ on the date of commencement of its banking business in this state or within one year after such date not less than fifty persons in this state in its business or (b) contract with a qualifying association as defined in subdivision (4) of section 8-1511 to provide for the processing of its credit card or transaction card operations;

(7) A credit card bank shall maintain only one office that accepts deposits;

(8) A credit card bank may maintain one or more processing centers in this state;

(9) A credit card bank shall operate in a manner and at a location that is not likely to attract customers from the general public in this state to the substantial detriment of existing financial institutions as defined in section 8-101 located in this state; and

(10) A credit card bank shall provide for the insurance of deposits as described in subsection (1) of section 8-702.

Source: Laws 2004, LB 999, § 17; Laws 2005, LB 533, § 24.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-2402 Charter; grant; when.

The Department of Banking and Finance may grant a charter to transact the business of a credit card bank if the Director of Banking and Finance is satisfied that the applicant has met the conditions set forth in section 8-2401 and the Nebraska Banking Act as to the formation of a new bank.

Source: Laws 2004, LB 999, § 18.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-2403 Provisions applicable.

A credit card bank shall be subject to the Interstate Branching By Merger Act of 1997, the Nebraska Bank Holding Company Act of 1995, the Nebraska Banking Act, and Chapter 8, articles 5, 6, 7, 8, 13, 14, 15, 16, 19, and 20, unless otherwise limited or excluded or the context otherwise requires.

Source: Laws 2004, LB 999, § 19.

Cross References

Interstate Branching By Merger Act of 1997, see section 8-2101.
Nebraska Bank Holding Company Act of 1995, see section 8-908.
Nebraska Banking Act, see section 8-101.01.

ARTICLE 25

SOLICITATION FOR FINANCIAL PRODUCTS OR SERVICES

Section
8-2501. Written solicitation; restrictions.
8-2502. Written solicitation; restriction on use of loan information; exception.
8-2503. Advertisement or written solicitation; comparison authorized.
8-2504. Violation; cease and desist order; fine.
8-2505. Financial institution, defined.

8-2501 Written solicitation; restrictions.

(1) Except as provided in section 8-2503, no person shall include the name, trade name, logo, or symbol of a financial institution in a written solicitation for financial products or services directed to a consumer who has obtained a loan from the financial institution without the consent of the financial institution, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the financial institution and that the solicitation is not authorized by the financial institution, which shall be identified by name. The statement shall be made in close proximity to, and in the

same or larger font size as, the first and most prominent use or uses of the name, trade name, logo, or symbol in the statement, including on an envelope or through an envelope window containing the statement.

(2) No person shall use the name of a financial institution or a name similar to that of a financial institution in a written solicitation for financial products or services directed to consumers, if that use could cause a reasonable person to be confused, mistaken, or deceived initially or otherwise as to either of the following:

(a) The financial institution's sponsorship, affiliation, connection, or association with the person using the name; or

(b) The financial institution's approval or endorsement of the person using the name or the person's products or services.

Source: Laws 2005, LB 533, § 25.

8-2502 Written solicitation; restriction on use of loan information; exception.

Except as provided in section 8-2503, no person shall include a consumer's loan number, loan amount, or other specific loan information, whether or not publicly available, in a written solicitation for products or services without the consent of the consumer, unless the solicitation clearly and conspicuously states, when applicable, that the person is not sponsored by or affiliated with the financial institution, that the statement is not authorized by the financial institution, and that the consumer's loan information was not provided to that person by the financial institution. The statement shall be made in close proximity to, and in the same or larger font as, the first and the most prominent use or uses of the consumer's loan information in the statement, including on an envelope or through an envelope window containing the statement. The prohibition in this section does not apply to communications by a financial institution or any of its affiliates, subsidiaries, or agents with a current customer of the financial institution or with a person who has been a customer of the financial institution.

Source: Laws 2005, LB 533, § 26.

8-2503 Advertisement or written solicitation; comparison authorized.

It is not a violation of section 8-2501 or 8-2502 for a person in an advertisement or written solicitation for products or services to use the name, trade name, logo, or symbol of a financial institution without the statement described in section 8-2501 or 8-2502, if that use is exclusively part of a comparison of like products or services in which the person clearly and conspicuously identifies itself. Nothing in section 8-2501 or 8-2502 shall be deemed or interpreted to alter or modify the trade name and trademark laws of this state.

Source: Laws 2005, LB 533, § 27.

8-2504 Violation; cease and desist order; fine.

(1) The Department of Banking and Finance may order any person to cease and desist whenever the Director of Banking and Finance determines that such person has violated section 8-2501 or 8-2502. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered and provide opportunity for hearing in accordance with the Administrative Procedure Act.

(2) If a person violates section 8-2501 or 8-2502 after receiving such cease and desist order, the director may, following notice and opportunity for hearing in accordance with the Administrative Procedure Act, impose a fine of up to one thousand dollars for each violation, plus the costs of investigation. Each instance in which a violation of section 8-2501 or 8-2502 takes place after receiving a cease and desist order constitutes a separate violation.

(3) The director shall remit all fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. All costs collected shall be remitted to the Financial Institution Assessment Cash Fund.

(4) This section does not affect the availability of any remedies otherwise available to a financial institution.

Source: Laws 2005, LB 533, § 28; Laws 2007, LB124, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

8-2505 Financial institution, defined.

For purposes of sections 8-2501 to 8-2504, financial institution means a state or federally chartered bank, savings and loan association, savings bank, or credit union or any affiliate, subsidiary, or agent thereof.

Source: Laws 2005, LB 533, § 29.

ARTICLE 26
CREDIT REPORT PROTECTION ACT

Section

8-2601 Act, how cited.

Sections 8-2601 to 8-2615 shall be known and may be cited as the Credit Report Protection Act.

Source: Laws 2007, LB674, § 1.

Cross References

Consumer reporting agency, duty to furnish information to consumer, see section 20-149.

8-2602 Terms, defined.

For purposes of the Credit Report Protection Act:

(1) Consumer reporting agency means any person which, for monetary fees, for dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

(2) File, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored;

(3) Security freeze means a notice placed in a consumer's file as provided in section 8-2603 that prohibits the consumer reporting agency from releasing a credit report, or any other information derived from the file, in connection with the extension of credit or the opening of a new account, without the express authorization of the consumer; and

(4) Victim of identity theft means a consumer who has a copy of an official police report evidencing that the consumer has alleged to be a victim of identity theft.

Source: Laws 2007, LB674, § 2.

8-2603 Security freeze; request.

A consumer, including a minor at the request of a parent or custodial parent or guardian if appointed, may elect to place a security freeze on his or her file by making a request by certified mail to the consumer reporting agency.

Source: Laws 2007, LB674, § 3.

8-2604 Consumer reporting agency; release of credit report or other information prohibited without consumer authorization.

If a security freeze is in place with respect to a consumer's file, the consumer reporting agency shall not release a credit report or any other information derived from the file to a third party without the prior express authorization of the consumer. This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to a consumer's file.

Source: Laws 2007, LB674, § 4.

8-2605 Consumer reporting agency; placement of security freeze; when; written confirmation to consumer.

(1) A consumer reporting agency shall place a security freeze on a file no later than three business days after receiving a request by certified mail.

(2) Until July 1, 2008, a consumer reporting agency shall, within ten business days after receiving a request, send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of a credit report or any other information derived from

his or her file for a specified period of time. Beginning July 1, 2008, a consumer reporting agency shall send such confirmation and provide such identification number or password to the consumer within five business days after receiving a request.

(3) The written confirmation required under subsection (2) of this section shall include a warning which shall read as follows: WARNING TO PERSONS SEEKING A CREDIT FREEZE AS PERMITTED BY THE CREDIT REPORT PROTECTION ACT: YOU MAY BE DENIED CREDIT AS A RESULT OF A FREEZE PLACED ON YOUR CREDIT.

Source: Laws 2007, LB674, § 5.

8-2606 Consumer reporting agency; disclose process of placing and temporarily lifting security freeze; consumer request to lift freeze; when.

(1) When a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting the security freeze, including the process for allowing access to his or her credit report or any other information derived from his or her file for a specified period of time by temporarily lifting the security freeze.

(2) If a consumer wishes to allow his or her credit report or any other information derived from his or her file to be accessed for a specified period of time by temporarily lifting the security freeze, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Proper identification, which means that information generally deemed sufficient to identify a person. Only if the consumer is unable to provide sufficiently self-identifying information may a consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify the consumer's identity;

(b) The unique personal identification number or password provided by the consumer reporting agency under section 8-2605; and

(c) The proper information regarding the specified time period.

(3)(a) Until January 1, 2009, a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on his or her file shall comply with the request no later than three business days after receiving the request.

(b) A consumer reporting agency shall develop procedures involving the use of a telephone, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a security freeze on his or her file in an expedited manner. By January 1, 2009, a consumer reporting agency shall comply with a request to temporarily lift a security freeze within fifteen minutes after receiving such request by telephone or through a secure electronic method.

(4) A consumer reporting agency is not required to temporarily lift a security freeze within the time provided in subsection (3) of this section if:

(a) The consumer fails to meet the requirements of subsection (2) of this section; or

(b) The consumer reporting agency's ability to temporarily lift the security freeze within the time provided in subsection (3) of this section is prevented by:

(i) An act of God, including fire, earthquake, hurricane, storm, or similar natural disaster or phenomena;

(ii) An unauthorized or illegal act by a third party, including terrorism, sabotage, riot, vandalism, labor strike or dispute disrupting operations, or similar occurrence;

(iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time, or similar disruption;

(iv) Governmental action, including an emergency order or regulation, judicial or law enforcement action, or similar directive;

(v) Regularly scheduled maintenance, during other than normal business hours, of the consumer reporting agency's system or updates to such system;

(vi) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's system that is unexpected or unscheduled; or

(vii) Receipt of a removal request outside of normal business hours.

For purposes of this subsection, normal business hours means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m., in the applicable time zone in this state.

Source: Laws 2007, LB674, § 6.

8-2607 Security freeze; duration; consumer reporting agency; place hold on file; release; notice; temporarily lift security freeze; removal of freeze; request from consumer.

(1) A security freeze shall remain in place, subject to being put on hold or temporarily lifted as otherwise provided in this section, until the earlier of the date that the consumer reporting agency receives a request from the consumer to remove the freeze under section 8-2608 or seven years after the date the security freeze was put in place.

(2) A consumer reporting agency may place a hold on a file due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to release a hold on a file, the consumer reporting agency shall notify the consumer in writing three business days prior to releasing the hold on the file.

(3) A consumer reporting agency shall temporarily lift a security freeze only upon request by the consumer under section 8-2606.

(4) A consumer reporting agency shall remove a security freeze upon the earlier of the date that the consumer reporting agency receives a request from the consumer to remove the freeze under section 8-2608 or seven years after the date the security freeze was put in place.

Source: Laws 2007, LB674, § 7.

8-2608 Consumer reporting agency; mandatory removal of security freeze; conditions.

A consumer reporting agency shall remove a security freeze within three business days after receiving a request for removal from the consumer who provides both of the following:

(1) Proper identification as specified in subdivision (2)(a) of section 8-2606; and

(2) The unique personal identification number or password referred to in subdivision (2)(b) of section 8-2606.

Source: Laws 2007, LB674, § 8.

8-2609 Consumer reporting agency; fee authorized; exceptions.

(1) A consumer reporting agency may charge a fee of fifteen dollars for placing a security freeze unless:

(a) The consumer is a minor; or

(b)(i) The consumer is a victim of identity theft; and

(ii) The consumer provides the consumer reporting agency with a copy of an official police report documenting the identity theft.

(2) A consumer reporting agency shall reissue the same or a new personal identification number or password required under section 8-2605 one time without charge and may charge a fee of no more than five dollars for subsequent reissuance of the personal identification number or password.

Source: Laws 2007, LB674, § 9.

8-2610 Consumer reporting agency; changes to official information in file; written confirmation to consumer required; exceptions.

If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a file without sending a written confirmation of the change to the consumer within thirty days after the change is made: Name, date of birth, social security number, and address. In the case of an address change, the written confirmation shall be sent to both the new address and the former address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters.

Source: Laws 2007, LB674, § 10.

8-2611 Consumer reporting agency; restrictions with respect to third parties; request by third party; how treated.

(1) A consumer reporting agency may not suggest or otherwise state or imply to a third party that a security freeze on a consumer's file reflects a negative credit score, history, report, or rating.

(2) If a third party requests access to a credit report or any other information derived from a file in connection with an application for credit or the opening of an account and the consumer has placed a security freeze on his or her file and does not allow his or her file to be accessed during that specified period of time, the third party may treat the application as incomplete.

Source: Laws 2007, LB674, § 11.

8-2612 Consumer reporting agency; information furnished to governmental agency.

The Credit Report Protection Act does not prohibit a consumer reporting agency from furnishing to a governmental agency a consumer's name, address, former address, place of employment, or former place of employment.

Source: Laws 2007, LB674, § 12.

8-2613 Act; use of credit report or information derived from file; applicability.

The Credit Report Protection Act does not apply to the use of a credit report or any information derived from the file by any of the following:

(1) A person or entity, a subsidiary, affiliate, or agent of that person or entity, an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subdivision, reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under section 8-2606 for purposes of facilitating the extension of credit or other permissible use;

(3) Any federal, state, or local governmental entity, including, but not limited to, a law enforcement agency, a court, or an agent or assignee of a law enforcement agency or court;

(4) A private collection agency acting under a court order, warrant, or subpoena;

(5) Any person or entity for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on September 1, 2007;

(6) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;

(7) Any person or entity for the purpose of providing a consumer with a copy of the consumer's credit report or any other information derived from his or her file upon the consumer's request; and

(8) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

Source: Laws 2007, LB674, § 13.

8-2614 Entities not considered consumer reporting agencies; not required to place security freeze on file.

The following entities are not consumer reporting agencies for purposes of the Credit Report Protection Act and are not required to place a security freeze on a file under section 8-2603:

(1) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;

(2) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a

consumer request for a deposit account at the inquiring bank or financial institution; and

(3) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency, or multiple consumer reporting agencies, and does not maintain a permanent data base of credit information from which new credit reports are produced. A consumer reporting agency shall honor any security freeze placed on a file by another consumer reporting agency.

Source: Laws 2007, LB674, § 14.

8-2615 Enforcement of act; Attorney General; powers and duties; violation; civil penalty; recovery of damages.

The Attorney General shall enforce the Credit Report Protection Act. For purposes of the act, the Attorney General may issue subpoenas, adopt and promulgate rules and regulations, and seek injunctive relief and a monetary award for civil penalties, attorney's fees, and costs. Any person who violates the act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General may also seek and recover actual damages for each consumer injured by a violation of the act.

Source: Laws 2007, LB674, § 15.

CHAPTER 9
BINGO AND OTHER GAMBLING

Article.
1. General Provisions. 9-101 to 9-1,106.
2. Bingo. 9-201 to 9-266.
3. Pickle Cards. 9-301 to 9-356.
4. Lotteries and Raffles. 9-401 to 9-437.
5. Small Lotteries and Raffles. 9-501 to 9-513.
6. County and City Lotteries. 9-601 to 9-653.
7. Gift Enterprises. 9-701.
8. State Lottery. 9-801 to 9-842.
9. Gaming Tax and License Fee. Repealed.

Cross References

Constitutional provision:
Legislature may authorize on certain conditions, see Article III, section 24, Constitution of Nebraska.
Cities of the first class, powers, see section 16-226.
Cities of the metropolitan class, powers, see section 14-102.
Cities of the primary class, powers, see section 15-258.
Cities of the second class and villages, powers, see sections 17-120 and 17-207.
Criminal Code, Nebraska, see section 28-1101 et seq.
Horseracing, see section 2-1201 et seq.
Income tax on gambling winnings, see section 77-2753.
License Suspension Act, see section 43-3301.
State Advisory Committee on Problem Gambling and Addiction Services, see section 71-816.
Volunteer fire departments, deposit and expenditure of gambling proceeds, see section 35-901.

ARTICLE 1
GENERAL PROVISIONS

Section
9-101. Repealed. Laws 1978, LB 351, § 52.
9-102. Repealed. Laws 1978, LB 351, § 52.
9-103. Repealed. Laws 1978, LB 351, § 52.
9-104. Repealed. Laws 1978, LB 351, § 52.
9-105. Repealed. Laws 1978, LB 351, § 52.
9-106. Repealed. Laws 1978, LB 351, § 52.
9-107. Repealed. Laws 1978, LB 351, § 52.
9-108. Repealed. Laws 1978, LB 351, § 52.
9-109. Repealed. Laws 1978, LB 351, § 52.
9-110. Repealed. Laws 1978, LB 351, § 52.
9-111. Repealed. Laws 1978, LB 351, § 52.
9-112. Repealed. Laws 1978, LB 351, § 52.
9-113. Repealed. Laws 1978, LB 351, § 52.
9-114. Repealed. Laws 1978, LB 351, § 52.
9-115. Repealed. Laws 1978, LB 351, § 52.
9-116. Repealed. Laws 1978, LB 351, § 52.
9-117. Repealed. Laws 1978, LB 351, § 52.
9-118. Repealed. Laws 1978, LB 351, § 52.
9-119. Repealed. Laws 1978, LB 351, § 52.
9-120. Repealed. Laws 1978, LB 351, § 52.
9-121. Repealed. Laws 1978, LB 351, § 52.
9-121.01. Repealed. Laws 1978, LB 351, § 52.
9-122. Repealed. Laws 1978, LB 351, § 52.
9-123. Repealed. Laws 1978, LB 351, § 52.

Section
9-124. Transferred to section 9-202.
9-125. Transferred to section 9-203.
9-126. Transferred to section 9-211.
9-127. Transferred to section 9-204.
9-128. Transferred to section 9-205.
9-129. Transferred to section 9-206.
9-130. Repealed. Laws 1983, LB 259, § 64.
9-131. Repealed. Laws 1984, LB 949, § 79.
9-132. Transferred to section 9-210.
9-133. Transferred to section 9-213.
9-134. Transferred to section 9-214.
9-135. Transferred to section 9-216.
9-136. Transferred to section 9-217.
9-137. Transferred to section 9-218.
9-138. Transferred to section 9-219.
9-139. Transferred to section 9-222.
9-140. Transferred to section 9-223.
9-140.01. Transferred to section 9-346.
9-140.02. Repealed. Laws 1986, LB 1027, § 225.
9-140.03. Transferred to section 9-308.
9-140.04. Transferred to section 9-209.
9-140.05. Transferred to section 9-317.
9-140.06. Transferred to section 9-224.
9-140.07. Transferred to section 9-225.
9-140.08. Transferred to section 9-207.
9-140.09. Transferred to section 9-220.
9-140.10. Transferred to section 9-212.
9-140.11. Transferred to section 9-221.
9-140.12. Transferred to section 9-208.
9-140.13. Transferred to section 9-320.
9-140.14. Transferred to section 9-316.
9-140.15. Transferred to section 9-313.
9-140.16. Transferred to section 9-215.
9-141. Transferred to section 9-231.
9-142. Transferred to section 9-232.
9-143. Transferred to section 9-233.
9-143.01. Transferred to section 9-329.
9-143.02. Transferred to section 9-332.
9-143.03. Transferred to section 9-335.
9-143.04. Transferred to section 9-341.
9-143.05. Transferred to section 9-333.
9-143.06. Transferred to section 9-334.
9-144. Transferred to section 9-246.
9-145. Transferred to section 9-243.
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9-147. Transferred to section 9-245.
9-148. Transferred to section 9-257.
9-149. Transferred to section 9-242.
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9-151. Transferred to section 9-248.
9-152. Transferred to section 9-249.
9-153. Transferred to section 9-261.
9-154. Transferred to section 9-256.
9-155. Transferred to section 9-251.
9-156. Transferred to section 9-247.
9-157. Transferred to section 9-260.
9-158. Transferred to section 9-258.
9-159. Transferred to section 9-259.
9-160. Transferred to section 9-241.
9-161. Transferred to section 9-254.
9-162. Transferred to section 9-255.

Section
9-163. Transferred to section 9-253.
9-164. Transferred to section 9-237.
9-165. Transferred to section 9-239.
9-166. Transferred to section 9-236.
9-167. Transferred to section 9-238.
9-168. Repealed. Laws 1986, LB 1027, § 225.
9-169. Repealed. Laws 1986, LB 1027, § 225.
9-170. Transferred to section 9-262.
9-171. Transferred to section 9-230.
9-172. Transferred to section 9-263.
9-173. Transferred to section 9-201.
9-174. Transferred to section 9-264.
9-175. Transferred to section 9-265.
9-176. Repealed. Laws 1986, LB 1027, § 225.
9-177. Transferred to section 9-342.
9-178. Transferred to section 9-235.
9-178.01. Transferred to section 9-234.
9-179. Transferred to section 9-351.
9-180. Repealed. Laws 1984, LB 949, § 79.
9-181. Transferred to section 9-348.
9-182. Transferred to section 9-349.
9-183. Transferred to section 9-343.
9-184. Transferred to section 9-344.
9-185. Transferred to section 9-427.
9-186. Transferred to section 9-340.
9-186.01. Transferred to section 9-337.
9-186.02. Transferred to section 9-338.
9-186.03. Transferred to section 9-336.
9-186.04. Transferred to section 9-339.
9-187. Transferred to section 9-226.
9-187.01. Transferred to section 9-227.
9-187.02. Transferred to section 9-350.
9-188. Transferred to section 9-228.
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9-190. Transferred to section 9-252.
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9-192. Repealed. Laws 1986, LB 1027, § 225.
9-193. Repealed. Laws 1986, LB 1027, § 225.
9-193.01. Repealed. Laws 1986, LB 1027, § 225.
9-194. Repealed. Laws 1986, LB 1027, § 225.
9-195. Transferred to section 9-433.
9-196. Transferred to section 9-429.
9-197. Transferred to section 9-240.
9-198. Transferred to section 9-431.
9-199. Transferred to section 9-422.
9-199.01. Transferred to section 9-426.
9-1,100. Repealed. Laws 1985, LB 408, § 41.
9-1,101. Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized.
9-1,102. Repealed. Laws 2000, LB 1135, § 34.
9-1,103. Invalidity of acts; effect.
9-1,104. Contract or license applicant or holder; fingerprinting; criminal history record information check; personal history report; background investigation; facilities inspection; required; when; payment of costs; refusal to comply; effect.
9-1,105. Charitable Gaming Investigation Petty Cash Fund; authorized; use; records; investment.
9-1,106. Tribal-state compact governing gaming; Governor; powers.

9-101 Repealed. Laws 1978, LB 351, § 52.

9-102 Repealed. Laws 1978, LB 351, § 52.

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9-193 Repealed. Laws 1986, LB 1027, § 225.

9-193.01 Repealed. Laws 1986, LB 1027, § 225.

9-194 Repealed. Laws 1986, LB 1027, § 225.

9-195 Transferred to section 9-433.

9-196 Transferred to section 9-429.

9-197 Transferred to section 9-240.

9-198 Transferred to section 9-431.

9-199 Transferred to section 9-422.

9-199.01 Transferred to section 9-426.

9-1,100 Repealed. Laws 1985, LB 408, § 41.

9-1,101 Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized.

(1) The Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and section 9-701 shall be administered and enforced by the Charitable Gaming Division of the Department of Revenue, which division is hereby created. The Department of Revenue shall make annual reports to the Governor, Legislature, Auditor of Public Accounts, and Attorney General on all tax revenue received, expenses incurred, and other activities relating to the administration and enforcement of such acts.

(2) The Charitable Gaming Operations Fund is hereby created. 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.

(3)(a) Forty percent of the taxes collected pursuant to sections 9-239, 9-344, 9-429, and 9-648 shall be available to the Charitable Gaming Division for administering and enforcing the acts listed in subsection (1) of this section and section 81-8,128. The remaining sixty percent shall be transferred to the General Fund. Any portion of the forty percent not used by the division in the administration and enforcement of such acts and section shall be distributed as provided in this subsection.

(b) On or before November 1 each year, the State Treasurer shall transfer fifty thousand dollars from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund, except that no transfer shall occur if the Charitable Gaming Operations Fund contains less than fifty thousand dollars.

(c) Any money remaining in the Charitable Gaming Operations Fund after the transfer pursuant to subdivision (b) of this subsection not used by the Charitable Gaming Division in its administration and enforcement duties pursuant to this section may be transferred to the General Fund at the direction of the Legislature.

(4) The Tax Commissioner shall employ investigators who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device. For purposes of enforcing sections 28-1101 to 28-1117, the

authority of the investigators shall be limited to investigating possession of a gambling device, notifying local law enforcement authorities, and reporting suspected violations to the county attorney for prosecution.

(5) The Charitable Gaming Division may charge a fee for publications and listings it produces. The fee shall not exceed the cost of publication and distribution of such items. The division may also charge a fee for making a copy of any record in its possession equal to the actual cost per page. The division shall remit the fees to the State Treasurer for credit to the Charitable Gaming Operations Fund.

Source: Laws 1986, LB 1027, § 185; Laws 1988, LB 1232, § 1; Laws 1989, LB 767, § 1; Laws 1990, LB 1055, § 3; Laws 1991, LB 427, § 1; Laws 1993, LB 397, § 1; Laws 1994, LB 694, § 1; Laws 1994, LB 1066, § 8; Laws 2000, LB 659, § 1; Laws 2001, LB 541, § 2; Laws 2002, LB 1310, § 2; Laws 2007, LB638, § 1.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska County and City Lottery Act, see section 9-601.
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.
Nebraska State Funds Investment Act, see section 72-1260.
State Athletic Commissioner, office and duties, see section 81-8,128.

9-1,102 Repealed. Laws 2000, LB 1135, § 34.

9-1,103 Invalidity of acts; effect.

If any provision of the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, or the Nebraska County and City Lottery Act or the application of such acts to any person or circumstance is held invalid, the remainder of the acts or the application of the provision to other persons or circumstances shall not be affected.

Source: Laws 1988, LB 1232, § 3.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
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.

9-1,104 Contract or license applicant or holder; fingerprinting; criminal history record information check; personal history report; background investigation; facilities inspection; required; when; payment of costs; refusal to comply; effect.

(1) Any person applying for or holding a contract or license (a) as a distributor, gaming manager, or manufacturer pursuant to the Nebraska Bingo Act, (b) as a distributor, manufacturer, pickle card operator, or sales agent pursuant to the Nebraska Pickle Card Lottery Act, (c) as a lottery operator, lottery worker who is designated as a keno manager or who has authority over the verification of winning number selection by an electrically operated blower machine, manufacturer-distributor, or sales outlet location pursuant to the Nebraska County and City Lottery Act, or (d) pursuant to the State Lottery Act shall be subject to fingerprinting and a check of his or her criminal history

record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol for the purpose of determining whether the Department of Revenue has a basis to deny the contract or license application or to suspend, cancel, revoke, or terminate the person's contract or license. Each applicant for or party holding a license as a manufacturer, distributor, manufacturer-distributor, or lottery operator shall also submit a personal history report to the department on a form provided by the department and may be subject to a background investigation, an inspection of the applicant's or licensee's facilities, or both. If the applicant is an individual, the application shall also include the applicant's social security number.

(2)(a) If the applicant, party to the contract, or licensee is a corporation, the persons subject to such requirements shall include any officer or director of the corporation, his or her spouse, any person or entity directly or indirectly associated with such corporation in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held, and, if applicable, any person or entity holding in the aggregate ten percent or more of the debt or equity of the corporation. If any person or entity holding ten percent or more of the debt or equity of the applicant, contractor, or licensee corporation is a corporation, partnership, or limited liability company, every partner of such partnership, every member of such limited liability company, every officer or director of such corporation or partnership, every person or entity holding ten percent or more of the debt or equity of such corporation, partnership, or limited liability company, and every person or entity directly or indirectly associated with such corporation, partnership, or limited liability company in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held may also be subject to such requirements. If the applicant, party to the contract, or licensee is a partnership, the persons subject to such requirements shall include any partner, his or her spouse, any officer or director of the partnership, or any person or entity directly or indirectly associated with such partnership in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held. If the applicant, party to the contract, or licensee is a limited liability company, the persons subject to such requirement shall include any member and his or her spouse. If the applicant, party to the contract, or licensee is a nonprofit organization or nonprofit corporation, the person subject to such requirement shall be the person designated by such nonprofit organization or nonprofit corporation as the manager.

(b) Notwithstanding the provisions of this section, background investigations shall not be required of any debt holder which is a financial institution organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, installment loan licensees, or similar associations organized under the laws of this state and subject to supervision by the Department of Banking and Finance.

(c) Notwithstanding the provisions of this section, if an applicant for or party holding a license as a pickle card operator, sales agent, gaming manager, lottery operator, lottery worker, or sales outlet location is issued a license by

the Nebraska Liquor Control Commission, the Department of Revenue may waive the fingerprinting requirements for criminal history record investigation purposes.

(3)(a) The applicant, party to the contract, or licensee shall pay the actual cost of any fingerprinting or check of his or her criminal history record information.

(b) The Department of Revenue may require an applicant or licensee subjected to a background investigation, a facilities inspection, or both to pay the actual costs incurred by the department in conducting the investigation or inspection. The department may require payment of the estimated costs in advance of beginning the investigation or inspection. If an applicant does not wish to pay the estimated costs, it may withdraw its application and its application fee will be refunded. After completion of the investigation or inspection, the department shall refund any overpayment or shall charge and collect an amount sufficient to reimburse the department for any underpayment of actual costs. The department may establish by rule and regulation the conditions and procedures for payment of the costs.

(4) Refusal to comply with this section by any person contracted with, licensed, or seeking a contract or license under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Pickle Card Lottery Act, or the State Lottery Act shall be a violation of the act under which such person is contracted with, licensed, or seeking a contract or license.

Source: Laws 1989, LB 767, § 2; Laws 1991, LB 427, § 2; Laws 1991, LB 849, § 43; Laws 1993, LB 121, § 106; Laws 1993, LB 138, § 1; Laws 1993, LB 563, § 1; Laws 1994, LB 694, § 2; Laws 1994, LB 884, § 16; Laws 1997, LB 248, § 1; Laws 1997, LB 752, § 61; Laws 2000, LB 1086, § 2; Laws 2002, LB 545, § 1; Laws 2003, LB 131, § 18.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska State Funds Investment Act, see section 72-1260.
State Lottery Act, see section 9-801.

9-1,105 Charitable Gaming Investigation Petty Cash Fund; authorized; use; records; investment.

The Tax Commissioner may apply to the Director of Administrative Services and the Auditor of Public Accounts to establish and maintain a Charitable Gaming Investigation Petty Cash Fund. The funds used to initiate and maintain the Charitable Gaming Investigation Petty Cash Fund shall be drawn solely from the Charitable Gaming Operations Fund. The Tax Commissioner shall determine the amount of money to be held in the Charitable Gaming Investigation Petty Cash Fund, consistent with carrying out the duties and responsibilities of the Charitable Gaming Division of the Department of Revenue but not to exceed five thousand dollars for the entire division. This restriction shall not apply to funds otherwise appropriated to the Charitable Gaming Operations Fund for investigative purposes. When the Director of Administrative Services and the Auditor of Public Accounts have approved the establishment of the Charitable Gaming Investigation Petty Cash Fund, a voucher shall be submitted

to the Department of Administrative Services accompanied by such information as the department may require for the establishment of the fund. The Director of Administrative Services shall issue a warrant for the amount specified and deliver it to the Charitable Gaming Division. The fund may be replenished as necessary, but the total amount in the fund shall not exceed ten thousand dollars in any fiscal year. The fund shall be audited by the Auditor of Public Accounts.

Any prize amounts won, less any charitable gaming investigative expenditures, by Charitable Gaming Division personnel with funds drawn from the Charitable Gaming Investigation Petty Cash Fund or reimbursed from the Charitable Gaming Operations Fund shall be deposited into the Charitable Gaming Investigation Petty Cash Fund.

For the purpose of establishing and maintaining legislative oversight and accountability, the Department of Revenue shall maintain records of all expenditures, disbursements, and transfers of cash from the Charitable Gaming Investigation Petty Cash Fund.

By September 15 of each year, the department shall report to the budget division of the Department of Administrative Services and to the Legislative Fiscal Analyst the unexpended balance existing on June 30 of the previous fiscal year relating to investigative expenses in the Charitable Gaming Investigation Petty Cash Fund and any funds existing on June 30 of the previous fiscal year in the possession of Charitable Gaming Division personnel involved in investigations. 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 1989, LB 815, § 5; Laws 1991, LB 427, § 3; Laws 1994, LB 1066, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

9-1,106 Tribal-state compact governing gaming; Governor; powers.

(1) Upon request of an Indian tribe having jurisdiction over Indian lands in Nebraska, the Governor or his or her designated representative or representatives shall, pursuant to 25 U.S.C. 2710 of the federal Indian Gaming Regulatory Act, negotiate with such Indian tribe in good faith for the purpose of entering into a tribal-state compact governing the conduct of Class III gaming as defined in the act. A compact which is negotiated pursuant to this section shall be executed by the Governor without ratification by the Legislature.

(2) It shall be the policy of this state that any compact negotiated pursuant to this section shall (a) protect the health, safety, and welfare of the public and (b) promote tribal economic development, tribal self-sufficiency, and strong tribal government.

(3) Such compact negotiations shall be conducted pursuant to the provisions of 25 U.S.C. 2710 of the federal Indian Gaming Regulatory Act.

Source: Laws 1993, LB 231, § 1.

ARTICLE 2
BINGO

Section

Section

9-201 Act, how cited.

Sections 9-201 to 9-266 shall be known and may be cited as the Nebraska Bingo Act.

Source: Laws 1978, LB 351, § 50; Laws 1979, LB 164, § 18; Laws 1983, LB 259, § 34; Laws 1984, LB 949, § 46; Laws 1985, LB 486, § 2; Laws 1985, LB 408, § 17; R.S.Supp.,1985, § 9-173; Laws 1986, LB 1027, § 2; Laws 1988, LB 295, § 1; Laws 1989, LB 767, § 3; Laws 1991, LB 427, § 4; Laws 1994, LB 694, § 3; Laws 2002, LB 545, § 2; Laws 2003, LB 429, § 1.

9-202 Purpose and intent.

(1) The purpose of the Nebraska Bingo Act is to protect the health and welfare of the public, to protect the economic welfare and interest in the fair play of bingo, to insure that the gross receipts derived from the conduct of bingo are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits of bingo are used for lawful purposes, and to prevent the purposes for which the profits of bingo are to be used from being subverted by improper elements. Bingo shall be played and conducted only by those methods permitted by the act or by rules and regulations adopted pursuant to the act. No other form, means of selection, or method of play shall be authorized or permitted.

(2) The purpose of the act is also to completely and fairly regulate each level of the marketing, conducting, and playing of bingo to insure fairness, quality, and compliance with the Constitution of Nebraska. To accomplish such purpose, the regulation and licensure of manufacturers and distributors of bingo equipment, nonprofit organizations, utilization-of-funds members, gaming managers, commercial lessors, and any other person involved in the marketing, conducting, and promoting of bingo are necessary.

(3) The intent of the act is that if facilities or equipment used for bingo occasions regulated by the act are leased or rented pursuant to the act (a) they shall be leased or rented at not more than their fair market value, (b) no lease or rental agreement shall provide a means for providing or obtaining a percentage of the receipts or a portion of the profits from the bingo operation, and (c) rental or lease agreements entered into for facilities shall be separate and apart from lease and rental agreements for bingo equipment.

Source: Laws 1978, LB 351, § 1; Laws 1983, LB 259, § 1; Laws 1984, LB 949, § 1; Laws 1985, LB 408, § 1; R.S.Supp.,1985, § 9-124; Laws 1986, LB 1027, § 3; Laws 1989, LB 767, § 4; Laws 1994, LB 694, § 4.

9-203 Definitions, where found.

For purposes of the Nebraska Bingo Act, unless the context otherwise requires, the definitions found in sections 9-204 to 9-225.02 shall be used.

Source: Laws 1978, LB 351, § 2; Laws 1983, LB 259, § 2; Laws 1984, LB 949, § 2; Laws 1985, LB 408, § 2; R.S.Supp.,1985, § 9-125; Laws 1986, LB 1027, § 4; Laws 1988, LB 295, § 2; Laws 1989, LB 767, § 5; Laws 1991, LB 427, § 5; Laws 1994, LB 694, § 5; Laws 2003, LB 3, § 1; Laws 2003, LB 429, § 2.

9-204 Bingo, defined.

(1) Bingo shall mean that form of gambling in which:

(a) The winning numbers are determined by random selection from a pool of seventy-five or ninety numbered designators; and

(b) Players mark by physically daubing or covering or, with the aid of a bingo card monitoring device, otherwise concealing those randomly selected numbers which match on bingo cards which they have purchased or leased only at the time and place of the bingo occasion.

(2) Bingo shall not mean or include:

(a) Any scheme which uses any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value;

(b) Any activity which is authorized or regulated under the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12; or

(c) Any activity which is prohibited under Chapter 28, article 11.

Source: Laws 1978, LB 351, § 4; Laws 1982, LB 602A, § 1; Laws 1983, LB 259, § 3; R.S.1943, (1983), § 9-127; Laws 1986, LB 1027, § 5; Laws 1991, LB 849, § 44; Laws 1993, LB 138, § 2; Laws 1994, LB 694, § 6; Laws 2003, LB 429, § 3.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
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.

9-204.01 Bingo card, defined.

Bingo card shall mean:

(1) In the case of seventy-five-number bingo, a disposable paper bingo card, a facsimile of a bingo card electronically displayed on a bingo card monitoring device, or a reusable hard bingo card or shutter card, which has letters and numbers preprinted or predetermined by a manufacturer and which:

(a) Contains five columns with five squares in each column;

(b) Identifies the five columns from left to right by the letters B-I-N-G-O; and

(c) Contains in each square, except for the center square identified as ''free'', one number from a pool of seventy-five numbers; or

(2) In the case of ninety-number bingo, a disposable paper bingo card or facsimile of a bingo card electronically displayed on a bingo card monitoring

device which has numbers preprinted or predetermined by a manufacturer and which:

(a) Contains six faces with each face containing twenty-seven squares arranged in nine columns of three squares each; and

(b) Contains in fifteen squares of each face a number from one to ninety which is not repeated on the same card.

The department may approve variations to the card formats described in subdivisions (1) and (2) of this section if such variations result in a bingo game which is conducted in a manner that is consistent with section 9-204.

Source: Laws 1994, LB 694, § 7; Laws 2000, LB 1086, § 3; Laws 2003, LB 429, § 4.

9-204.02 Bingo chairperson, defined.

Bingo chairperson shall mean one individual member of a licensed organization who is designated as responsible for overseeing the organization's bingo activities.

Source: Laws 1994, LB 694, § 8.

9-204.03 Bingo equipment, defined.

Bingo equipment shall mean all devices, machines, and parts used in and which are an integral part of the conduct of bingo, including, but not limited to, bingo cards, disposable paper bingo cards, bingo balls, bingo blower devices, and computerized accounting systems.

Source: Laws 1994, LB 694, § 9; Laws 2002, LB 545, § 3.

9-204.04 Bingo card monitoring device, defined.

Bingo card monitoring device shall mean a technological aid which allows a bingo player to enter bingo numbers as they are announced at a bingo occasion and which marks or otherwise conceals those numbers on bingo cards which are electronically stored in and displayed on the device. A bingo card monitoring device shall not mean or include any device into which currency, coins, or tokens may be inserted or from which currency, coins, tokens, or any receipt for monetary value can be dispensed or which, once provided to a bingo player, is capable of communicating with any other bingo card monitoring device or any other form of electronic device or computer.

Source: Laws 2003, LB 429, § 5.

9-205 Bingo occasion, defined.

Bingo occasion shall mean a single gathering or session at which a bingo game or series of successive bingo games are played.

Source: Laws 1978, LB 351, § 5; Laws 1984, LB 949, § 4; R.S.Supp.,1984, § 9-128; Laws 1986, LB 1027, § 6.

9-206 Bingo supplies, defined.

Bingo supplies shall mean any items other than bingo equipment which may be used by a player to assist in the playing of bingo, including, but not limited to, daubers, chips, and glue sticks.

Source: Laws 1978, LB 351, § 6; R.S.1943, (1983), § 9-129; Laws 1986, LB 1027, § 7; Laws 1994, LB 694, § 10.

9-207 Cancel, defined.

Cancel shall mean to discontinue all rights and privileges to hold a license or permit for up to three years.

Source: Laws 1983, LB 259, § 12; Laws 1985, LB 408, § 6; R.S.Supp.,1985, § 9-140.08; Laws 1986, LB 1027, § 8; Laws 1994, LB 694, § 11.

9-207.01 Commercial lessor, defined.

Commercial lessor shall mean a person, partnership, limited liability company, corporation, or organization which owns or is a lessee of premises which are offered for leasing to a licensed organization on which bingo is or will be conducted.

Source: Laws 1988, LB 295, § 3; Laws 1991, LB 427, § 6; Laws 1993, LB 121, § 107.

9-208 Department, defined.

Department shall mean the Department of Revenue.

Source: Laws 1984, LB 949, § 19; R.S.Supp.,1984, § 9-140.12; Laws 1986, LB 1027, § 9.

9-209 Distributor, defined.

Distributor shall mean any person who purchases or otherwise obtains bingo equipment from a licensed manufacturer to sell, lease, distribute, or otherwise provide in this state to a licensed organization or licensed commercial lessor for use in a bingo occasion regulated by the Nebraska Bingo Act.

Source: Laws 1983, LB 259, § 8; Laws 1984, LB 949, § 14; R.S.Supp.,1984, § 9-140.04; Laws 1986, LB 1027, § 10; Laws 1988, LB 929, § 1; Laws 1989, LB 767, § 6; Laws 1994, LB 694, § 12.

9-209.01 Gaming manager, defined.

Gaming manager shall mean any person who is licensed by a Class II bingo licensee to be responsible for the supervision and operation of all gaming activities authorized and regulated under Chapter 9 which are conducted at the bingo occasions of a Class II bingo licensee.

Source: Laws 1988, LB 295, § 4; Laws 1994, LB 694, § 13.

9-209.02 Excursion or dinner train, defined.

Excursion or dinner train shall mean a train which has all of its passengers board and depart from the same location and is operated for trips of short duration for sightseeing, dining, entertainment, or other recreational purposes.

Source: Laws 1991, LB 427, § 7.

9-210 Gross receipts, defined.

Gross receipts shall mean the total receipts received from admissions to the premises where bingo is conducted, when such admissions are directly related to the participation in bingo, and from the sale, rental, or use of all bingo cards.

Source: Laws 1978, LB 351, § 9; Laws 1984, LB 949, § 5; R.S.Supp.,1984, § 9-132; Laws 1986, LB 1027, § 11; Laws 1994, LB 694, § 14.

9-211 Lawful purpose, defined.

(1) Lawful purpose, for a licensed organization or a qualifying nonprofit organization making a donation of its profits derived from the conduct of bingo solely for its own organization, shall mean donating such profits for any activity which benefits and is conducted by the organization, including any charitable, benevolent, humane, religious, philanthropic, youth sports, educational, civic, or fraternal activity conducted by the organization for the benefit of its members.

(2) Lawful purpose, for a licensed organization or a qualifying nonprofit organization making a donation of its profits derived from the conduct of bingo outside of its organization, shall mean donating such profits only to:

(a) The State of Nebraska or any political subdivision of the state but only if the donation is made exclusively for public purposes;

(b) A corporation, trust, community chest, fund, or foundation:

(i) Created or organized under the laws of Nebraska which has been in existence for five consecutive years immediately preceding the date of the donation and which has its principal office located in Nebraska;

(ii) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition;

(iii) No part of the net earnings of which inures to the benefit of any private shareholder or individual;

(iv) Which is not disqualified for tax exemption under section 501(c)(3) of the Internal Revenue Code by reason of attempting to influence legislation; and

(v) Which does not participate in any political campaign on behalf of any candidate for political office;

(c) A post or organization of war veterans or an auxiliary unit or society of, trust for, or foundation for any such post or organization:

(i) Organized in the United States or in any territory or possession thereof; and

(ii) No part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(d) A volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad serving any city, village, county, township or rural or suburban fire protection district in Nebraska.

(3) No donation of profits under this section shall (a) inure to the benefit of any individual member of the organization making the donation except to the extent it is in furtherance of the purposes described in this section or (b) be

used for any activity which attempts to influence legislation or for any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

Source: Laws 1978, LB 351, § 3; Laws 1979, LB 164, § 1; Laws 1984, LB 949, § 4; Laws 1985, LB 408, § 3; R.S.Supp.,1985, § 9-126; Laws 1986, LB 1027, § 12; Laws 1988, LB 295, § 5; Laws 1994, LB 694, § 15; Laws 1995, LB 344, § 1; Laws 1995, LB 574, § 5; Laws 2002, LB 545, § 4.

Facilitating the recruitment and retention of volunteer firefighters cannot be said to constitute a charitable activity, and therefore, retirement plan contributions inuring to the benefit of individual members do not constitute a use for a lawful purpose. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-212 License, defined.

License shall mean any license to conduct bingo as provided in section 9-233, any license for a utilization-of-funds member as provided in section 9-232.01, any manufacturer's license as provided in section 9-255.09, any distributor's license as provided in section 9-255.07, any gaming manager's license as provided in section 9-232.01, or any commercial lessor's license as provided in section 9-255.06.

Source: Laws 1983, LB 259, § 14; R.S.1943, (1983), § 9-140.10; Laws 1986, LB 1027, § 13; Laws 1988, LB 295, § 6; Laws 1989, LB 767, § 7; Laws 1994, LB 694, § 16.

9-213 Licensed organization, defined.

Licensed organization shall mean a nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad licensed to conduct bingo under the Nebraska Bingo Act.

Source: Laws 1978, LB 351, § 10; Laws 1983, LB 259, § 4; Laws 1984, LB 949, § 6; R.S.Supp.,1984, § 9-133; Laws 1986, LB 1027, § 14; Laws 2002, LB 545, § 5.

9-214 Limited period bingo, defined.

Limited period bingo shall mean a bingo occasion, authorized by the department to be conducted, which is in addition to a licensed organization's regularly scheduled bingo occasions.

Source: Laws 1978, LB 351, § 11; Laws 1984, LB 949, § 7; R.S.Supp.,1984, § 9-134; Laws 1986, LB 1027, § 15; Laws 1994, LB 694, § 17.

9-214.01 Manufacturer, defined.

(1) Manufacturer shall mean any person who assembles, produces, makes, or prints any bingo equipment.

(2) Manufacturer shall not mean or include a licensed distributor who places, finishes, or configures disposable paper bingo cards, which have been produced by a licensed manufacturer, into a looseleaf or book form or some other format for distribution to an organization licensed to conduct bingo.

Source: Laws 1989, LB 767, § 8; Laws 1991, LB 427, § 8; Laws 1994, LB 694, § 18; Laws 2002, LB 545, § 6.

9-215 Member, defined.

Member shall mean a person who has qualified for and been admitted to membership in a licensed organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement for purposes other than conducting activities under the Nebraska Bingo Act. Member shall not include social or honorary members.

Source: Laws 1985, LB 408, § 11; R.S.Supp.,1985, § 9-140.16; Laws 1986, LB 1027, § 16; Laws 1988, LB 295, § 7.

9-215.01 Permit, defined.

Permit shall mean a special event bingo permit as provided in section 9-230.01.

Source: Laws 1994, LB 694, § 19.

9-216 Premises, defined.

Premises shall mean a building, a distinct portion of a building, or a railroad coach car of an excursion or dinner train in which bingo is being played and shall not include any area of land surrounding the building or excursion or dinner train.

No premises shall be subdivided to provide multiple premises where games of bingo are managed, operated, or conducted whether or not such premises have different mailing addresses or legal descriptions.

Source: Laws 1978, LB 351, § 12; R.S.1943, (1983), § 9-135; Laws 1986, LB 1027, § 17; Laws 1988, LB 295, § 8; Laws 1991, LB 427, § 9.

9-217 Profit, defined.

Profit shall mean the gross receipts collected from one or more bingo games, less reasonable sums necessarily and actually expended for prizes, taxes, license and permit fees, bingo equipment, the cost of renting or leasing a premises for the conduct of bingo, and other allowable expenses.

Source: Laws 1978, LB 351, § 13; Laws 1979, LB 164, § 2; Laws 1984, LB 949, § 8; R.S.Supp.,1984, § 9-136; Laws 1986, LB 1027, § 18; Laws 1994, LB 694, § 20.

9-217.01 Qualifying nonprofit organization, defined.

(1) Qualifying nonprofit organization, for the purpose of special event bingo, shall mean a nonprofit organization:

(a) Which holds a certificate of exemption under section 501 of the Internal Revenue Code or the major activities of which, exclusive of conducting gaming activities regulated under Chapter 9, are conducted for charitable or community betterment purposes; and

(b) Which has been in existence in this state for a period of at least five years immediately preceding its application for a permit.

(2) Qualifying nonprofit organization shall not mean or include any organization which holds a license pursuant to the Nebraska Bingo Act.

Source: Laws 1994, LB 694, § 21; Laws 1995, LB 574, § 6.

9-218 Repealed. Laws 1994, LB 694, § 126.

9-219 Repealed. Laws 1994, LB 694, § 126.

9-220 Revoke, defined.

Revoke shall mean to permanently void and recall all rights and privileges of an organization or a person to obtain a license or a permit.

Source: Laws 1983, LB 259, § 13; Laws 1984, LB 949, § 17; Laws 1985, LB 408, § 7; R.S.Supp.,1985, § 9-140.09; Laws 1986, LB 1027, § 21; Laws 1994, LB 694, § 22.

9-221 Repealed. Laws 1994, LB 694, § 126.

9-222 Repealed. Laws 1994, LB 694, § 126.

9-223 Repealed. Laws 1994, LB 694, § 126.

9-224 Special event bingo, defined.

Special event bingo shall mean the conduct of bingo as provided in section 9-230.01 by a qualifying nonprofit organization in conjunction with a special event.

Source: Laws 1994, LB 694, § 23.

9-225 Suspend, defined.

Suspend shall mean to cause a temporary interruption of all rights and privileges of a license or the renewal thereof and all rights and privileges to obtain a permit.

Source: Laws 1983, LB 259, § 11; Laws 1985, LB 408, § 5; R.S.Supp.,1985, § 9-140.07; Laws 1986, LB 1027, § 26; Laws 1994, LB 694, § 24.

9-225.01 Utilization-of-funds member, defined.

Utilization-of-funds member shall mean a member of the organization who shall be responsible for the proper utilization of the gross receipts derived from the conduct of bingo by the licensed organization.

Source: Laws 1994, LB 694, § 25.

9-225.02 Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, defined.

Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall mean a volunteer association or organization serving any city, village, county, township, or rural or suburban fire protection district in Nebraska by providing fire protection or emergency response services for the purpose of protecting human life, health, or property.

Source: Laws 2002, LB 545, § 7.

9-226 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To issue licenses, temporary licenses, and permits;

(2) To deny any license or permit application or renewal license application for cause. Cause for denial of an application or renewal of a license shall

include instances in which the applicant individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the applicant, licensee, or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant, licensee, or permittee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such applicant for past or present services in a consulting capacity or otherwise, the licensee, or any person with a substantial interest in the applicant, licensee, or permittee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery 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 or any rules or regulations adopted and promulgated pursuant to the acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;

(c) Obtained a license or permit pursuant to such acts by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where bingo activity required to be licensed or for which a permit is required under the Nebraska Bingo Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed or granted a permit in accordance with the Nebraska Bingo Act;

(i) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(j) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(k) Failed to demonstrate good character, honesty, and integrity;

(l) Failed to demonstrate, either individually or, in the case of a business entity or a nonprofit organization, through its managers, employees, or agents,

the ability, experience, or financial responsibility necessary to establish or maintain the activity for which the application is made; or

(m) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act.

No renewal of a license under the Nebraska Bingo Act shall be issued when the applicant for renewal would not be eligible for a license upon a first application;

(3) To revoke, cancel, or suspend for cause any license or permit. Cause for revocation, cancellation, or suspension of a license or permit shall include instances in which the licensee or permittee individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the licensee or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such licensee or permittee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such licensee or permittee for past or present services in a consulting capacity or otherwise, or any person with a substantial interest in the licensee or permittee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to the act;

(c) Obtained a license or permit pursuant to the Nebraska Bingo Act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon the charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where bingo activity required to be licensed or for which a permit is required under the Nebraska Bingo Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City

Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(i) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(j) Failed to demonstrate good character, honesty, and integrity;

(k) Failed to demonstrate, either individually or, in the case of a business entity or a nonprofit organization, through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued; or

(l) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act;

(4) To issue an order requiring a licensee, permittee, or other person to cease and desist from violations of the Nebraska Bingo Act or any rules and regulations adopted and promulgated pursuant to such act. The order shall give reasonable notice of the rights of the licensee, permittee, or other person to request a hearing and shall state the reason for the entry of the order. The notice of order to cease and desist shall be mailed by certified mail to or personally served upon the licensee, permittee, or other person. If the notice of order is mailed by certified mail, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee, permittee, or other person. A request for a hearing by the licensee, permittee, or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee, permittee, or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee, permittee, or other person shall be deemed in default and the proceeding may be determined against the licensee, permittee, or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the

violation and the extent thereof, and whether the violator has had previous violations of the act, rules, or regulations. A fine levied on a violator under this section shall not exceed one thousand dollars for each violation of the act or any rule or regulation adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from bingo gross receipts of an organization and shall be remitted by the violator to the department within thirty days after the date of the order issued by the department levying such fine;

(6) To enter or to authorize any law enforcement officer to enter at any time upon any premises where bingo activity required to be licensed or for which a permit is required under the act is being conducted to determine whether any of the provisions of the act or any rules or regulations adopted and promulgated under the act have been or are being violated and at such time to examine such premises;

(7) To require periodic reports of bingo activity from licensees under the act as the department deems necessary to carry out the act;

(8) To examine or to cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to bingo activities of any licensee or permittee, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to acquire proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. If the documents requested by the department are in the custody of a limited liability company, the court order may be directed to any member when management is reserved to the members or otherwise to any manager. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(9) Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid to the state as taxes imposed by the act in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(10) To collect license application, license renewal application, and permit fees imposed by the Nebraska Bingo Act and to prorate license fees on an annual basis. The department shall establish by rule and regulation the conditions and circumstances under which such fees may be prorated;

(11) To confiscate and seize bingo supplies and equipment pursuant to section 9-262.01; and

(12) To adopt and promulgate such rules and regulations, prescribe such forms, and employ such staff, including inspectors, as are necessary to carry out the act.

Source: Laws 1983, LB 259, § 52; Laws 1984, LB 949, § 58; Laws 1985, LB 408, § 36; R.S.Supp.,1985, § 9-187; Laws 1986, LB 1027, § 27; Laws 1988, LB 295, § 11; Laws 1989, LB 767, § 14; Laws

1991, LB 427, § 10; Laws 1991, LB 849, § 45; Laws 1993, LB 138, § 3; Laws 1994, LB 694, § 26; Laws 1995, LB 344, § 2; Laws 1995, LB 574, § 7; Laws 1997, LB 248, § 2; Laws 2000, LB 1086, § 4; Laws 2002, LB 545, § 8; Laws 2002, LB 1126, § 1.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Liquor Control Act, see section 53-101.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

The Department of Revenue has the authority to deny licenses for reasons of unlawful donations to a retirement plan and unlawful salary advances. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-226.01 Denial of application; procedure.

(1) Before any application is denied pursuant to section 9-226, the department shall notify the applicant in writing by certified mail of the department's intention to deny the application and the reasons for the denial. Such notice shall inform the applicant of his or her right to request an administrative hearing for the purpose of reconsideration of the intended denial of the application. The date the notice is mailed shall be deemed to be the date of service of notice to the applicant.

(2) A request for hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the application denial shall become final at the expiration of such period.

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least ten days before the hearing, serve notice upon the applicant by certified or registered mail, return receipt requested, of the time, date, and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1988, LB 295, § 12; Laws 1994, LB 694, § 27; Laws 2002, LB 545, § 9.

Cross References

Administrative Procedure Act, see section 84-920.

Administrative bodies have only that authority specifically conferred upon them by statute or by construction necessary to achieve the purpose of the relevant act, and as such, the Department of Revenue is not statutorily authorized to grant motions for summary judgment. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-226.02 Administrative fines; disposition; collection.

(1) All money collected by the department as an administrative fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund.

(2) Any administrative fine levied under section 9-226 and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violator resides or owns property.

Source: Laws 1991, LB 427, § 11; Laws 1994, LB 694, § 28.

9-227 Suspension of license or permit; limitation; procedure.

(1) The Tax Commissioner may suspend any license or permit, except that no order to suspend any license or permit shall be issued unless the department determines that the licensee or permittee is not operating in accordance with the purposes and intent of the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts.

(2) Before any license or permit is suspended prior to a hearing, notice of an order to suspend a license or permit shall be mailed to or personally served upon the licensee or permittee at least fifteen days before the order of suspension takes effect.

(3) The order of suspension may be withdrawn if the licensee or permittee provides the department with evidence that any prior findings or violations have been corrected and that the licensee or permittee is now in full compliance, whether before or after the effective date of the order of suspension.

(4) The Tax Commissioner may issue an order of suspension pursuant to subsections (1) and (2) of this section when an action for suspension, cancellation, or revocation is pending. The Tax Commissioner may also issue an order of suspension after a hearing for a limited time of up to one year without an action for cancellation or revocation pending.

(5) The hearing for suspension, cancellation, or revocation of the license or permit shall be held within twenty days after the date the suspension takes effect. A request by the licensee or permittee to hold the hearing after the end of the twenty-day period shall extend the suspension until the hearing.

(6) The decision of the department shall be made within twenty days after the conclusion of the hearing. The suspension shall continue in effect until the decision is issued. If the decision is that an order of suspension, revocation, or cancellation is not appropriate, the suspension shall terminate immediately by order of the Tax Commissioner. If the decision is an order for the suspension, revocation, or cancellation of the license or permit, the suspension shall continue pending an appeal of the decision of the department.

(7) Any period of suspension prior to the issuance of an order of suspension issued by the Tax Commissioner shall count toward the total amount of time a licensee or permittee shall be suspended from gaming activities under the Nebraska Bingo Act. Any period of suspension prior to the issuance of an order of cancellation shall not reduce the period of the cancellation. Any period of suspension after the issuance of the order and during an appeal shall be counted as a part of the period of cancellation.

Source: Laws 1985, LB 408, § 28; R.S.Supp.,1985, § 9-187.01; Laws 1986, LB 1027, § 28; Laws 1988, LB 295, § 13; Laws 1991, LB 427, § 12; Laws 1994, LB 694, § 29; Laws 1995, LB 344, § 3.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
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.

9-228 Hearing; required; when; notice.

Before the adoption, amendment, or repeal of any rule or regulation, the suspension, revocation, or cancellation of any license or permit, or the levying of any administrative fine pursuant to section 9-226, the department shall set the matter for hearing. Such suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine shall be considered contested cases pursuant to the Administrative Procedure Act.

At least ten days before the hearing, the department shall (1) in the case of suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine, serve notice upon the licensee, permittee, or violator, by personal service or certified or registered mail, return receipt requested, of the time, date, and place of any hearing or (2) in the case of adoption, amendment, or repeal of any rule or regulation, issue a public notice of the time, date, and place of such hearing.

This section shall not apply to an order of suspension by the Tax Commissioner prior to a hearing as provided in section 9-227.

Source: Laws 1983, LB 259, § 53; Laws 1984, LB 949, § 59; Laws 1985, LB 408, § 37; R.S.Supp.,1985, § 9-188; Laws 1986, LB 1027, § 29; Laws 1988, LB 295, § 14; Laws 1991, LB 427, § 13; Laws 1994, LB 694, § 30; Laws 1995, LB 344, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

9-229 Proceeding before department; service; security; appeal.

(1) A copy of the order or decision of the department in any proceeding before it, certified under the seal of the department, shall be served upon each party of record to the proceeding before the department. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the department shall enter his or her appearance and indicate to the department his or her address for the service of a copy of any order, decision, or notice. The mailing of any copy of any order or decision or of any notice in the proceeding to such party at such address shall be deemed to be service upon such party.

(2) At the time of making an appearance before the department, each party shall deposit in cash or furnish a sufficient security for costs in an amount the department deems adequate to cover all costs liable to accrue, including costs for (a) reporting the testimony to be adduced, (b) making up a complete transcript of the hearing, and (c) extending reporter's original notes in typewriting.

(3) Any decision of the department in any proceeding before it may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1983, LB 259, § 54; Laws 1984, LB 949, § 60; Laws 1985, LB 408, § 38; R.S.Supp.,1985, § 9-189; Laws 1986, LB 1027, § 30; Laws 1988, LB 352, § 14; Laws 1988, LB 295, § 15.

Cross References

Administrative Procedure Act, see section 84-920.

9-230 Operation without license; public nuisance; penalties.

No person, except a licensed organization or qualifying nonprofit organization operating pursuant to the Nebraska Bingo Act, shall conduct any game of bingo for which a charge is made, and no person except a licensed organization shall award any prize with a value in excess of twenty-five dollars for any bingo game. Any such game conducted in violation of this section is hereby declared to be a public nuisance. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor for the first offense and a Class I misdemeanor for the second or subsequent offense.

Source: Laws 1978, LB 351, § 48; Laws 1984, LB 949, § 44; R.S.Supp.,1984, § 9-171; Laws 1986, LB 1027, § 31; Laws 1988, LB 295, § 16; Laws 1994, LB 694, § 31.

9-230.01 Special event bingo; permit; application; form; fee; issuance; restrictions.

(1) A qualifying nonprofit organization may apply to the department for a permit to conduct a special event bingo in conjunction with a special event at which bingo is not the primary function. Such special event bingo shall be exempt from (a) the licensing requirements found in the Nebraska Bingo Act for Class I and Class II licenses, (b) the record-keeping and reporting requirements found in the act for licensed organizations, and (c) any tax on the gross receipts derived from the conduct of bingo as provided in the act for licensed organizations.

(2) A qualifying nonprofit organization may apply for and obtain two special event bingo permits per calendar year, not to exceed a total of fourteen days in duration. An application for a permit shall be made, on a form prescribed by the department, at least ten days prior to the desired starting date of the special event bingo. The form shall be accompanied by a permit fee of fifteen dollars and shall contain:

(a) The name and address of the nonprofit organization applying for the permit;

(b) Sufficient facts relating to the nature of the organization to enable the department to determine if the organization is eligible for the permit;

(c) The date, time, place, duration, and nature of the special event at which the special event bingo will be conducted;

(d) The name, address, and telephone number of the individual who will be in charge of the special event bingo; and

(e) Any other information which the department deems necessary.

(3) An organization must have a permit issued by the department before it can conduct a special event bingo. The permit shall be clearly posted and visible to all participants at the special event bingo.

(4) Special event bingo shall be subject to the following:

(a) Special event bingo shall be conducted only within the county in which the qualifying nonprofit organization has its principal office;

(b) Bingo equipment, other than disposable paper bingo cards, necessary to conduct bingo may be obtained from any source. Disposable paper bingo cards may be obtained only from (i) a licensed distributor or (ii) a licensed organization as provided in subdivision (4)(e) of section 9-241.05;

(c) No bingo card used at a special event bingo shall be sold, rented, or leased for more than twenty-five cents per card;

(d) No single prize shall be offered or awarded at a special event bingo which exceeds twenty-five dollars in value;

(e) A special event bingo shall be conducted by individuals who are at least eighteen years of age. The qualifying nonprofit organization may permit individuals under eighteen years of age to play special event bingo when no alcoholic beverages are served, sold, or consumed in the immediate vicinity of where the special event bingo is conducted;

(f) No wage, commission, or salary shall be paid to any person in connection with the conduct of a special event bingo; and

(g) The gross receipts from the conduct of a special event bingo shall be used solely for the awarding of prizes and reasonable and necessary expenses associated with the conduct of the special event bingo such as the permit fee and the purchase or rental of bingo cards or other equipment needed to conduct bingo. The remaining receipts shall be used solely for a lawful purpose.

Source: Laws 1994, LB 694, § 32; Laws 2001, LB 268, § 1; Laws 2002, LB 545, § 10.

9-231 License; qualified applicants.

(1) Any nonprofit organization holding a certificate of exemption under section 501(c)(3), (c)(4), (c)(5), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad may apply for a license to conduct bingo.

(2) Prior to applying for any license, an organization shall:

(a) Be incorporated in this state as a not-for-profit corporation or organized in this state as a religious or not-for-profit organization. For purposes of this subsection, a domesticated foreign corporation shall not be considered incorporated in this state as a not-for-profit corporation;

(b) Conduct activities within this state in addition to the conduct of bingo;

(c) Be authorized by its constitution, articles, charter, or bylaws to further in this state a lawful purpose;

(d) Operate without profit to its members, and no part of the net earnings of such organization shall inure to the benefit of any private shareholder or individual; and

(e) Have been in existence for five years immediately preceding its application for a license, and shall have had during that five-year period a bona fide membership actively engaged in furthering a lawful purpose. A society defined in section 21-608 which is chartered in Nebraska under a state, grand, supreme, national, or other governing body may use the charter date of its parent organization to satisfy such five-year requirement.

(3) None of the provisions of this section shall prohibit a senior citizens group from organizing and conducting bingo pursuant to the Nebraska Bingo Act when bingo is played only by members of the senior citizens group conducting the bingo. For purposes of this section, senior citizens group shall mean any

organization the membership of which consists entirely of persons who are at least sixty years old.

Source: Laws 1978, LB 351, § 18; Laws 1983, LB 259, § 15; Laws 1984, LB 949, § 20; R.S.Supp.,1984, § 9-141; Laws 1986, LB 1027, § 32; Laws 1988, LB 295, § 17; Laws 1989, LB 767, § 16; Laws 2002, LB 545, § 11.

9-232 Repealed. Laws 1994, LB 694, § 126.

9-232.01 License; application; contents; restrictions on conduct of bingo; gaming manager license; fee; utilization-of-funds member; license.

(1) Each organization applying for a license to conduct bingo shall file with the department an application on a form prescribed by the department. Each application shall include:

(a) The name and address of the applicant organization;

(b) Sufficient facts relating to the incorporation or organization of the applicant organization to enable the department to determine if the organization is eligible for a license pursuant to section 9-231;

(c) The name and address of each officer of the applicant organization;

(d) The name, address, social security number, years of membership, and date of birth of one bona fide and active member of the organization who will serve as the organization's bingo chairperson; and

(e) The name, address, social security number, years of membership, and date of birth of no more than three bona fide and active members of the organization who will serve as alternate bingo chairpersons.

(2) In addition, each applicant organization shall include with the application:

(a) The name, address, social security number, date of birth, and years of membership of an active and bona fide member of the applicant organization to be licensed as the utilization-of-funds member. Such person shall have been an active and bona fide member of the applicant organization for at least one year preceding the date the application is filed with the department unless the applicant organization can provide evidence that the one-year requirement would impose an undue hardship on the organization. All utilization-of-funds members shall sign a sworn statement indicating that they agree to comply with all provisions of the Nebraska Bingo Act and all rules and regulations adopted pursuant to the act, that they will insure that no commission, fee, rent, salary, profits, compensation, or recompense will be paid to any person or organization, except payments authorized by the act, and that all profits will be spent only for lawful purposes. A fee of forty dollars shall be charged for a license for each utilization-of-funds member, and the department may prescribe a separate application form for such license;

(b) For a Class II license only, the name, address, social security number, and date of birth of the individual to be licensed as the gaming manager. Such person shall sign a sworn statement indicating that he or she agrees to comply with all provisions of the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and all rules and regulations adopted pursuant to such acts. A fee of

one hundred dollars shall be charged for a license for each gaming manager, and the department may prescribe a separate application form for such license;

(c) The name and address of the owner or lessor of the premises in which bingo will be conducted; and

(d) Any other information which the department deems necessary, including, but not limited to, copies of any and all lease or rental agreements and contracts entered into by the organization relative to its bingo activities.

(3) The information required by this section shall be kept current. A licensed organization shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(4) Except for a limited period bingo, a licensed organization shall not conduct any bingo game or occasion at any time, on any day, at any location, or in any manner different from that described in its most recent filing with the department unless prior approval has been obtained from the department. A request for approval to change the day, time, or location of a bingo occasion shall be made by the bingo chairperson, in writing, at least thirty days in advance of the date the proposed change is to become effective.

(5) No bingo chairperson, alternate bingo chairperson, utilization-of-funds member, or gaming manager for an organization shall be connected with, interested in, or otherwise concerned directly or indirectly with any party licensed as a manufacturer, distributor, or commercial lessor pursuant to the Nebraska Bingo Act or with any party licensed as a manufacturer or distributor pursuant to the Nebraska Pickle Card Lottery Act.

(6) No person shall act as a gaming manager until he or she has received a license from the department. A gaming manager may apply for a license to act as a gaming manager for more than one licensed organization by completing a separate application and paying the license fee for each organization for which he or she intends to act as a gaming manager. No gaming manager shall be a bingo chairperson or alternate bingo chairperson, and no gaming manager shall hold any other type of license issued under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act.

(7) No person shall act as a utilization-of-funds member until he or she has received a license from the department. A utilization-of-funds member shall not hold any other type of license issued under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, and the Nebraska Pickle Card Lottery Act, except that a utilization-of-funds member may also be designated as the bingo chairperson or alternate bingo chairperson for the same organization.

Source: Laws 1994, LB 694, § 34; Laws 1995, LB 344, § 5; Laws 2002, LB 545, § 12; Laws 2007, LB638, § 2.

Cross References

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.

9-232.02 Licenses; renewal; procedure; fee.

(1) All licenses to conduct bingo and licenses issued to utilization-of-funds members, gaming managers, or commercial lessors shall expire as provided in this section and may be renewed biennially. An application for license renewal shall be submitted at least forty-five days prior to the expiration date of the

license. The department may prescribe a separate application form for renewal purposes for any license application required by the Nebraska Bingo Act. The renewal application may require such information as the department deems necessary for the proper administration of the act.

(2) A license to conduct bingo issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization-of-funds member or gaming manager for such nonprofit organization shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation. The biennial license fee for a utilization-of-funds member shall be forty dollars and the biennial license fee for a gaming manager shall be one hundred dollars.

(3) A license to conduct bingo issued to a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad and any license issued to a utilization-of-funds member or gaming manager for such nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation. The biennial license fee for a utilization-of-funds member shall be forty dollars and the biennial license fee for a gaming manager shall be one hundred dollars.

(4) A license issued to a commercial lessor shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation.

Source: Laws 1994, LB 694, § 35; Laws 1997, LB 248, § 3; Laws 2000, LB 1086, § 5; Laws 2002, LB 545, § 13; Laws 2007, LB638, § 3.

9-232.03 Limited period bingo; authorization.

A licensed organization may request authorization from the department to conduct a limited period bingo. A licensed organization may conduct no more than four limited period bingos with an aggregate total of no more than twelve days in any twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation.

The request shall be in writing and shall contain the date and time when and the location where the limited period bingo is to be conducted. The request shall be submitted to the department at least ten days prior to the desired starting date of the limited period bingo.

Except as otherwise provided in the Nebraska Bingo Act, a limited period bingo shall be conducted in the same manner as prescribed for regular bingo occasions.

Source: Laws 1994, LB 694, § 36; Laws 2000, LB 1086, § 6.

9-233 Licenses; classes; fees.

(1) The department may issue an applicant organization one of the following classes of bingo licenses:

(a) A Class I license which shall include organizations with gross receipts from the conduct of bingo which are less than one hundred thousand dollars

per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation; or

(b) A Class II license which shall include organizations with gross receipts from the conduct of bingo equal to or greater than one hundred thousand dollars per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation.

(2) For purposes of this section, when bingo occasions are conducted on a joint basis by two or more licensed organizations, the class of license required shall be determined based upon the combined gross receipts of all licensed organizations involved in the conduct of the bingo occasion.

(3) A biennial fee of thirty dollars shall be charged for a Class I license, and a biennial fee of one hundred dollars shall be charged for a Class II license.

(4) The department shall adopt and promulgate rules and regulations to establish reporting requirements for each class of license issued.

Source: Laws 1978, LB 351, § 20; Laws 1982, LB 928, § 4; Laws 1983, LB 259, § 17; Laws 1984, LB 949, § 22; R.S.Supp.,1984, § 9-143; Laws 1986, LB 1027, § 34; Laws 1988, LB 295, § 19; Laws 1991, LB 427, § 14; Laws 1994, LB 694, § 33; Laws 2000, LB 1086, § 7; Laws 2002, LB 545, § 14; Laws 2007, LB638, § 4.

9-233.01 Repealed. Laws 1994, LB 694, § 126.

9-233.02 Repealed. Laws 1994, LB 694, § 126.

9-233.03 Repealed. Laws 1994, LB 694, § 126.

9-233.04 Repealed. Laws 1994, LB 694, § 126.

9-233.05 Repealed. Laws 1994, LB 694, § 126.

9-234 Repealed. Laws 1994, LB 694, § 126.

9-234.01 Repealed. Laws 1994, LB 694, § 126.

9-235 Repealed. Laws 1994, LB 694, § 126.

9-235.01 Repealed. Laws 1994, LB 694, § 126.

9-235.02 Repealed. Laws 1994, LB 694, § 126.

9-235.03 Repealed. Laws 1994, LB 694, § 126.

9-236 Repealed. Laws 2007, LB 638, § 21.

9-237 Information; copies; with whom filed.

A copy of all information filed with the department pursuant to section 9-232.01 shall also be filed with the county clerk of the county in which the bingo is to be conducted, and if the bingo is conducted within the limits of an incorporated city or village, a copy shall also be filed with the city or village clerk. Such information shall be filed within five days after its filing with the department.

Source: Laws 1978, LB 351, § 41; Laws 1983, LB 259, § 28; Laws 1984, LB 949, § 38; R.S.Supp.,1984, § 9-164; Laws 1986, LB 1027, § 38; Laws 1994, LB 694, § 37.

9-238 Repealed. Laws 1994, LB 694, § 126.

9-239 Bingo; taxation.

(1) The department shall collect a state tax of three percent on the gross receipts received from the conducting of bingo within the state. The tax shall be remitted to the department. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. The tax shall be remitted quarterly, not later than thirty days after the close of the preceding quarter, together with any other reports as may be required by the department.

(2) Unless otherwise provided in the Nebraska Bingo Act, no occupation tax on any receipts derived from the conduct of bingo shall be levied, assessed, or collected from any licensee under the act by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect such tax.

Source: Laws 1978, LB 351, § 42; Laws 1979, LB 164, § 13; Laws 1983, LB 259, § 29; Laws 1984, LB 949, § 39; R.S.Supp.,1984, § 9-165; Laws 1986, LB 1027, § 40; Laws 1990, LB 1055, § 4; Laws 1991, LB 427, § 21; Laws 1997, LB 99, § 1; Laws 2007, LB638, § 5.

9-240 Tax; deficiency; interest; penalty.

All deficiencies of the tax prescribed in subsection (1) of section 9-239 shall accrue interest and be subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

Source: Laws 1984, LB 949, § 71; R.S.Supp.,1984, § 9-197; Laws 1986, LB 1027, § 41.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

9-241 Repealed. Laws 1989, LB 767, § 97.

9-241.01 Conduct of bingo; authorized location.

A licensed organization shall conduct bingo only within the county in which the licensed organization has its principal office.

Source: Laws 1994, LB 694, § 38.

9-241.02 Bingo occasion; restrictions; exceptions.

(1) A licensed organization shall not hold more than ten bingo occasions per calendar month nor shall a licensed organization use any premises more than two times per calendar week for the conduct of bingo.

(2) No bingo occasion, except for a limited period bingo or a special event bingo, shall last for longer than six consecutive hours, and no bingo occasion, except for a limited period bingo or special event bingo, shall begin within three hours of the completion of another bingo occasion conducted within the same premises.

(3) Bingo occasions held as part of a limited period bingo shall not be counted in determining whether a licensed organization has complied with subsection (1) of this section.

(4) Nothing in this section or section 9-241.03 shall prohibit the department from approving a request by a licensed organization to reschedule a bingo

occasion that was canceled due to an act of God. Such request shall be made in writing by the organization's bingo chairperson at least thirty days prior to the desired reschedule date.

Source: Laws 1994, LB 694, § 39.

9-241.03 Bingo occasions; additional restrictions; department; powers.

(1) Irrespective of the number of organizations authorized to hold bingo occasions within a premises:

(a) No more than two bingo occasions per calendar week shall be held within a premises except as otherwise provided in subsection (3) of this section; and

(b) No more than four limited period bingos with an aggregate of no more than twelve days per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation and no more than two special event bingos with an aggregate of no more than fourteen days per calendar year shall be held within a premises.

(2) Bingo occasions held as part of a limited period bingo or special event bingo, or a bingo occasion that was canceled due to an act of God and rescheduled pursuant to section 9-241.02, shall not be counted in determining whether the use of a premises is in compliance with subdivision (1)(a) of this section.

(3) Notwithstanding the restriction contained in subdivision (1)(a) of this section, the department may authorize more than two bingo occasions per calendar week to be held within a premises if a licensed organization or commercial lessor can demonstrate in writing to the department that utilizing the premises for the conduct of bingo more than two times per calendar week will result in a cost savings for each of the licensed organizations who would be utilizing the premises. If the department authorizes a premises to be used more than two times per calendar week, the department shall not permit more than one bingo occasion per calendar day to be held in a premises except when one of the occasions is a limited period bingo or a special event bingo.

Source: Laws 1994, LB 694, § 40; Laws 1997, LB 248, § 4; Laws 2000, LB 1086, § 8; Laws 2001, LB 268, § 2; Laws 2007, LB638, § 6.

9-241.04 Premises; rental or lease; requirements.

A premises may be rented or leased by a licensed organization for the purpose of conducting bingo. Such rental or lease agreement shall be in writing and may include the rental or lease of personal property, excluding bingo equipment, which is necessary in order to conduct a bingo occasion. Such rental or lease agreement shall be in accordance with the rules and regulations adopted by the department and the following:

(1) Except as provided in section 9-255.06, the premises must be rented or leased from a licensed commercial lessor;

(2) All bingo occasions shall be conducted only by the organization which holds the rental or lease agreement;

(3) No rental or lease payments shall be based on a percentage of the gross receipts or profits from bingo or on the number of persons attending or playing at any bingo occasion;

(4) No rental or lease agreement for real or personal property shall be in excess of fair market value;

(5) No rental or lease agreement for a premises shall contain any right to use bingo supplies or bingo equipment. A rental or lease agreement for bingo equipment shall be separate and distinct from that for a premises; and

(6) All rental and lease agreements shall be subject to prior approval by the department.

Source: Laws 1994, LB 694, § 41.

9-241.05 Bingo equipment; obtain from licensed distributor; exceptions.

(1) A licensed organization shall purchase or otherwise obtain bingo equipment only from a licensed distributor, except that a licensed organization may rent or lease bingo equipment, excluding disposable paper bingo cards, only from:

(a) A licensed distributor; or

(b) The licensed commercial lessor from whom the organization is leasing a premises for the conduct of bingo.

(2) All rental or lease agreements for bingo equipment shall be in writing and shall be subject to prior approval by the department.

(3) No purchase, rental, or lease of bingo equipment shall be in excess of fair market value.

(4) Nothing in this section shall prohibit:

(a) Two licensed organizations which may be conducting bingo within the same premises from equally sharing the cost of purchasing bingo equipment, excluding disposable paper bingo cards, and sharing its use;

(b) A licensed organization from lending its bingo equipment, excluding disposable paper bingo cards, without charge to another licensed organization in an emergency situation or to a qualifying nonprofit organization to use at a special event bingo;

(c) A licensed organization which has purchased or intends to purchase new bingo equipment from selling or donating its old bingo equipment to another licensed organization if prior written approval has been obtained from the department;

(d) An organization which has voluntarily canceled or allowed its license to conduct bingo to lapse or an organization which has had its license to conduct bingo suspended, canceled, or revoked from selling or donating its bingo equipment to another licensed organization if prior written approval has been obtained from the department; or

(e) A licensed organization from selling or donating its disposable paper bingo cards, when authorization has been obtained from the department, to another licensed organization in an emergency situation or to a qualifying nonprofit organization to use at a special event bingo.

Source: Laws 1994, LB 694, § 42; Laws 2002, LB 545, § 15.

9-241.06 Bingo occasion; alcoholic beverages prohibited; exception; food; beverages; sale; expenses.

No alcoholic beverages shall be sold or served to the public during a bingo occasion unless it is a limited period bingo or special event bingo at which no one under eighteen years of age is permitted to play bingo. Nonalcoholic beverages, as well as food, may be served and sold during any bingo occasion conducted by a licensed organization if all of the profits from the sales are paid to such licensed organization. The proceeds from the sale of such food and beverage items shall not be commingled with the organization's bingo receipts or placed in the bingo checking account. No expense associated with the purchase, preparation, serving, or selling of such food and beverage items shall be paid using bingo receipts.

Source: Laws 1994, LB 694, § 43.

9-241.07 Advertising; limitations; exception.

Only a licensed organization or a qualifying nonprofit organization may advertise a bingo occasion, a limited period bingo, or a special event bingo. No advertising for any bingo occasion or occasions conducted by any organization shall include any reference to an aggregate value of bingo prizes exceeding four thousand dollars.

Source: Laws 1994, LB 694, § 44.

9-241.08 Bingo game; participation; conduct of bingo; restrictions.

(1) No person under eighteen years of age shall play or participate in any bingo game, except that any person may play bingo at a limited period bingo or special event bingo if (a) no alcoholic beverages are served and (b) no prize or prizes to be awarded exceed twenty-five dollars in value per game.

(2) All persons involved in the conduct of bingo must be at least eighteen years of age.

(3) No person who is conducting or assisting in the conduct of a bingo occasion shall be permitted to participate as a player at that bingo occasion.

(4) No licensed commercial lessor, distributor, or manufacturer, person having a substantial interest in a licensed commercial lessor, distributor, or manufacturer, or employee or agent of a licensed commercial lessor, distributor, or manufacturer shall operate, manage, conduct, advise, or assist in the operating, managing, conducting, promoting, or administering of any bingo game or occasion. For purposes of this subsection, the term assist shall include, but not be limited to, the payment of any expense of a licensed organization, whether such payment is by loan or otherwise.

(5) No person, licensee, or permittee or employee or agent thereof shall knowingly permit an individual under eighteen years of age to play or participate in any way in a bingo game conducted pursuant to the Nebraska Bingo Act, excluding those individuals allowed by law to play at a limited period bingo or special event bingo when (a) no alcoholic beverages are served and (b) no prize or prizes that will be awarded exceed twenty-five dollars in value per game.

Source: Laws 1994, LB 694, § 45; Laws 1997, LB 248, § 5.

9-241.09 Bingo chairperson or alternate bingo chairperson; licensed gaming manager; presence during bingo occasion; when required.

(1) A bingo chairperson or another member of the licensed organization who has been designated as an alternate bingo chairperson shall be present during the duration of each bingo occasion conducted pursuant to a Class I license.

(2) A licensed gaming manager shall be present during the duration of each bingo occasion conducted pursuant to a Class II license, except that in the case of an emergency, the licensed organization's bingo chairperson or alternate bingo chairperson may substitute for the gaming manager.

Source: Laws 1994, LB 694, § 46; Laws 1995, LB 344, § 6.

9-241.10 Bingo cards; requirements; department; rules and regulations.

(1) An organization licensed to conduct bingo under a Class II license shall not use any reusable hard bingo card or shutter card to conduct bingo.

(2) All licensed organizations shall accurately account for and report the sale, use, rental, or lease of all bingo cards used at each bingo occasion. The department shall prescribe by rule and regulation the method by which such sale, use, rental, or lease is to be recorded, including, but not limited to, the manner in which all bingo cards are to be issued and receipted at a bingo occasion.

(3) The department shall establish by rule and regulation the manner in which bingo shall be conducted, including rules for the methods of conducting and playing bingo and for the utilization of bingo supplies and bingo equipment to insure that each player is afforded a fair and equal opportunity to win.

Source: Laws 1994, LB 694, § 47; Laws 2003, LB 429, § 6.

9-242 Repealed. Laws 1994, LB 694, § 126.

9-243 Repealed. Laws 1994, LB 694, § 126.

9-244 Repealed. Laws 1994, LB 694, § 126.

9-245 Repealed. Laws 1994, LB 694, § 126.

9-246 Repealed. Laws 1994, LB 694, § 126.

9-247 Repealed. Laws 1994, LB 694, § 126.

9-248 Repealed. Laws 1994, LB 694, § 126.

9-249 Repealed. Laws 1994, LB 694, § 126.

9-250 Repealed. Laws 1994, LB 694, § 126.

9-251 Repealed. Laws 1994, LB 694, § 126.

9-252 Repealed. Laws 1994, LB 694, § 126.

9-253 Repealed. Laws 1994, LB 694, § 126.

9-254 Repealed. Laws 1994, LB 694, § 126.

9-255 Bingo games; selection of designators.

Only the following means of random selection of the numbered designators shall be used in the conduct of any bingo game:

(1) An electrically operated blower machine containing balls which the operator may take from the air one at a time while the blower is in operation, or which provides a trap or other mechanical means for automatically catching not more than one ball at a time while the blower is in operation; or

(2) A mechanically or manually operated cage which provides a trap or other mechanical means for automatically catching not more than one ball at a time while the cage is in operation.

For any means of selection permitted by subdivisions (1) and (2) of this section, the balls to be drawn shall be essentially the same in size, shape, weight, balance, and all other characteristics so that at all times during the conduct of bingo each ball possesses the capacity for equal agitation with any other ball within the receptacle. All balls within the total set shall be subject to random selection at the beginning of each bingo game.

Source: Laws 1978, LB 351, § 39; Laws 1983, LB 259, § 26; R.S.1943, (1983), § 9-162; Laws 1986, LB 1027, § 56; Laws 1994, LB 694, § 48.

9-255.01 Bingo cards, equipment, and supplies; requirements.

All bingo cards and any other bingo equipment or supplies furnished, sold, rented, or leased for use at any bingo occasion subject to regulation under the Nebraska Bingo Act shall conform in all respects to the specifications imposed by rule and regulation by the department, including, but not limited to, the proper manufacture, assembly, packaging, and numbering of bingo cards. All bingo cards and any other bingo equipment or supplies which do not conform to such specifications shall be considered contraband goods pursuant to section 9-262.01.

Source: Laws 1994, LB 694, § 49.

9-255.02 Prizes; limitations.

(1) Irrespective of whether a bingo game or a bingo occasion is conducted jointly by two or more licensed organizations, no prize for a single bingo game shall exceed one thousand dollars in value and the aggregate value of all bingo prizes at any bingo occasion shall not exceed four thousand dollars.

(2) A winner shall be determined for each bingo game, and each winner shall be awarded and delivered the prize on the same day that the bingo occasion is conducted.

(3) At least fifty percent of the gross receipts derived from the conduct of bingo shall be awarded in bingo prizes during each quarterly reporting period. The licensed organization shall clearly post at each bingo occasion the percentage of gross receipts paid out in prizes for the last preceding quarter.

(4) In addition to the prizes permitted by subsection (1) of this section, a licensed organization may award promotional prizes in cash or merchandise to players at a bingo occasion if:

(a) No consideration is charged in order to be eligible to win a promotional prize except that given to participate as a player in the bingo occasion;

(b) The total fair market value of all promotional prizes awarded at a bingo occasion does not exceed one hundred dollars in value or, in the case of a limited period bingo, does not exceed two hundred fifty dollars in value;

(c) The winner of any promotional prize is a bingo player who is present at the bingo occasion; and

(d) The winners are determined by an element of chance or some other factor which does not involve any scheme which utilizes any type of pickle card, the game of keno, a scratch-off or rub-off ticket, any promotional game tickets authorized by section 9-701, any non-telecommunication-related, player-activated electronic or electromechanical facsimile of any game of chance, or any slot machine of any kind.

(5) The total fair market value of all promotional prizes awarded at a bingo occasion shall be excluded from determination of the fifty-percent prize payout requirement in subsection (3) of this section.

(6) The licensed organization's cost of promotional prizes permitted by subsection (4) of this section shall not be included in determining compliance with the expense limitation of fourteen percent of bingo gross receipts provided in section 9-255.04.

Source: Laws 1994, LB 694, § 50; Laws 1995, LB 344, § 7; Laws 2002, LB 545, § 16.

9-255.03 Gross receipts; segregation; books and records; commingling of funds.

(1) The gross receipts, less the amount awarded in prizes at each bingo occasion, shall be segregated from all other revenue of a licensed organization and placed in a separate bingo checking account of the licensed organization. All lawful purpose donations and all bingo expenses, including expenses for the management, operation, or conduct of bingo but excluding the payment of prizes, shall be paid by a check from such account. Prizes may be paid out in cash by the licensed organization if prize payments in cash of five hundred dollars or more are receipted in a manner prescribed by the department in rule and regulation.

(2) Separate books of the bingo operations shall be maintained by the licensed organization. Records, reports, lists, and all other information required by the Nebraska Bingo Act and any rules and regulations adopted pursuant to the act shall be preserved for at least three years.

(3) A licensed organization may commingle funds received from the conduct of bingo with any general operating funds of the licensed organization by means of a check or electronic funds transfer, but the burden of proof shall be on the licensed organization to demonstrate that such commingled funds are not used to make any payments associated with the conduct of bingo and are used for a lawful purpose.

Source: Laws 1994, LB 694, § 51.

9-255.04 Expenses; limitations; allocation; payment of workers; expenses; how paid.

(1) No expense shall be incurred or amounts paid in connection with the conduct of bingo by a licensed organization except those which are reasonable and necessary.

(2) A licensed organization shall not spend more than fourteen percent of its bingo gross receipts to pay the expenses of conducting bingo. The actual cost of (a) license and local permit fees, (b) any taxes authorized by the Nebraska

Bingo Act, (c) bingo and promotional prizes, (d) the purchase, rental, or lease of bingo equipment, and (e) the rental or lease of a premises for the conduct of bingo and the purchase, rental, or lease of personal property as allowed by the department in rule and regulation which is necessary for the conduct of bingo shall not be included in determining compliance with the expense limitation contained in this section.

(3) A licensed organization which is also licensed to conduct a lottery by the sale of pickle cards pursuant to the Nebraska Pickle Card Lottery Act may allocate a portion of the expenses associated with the conduct of its bingo occasions to its lottery by the sale of pickle cards conducted at such bingo occasions. Such allocation shall be based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the previous annual reporting period. An organization licensed to conduct bingo that has not been previously licensed shall determine such allocation based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the initial three consecutive calendar months of operation.

(4) The total amount of expenses that may be allocated to the organization's lottery by the sale of pickle cards shall be subject to the limitations on bingo expenses as provided for in the Nebraska Bingo Act with respect to the fourteen-percent expense limitation and the fair-market-value limitation on the purchase, rental, or lease of bingo equipment and the rental or lease of personal property or of a premises for the conduct of bingo. No portion of the eight percent of the definite profit of a pickle card unit as allowed by section 9-347 to pay the allowable expenses of operating a lottery by the sale of pickle cards shall be used to pay any expenses associated with the sale of pickle cards at a bingo occasion.

(5) All persons paid for working at a bingo occasion, including pickle card sellers but excluding concession workers, shall be paid only by a check written from the licensed organization's bingo checking account and shall not receive any other compensation or payment for working at a bingo occasion from any other source. Such wages shall be at an hourly or occasion rate and shall be included in the amount allowed by the expense limitation provided in subsection (2) of this section. No person shall receive any compensation or payment from a licensed organization based upon a percentage of the organization's bingo gross receipts or profit.

(6) No expenses associated with the conduct of bingo may be paid directly from the licensed organization's pickle card checking account. A licensed organization may transfer funds from its pickle card checking account to its bingo checking account as permitted by subsection (3) of this section by a check drawn on the pickle card checking account or by electronic funds transfer as provided only by section 9-347.

Source: Laws 1994, LB 694, § 52; Laws 1995, LB 344, § 8; Laws 2002, LB 545, § 17.

Cross References

Nebraska Pickle Card Lottery Act, see section 9-301.

9-255.05 Licensed organization; reports required.

(1) A licensed organization shall report annually to the department, on a form prescribed by the department, a complete and accurate accounting of its gross receipts. The annual report shall demonstrate that the gross receipts less cash prizes paid have been retained in the organization's bingo checking account or expended solely for authorized expenses pursuant to section 9-255.04 or lawful purpose donations.

(2) The annual report shall cover the organization's bingo activities from July 1 through June 30 of each year or such other period as the department may prescribe by rule and regulation. Such report shall be submitted to the department by August 15 of each year or such other date as the department may prescribe by rule and regulation.

(3) A copy of the report shall be submitted to the organization's membership.

(4) Upon dissolution of a licensed organization or if a previously licensed organization does not renew its license to conduct bingo, its license renewal application is denied, or its license is canceled or revoked, all remaining profits derived from the conduct of bingo shall be utilized for a lawful purpose and shall not be distributed to any private individual or shareholder. A complete and accurate report of the organization's bingo activity shall be filed with the department, on a form prescribed by the department, no later than forty-five days after the date the organization is dissolved or no later than forty-five days after the expiration date of the license or the effective date of the license renewal application denial or license cancellation or revocation. The report shall cover the period from the end of the organization's most recent annual report filed through the date the organization is dissolved or the date the license renewal application has been denied or the license has been canceled or revoked or has otherwise expired. The organization shall include with the report a plan for the disbursement of any remaining profits which shall be subject to approval by the department. Such plan shall identify the specific purposes for which the remaining profits will be utilized.

(5) In addition to the reports required by subsections (1) and (4) of this section, the department may prescribe by rule and regulation the filing of a bingo revenue status report by August 15 of each year or such other date as the department may prescribe by rule and regulation, on a form prescribed by the department, listing all disbursements of bingo revenue until all such revenue has been expended either for allowable expenses or for a lawful purpose.

Source: Laws 1994, LB 694, § 53; Laws 2002, LB 545, § 18.

9-255.06 Commercial lessor's license; when required; application; form; contents; fee; bingo equipment; restrictions; conduct of bingo; restrictions; exemption.

(1) An individual, partnership, limited liability company, corporation, or organization which will be leasing a premises to one or more organizations for the conduct of bingo and which will receive more than two hundred fifty dollars per month as aggregate total rent from leasing such premises for the conduct of bingo shall first obtain a commercial lessor's license from the department. The license shall be applied for on a form prescribed by the department and shall contain:

(a) The name and home address of the applicant;

(b) If the applicant is an individual, the applicant's social security number;

(c) If the applicant is not a resident of this state or is not a corporation, the full name, business address, and home address of a natural person, at least nineteen years of age, who is a resident of and living in this state designated by the applicant as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the applicant;

(d) A designated mailing address and legal description of the premises intended to be covered by the license sought;

(e) The lawful capacity of the premises for public assembly purposes;

(f) The amount of rent to be paid or other consideration to be given directly or indirectly for each bingo occasion to be conducted; and

(g) Any other information which the department deems necessary.

(2) An application for a commercial lessor's license shall be accompanied by a biennial fee of two hundred dollars for each premises the applicant is seeking to lease pursuant to subsection (1) of this section. A commercial lessor who desires to lease more than one premises for the conduct of bingo shall file a separate application and pay a separate fee for each such premises.

(3) The information required by this section shall be kept current. The commercial lessor shall notify the department within thirty days of any changes to the information contained on or with the application.

(4) A commercial lessor who will be leasing or renting bingo equipment in conjunction with his or her premises shall obtain such equipment only from a licensed distributor, except that a commercial lessor shall not purchase or otherwise obtain disposable paper bingo cards from any source.

(5) A commercial lessor, the owner of a premises, and all parties who lease or sublease a premises which ultimately is leased to an organization for the conduct of bingo shall not be involved directly with the conduct of any bingo occasion regulated by the Nebraska Bingo Act which may include, but not be limited to, the managing, operating, promoting, advertising, or administering of bingo. Such persons shall not derive any financial gain from any gaming activities regulated by Chapter 9 except as provided in subsection (4) of section 9-347 if the individual is licensed as a pickle card operator, if the individual is licensed as a lottery operator or authorized sales outlet location pursuant to the Nebraska County and City Lottery Act, or if the individual is contracted with as a lottery game retailer pursuant to the State Lottery Act.

(6) A nonprofit organization owning its own premises which in turn rents or leases its premises solely to its own auxiliary shall be exempt from the licensing requirements contained in this section.

Source: Laws 1994, LB 694, § 54; Laws 1997, LB 752, § 62; Laws 2000, LB 1086, § 9; Laws 2002, LB 545, § 19; Laws 2007, LB638, § 7.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
State Lottery Act, see section 9-801.

9-255.07 Distributor's license; application; form; contents; renewal; fee; exemption; distributor, spouse, or employee; restrictions on activities.

(1) Any individual, partnership, limited liability company, or corporation which desires to sell, lease, distribute, or otherwise provide bingo equipment in

this state to a licensed commercial lessor or a licensed organization for use in a bingo occasion which is regulated by the Nebraska Bingo Act shall first apply for and obtain a distributor's license from the department. Distributors' licenses may be renewed biennially. The expiration date shall be September 30 of every odd-numbered year or such other date as the department may prescribe by rule and regulation. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license. An applicant for a distributor's license shall have its principal office located within this state. The license shall be applied for on a form prescribed by the department and shall contain:

(a) The name and home address of the applicant;

(b) If the applicant is an individual, the applicant's social security number;

(c) The address and legal description of each location where the applicant stores or distributes bingo equipment;

(d) A sworn statement by the applicant or appropriate officer of the applicant that the applicant will comply with all provisions of the act and all rules and regulations adopted pursuant to the act; and

(e) Any other information which the department deems necessary.

(2) The information required by this section shall be kept current. The distributor shall notify the department within thirty days of any changes to the information contained on or with the application.

(3) The application shall be accompanied by a biennial license fee of three thousand fifty dollars.

(4) Any person licensed as a distributor pursuant to section 9-330 may act as a distributor pursuant to this section without filing a separate application or submitting the license fee required by this section.

(5) A licensed distributor or person having a substantial interest therein shall not hold any other type of license issued pursuant to Chapter 9 except as provided in sections 9-330 and 9-632.

(6) No distributor or spouse or employee of any distributor shall participate in the conduct or operation of any bingo game or occasion or any other kind of gaming activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her statutory duties as a licensed distributor as provided by this section and except as provided in sections 9-330 and 9-632. No distributor or employee or spouse of any distributor shall have a substantial interest in another distributor, a manufacturer, a manufacturer-distributor as defined in section 9-616 other than itself, a licensed organization, or any other licensee regulated under Chapter 9. Membership in a licensed organization shall not be deemed a violation of this section.

Source: Laws 1994, LB 694, § 55; Laws 1997, LB 248, § 6; Laws 1997, LB 752, § 63.

9-255.08 Distributor; purchase or sale of bingo equipment; restrictions; records; reporting.

(1) A licensed distributor shall purchase or otherwise obtain bingo equipment only from a licensed manufacturer.

(2) A licensed distributor shall sell or otherwise supply bingo equipment for use in a bingo game regulated by the Nebraska Bingo Act only to a licensed

organization, a qualifying nonprofit organization, a licensed commercial lessor, or a federally recognized Indian tribe, except that a licensed distributor shall not sell disposable paper bingo cards in this state to anyone other than a licensed organization, a qualifying nonprofit organization, or a federally recognized Indian tribe. Notwithstanding the restrictions in this subsection, a licensed distributor may, with prior authorization from the department, sell disposable paper bingo cards for use in a bingo game not regulated by the Nebraska Bingo Act.

(3) A licensed distributor shall keep and maintain a complete set of records which shall include all details of all activities of the distributor related to the conduct of the licensed activity as may be required by the department, including the quantities and types of all bingo equipment purchased and sold. Such records shall be available upon request for inspection by the department. All records required by the department shall be maintained for at least three years after the last day of the distributor's fiscal year.

(4) The department may require by rule and regulation periodic reporting from the licensed distributor relative to its bingo activities in this state.

Source: Laws 1994, LB 694, § 56; Laws 2002, LB 545, § 20.

9-255.09 Manufacturer's license; application; form; contents; renewal; fee; exemption; manufacturer, spouse, or employee; restriction on activities.

(1) Any individual, partnership, limited liability company, or corporation which desires to sell or otherwise supply bingo equipment in this state to a licensed distributor shall first apply for and obtain a manufacturer's license from the department. Manufacturers' licenses may be renewed biennially. The expiration date shall be September 30 of every odd-numbered year or such other date as the department may prescribe by rule and regulation. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license. The license shall be applied for on a form prescribed by the department and shall contain:

(a) The business name and address of the applicant and the name and address of each of the applicant's separate locations which manufacture or store bingo equipment and any location from which the applicant distributes or promotes bingo equipment;

(b) The name and home address of the applicant;

(c) If the applicant is an individual, the applicant's social security number;

(d) If the applicant is not a resident of this state or is not a corporation, the full name, business address, and home address of a natural person, at least nineteen years of age, who is a resident of and living in this state designated by the applicant as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the applicant;

(e) A sworn statement by the applicant or appropriate officer of the applicant that the applicant will comply with all provisions of the Nebraska Bingo Act and all rules and regulations adopted pursuant to the act; and

(f) Any other information which the department deems necessary.

(2) The application shall be accompanied by a biennial license fee of three thousand fifty dollars.

(3) The information required by this section shall be kept current. The manufacturer shall notify the department within thirty days of any changes to the information contained on or with the application.

(4) Any person licensed as a manufacturer pursuant to section 9-332 may act as a manufacturer pursuant to this section without filing a separate application or submitting the license fee required by this section.

(5) A licensed manufacturer shall not hold any other type of license issued pursuant to Chapter 9 except as provided in sections 9-332 and 9-632.

(6) No manufacturer or spouse or employee of the manufacturer shall participate in the conduct or operation of any bingo game or occasion or any other kind of gaming activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her statutory duties as a licensed manufacturer or employee thereof as provided by this section and except as provided in sections 9-332 and 9-632 and the State Lottery Act. No manufacturer or employee or spouse of any manufacturer shall have a substantial interest in another manufacturer, a distributor, a manufacturer-distributor as defined in section 9-616 other than itself, a licensed organization, or any other licensee regulated under Chapter 9.

Source: Laws 1994, LB 694, § 57; Laws 1997, LB 248, § 7; Laws 1997, LB 752, § 64.

Cross References

State Lottery Act, see section 9-801.

9-255.10 Manufacturer; sale of bingo equipment; restrictions; records; department; powers.

(1) A licensed manufacturer shall sell or otherwise supply bingo equipment in this state only to a licensed distributor or a federally recognized Indian tribe, except that nothing in this section shall prohibit a licensed manufacturer from selling or otherwise supplying bingo equipment, excluding disposable paper bingo cards, to a qualifying nonprofit organization as provided for in section 9-230.01.

(2) A licensed manufacturer shall keep and maintain a complete set of records which shall include all details of all activities of the licensee relating to the conduct of the licensed activity as may be required by the department, including the quantities and types of all bingo equipment sold to each Nebraska-licensed distributor. Such records shall be made available for inspection upon request by the department. All records required by the department shall be maintained for a period of at least three years after the last day of the licensee's fiscal year.

(3) The department may require, by rule and regulation, periodic reporting from the manufacturer relative to its bingo activities in this state.

(4) The department may require departmental approval of bingo equipment prior to the manufacturer offering or marketing such equipment in this state. Approval by the department shall be based upon conformance with specifications imposed by the department by rule and regulation adopted pursuant to the Nebraska Bingo Act.

(5) The department may require a manufacturer seeking approval of any bingo equipment to pay the actual costs incurred by the department in examining the equipment. If required, the anticipated costs shall be paid in advance by

the manufacturer. After completion of the examination, the department shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayment of actual costs.

Source: Laws 1994, LB 694, § 58.

9-256 Repealed. Laws 1994, LB 694, § 126.

9-257 Repealed. Laws 1994, LB 694, § 126.

9-258 Repealed. Laws 1994, LB 694, § 126.

9-259 Repealed. Laws 1994, LB 694, § 126.

9-260 Repealed. Laws 1994, LB 694, § 126.

9-261 Repealed. Laws 1994, LB 694, § 126.

9-262 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of the Nebraska Bingo Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee, or any employee or agent thereof, to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Bingo Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of the state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operation except as authorized by the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to such act;

(b) Intentionally employing or possessing any device to facilitate cheating in a bingo game or using any fraudulent scheme or technique in connection with any bingo game when the amount gained or intended to be gained through the use of such items, schemes, or techniques is three hundred dollars or more;

(c) Knowingly filing a false report under the Nebraska Bingo Act; or

(d) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of bingo activity.

(3) In all proceedings initiated in any court or otherwise under the Nebraska Bingo Act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(4) The failure to do any act required by or under the Nebraska Bingo Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(5) In the enforcement and investigation of any offense committed under the Nebraska Bingo Act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1978, LB 351, § 47; Laws 1983, LB 259, § 32; Laws 1984, LB 949, § 43; Laws 1985, LB 408, § 16; R.S.Supp.,1985, § 9-170; Laws 1986, LB 1027, § 63; Laws 1987, LB 523, § 1; Laws 1988, LB 295, § 33; Laws 1995, LB 344, § 9; Laws 1997, LB 248, § 8.

9-262.01 Tax Commissioner; power to seize contraband; effect.

(1) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, or any peace officer of this state may seize, without a warrant, the following contraband goods found any place in this state:

(a) Any bingo supplies and equipment which do not conform in all respects to specifications imposed by the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to the act;

(b) Any bingo equipment purchased by any licensed organization from any source other than a licensed distributor or as provided in section 9-241.05; and

(c) Any bingo equipment furnished, sold, or rented for use in a bingo occasion subject to regulation under the act without the proper licenses or approval.

(2) The Tax Commissioner may, upon satisfactory proof, direct return of any confiscated bingo supplies and equipment when he or she has reason to believe that the owner has not willfully or intentionally failed to comply with the act.

(3) The Tax Commissioner may, upon finding that an owner of contraband goods has willfully or intentionally failed to comply with the act, confiscate such goods. Any bingo supplies and equipment confiscated may be destroyed.

(4) The seizure and destruction of bingo supplies and equipment shall not relieve any person from a fine, imprisonment, or other penalty for violation of the act.

(5) The Tax Commissioner or his or her agents or employees, when directed to do so by the Tax Commissioner, or any peace officer of this state shall not be responsible for negligence in any court for the seizure or confiscation of any bingo supplies and equipment pursuant to this section.

Source: Laws 1989, LB 767, § 25; Laws 1994, LB 694, § 59.

9-263 Violations; standing to sue.

Any person in this state, including any law enforcement official, who has cause to believe that (1) any licensed organization, (2) any lessor of facilities or bingo equipment and supplies used for a bingo occasion, (3) any person conducting any game of bingo, (4) any employee or agent of such licensed organization, lessor, or person, or (5) any person acting in concert with such licensed organization, lessor, or person has engaged in or is engaging in any conduct in violation of the Nebraska Bingo Act or has aided or is aiding another in any conduct in violation of such act may commence a civil action in any district court of this state.

Source: Laws 1978, LB 351, § 49; Laws 1979, LB 164, § 14; Laws 1983, LB 259, § 33; Laws 1984, LB 949, § 45; R.S.Supp.,1984, § 9-172; Laws 1986, LB 1027, § 64.

9-264 Civil action; relief permitted.

In any civil action commenced pursuant to section 9-263, a court may allow:

(1) A temporary restraining order or injunction, with or without a bond as the court may direct, prohibiting a party to the action from continuing or engaging in such conduct, aiding in such conduct, or doing any act in furtherance of such conduct;

(2) A declaration that the conduct by a licensed organization or a qualifying nonprofit organization or employee or agent of the organization, which is a party to the action, constitutes a violation of the Nebraska Bingo Act and a determination of the number and times of violations for certification to the department for appropriate license or permit revocation purposes;

(3) A permanent injunction under principles of equity and on reasonable terms;

(4) An accounting of the profits, earnings, or gains resulting directly and indirectly from such violations, with restitution or a distribution of such profits, earnings, or gains to all licensed organizations or qualifying nonprofit organizations affected by such violations which apply to the court and show that they suffered monetary losses by reason of such violations and with distribution of any remaining profits, earnings, or gains to the state; and

(5) Reasonable attorney's fees and court costs.

Source: Laws 1979, LB 164, § 15; Laws 1983, LB 259, § 35; Laws 1984, LB 949, § 47; R.S.Supp.,1984, § 9-174; Laws 1986, LB 1027, § 65; Laws 1991, LB 427, § 27; Laws 1994, LB 694, § 60.

9-265 Civil procedure statutes; applicability.

Proceedings under section 9-263 shall be subject to and governed by the district court civil procedure statutes. Issues properly raised shall be tried and determined as in other civil actions in equity. All orders, judgments, and decrees may be reviewed as other orders, judgments, and decrees.

Source: Laws 1979, LB 164, § 16; R.S.1943, (1983), § 9-175; Laws 1986, LB 1027, § 66.

Cross References

Appeals, procedure, see section 25-1901 et seq.
Civil procedure statutes, see section 25-101 et seq.

9-266 Reports and records; disclosure; limitations; violation; penalty.

(1) Except in accordance with a proper judicial order or as otherwise provided by this section or other law, it shall be a Class I misdemeanor for the Tax Commissioner or any employee or agent of the Tax Commissioner to make known, in any manner whatsoever, the contents of any reports or records submitted by a licensed distributor or manufacturer or the contents of any personal history reports submitted by any licensee or license applicant to the department pursuant to the Nebraska Bingo Act and any rules and regulations adopted and promulgated pursuant to such act.

(2) Nothing in this section shall be construed to prohibit (a) the delivery to a licensee, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, a certified copy of any report or record, (b) the

publication of statistics so classified as to prevent the identification of particular reports or records, (c) the inspection by the Attorney General, a county attorney, or other legal representative of the state of reports or records submitted by a licensed distributor or manufacturer when information on the reports or records is considered by the Attorney General, county attorney, or other legal representative to be relevant to any action or proceeding instituted by the licensee or against whom an action or proceeding is being considered or has been commenced by any state agency or county, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner for the collection of delinquent taxes under the Nebraska Bingo Act, (f) the publication or disclosure of final administrative opinions and orders made by the Tax Commissioner in the adjudication of license or permit denials, suspensions, cancellations, or revocations, (g) the release of any application, without the contents of any submitted personal history report or social security number, filed with the department to obtain a license or permit to conduct activities under the act, which shall be deemed a public record, (h) the release of any report filed pursuant to section 9-255.05 or any other report filed by a licensee pursuant to the act, which shall be deemed a public record, or (i) the notification of an applicant, a licensee, or a licensee's duly authorized representative of the existence of and the grounds for an administrative action to deny the license application of, to revoke, cancel, or suspend the license of, or to levy an administrative fine upon any agent or employee of the applicant, the licensee, or any other person upon whom the applicant or licensee relies to conduct activities authorized by the act.

(3) Nothing in this section shall prohibit the Tax Commissioner or any employee or agent of the Tax Commissioner from making known the names of persons, firms, or corporations licensed or issued a permit to conduct activities under the act, the locations at which such activities are conducted by licensees or permittees, or the dates on which such licenses or permits were issued.

(4) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect reports or records submitted by a licensed distributor or manufacturer pursuant to the act when information on the reports or records is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(5) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit other tax officials of this state to inspect reports or records submitted pursuant to the act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

Source: Laws 1988, LB 295, § 34; Laws 1989, LB 767, § 27; Laws 1991, LB 427, § 28; Laws 1994, LB 694, § 61; Laws 1995, LB 344, § 10; Laws 2007, LB638, § 8.

ARTICLE 3
PICKLE CARDS

Section

9-301 Act, how cited.

Sections 9-301 to 9-356 shall be known and may be cited as the Nebraska Pickle Card Lottery Act.

Source: Laws 1986, LB 1027, § 67; Laws 1988, LB 1232, § 4; Laws 1991, LB 795, § 1; Laws 1994, LB 694, § 62; Laws 1996, LB 1277, § 2; Laws 2002, LB 545, § 21.

9-302 Purposes of act.

(1) The purpose of the Nebraska Pickle Card Lottery Act is to protect the health and welfare of the public, to protect the economic welfare and interest in pickle card sales and winnings, to insure that the profits derived from the operation of lottery by the sale of pickle cards are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits are used for legitimate purposes, and to prevent the purposes for which the profits of lottery by the sale of pickle cards are to be used from being subverted by improper elements. Lottery by the sale of pickle cards shall be played and conducted only by those methods permitted in the Nebraska Pickle Card Lottery Act. No other form, means of selection, or method of play shall be authorized or permitted.

(2) The purpose of the Nebraska Pickle Card Lottery Act is also to completely and fairly regulate each level of the traditional marketing scheme of pickle cards to insure fairness, quality, and compliance with the Constitution of the State of Nebraska. To accomplish such purpose, the regulation and licensure of manufacturers of pickle cards, nonprofit organizations, distributors, sales

agents, pickle card operators, and any other person involved in the marketing scheme are necessary.

Source: Laws 1986, LB 1027, § 68; Laws 1988, LB 1232, § 5.

9-303 Definitions, where found.

For purposes of the Nebraska Pickle Card Lottery Act, unless the context otherwise requires, the definitions found in sections 9-304 to 9-321.03 shall be used.

Source: Laws 1986, LB 1027, § 69; Laws 1988, LB 1232, § 6; Laws 1994, LB 694, § 63; Laws 2003, LB 3, § 2.

9-304 Allowable expenses, defined.

Allowable expenses shall mean:

(1) All costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed to participants;

(2) All office expenses;

(3) All promotional expenses;

(4) All salaries of persons employed to operate the lottery by the sale of pickle cards;

(5) Any rental or lease expense;

(6) Any fee paid to any person associated with the operation of any lottery by the sale of pickle cards, including any commission paid to a sales agent and any expense for which a sales agent is reimbursed;

(7) Any delivery or shipping charge incurred by a licensed organization in connection with the lottery by the sale of pickle cards;

(8) Any license fees paid to the department to license the organization, each utilization-of-funds member, and each sales agent and any pickle card dispensing device registration fees paid to the department to register devices utilized at the licensed organization's designated premises or its bingo occasions; and

(9) Any pickle card dispensing device repairs or maintenance paid by the licensed organization.

Source: Laws 1986, LB 1027, § 70; Laws 1988, LB 1232, § 7; Laws 1994, LB 694, § 64; Laws 2002, LB 545, § 22.

9-305 Cancel, defined.

Cancel shall mean to discontinue all rights and privileges to hold a license for up to three years.

Source: Laws 1986, LB 1027, § 71.

9-305.01 Definite profit, defined.

Definite profit shall mean the gross proceeds from a pickle card unit less all of the possible prizes in the unit.

Source: Laws 1988, LB 1232, § 8; Laws 1989, LB 767, § 28.

9-306 Department, defined.

Department shall mean the Department of Revenue.

Source: Laws 1986, LB 1027, § 72.

9-306.01 Designated premises, defined.

Designated premises shall mean one location selected by a licensed organization at which individual pickle cards may be sold as opportunities for participation in a lottery by the sale of pickle cards. Only one of the following types of locations may be selected as a designated premises: (1) In the case of an organization holding a certificate of exemption under section 501(c)(3), (c)(4), or (c)(5) of the Internal Revenue Code or a volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, one piece of real property which is owned, leased, or used by the organization as its principal office, which is in use by the organization primarily for purposes other than the conduct of gaming activities, and which is not used in connection with any other type of retail business activity other than an occasional sale as defined in section 77-2701.24; or (2) in the case of an organization holding a certificate of exemption under section 501(c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code, one piece of real property which is owned, leased, or used by the organization as its principal office and which is in use by the organization primarily for purposes other than the conduct of gaming activities. For purposes of this section, principal office shall mean the place where the principal affairs and business of the licensed organization are transacted, including where the officers and members assemble to discuss and transact the business of the organization, where its meetings are held, and generally where its records are kept.

Source: Laws 1988, LB 1232, § 9; Laws 1989, LB 767, § 29; Laws 1991, LB 427, § 29; Laws 1992, LB 871, § 1; Laws 1996, LB 1277, § 3; Laws 2002, LB 545, § 23; Laws 2003, LB 282, § 1.

9-307 Distributor, defined.

Distributor shall mean any person licensed pursuant to section 9-330, who purchases or otherwise obtains pickle card units from manufacturers and sells, distributes, or otherwise provides pickle card units in this state to licensed organizations.

Source: Laws 1986, LB 1027, § 73; Laws 1994, LB 694, § 65.

9-308 Gross proceeds, defined.

Gross proceeds shall mean the total possible receipts from the sale of all pickle cards in any pickle card unit.

Source: Laws 1983, LB 259, § 7; Laws 1984, LB 949, § 13; R.S.Supp.,1984, § 9-140.03; Laws 1986, LB 1027, § 74.

9-308.01 Gross profit, defined.

Gross profit shall mean the definite profit from the sale of a pickle card unit less any commission paid by a licensed organization to a pickle card operator selling individual pickle cards on behalf of the licensed organization.

Source: Laws 1988, LB 1232, § 10.

9-309 Lawful purpose, defined.

(1) Lawful purpose, for a licensed organization making a donation of its net profits derived from its lottery by the sale of pickle cards solely for its own organization, shall mean donating such net profits for any activity which benefits and is conducted by the organization, including any charitable, benevolent, humane, religious, philanthropic, youth sports, educational, civic, or fraternal activity conducted by the organization for the benefit of its members.

(2) Lawful purpose, for a licensed organization making a donation of its net profits derived from its lottery by the sale of pickle cards outside of its organization, shall mean donating such net profits only to:

(a) The State of Nebraska or any political subdivision thereof, but only if the contribution or gift is made exclusively for public purposes;

(b) A corporation, trust, community chest, fund, or foundation:

(i) Created or organized under the laws of Nebraska which has been in existence for five consecutive years immediately preceding the date of the donation and which has its principal office located in Nebraska;

(ii) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition;

(iii) No part of the net earnings of which inures to the benefit of any private shareholder or individual;

(iv) Which is not disqualified for tax exemption under section 501(c)(3) of the Internal Revenue Code by reason of attempting to influence legislation; and

(v) Which does not participate in any political campaign on behalf of any candidate for political office;

(c) A post or organization of war veterans or an auxiliary unit or society of, trust for, or foundation for any such post or organization:

(i) Organized in the United States or in any territory or possession thereof; and

(ii) No part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(d) A volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad serving any city, village, county, township, or rural or suburban fire protection district in Nebraska.

(3) No donation of net profits under this section shall (a) inure to the benefit of any individual member of the licensed organization making the donation except to the extent it is in furtherance of the purposes described in this section or (b) be used for any activity which attempts to influence legislation or for any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

Source: Laws 1986, LB 1027, § 75; Laws 1988, LB 1232, § 11; Laws 1994, LB 694, § 66; Laws 1995, LB 344, § 11; Laws 1995, LB 574, § 8; Laws 2002, LB 545, § 24.

Facilitating the recruitment and retention of volunteer firefighters cannot be said to constitute a charitable activity, and therefore, retirement plan contributions inuring to the benefit of individual members do not constitute a use for a lawful purpose. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-310 License, defined.

License shall mean any license to conduct a lottery by the sale of pickle cards as provided in section 9-326, any license for a utilization-of-funds member as

provided in section 9-327, any sales agent's license as provided in section 9-329, any pickle card operator's license as provided in section 9-329.02, any distributor's license as provided in section 9-330, or any manufacturer's license as provided in section 9-332.

Source: Laws 1986, LB 1027, § 76; Laws 1989, LB 767, § 30; Laws 1994, LB 694, § 67.

9-311 Licensed organization, defined.

Licensed organization shall mean a nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad licensed to conduct a lottery by the sale of pickle cards under the Nebraska Pickle Card Lottery Act.

Source: Laws 1986, LB 1027, § 77; Laws 2002, LB 545, § 25.

9-312 Lottery by the sale of pickle cards, defined.

Lottery by the sale of pickle cards shall mean any gambling scheme in which participants pay or agree to pay something of value for a pickle card. Any lottery by the sale of pickle cards shall be conducted pursuant to and in accordance with the Nebraska Pickle Card Lottery Act.

Lottery by the sale of pickle cards shall not mean or include any activity authorized or regulated under the Nebraska Bingo Act, except as provided in section 9-346, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, nor shall lottery by the sale of pickle cards mean or include any activity prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 78; Laws 1991, LB 849, § 46; Laws 1993, LB 138, § 4; Laws 2000, LB 658, § 1.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-313 Manufacturer, defined.

Manufacturer shall mean any person who assembles from raw materials or subparts a completed piece or pieces of pickle cards and pickle card units.

Source: Laws 1985, LB 408, § 10; R.S.Supp.,1985, § 9-140.15; Laws 1986, LB 1027, § 79.

9-314 Member, defined.

Member shall mean a person who has qualified for and been admitted to membership in a licensed organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement for purposes other than conducting activities under the Nebraska Pickle Card Lottery Act. Member shall not include social or honorary members.

Source: Laws 1986, LB 1027, § 80; Laws 1988, LB 1232, § 12.

9-314.01 Net profit, defined.

Net profit shall mean the gross profit from the sale of a pickle card unit less the unit cost and allowable expenses incurred by a licensed organization in connection with the sale of a pickle card unit.

Source: Laws 1988, LB 1232, § 13.

9-315 Pickle card, defined.

Pickle card shall mean any disposable card, board, or ticket which accords a person an opportunity to win a cash prize by opening, pulling, detaching, or otherwise removing one or more tabs from the card, board, or ticket to reveal a set of numbers, letters, symbols, or configurations, or any combination thereof, and shall include, but not be limited to, any card known as a pickle ticket, pickle, break-open, pull-tab, pull-tab board, punchboard, seal card, pull card, or any other similar card, board, or ticket which is included under this section, whether referred to by any other name.

Pickle card shall not mean or include any:

(1) Card used in connection with bingo conducted pursuant to the Nebraska Bingo Act, except as provided in section 9-346;

(2) Racing ticket or wager in connection with any horserace conducted pursuant to Chapter 2, article 12;

(3) Scrape-off or rub-off ticket;

(4) Card, ticket, or other device used in connection with any kind of gambling, lottery, raffle, or gift enterprise authorized or regulated under the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701; or

(5) Card, ticket, or other device prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 81; Laws 1991, LB 849, § 47; Laws 1993, LB 138, § 5; Laws 1994, LB 694, § 68; Laws 1996, LB 1277, § 4; Laws 2000, LB 658, § 2.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-316 Pickle card operator, defined.

Pickle card operator shall mean any sole proprietorship, partnership, limited liability company, or corporation which sells individual pickle cards on behalf of the licensed organization.

Source: Laws 1985, LB 408, § 9; R.S.Supp.,1985, § 9-140.14; Laws 1986, LB 1027, § 82; Laws 1988, LB 1232, § 14; Laws 1993, LB 121, § 109.

9-317 Pickle card unit, defined.

Pickle card unit shall mean a series or complete set of pickle cards, which consists of all winning and losing cards in a particular unit, set, series, deal, or

scheme for a lottery by the sale of pickle cards, in the receptacle or box in and with which the unit of pickle cards is sold by a distributor.

Source: Laws 1983, LB 259, § 9; Laws 1984, LB 949, § 15; R.S.Supp.,1984, § 9-140.05; Laws 1986, LB 1027, § 83.

9-317.01 Premises, defined.

Premises shall mean a building or a distinct portion of a building and shall not include any area of land surrounding the building.

Source: Laws 1988, LB 1232, § 15.

9-318 Repealed. Laws 1988, LB 1232, § 54.

9-319 Revoke, defined.

Revoke shall mean to permanently void and recall all rights and privileges of an organization or a person to obtain a license.

Source: Laws 1986, LB 1027, § 85.

9-320 Sales agent, defined.

Sales agent shall mean any person who markets, sells, or delivers any pickle card unit on behalf of a licensed organization to any licensed pickle card operator.

Source: Laws 1985, LB 408, § 8; R.S.Supp.,1985, § 9-140.13; Laws 1986, LB 1027, § 86; Laws 1988, LB 1232, § 16.

9-321 Suspend, defined.

Suspend shall mean to cause a temporary interruption of all rights and privileges of a license or the renewal thereof.

Source: Laws 1986, LB 1027, § 87.

9-321.01 Unit cost, defined.

Unit cost shall mean the total cost of a pickle card unit paid by a licensed organization to a distributor. Unit cost shall include the tax on definite profit prescribed in section 9-344 and any applicable sales tax. Unit cost shall also include any applicable federal gaming tax for which the licensed organization is liable in connection with its purchase or sale of a pickle card unit.

Source: Laws 1988, LB 1232, § 17.

9-321.02 Utilization-of-funds member, defined.

Utilization-of-funds member shall mean a member of the organization who shall be responsible for supervising the conduct of the lottery by the sale of pickle cards and for the proper utilization of the gross proceeds derived from the conduct of the lottery by the sale of pickle cards.

Source: Laws 1994, LB 694, § 69.

9-321.03 Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, defined.

Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall mean a volunteer association or organization serving any city, village, county, township, or rural or suburban fire protection district in Nebraska by providing fire protection or emergency response services for the purpose of protecting human life, health, or property.

Source: Laws 2002, LB 545, § 26.

9-322 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To issue licenses and temporary licenses;

(2) To deny any license application or renewal application for cause. Cause for denial of an application for or renewal of a license shall include instances in which the applicant individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the applicant or licensee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant or licensee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code, from such applicant or licensee for past or present services in a consulting capacity or otherwise, the licensee, or any person with a substantial interest in the applicant or licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery 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 or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;

(c) Obtained a license or permit pursuant to such acts by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where pickle card activity required to be licensed under the Nebraska Pickle Card Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed in accordance with the Nebraska Pickle Card Lottery Act;

(i) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(j) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(k) Failed to demonstrate good character, honesty, and integrity;

(l) Failed to demonstrate, either individually or, in the case of a business entity or a nonprofit organization, through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to establish or maintain the activity for which the application is made; or

(m) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act.

No renewal of a license under the Nebraska Pickle Card Lottery Act shall be issued when the applicant for renewal would not be eligible for a license upon a first application;

(3) To revoke, cancel, or suspend for cause any license. Cause for revocation, cancellation, or suspension of a license shall include instances in which the licensee individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the licensee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such licensee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such licensee for past or present services in a consulting capacity or otherwise, or any person with a substantial interest in the licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska Pickle Card Lottery Act or any rules or regulations adopted and promulgated pursuant to the act;

(c) Obtained a license pursuant to the Nebraska Pickle Card Lottery Act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where pickle card activity required to be licensed under the act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(i) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(j) Failed to demonstrate good character, honesty, and integrity;

(k) Failed to demonstrate, either individually or, in the case of a business entity or a nonprofit organization, through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued; or

(l) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act;

(4) To issue an order requiring a licensee or other person to cease and desist from violations of the Nebraska Pickle Card Lottery Act or any rules or regulations adopted and promulgated pursuant to such act. The order shall give reasonable notice of the rights of the licensee or other person to request a hearing and shall state the reason for the entry of the order. The notice of order shall be mailed by certified mail to or personally served upon the licensee or other person. If the notice of order is mailed by certified mail, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee or other person. A request for a hearing by the licensee or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee or other person shall be deemed in default and the proceeding may be determined

against the licensee or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the violation and the extent thereof, and whether the violator has had previous violations of the act, rules, or regulations. A fine levied on a violator under this section shall not exceed one thousand dollars for each violation of the act or any rule or regulation adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from pickle card lottery gross proceeds of an organization and shall be remitted by the violator to the department within thirty days after the date of the order issued by the department levying such fine;

(6) To enter or to authorize any law enforcement officer to enter at any time upon any premises where lottery by the sale of pickle cards activity required to be licensed under the act is being conducted to determine whether any of the provisions of such act or any rules or regulations adopted and promulgated under such act have been or are being violated and at such time to examine such premises;

(7) To require periodic reports of lottery by the sale of pickle cards activity from licensed manufacturers, distributors, nonprofit organizations, sales agents, pickle card operators, and any other persons, organizations, limited liability companies, or corporations as the department deems necessary to carry out the act;

(8) To require annual registration of coin-operated and currency-operated devices used for the dispensing of pickle cards, to issue registration decals for such devices, to prescribe all forms necessary for the registration of such devices, and to impose administrative penalties for failure to properly register such devices;

(9) To examine or to cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to the conduct of lottery by the sale of pickle cards of any licensee, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to require proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. If the documents requested by the

department are in the custody of a limited liability company, the court order may be directed to any member when management is reserved to the members or otherwise to any manager. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(10) Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid as taxes imposed by the act in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(11) To collect license application and license renewal application fees imposed by the Nebraska Pickle Card Lottery Act and to prorate license fees on an annual basis. The department shall establish by rule and regulation the conditions and circumstances under which such fees may be prorated;

(12) To inspect pickle cards and pickle card units as provided in section 9-339;

(13) To confiscate, seize, or seal pickle cards, pickle card units, or coin-operated or currency-operated pickle card dispensing devices pursuant to section 9-350;

(14) To adopt and promulgate such rules and regulations and prescribe all forms as are necessary to carry out the Nebraska Pickle Card Lottery Act; and

(15) To employ staff, including auditors and inspectors, as necessary to carry out the act.

Source: Laws 1986, LB 1027, § 88; Laws 1988, LB 1232, § 18; Laws 1989, LB 767, § 31; Laws 1991, LB 427, § 30; Laws 1991, LB 849, § 48; Laws 1993, LB 138, § 6; Laws 1994, LB 694, § 70; Laws 1995, LB 344, § 12; Laws 1995, LB 574, § 9; Laws 1997, LB 248, § 9; Laws 2000, LB 1086, § 10; Laws 2002, LB 545, § 27; Laws 2002, LB 1126, § 2.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Liquor Control Act, see section 53-101.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

Documents belonging to a donee of pickle card proceeds that describe the donee's disposition of those proceeds are documents relating to the conduct of lottery by the sale of pickle cards within the meaning of subsection (9) of this section.This section requires that a contested hearing be held before judicial enforcement of a request for documents may be obtained. Central States Found. v. Balka, 256 Neb. 369, 590 N.W.2d 832 (1999).

9-322.01 Administrative fine; disposition; collection.

(1) All money collected by the department as an administrative fine shall be transmitted on a monthly basis to the State Treasurer who shall deposit such money in the permanent school fund.

(2) Any administrative fine levied under section 9-322 and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure, or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violator resides or owns property.

Source: Laws 1988, LB 1232, § 19; Laws 1994, LB 694, § 71.

9-322.02 Denial of application; procedure.

(1) Before any application is denied pursuant to section 9-322, the department shall notify the applicant in writing by certified mail of the department's intention to deny the application and the reasons for the denial. Such notice shall inform the applicant of his or her right to request an administrative hearing for the purpose of reconsideration of the intended denial of the application. The date the notice is mailed shall be deemed to be the date of service of notice to the applicant.

(2) A request for a hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the application denial shall become final at the expiration of such period.

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least ten days before the hearing, serve notice upon the applicant by certified mail, return receipt requested, of the time, date, and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1988, LB 1232, § 20; Laws 2002, LB 545, § 28.

Cross References

Administrative Procedure Act, see section 84-920.

Administrative bodies have only that authority specifically conferred upon them by statute or by construction necessary to achieve the purpose of the relevant act, and as such, the Department of Revenue is not statutorily authorized to grant motions for summary judgment. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-322.03 Repealed. Laws 2007, LB 638, § 21.

9-323 Suspension of license; limitation; procedure.

(1) The Tax Commissioner may suspend any license issued pursuant to the Nebraska Pickle Card Lottery Act except a license issued pursuant to section 9-326, except that no order to suspend any license shall be issued unless the department determines that the licensee is not operating in accordance with the purposes and intent of the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts. The Tax Commissioner may suspend a license issued pursuant to section 9-326 after a hearing upon a finding by the department that the licensee is not operating in accordance with the purposes and intent of such acts.

(2) Before any license is suspended prior to a hearing, notice of an order to suspend a license shall be mailed to or personally served upon the licensee at least fifteen days before the order of suspension takes effect.

(3) The order of suspension may be withdrawn if the licensee provides the department with evidence that any prior findings or violations have been corrected and that the licensee is now in full compliance, whether before or after the effective date of the order of suspension.

(4) The Tax Commissioner may issue an order of suspension pursuant to subsections (1) and (2) of this section when an action for suspension, cancellation, or revocation is pending. The Tax Commissioner may also issue an order

of suspension after a hearing for a limited time of up to one year without an action for cancellation or revocation pending.

(5) The hearing for suspension, cancellation, or revocation of the license shall be held within twenty days after the date the suspension takes effect. A request by the licensee to hold the hearing after the end of the twenty-day period shall extend the suspension until the hearing.

(6) The decision of the department shall be made within twenty days after the conclusion of the hearing. The suspension shall continue in effect until the decision is issued. If the decision is that an order of suspension, revocation, or cancellation is not appropriate, the suspension shall terminate immediately by order of the Tax Commissioner. If the decision is an order for the suspension, revocation, or cancellation of the license, the suspension shall continue pending an appeal of the decision of the department.

(7) Any period of suspension prior to the issuance of an order of suspension issued by the Tax Commissioner shall count toward the total amount of time a licensee shall be suspended from gaming activities under the Nebraska Pickle Card Lottery Act. Any period of suspension prior to the issuance of an order of cancellation shall not reduce the period of the cancellation. Any period of suspension after the issuance of the order and during an appeal shall be counted as a part of the period of cancellation.

Source: Laws 1986, LB 1027, § 89; Laws 1988, LB 1232, § 21; Laws 1991, LB 427, § 31; Laws 1995, LB 344, § 13.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-324 Hearing; required; when; notice.

Before the adoption, amendment, or repeal of any rule or regulation, the suspension, revocation, or cancellation of any license pursuant to section 9-322, or the levying of an administrative fine pursuant to section 9-322, the department shall set the matter for hearing. Such suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine shall be contested cases pursuant to the Administrative Procedure Act.

At least ten days before the hearing, the department shall (1) in the case of suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine, serve notice upon the licensee or violator by personal service or certified mail, return receipt requested, of the time, date, and place of any hearing or (2) in the case of adoption, amendment, or repeal of any rule or regulation, issue a public notice of the time, date, and place of such hearing.

This section shall not apply to an order of suspension by the Tax Commissioner prior to a hearing as provided in section 9-323.

Source: Laws 1986, LB 1027, § 90; Laws 1988, LB 1232, § 22; Laws 1991, LB 427, § 32; Laws 1994, LB 694, § 72; Laws 1995, LB 344, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

9-325 Proceeding before department; service; security; appeal.

(1) A copy of the order or decision of the department in any proceeding before it, certified under the seal of the department, shall be served upon each party of record to the proceeding before the department. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the department shall enter his or her appearance and indicate to the department his or her address for the service of a copy of any order, decision, or notice. The mailing of any copy of any order or decision or of any notice in the proceeding, to such party at such address, shall be deemed to be service upon such party.

(2) At the time of making an appearance before the department, each party shall deposit in cash or furnish a sufficient security for costs in an amount the department deems adequate to cover all costs liable to accrue, including costs for (a) reporting the testimony to be adduced, (b) making up a complete transcript of the hearing, and (c) extending reporter's original notes in typewriting.

(3) Any decision of the department in any proceeding before it may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1986, LB 1027, § 91; Laws 1988, LB 352, § 15; Laws 1988, LB 1232, § 23.

Cross References

Administrative Procedure Act, see section 84-920.

9-326 License; qualified applicants.

(1) Any nonprofit organization holding a certificate of exemption under section 501(c)(3), (c)(4), (c)(5), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad may apply for a license to conduct a lottery by the sale of pickle cards.

(2) Prior to applying for any license, an organization shall:

(a) Be incorporated in this state as a not-for-profit corporation or organized in this state as a religious or not-for-profit organization. For purposes of this subsection, a domesticated foreign corporation shall not be considered incorporated in this state as a not-for-profit corporation;

(b) Conduct activities within this state in addition to the conduct of lottery by the sale of pickle cards;

(c) Be authorized by its constitution, articles, charter, or bylaws to further in this state a lawful purpose;

(d) Operate without profit to its members, and no part of the net earnings of such organization shall inure to the benefit of any private shareholder or individual; and

(e) With the exception of a volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, have been in existence in this state for five years immediately preceding its application for a license and have had during that five-year period a bona fide membership actively engaged in furthering a lawful purpose. A society defined in section 21-608 which is chartered in Nebraska under a state, grand, supreme, national, or other

governing body may use the charter date of its parent organization to satisfy such five-year requirement.

Source: Laws 1986, LB 1027, § 92; Laws 1988, LB 1232, § 24; Laws 1989, LB 767, § 32; Laws 1996, LB 1277, § 5; Laws 2002, LB 545, § 29.

9-327 License; application; contents; enumerated; duty to keep current.

(1) Each applicant for a license to conduct a lottery by the sale of pickle cards shall file with the department an application on a form prescribed by the department.

(2) Each application shall include:

(a) The name and address of the applicant;

(b) Sufficient facts relating to the incorporation or organization of the applicant to enable the department to determine if the applicant is eligible for a license under section 9-326;

(c) The name and address of each officer of the applicant organization;

(d) The name, address, social security number, date of birth, and years of membership of a bona fide and active member of the applicant organization to be licensed as a utilization-of-funds member. Such person shall have been an active and bona fide member of the applicant organization for at least one year preceding the date the application is filed with the department unless the applicant organization can provide evidence that the one-year requirement would impose an undue hardship on the organization. Such person shall sign a sworn statement indicating that he or she agrees to comply with all provisions of the Nebraska Pickle Card Lottery Act and all rules and regulations adopted pursuant to the act, that no commission, fee, rent, salary, profits, compensation, or recompense will be paid to any person or organization, except payments authorized by the Nebraska Pickle Card Lottery Act, and that all net profits will be spent only for lawful purposes. The department may prescribe a separate application for such license;

(e) A roster of members if the department deems it necessary and proper; and

(f) Other information which the department deems necessary.

(3) The information required by this section shall be kept current. An organization shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(4) The department may prescribe a separate application form for renewal purposes.

Source: Laws 1986, LB 1027, § 93; Laws 1988, LB 1232, § 25; Laws 1994, LB 694, § 73.

9-328 Licenses; renewal; application; requirements; classes; fees.

(1) All licenses to conduct a lottery by the sale of pickle cards and licenses issued to utilization-of-funds members shall expire as provided in this section and may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license unless such application only pertains to the conduct of a lottery by the sale of pickle cards at a special function as provided in section 9-345.01.

(2) A license to conduct a lottery by the sale of pickle cards issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization-of-funds member for such nonprofit organization shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation.

(3) A license to conduct a lottery by the sale of pickle cards issued to a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad and any license issued to a utilization-of-funds member for such nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation.

(4) The department shall establish classes of licenses for licensed organizations based upon the manner in which the licensed organization intends to sell the pickle cards. The classes shall include:

(a) Class I licenses which shall include organizations which sell individual pickle cards only at the organization's designated premises and at the organization's licensed regularly scheduled bingo occasions pursuant to the Nebraska Bingo Act; and

(b) Class II licenses which shall include organizations which sell the pickle cards on the premises of one or more licensed pickle card operators.

A licensed organization holding a Class II license shall be required to market and deliver its pickle cards by a licensed sales agent.

(5) A biennial license fee of two hundred dollars shall be charged for each Class I license, three hundred dollars for each Class II license, and forty dollars for a license for each utilization-of-funds member.

(6) The department shall adopt and promulgate rules and regulations establishing reporting requirements for each class of license.

Source: Laws 1986, LB 1027, § 94; Laws 1988, LB 1232, § 26; Laws 1989, LB 767, § 33; Laws 1991, LB 427, § 33; Laws 1994, LB 694, § 74; Laws 2000, LB 1086, § 11; Laws 2002, LB 545, § 30; Laws 2007, LB638, § 9.

Cross References

Nebraska Bingo Act, see section 9-201.

9-329 Sales agent; license required; application; contents; fee; temporary license.

(1) Unless otherwise authorized by the department, no person shall market, sell, or deliver any pickle card unit to any pickle card operator without first obtaining a sales agent license.

(2) Any person wishing to operate as a sales agent in this state shall file an application with the department for a license on a form prescribed by the department. Each application for a license shall include (a) the name, address, and social security number of the person applying for the license, (b) the name and state identification number of the licensed organization for which any

pickle card units are to be marketed or sold by the applicant, and (c) such other information which the department deems necessary.

(3) A statement signed by the person licensed as a utilization-of-funds member signifying that such licensed organization approves the applicant to act as a sales agent on behalf of such organization shall accompany each sales agent's application for a license. No person licensed as a utilization-of-funds member shall be licensed as a sales agent.

(4)(a) A biennial fee of one hundred dollars shall be charged for each license issued pursuant to this section. The department shall remit the proceeds from such fee to the State Treasurer for credit to the Charitable Gaming Operations Fund. Such licenses shall expire as prescribed in this section and may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license.

(b) A sales agent license issued to a person on behalf of a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation. A sales agent license issued to a person on behalf of a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation.

(5) The information required by this section shall be kept current. A sales agent shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(6) The department may prescribe a separate application form for renewal purposes.

(7) The department may issue a temporary license pending receipt of additional information or further inquiry.

Source: Laws 1985, LB 408, § 18; R.S.Supp.,1985, § 9-143.01; Laws 1986, LB 1027, § 95; Laws 1988, LB 1232, § 31; Laws 1991, LB 427, § 34; Laws 1994, LB 694, § 75; Laws 2000, LB 1086, § 12; Laws 2002, LB 545, § 31; Laws 2007, LB638, § 10.

9-329.01 Sales agent; license applicant; qualifications; licensee; limitations.

(1) Prior to applying for a license as a sales agent for a licensed organization, the applicant shall have been an active and bona fide member of the licensed organization for one year preceding the date the application is filed with the department.

(2) No person applying for a license under this section shall hold a license as a sales agent for more than one licensed organization. This subsection shall not prohibit a licensed sales agent from applying for a license to represent another licensed organization as a sales agent if he or she has ceased being a sales agent for and will not continue to market pickle card units on behalf of the organization for which he or she is currently licensed and has obtained a written release of any legal obligations he or she has to such licensed organization. Such release shall be signed by a person licensed as a utilization-of-funds member and an officer of the licensed organization and shall state that the sales

agent has satisfied all legal obligations he or she has to the licensed organization in connection with the lottery by the sale of pickle cards. When applicable, a copy of the written release shall accompany any application for a license to become a sales agent.

(3) Any sales agent licensed under the Nebraska Pickle Card Lottery Act shall not be connected with or interested in, directly or indirectly, any person, partnership, limited liability company, firm, corporation, or other party licensed as a distributor, manufacturer, or pickle card operator under section 9-329.03, 9-330, or 9-332 and, unless such sales agent does not directly or indirectly receive payment of any commission, salary, or fee for the sale, marketing, or delivery of pickle cards on behalf of the licensed organization or any other service on behalf of the licensed organization, shall not be a director, manager, trustee, or member of any governing committee, board, or body of the licensed organization on behalf of which the sales agent sells pickle card units.

Source: Laws 1988, LB 1232, § 27; Laws 1993, LB 121, § 110; Laws 1994, LB 694, § 76.

9-329.02 Pickle card operator; license required; application; contents; fee; restrictions; authorization required; equipment requirements.

(1) A pickle card operator shall not be eligible to sell individual pickle cards as opportunities to participate in a lottery by the sale of pickle cards without first obtaining a license.

(2) Any sole proprietorship, partnership, limited liability company, or corporation wishing to operate as a pickle card operator in this state shall file an application with the department for a license on a form prescribed by the department. Each application for a license shall include (a) the name, address, and state identification number of the sole proprietorship, partnership, limited liability company, or corporation applying for the license, (b) a description of the premises on which the pickle cards will be sold or offered for sale, (c) if the applicant is an individual, the applicant's social security number, and (d) such other information which the department deems necessary. The information required by this subsection shall be kept current. A pickle card operator shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(3) A biennial fee of one hundred dollars shall be charged for each license issued pursuant to this section and shall be paid for by the applicant. A licensed organization shall not pay the required licensing fees of a pickle card operator as an inducement for the pickle card operator to sell individual pickle cards on its behalf. Such licenses shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation and may be renewed biennially. The department shall remit the proceeds from such license fees to the State Treasurer for credit to the Charitable Gaming Operations Fund. An application for license renewal shall be submitted to the department at least sixty days prior to the expiration date of the license.

(4) One license issued to any sole proprietorship, partnership, limited liability company, or corporation under this section as a pickle card operator shall cover the sole proprietorship, partnership, limited liability company, or corporation and the employees of the licensed pickle card operator. Any license issued pursuant to this section shall be valid only for the sole proprietorship,

partnership, limited liability company, or corporation in the name of which it was issued and shall allow the sale of individual pickle cards only on the premises described in the pickle card operator's application for a license. A pickle card operator's license may not be transferred under any circumstances including change of ownership.

(5) The department may prescribe a separate application form for renewal purposes.

(6) A licensed pickle card operator shall not sell individual pickle cards on behalf of a licensed organization until an authorization has been obtained from the department by the licensed organization. The licensed organization shall file an application with the department for such authorization on a form prescribed by the department. Each application for an authorization shall include (a) the name, address, and state identification number of the licensed pickle card operator and (b) such other information which the department deems necessary. The application shall include a statement signed by a person licensed as a utilization-of-funds member signifying that such licensed organization approves the pickle card operator to sell individual pickle cards on behalf of such organization.

(7) A pickle card operator may sell individual pickle cards on behalf of more than one licensed organization. Each licensed organization for which the pickle card operator desires to sell individual pickle cards shall obtain the authorization described in subsection (6) of this section.

(8) A pickle card operator who sells individual pickle cards through a coin-operated or currency-operated dispensing device shall purchase, lease, or rent its own equipment. If such equipment is obtained from a licensed organization or distributor, it shall be purchased, leased, or rented at a rate not less than fair market value. A licensed organization or distributor shall not provide such equipment to a pickle card operator free of charge or at a rate less than fair market value as an inducement for the pickle card operator to sell a licensed organization's individual pickle cards. The department may require a licensed organization, distributor, or pickle card operator to provide such documentation as the department deems necessary to verify that a pickle card operator has purchased, leased, or rented the equipment for a rate not less than fair market value.

(9) No pickle card operator shall generate revenue from the sale of individual pickle cards which exceeds the revenue generated from other retail sales on an annual basis. For purposes of this subsection, retail sales shall not include revenue generated from other charitable gaming activities authorized by Chapter 9.

Source: Laws 1988, LB 1232, § 33; Laws 1989, LB 767, § 34; Laws 1991, LB 427, § 35; Laws 1993, LB 121, § 111; Laws 1994, LB 694, § 77; Laws 1995, LB 344, § 15; Laws 1997, LB 752, § 65; Laws 2000, LB 1086, § 13; Laws 2007, LB638, § 11.

9-329.03 Pickle card operator; qualified applicant; licensee; limitations.

(1) Any sole proprietorship, partnership, limited liability company, or corporation, which holds a retail license for the sale of alcoholic liquor for consumption on the premises issued by the Nebraska Liquor Control Commission pursuant to the Nebraska Liquor Control Act or which holds a retail license for the sale of alcoholic liquor for consumption off the premises, may apply for a

pickle card operator's license to sell individual pickle cards as opportunities to participate in a lottery by the sale of pickle cards.

(2) A pickle card operator licensed under the Nebraska Pickle Card Lottery Act shall not be connected with or interested in, directly or indirectly, any person, partnership, limited liability company, firm, corporation, or other party licensed as a distributor or manufacturer under section 9-330 or 9-332.

(3) A sole proprietor, partner in a partnership, member in a limited liability company, or officer or director of a corporation licensed as a pickle card operator shall not be licensed as a sales agent.

(4) A sole proprietor, partner in a partnership, member in a limited liability company, or officer or director of a corporation licensed as a pickle card operator shall not be a director, manager, trustee, or member of any governing committee, board, or body of the licensed organization on behalf of which the pickle card operator sells individual pickle cards.

Source: Laws 1988, LB 1232, § 32; Laws 1991, LB 795, § 3; Laws 1993, LB 121, § 112; Laws 1997, LB 248, § 10; Laws 2004, LB 485, § 1.

Cross References

Nebraska Liquor Control Act, see section 53-101.

9-329.04 Repealed. Laws 1997, LB 248, § 39.

9-330 Distributor's license; application; requirements; fee; renewal.

Any applicant for a distributor's license, including renewal thereof, shall file an application with the department on a form prescribed by the department. Each application shall be accompanied by a biennial license fee of three thousand fifty dollars. At a minimum, the application shall include the name and address of the applicant, including all shareholders who own ten percent or more of the outstanding stock if the applicant is a corporation, the location of its office or business, a current list, if requested, of those organizations within the state to whom the applicant is selling pickle card units, and, if the applicant is an individual, the applicant's social security number. All applications shall include a sworn statement by the applicant or the appropriate officer thereof that the applicant will comply with all provisions of the Nebraska Pickle Card Lottery Act and all rules and regulations adopted and promulgated under such act.

The principal office of an applicant for a distributor's license or of a licensed distributor shall be located in Nebraska.

No person shall be issued a distributor's license if such person is not doing business or authorized to do business in this state.

Distributors' licenses shall expire on September 30 of every odd-numbered year or such other date as the department may prescribe by rule or regulation. Distributors' licenses may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license.

Source: Laws 1986, LB 1027, § 96; Laws 1991, LB 427, § 36; Laws 1994, LB 694, § 78; Laws 1997, LB 248, § 11; Laws 1997, LB 752, § 66.

9-331 Distributor; employee or spouse; participation in gambling; restrictions.

(1) No person, except a distributor operating pursuant to the Nebraska Pickle Card Lottery Act, shall sell or distribute any pickle card units to any licensed organization.

(2) No distributor shall hold a license to conduct a lottery by the sale of pickle cards or any other kind of gambling activity which is authorized or regulated under Chapter 9 or a license to act as a sales agent, pickle card operator, or manufacturer of pickle cards or pickle card units except as provided in sections 9-255.07 and 9-632.

(3) If a distributor delivers any pickle card unit, he or she shall deliver such unit only to a licensed utilization-of-funds member for pickle cards, a licensed sales agent, a licensed gaming manager, a bingo chairperson designated by an organization licensed to conduct bingo pursuant to the Nebraska Bingo Act, or a person who serves as a manager for a licensed organization which is exempt under section 501(c)(8), (c)(10), or (c)(19) of the Internal Revenue Code and shall not deliver any pickle card unit to any other person, including a pickle card operator.

(4) No distributor shall offer or agree to offer anything of value to any person in exchange for an agreement or commitment by such person to exclusively sell pickle cards sold by such distributor. Nothing in this section shall prohibit a licensed organization or pickle card operator from exclusively selling pickle cards sold by a single distributor. No licensed organization or pickle card operator shall accept or agree to accept anything of value from a distributor in exchange for an agreement or commitment by such licensed organization or pickle card operator to exclusively sell pickle cards sold by such distributor.

(5) No distributor or employee or spouse of any distributor shall participate in the conduct or operation of any lottery by the sale of pickle cards or any other kind of gambling activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her statutory duties as a licensed distributor and as provided in sections 9-255.07 and 9-632. No distributor or employee or spouse of any distributor shall have a substantial interest in another distributor, a manufacturer, a manufacturer-distributor as defined in section 9-616 other than itself, or a licensed organization or any other licensee regulated under Chapter 9. Membership in any organization shall not be deemed a violation of this section.

(6) A distributor shall purchase or otherwise obtain pickle card units only from a licensed manufacturer and shall pay for such units by check within thirty days of delivery.

Source: Laws 1986, LB 1027, § 97; Laws 1988, LB 1232, § 34; Laws 1989, LB 767, § 35; Laws 1994, LB 694, § 79; Laws 1997, LB 248, § 12; Laws 2002, LB 545, § 32.

Cross References

Nebraska Bingo Act, see section 9-201.

9-332 Manufacturer of pickle cards; license required; application; fee; change in information; renewal.

A manufacturer shall obtain a license from the department prior to manufacturing or selling or supplying to any licensed distributor in this state any pickle

cards or pickle card units or engaging in any interstate activities relating to such pickle cards or pickle card units, except that nothing in this section shall prohibit a manufacturer from marketing, selling, or otherwise providing pickle cards or pickle card units to a federally recognized Indian tribe for use in a Class II gaming activity authorized by the federal Indian Gaming Regulatory Act. The applicant shall include with the application form prescribed by the department a biennial license fee of three thousand fifty dollars, a sworn statement by the applicant or appropriate officer of the applicant that the applicant will comply with all provisions of the Nebraska Pickle Card Lottery Act and all rules and regulations adopted and promulgated pursuant to the act, and such other information as the department deems necessary. If the applicant is an individual, the application shall include the applicant's social security number.

The applicant shall notify the department within thirty days of any change in the information submitted on or with the application form. The applicant shall comply with all applicable laws of the United States and the State of Nebraska and all applicable rules and regulations of the department.

Manufacturers' licenses shall expire on September 30 of every odd-numbered year or such other date as the department may prescribe by rule and regulation. Manufacturers' licenses may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license.

Source: Laws 1985, LB 408, § 19; R.S.Supp.,1985, § 9-143.02; Laws 1986, LB 1027, § 98; Laws 1989, LB 767, § 36; Laws 1991, LB 427, § 37; Laws 1994, LB 694, § 80; Laws 1997, LB 248, § 13; Laws 1997, LB 752, § 67.

9-332.01 Manufacturer; preselling activities; approval required.

Each manufacturer shall receive departmental approval prior to selling in this state any type of pickle card, pickle card unit, punchboard, or other similar card, board, or ticket included in section 9-315 whether referred to by any other name intended for resale in Nebraska. Approval by the department shall be based upon, but not limited to, the manufacture, assembly, and packaging of pickle cards or pickle card units and any other specifications imposed by the Nebraska Pickle Card Lottery Act or any rule or regulation adopted and promulgated pursuant to the act.

Source: Laws 1988, LB 1232, § 30; Laws 1996, LB 1277, § 6.

9-333 Manufacturer; records.

Each manufacturer shall keep and maintain a complete set of records detailing the manufacturer's pickle card activities, including the name and state identification number of each distributor purchasing pickle card units, the quantity and type of each pickle card unit sold, and any other information concerning pickle card units which the department deems necessary. Such records shall be made available to the department upon request. The department may require by rule and regulation periodic reporting from a manufacturer relative to its pickle card activities.

Source: Laws 1985, LB 408, § 26; R.S.Supp.,1985, § 9-143.05; Laws 1986, LB 1027, § 99; Laws 1988, LB 1232, § 35; Laws 1997, LB 248, § 14.

9-334 Nonresident manufacturer; designated agent for service of process.

Each manufacturer selling pickle cards and pickle card units in this state that is not a resident or corporation shall designate a natural person who is a resident of and living in this state and is nineteen years of age or older as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the manufacturer. The name, business address where service of process and delivery of mail can be made, and home address of such agent shall be filed with the department.

Source: Laws 1985, LB 408, § 21; R.S.Supp.,1985, § 9-143.06; Laws 1986, LB 1027, § 100; Laws 1994, LB 694, § 81.

9-335 Manufacturer; employee or spouse; restriction on activities.

No manufacturer shall be licensed to conduct any other activity under the Nebraska Pickle Card Lottery Act. No manufacturer shall hold a license to conduct any other kind of gambling activity which is authorized or regulated under Chapter 9 except as provided in sections 9-255.09 and 9-632. No manufacturer or employee or spouse of any manufacturer shall participate in the conduct or operation of any lottery by the sale of pickle cards or any other kind of gambling activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her statutory duties as a licensed manufacturer or employee thereof, as a lottery contractor pursuant to the State Lottery Act, and as provided in sections 9-255.09 and 9-632. No manufacturer or employee or spouse of any manufacturer shall have a substantial interest in any other manufacturer, any distributor, any manufacturer-distributor as defined in section 9-616 other than itself, or any licensed organization or any other licensee regulated under Chapter 9.

Source: Laws 1985, LB 408, § 27; R.S.Supp.,1985, § 9-143.03; Laws 1986, LB 1027, § 101; Laws 1989, LB 767, § 37; Laws 1994, LB 694, § 82.

Cross References

State Lottery Act, see section 9-801.

9-336 Pickle card or pickle card unit; serial number required; manufacturer; duties.

Each manufacturer of pickle cards or pickle card units shall assign a serial number to each unit of pickle cards he or she manufactures and place such number on each flare card supplied by such manufacturer and on each pickle card in the unit. No manufacturer shall sell or furnish to any person a unit of pickle cards with the same serial number as a unit which such manufacturer has previously distributed in this or any other state within the three years prior to such sale or furnishing.

Source: Laws 1985, LB 408, § 25; R.S.Supp.,1985, § 9-186.03; Laws 1986, LB 1027, § 102; Laws 1994, LB 694, § 83.

9-337 Pickle cards; construction standards.

(1) Pickle cards shall be constructed so that it is impossible to determine the covered or concealed number, letter, symbol, configuration, or combination thereof on the pickle card until it has been dispensed to and opened by the

player, by any method or device, including, but not limited to, the use of a marking, variance in size, variance in paper fiber, or light.

(2) All pickle cards shall be constructed to ensure that, when offered for sale to the public, the pickle card is virtually opaque and free of security defects so that winning pickle cards cannot be determined, prior to being opened, through the use of high-intensity lights or any other method.

(3) All pickle cards shall be constructed to conform in all other respects to the provisions and specifications imposed by the Nebraska Pickle Card Lottery Act or by rule or regulation as to the manufacture, assembly, or packaging of pickle cards or pickle card units.

Source: Laws 1985, LB 408, § 23; R.S.Supp.,1985, § 9-186.01; Laws 1986, LB 1027, § 103.

9-338 Pickle card or pickle card unit; restrictions on manufacturer; contraband.

(1) No manufacturer or representative thereof, with knowledge or in circumstances under which he or she reasonably should have known, shall manufacture, possess, display, sell, or otherwise furnish to any person any pickle card or pickle card unit:

(a) In which the winning tab or tabs have not been completely and randomly distributed and mixed among all other tabs in a series;

(b) In which the location or approximate location of any of the winning tab or tabs can be determined in advance of opening the tab or tabs in any manner or by any device, including, but not limited to, any pattern in the manufacture, assembly, or packaging of the tabs or pickle cards by the manufacturer, by any markings on the tabs or container, or by the use of a light;

(c) Which offers both a chance for an instant prize and a possible chance to participate in a subsequent lottery activity, except that pickle card units (i) may utilize a seal card to award prizes or (ii) may utilize numbers drawn or selected in the conduct of bingo pursuant to the Nebraska Bingo Act to award prizes; or

(d) Which does not conform in all other respects to the requirements of the Nebraska Pickle Card Lottery Act and any other specifications imposed by the department by rule and regulation as to the manufacture, assembly, or packaging of pickle cards.

Any such cards or units shall be contraband goods for purposes of section 9-350.

(2) No manufacturer or representative thereof shall use as a sales promotion any statement, demonstration, or implication that any certain portion of a series of pickle cards contains more winners than other portions of the series or that any series of pickle cards or pickle card units may be sold by the organization or its designated sales agent or pickle card operator in a particular manner that would give the seller any advantage in selling more of the pickle cards before having to pay out winners.

Source: Laws 1985, LB 408, § 24; R.S.Supp.,1985, § 9-186.02; Laws 1986, LB 1027, § 104; Laws 1996, LB 1277, § 7; Laws 2000, LB 658, § 3.

Cross References

Nebraska Bingo Act, see section 9-201.

9-339 Pickle card or pickle card unit; department; examination.

In addition to any other authority of the department and its authorized agents to conduct inspections, the department and its agents shall have the authority to select any pickle card or pickle card unit held by a distributor, licensed organization, sales agent, pickle card operator, or manufacturer and to examine the quality and integrity of such card or unit in any manner, including pulling all chances remaining thereon. If the pickle card or pickle card unit so inspected is thereby altered in any manner and no defect, alteration, deceptive condition, or other violation is discovered, the owner shall be reimbursed by the department for the cost of the pickle card or pickle card unit and the pickle card or pickle card unit shall become property of the department.

Source: Laws 1985, LB 408, § 22; R.S.Supp.,1985, § 9-186.04; Laws 1986, LB 1027, § 105.

9-340 Pickle card or pickle card unit; restrictions; costs of examination.

(1) No manufacturer shall sell or otherwise provide any pickle cards or pickle card units to any person in Nebraska except a licensed distributor or a federally recognized Indian tribe for use in a Class II gaming activity authorized by the federal Indian Gaming Regulatory Act. No distributor licensed in Nebraska shall purchase or otherwise obtain any pickle cards or pickle card units except from manufacturers licensed in Nebraska.

(2) No distributor shall sell or otherwise provide any pickle card units except to an organization licensed to conduct a lottery by the sale of pickle cards pursuant to the Nebraska Pickle Card Lottery Act or to a federally recognized Indian tribe for use in a Class II gaming activity authorized by the federal Indian Gaming Regulatory Act. No pickle cards shall be sold by a distributor except in the form of pickle card units. No distributor shall market or sell any pickle card unit for use in this state:

(a) Which has not been approved and authorized by the department;

(b) Which has a card or play count in excess of six thousand per pickle card unit;

(c) Which offers less than sixty-five percent or more than eighty percent of the gross proceeds to be paid out in prizes;

(d) Which contains any pickle card or punch on a punchboard, the individual purchase price of which exceeds one dollar;

(e) In which any individual pickle card awards a prize or prizes in excess of one thousand dollars;

(f) Which may be used for any gift enterprise as defined in section 9-701;

(g) Unless and until a stamp obtained from the department containing an identifying number has been permanently and conspicuously affixed upon the flare card supplied by the manufacturer for identification purposes. Once placed, such stamp shall not be removed or tampered with by any person. The state identification stamp shall be placed on each punchboard such that the complete number, together with the symbol appearing thereon, is plainly visible. State identification stamps shall be obtained only from the department and only by a licensed distributor for ten cents each. Such stamps shall be placed by the licensed distributor only on items sold or furnished to licensed organizations in this state. Such stamps shall not be transferred or furnished to

any other person unless already placed upon a punchboard or pickle card unit; or

(h) Without the information required in section 9-346.

(3) The department may require a manufacturer seeking approval of any pickle card unit to pay the actual costs incurred by the department in examining the unit. If required, the anticipated costs shall be paid in advance by the manufacturer. After completion of the examination, the department shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayment of actual costs.

Source: Laws 1983, LB 259, § 51; Laws 1984, LB 949, § 57; Laws 1985, LB 408, § 35; R.S.Supp.,1985, § 9-186; Laws 1986, LB 1027, § 106; Laws 1988, LB 1232, § 36; Laws 1989, LB 767, § 38; Laws 1994, LB 694, § 84; Laws 1995, LB 762, § 1.

9-340.01 Distributor; provide purchaser with invoice.

Each distributor shall, in a manner prescribed by the department, provide each purchaser of a pickle card unit or punchboard with an invoice of sale. The invoice shall contain the purchaser's name and complete address and any other information the department deems necessary.

Source: Laws 1988, LB 1232, § 37.

9-340.02 Pickle card units; dispensing devices; payment; definite profit; how remitted; delivery; credit; limitations.

(1) All pickle card units purchased by a licensed organization from a licensed distributor shall be paid for by a check drawn on the pickle card bank account of the licensed organization either in advance of or upon delivery of the pickle card units.

(2) A licensed pickle card operator shall remit the definite profit, less not more than thirty percent of the definite profit as allowed by subsection (4) of section 9-347, of all pickle card units received to the sponsoring licensed organization by check either in advance of or upon delivery of the pickle card units from the sales agent to the pickle card operator. Upon delivery of the pickle card units, the sales agent shall issue the pickle card operator a standard receipt prescribed by the department.

(3) Unless otherwise authorized by the department, pickle card units shall be delivered to a pickle card operator only by a sales agent's personal delivery or by delivery arranged by a sales agent through the mail or by a common carrier.

(4) No licensed organization conducting a lottery by the sale of pickle cards shall extend credit in any form, including, but not limited to, the extension of any credit with regard to the receipt of the definite profit, less not more than thirty percent of the definite profit as allowed by subsection (4) of section 9-347, of a pickle card unit from a pickle card operator upon delivery of a pickle card unit to the pickle card operator and the extension of any credit with regard to the sale or lease of any equipment or coin-operated or currency-operated pickle card dispensing device used in connection with a lottery by the sale of pickle cards.

(5) All payments for the purchase, lease, or rental of a coin-operated or currency-operated pickle card dispensing device by a licensed organization

shall be made by a check drawn on the organization's pickle card checking account.

(6) All payments for the purchase, lease, or rental of a coin-operated or currency-operated pickle card dispensing device by a licensed pickle card operator from a licensed organization shall be made by a check drawn on the business checking account of the pickle card operator or a personal checking account of an owner, partner, or officer of the pickle card operator, either at the time of or before placement of the device or on or before the first day of the period of the lease, whichever comes first.

(7) All lease or rental agreements between a licensed organization and a licensed pickle card operator for coin-operated or currency-operated pickle card dispensing devices shall be subject to approval by the department.

Source: Laws 1988, LB 1232, § 38; Laws 1989, LB 767, § 39; Laws 1991, LB 427, § 38; Laws 1995, LB 344, § 16; Laws 2002, LB 545, § 33.

9-341 Licensed manufacturer; duty to keep records.

Every licensed manufacturer shall keep and maintain a complete set of records which shall include all details of all activities of the licensee related to the conduct of the licensed activity as may be required by the department, including the total number of pickle card units sold to any Nebraska-licensed distributor. Such records shall be available for inspection by the department. The records shall be maintained for a period of not less than three years from the date of the end of the licensee's fiscal year.

Source: Laws 1985, LB 408, § 20; R.S.Supp.,1985, § 9-143.04; Laws 1986, LB 1027, § 107.

9-342 Licensed organization; pickle cards; powers and duties; purchases; limitation.

(1) Any organization licensed to conduct a lottery by the sale of pickle cards shall purchase units for such purposes from a distributor and shall use the net profit from the sale of the pickle cards for a lawful purpose.

(2) When any organization licensed to conduct a lottery by the sale of pickle cards purchases units from a distributor, such organization shall provide the distributor with a copy of the organization's license or other adequate identification indicating that such organization has a valid license issued pursuant to section 9-327.

(3) Only a person (a) licensed pursuant to section 9-327 as a utilization-of-funds member, (b) licensed pursuant to section 9-329 as a sales agent, (c) licensed pursuant to section 9-232.01 as a gaming manager, (d) designated as a bingo chairperson by an organization licensed to conduct bingo pursuant to the Nebraska Bingo Act, or (e) who serves as a manager for a licensed organization which is exempt under section 501(c)(8), (c)(10), or (c)(19) of the Internal Revenue Code shall order pickle card units from a distributor on behalf of the organization. Only a person licensed as a utilization-of-funds member shall purchase pickle card units from a distributor on behalf of the organization. No

pickle card operator shall order or purchase any pickle card or pickle card unit from a distributor.

Source: Laws 1983, LB 259, § 42; Laws 1984, LB 949, § 48; R.S.Supp.,1984, § 9-177; Laws 1986, LB 1027, § 108; Laws 1988, LB 1232, § 40; Laws 1994, LB 694, § 85; Laws 1997, LB 248, § 15.

Cross References

Nebraska Bingo Act, see section 9-201.

9-343 Distributor; records; reports.

(1) A distributor shall maintain records of total sales of pickle card units and, within thirty days after the end of the calendar month or by the last day of the month following each monthly period, whichever comes first, shall report to the department, in a manner prescribed by the department, detailed information concerning each sale, which information shall include, but not be limited to, (a) the total number of units sold by such distributor, (b) the aggregate price for which such cards will be sold by the purchasing organization, and (c) any other information the department deems necessary.

(2) A distributor shall maintain a record of the serial number of each unit sold and the corresponding state identification stamp number assigned to each unit. Such information shall be made available to the department upon request.

Source: Laws 1983, LB 259, § 48; Laws 1984, LB 949, § 54; Laws 1985, LB 408, § 32; R.S.Supp.,1985, § 9-183; Laws 1986, LB 1027, § 109; Laws 1988, LB 1232, § 41; Laws 1997, LB 248, § 16.

9-344 Distributor; taxation; deficiencies.

(1) Accompanying the monthly reports required in section 9-343, the distributor shall remit to the department a tax equal to ten percent of the definite profit of each pickle card unit sold by the distributor. Such tax shall be remitted with and reported on a form prescribed by the department on a monthly basis and shall be due and payable within thirty days after each monthly period or by the last day of the month following each monthly period, whichever comes first. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. The distributor shall include the tax due under this section in the selling price of units and shall separately state such tax on the invoice. All deficiencies of the tax prescribed in this section shall accrue interest and be subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

(2) Unless otherwise provided in the Nebraska Pickle Card Lottery Act, no occupation tax on any proceeds derived from the conduct of a lottery by the sale of pickle cards shall be levied, assessed, or collected from any licensee under the act by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect such tax.

(3) For purposes of proper administration of the tax imposed by this section and to prevent evasion of the tax, it shall be presumed that each pickle card unit sold by a distributor or obtained from a manufacturer and not accounted

for by a distributor is subject to the tax until the contrary is established. The burden of proving the contrary shall be upon the distributor.

Source: Laws 1983, LB 259, § 49; Laws 1984, LB 949, § 55; Laws 1985, LB 408, § 33; R.S.Supp.,1985, § 9-184; Laws 1986, LB 1027, § 110; Laws 1988, LB 1232, § 42; Laws 1989, LB 767, § 40; Laws 1990, LB 1055, § 5; Laws 1991, LB 427, § 39; Laws 1994, LB 694, § 86.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

9-345 Participation; age limitation.

(1) No person under eighteen years of age shall play or participate in any way in any lottery by the sale of pickle cards.

(2) No person or licensee, or employee or agent thereof, shall knowingly permit an individual under eighteen years of age to play or participate in any way in any lottery by the sale of pickle cards conducted pursuant to the Nebraska Pickle Card Lottery Act.

Source: Laws 1986, LB 1027, § 111; Laws 1997, LB 248, § 17.

9-345.01 Conduct of lottery; location; special function.

A licensed organization may conduct a lottery by the sale of pickle cards only at its designated premises, at its regularly scheduled bingo occasion and its limited period bingo conducted pursuant to the Nebraska Bingo Act, and at the premises of one or more pickle card operators.

A licensed organization may obtain an authorization from the department to sell its individual pickle cards at a festival, bazaar, picnic, carnival, or similar special function conducted by the licensed organization outside of the organization's designated premises one time per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation not to exceed seven consecutive days if the special function is conducted within the county in which the licensed organization has its principal office and the pickle cards are sold only by volunteer members of the licensed organization. A licensed organization shall make written request to the department for such authorization at least ten days prior to the start of the special function.

Source: Laws 1988, LB 1232, § 28; Laws 1994, LB 694, § 87; Laws 2000, LB 1086, § 14.

Cross Reference

Nebraska Bingo Act, see section 9-201.

9-345.02 Flare cards; punchboards; posting; identification.

(1) Licensed organizations and pickle card operators selling individual pickle cards or punchboards shall conspicuously post the flare card for each pickle card unit in play at that location.

(2) Licensed organizations and pickle card operators shall identify each flare card or punchboard in a manner prescribed by the department indicating the name and state identification number of each nonprofit organization on behalf

of which individual pickle cards and punches from punchboards are sold at such location.

Source: Laws 1988, LB 1232, § 29; Laws 1989, LB 767, § 41.

9-345.03 Pickle cards; dispensing device; registration; application; fee; decal; nontransferable; access; violations; penalties.

(1) Any person who places a coin-operated or currency-operated pickle card dispensing device in operation in this state without a current registration decal affixed permanently and conspicuously to the device shall be subject to an administrative penalty of thirty dollars for each violation. The department shall remit the proceeds from such penalties to the State Treasurer for credit to the Charitable Gaming Operations Fund.

(2) Registration of the device with the department shall be made by application to the department and shall be the responsibility of the licensed organization when such device is to be used in a licensed organization's designated premises or at the location of its regularly scheduled bingo occasion or of the licensed pickle card operator when such device is to be used on the premises of the pickle card operator.

(3) Each application for registration shall include (a) the name and address of the licensed pickle card operator or licensed organization registering the device, (b) the state identification number of the licensed pickle card operator or licensed organization registering the device, (c) a detailed description of the physical appearance and operation of the device, and (d) such other information which the department deems necessary.

(4) A fee of fifty dollars shall be charged for each decal issued pursuant to this section. The department shall remit the proceeds from the fee to the State Treasurer for credit to the Charitable Gaming Operations Fund. All decals issued by the department pursuant to this section shall expire on December 31 of each year or such other date as the department may prescribe by rule and regulation and shall be renewed annually.

(5) The registration decal issued by the department pursuant to this section shall not be transferable.

(6) Upon request by the Tax Commissioner or his or her agents or employees, the licensed organization or pickle card operator responsible for registering the device shall provide the requesting individual immediate access to any pickle cards contained within such device.

(7) Any person violating any provision of this section shall be deemed guilty of a Class II misdemeanor. Each day on which any person engages in or conducts the business of operating any device subject to this section without having paid the penalty or the registration as provided constitutes a separate offense.

Source: Laws 1988, LB 1232, § 43; Laws 1991, LB 427, § 40; Laws 1995, LB 344, § 17; Laws 2000, LB 1086, § 15.

9-345.04 Seal cards; authorized; requirements.

A lottery by the sale of pickle cards may be conducted utilizing a seal card comprised of a board or placard that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, symbols, or any combination thereof. All rules governing the handling of prizes awarded in

conjunction with seal cards shall be posted prominently in the area where such pickle card units are played.

Source: Laws 1996, LB 1277, § 1.

9-346 Determination of winner; pickle cards; requirements.

(1) The winning cards, boards, or tickets in any lottery by the sale of pickle cards shall be determined by a comparison of those numbers, letters, symbols, or configurations, or combination thereof, which are revealed on the pickle cards, to a set of numbers, letters, symbols, or configurations, or combination thereof, which has been previously specified as a winning combination. Whenever the winning combinations do not comprise a statement of the cash prize won, the winning combinations shall be printed on every pickle card that is wider than one inch or longer than two and one-half inches. Pickle cards that are smaller than such dimensions shall have the winning combinations printed on a flare card that is publicly displayed at the point of sale of the pickle cards.

(2) The winning chances of any pickle card shall not be determined or otherwise known until after its purchase and only upon opening, pulling, detaching, breaking open, or otherwise removing the tab or tabs to clearly reveal or otherwise appropriately revealing the combination. The winning chances shall be determined by and based upon an element of chance.

(3) Any person possessing a winning pickle card shall receive the appropriate cash prize previously determined and specified for that winning combination.

(4) All pickle cards shall legibly bear on the outside of each pickle card the name of the licensed organization conducting the lottery by the sale of pickle cards and such organization's state identification number.

(5) Nothing in this section shall prohibit (a) punchboards which allow the person who purchases the last punch on the punchboard to receive a cash prize predetermined by the manufacturer as a result of purchasing the last punch, (b) pickle card units which utilize a seal card which allows a seal card winner to receive a cash prize predetermined by the manufacturer, (c) pickle card units which utilize a seal card as described in this section which allow the person who purchases the last pickle card of such a unit to receive a cash prize predetermined by the manufacturer as a result of purchasing the last pickle card, or (d) pickle card units which are designed by a manufacturer to utilize bingo numbers drawn during the conduct of bingo to determine a winning combination. Such pickle card units shall be sold by a licensed distributor only to an organization licensed to conduct a lottery by the sale of pickle cards which is also licensed to conduct bingo and shall be played only at the bingo premises of the licensed organization during a bingo occasion conducted pursuant to the Nebraska Bingo Act.

Source: Laws 1983, LB 259, § 5; Laws 1984, LB 949, § 11; Laws 1985, LB 408, § 4; R.S.Supp.,1985, § 9-140.01; Laws 1986, LB 1027, § 112; Laws 1988, LB 1232, § 44; Laws 1989, LB 767, § 42; Laws 1994, LB 694, § 88; Laws 1996, LB 1277, § 8; Laws 1997, LB 248, § 18; Laws 2000, LB 658, § 4.

Cross References

Nebraska Bingo Act, see section 9-201.

9-347 Gross proceeds; definite profit; use; restrictions; allocation of expenses.

(1) The gross proceeds of any lottery by the sale of pickle cards shall be used solely for lawful purposes, awarding of prizes, payment of the unit cost, any commission paid to a pickle card operator, allowable expenses, and allocations for bingo expenses as provided by subsection (5) of this section.

(2) Not less than sixty-five percent or more than eighty percent of the gross proceeds of any lottery by the sale of pickle cards shall be used for the awarding of prizes.

(3) Not more than eight percent of the definite profit of a pickle card unit shall be used by the licensed organization to pay the allowable expenses of operating a lottery by the sale of pickle cards, except that license fees paid to the department to license the organization, each utilization-of-funds member, and any sales agent and pickle card dispensing device registration fees shall not be included in determining the eight-percent limitation on expenses and no portion of such eight percent shall be used to pay any expenses associated with the sale of pickle cards at a bingo occasion conducted pursuant to the Nebraska Bingo Act, and of such eight percent not more than four percent of the definite profit may be used by the licensed organization for the payment of any commission, salary, or fee to a sales agent in connection with the marketing, sale, and delivery of a pickle card unit. When determining the eight percent of definite profit that is permitted to pay the allowable expenses of operating a lottery by the sale of pickle cards, the definite profit from the sale of pickle cards at the organization's bingo occasions shall not be included.

(4) Not more than thirty percent of the definite profit of a pickle card unit shall be used by a licensed organization to pay a pickle card operator a commission, fee, or salary for selling individual pickle cards as opportunities for participation in a lottery by the sale of pickle cards on behalf of the licensed organization.

(5) An organization licensed to conduct bingo pursuant to the Nebraska Bingo Act may allocate a portion of the expenses associated with the conduct of its bingo occasions to its lottery by the sale of pickle cards conducted at such bingo occasions. Such allocation shall be based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the previous annual reporting period. An organization licensed to conduct bingo that has not been previously licensed shall determine such allocation based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the initial three consecutive calendar months of operation. The total amount of expenses that may be allocated to the organization's lottery by the sale of pickle cards shall be subject to the limitations on bingo expenses as provided for in the Nebraska Bingo Act with respect to the fourteen-percent expense limitation and the fair-market-value limitation on the purchase, rental, or lease of bingo equipment and the rental or lease of personal property or of a premises for the conduct of bingo. No expenses associated with the conduct of bingo may be paid directly from the pickle card checking account. A licensed organization which needs to allocate a portion of the expenses associated with the conduct of its bingo occasions to its

lottery by the sale of pickle cards conducted at such bingo occasions to pay bingo expenses as provided by this section shall transfer funds from the pickle card checking account to the bingo checking account by a check drawn on the pickle card checking account or by electronic funds transfer.

Source: Laws 1986, LB 1027, § 113; Laws 1988, LB 1232, § 45; Laws 1989, LB 767, § 43; Laws 1994, LB 694, § 89; Laws 1995, LB 344, § 18; Laws 2002, LB 545, § 34.

Cross References

Nebraska Bingo Act, see section 9-201.

9-347.01 Definite profit; distribution; net profit; use.

(1) For each type of pickle card unit marketed in this state, the department shall determine the following: (a) When a licensed organization sells pickle cards through pickle card operators, the portion of the definite profit from that pickle card unit which shall go to the licensed organization, such amount to be not less than seventy percent of the definite profit from such pickle card unit; (b) the maximum amount of the definite profit from the sale of a pickle card unit that a licensed organization may pay a pickle card operator as a commission, fee, or salary to sell its pickle cards, such amount not to exceed thirty percent of the definite profit from such pickle card unit; (c) the portion of the definite profit from the sale of a pickle card unit which may be expended by a licensed organization for allowable expenses, such amount not to exceed eight percent of the definite profit from such pickle card unit; and (d) the portion of the definite profit from the sale of a pickle card unit which may be utilized by a licensed organization for payment of the organization's sales agent, such amount to be a portion of the allowable expenses and not to exceed four percent of the definite profit from such pickle card unit.

(2) The licensed organization's net profit from the sale of a pickle card unit shall be used exclusively for a lawful purpose. A licensed organization shall not donate or promise to donate its net profit or any portion of the net profit to a recipient outside of its organization as an inducement for or in exchange for (a) a payment, gift, or other thing of value from the recipient to any person, organization, or corporation, including, but not limited to, the licensed organization or any of its members, employees, or agents, or (b) a pickle card operator's agreement to sell pickle cards on behalf of the licensed organization.

Source: Laws 1988, LB 1232, § 46; Laws 1989, LB 767, § 44; Laws 1995, LB 344, § 19; Laws 2002, LB 545, § 35.

9-348 Segregation of definite profit; manner of payment; records; requirements.

(1) The definite profit, less not more than thirty percent of the definite profit as allowed by subsection (4) of section 9-347, of any lottery by the sale of pickle cards and all amounts received by any licensed organization from the sale, lease, or rental of coin-operated or currency-operated pickle card dispensing devices shall be segregated from other revenue of any licensed organization conducting the lottery and placed in a separate checking account. All lawful purpose donations and expenses relating to the licensed organization's lottery by the sale of pickle cards, including the allowable expenses, any license fees paid to the department to license the organization, each utilization-of-funds

member, and any sales agent, coin-operated or currency-operated pickle card dispensing device registration fees, and the unit cost but excluding the payment of prizes for winning pickle cards, shall be paid by check from such account and shall be made payable to the ultimate use of such lawful purpose donations or expenses.

(2) Separate records shall be maintained by any licensed organization conducting a lottery by the sale of pickle cards. Each nonprofit organization conducting a lottery by the sale of pickle cards shall keep a record of all locations or persons who are paid to sell pickle cards. Records and lists required by the Nebraska Pickle Card Lottery Act shall be preserved for at least three years. Any law enforcement agency or other agency of government shall have the authority to investigate the records relating to lotteries by the sale of pickle cards and gross proceeds from such lotteries at any time. Organizations shall, upon proper written request, deliver all such records to the department, law enforcement agency, or other agency of government for investigation.

Source: Laws 1983, LB 259, § 46; Laws 1984, LB 949, § 52; R.S.Supp.,1984, § 9-181; Laws 1986, LB 1027, § 114; Laws 1988, LB 1232, § 47; Laws 1989, LB 767, § 45; Laws 1994, LB 694, § 90; Laws 1995, LB 344, § 20.

9-348.01 Lottery by the sale of pickle cards; sources of funding; payments; restrictions.

(1) A lottery by the sale of pickle cards shall fund itself after its first year of existence and shall not receive money from any other source, including the operation of other charitable gaming activities, for the payment of prizes, unit cost, allowable expenses, any commission paid to a pickle card operator, lawful purpose donations, or any other expense associated with the operation of the lottery by the sale of pickle cards except as provided in subsection (2) of this section.

(2) A licensed organization establishing a lottery by the sale of pickle cards may finance such lottery with money from the general fund of the licensed organization during the first year of operation of the lottery by the sale of pickle cards. General fund money used to finance a lottery by the sale of pickle cards may be repaid from funds received by the lottery by the sale of pickle cards.

(3) A licensed organization may commingle funds received from the sale of pickle cards with any general operating funds of the licensed organization by means of a check drawn on the pickle card checking account or by electronic funds transfer from that account, but the burden of proof shall be on the licensed organization to demonstrate that such commingled funds are not used to make any payments associated with the operation of the lottery by the sale of pickle cards and are used for a lawful purpose.

Source: Laws 1988, LB 1232, § 49; Laws 1989, LB 767, § 46; Laws 1994, LB 694, § 91.

9-349 Lottery by the sale of pickle cards; reports.

(1) A licensed organization conducting a lottery by the sale of pickle cards shall report annually to the department, on a form prescribed by the department, a complete and accurate accounting of its gross proceeds from the lottery by the sale of pickle cards. The annual report shall demonstrate that the organization's definite profit from pickle card sales has been retained in the

organization's pickle card checking account or expended solely for allowable expenses, unit costs, any pickle card operator commissions, lawful purpose donations, any license fees paid to the department to license the organization, each utilization-of-funds member, and any sales agent, coin-operated or currency-operated pickle card dispensing device registration fees, or any bingo expenses allocated to the sale of pickle cards as provided for in section 9-347.

(2) The annual report shall cover the organization's lottery by the sale of pickle cards activities from July 1 through June 30 of each year or such other period as the department may prescribe by rule and regulation. Such report shall be submitted to the department on or before August 15 of each year or such other date as the department may prescribe by rule and regulation.

(3) A copy of the report shall be submitted to the organization's membership.

(4) Upon dissolution of a licensed organization or if a previously licensed organization does not renew its license to conduct a lottery by the sale of pickle cards, its license renewal application is denied, or its license is canceled or revoked, all remaining profits derived from the conduct of the lottery by the sale of pickle cards shall be utilized for a lawful purpose and shall not be distributed to any private individual or shareholder. A complete and accurate report of the organization's pickle card activity shall be filed with the department, on a form prescribed by the department, no later than forty-five days after the date the organization is dissolved or no later than forty-five days after the expiration date of the license or the effective date of the license renewal application denial or license cancellation or revocation. The report shall cover the period from the end of the organization's most recent annual report filed through the date the organization is dissolved or the date the license renewal application has been denied or the license has been canceled or revoked or has otherwise expired. The organization shall include with the report a plan for the disbursement of any remaining profits which shall be subject to approval by the department. Such plan shall identify the specific purposes for which the remaining profits will be utilized.

(5) In addition to the reports required by subsections (1) and (4) of this section, the department may prescribe by rule and regulation the filing of a pickle card revenue status report by August 15 of each year or such other date as the department may prescribe by rule and regulation, on a form prescribed by the department, listing all disbursements of pickle card revenue until all such revenue has been expended either for allowable expenses or for a lawful purpose.

Source: Laws 1983, LB 259, § 47; Laws 1984, LB 949, § 53; R.S.Supp.,1984, § 9-182; Laws 1986, LB 1027, § 115; Laws 1988, LB 1232, § 48; Laws 1994, LB 694, § 92; Laws 1995, LB 344, § 21; Laws 2002, LB 545, § 36.

9-350 Tax Commissioner; power to seize contraband; effect.

(1) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, or any peace officer of this state may seize, without a warrant, the following contraband goods found any place in this state: (a) Any pickle cards and pickle card units declared to be contraband goods in section 9-338; (b) any pickle cards that are not properly printed as required in section 9-346 or on which the tax has not been paid, except for pickle cards in the possession of a licensed distributor or licensed manufacturer; (c) any pickle cards or pickle card units purchased by any licensed organization from any

source other than a licensed distributor; (d) any pickle cards or pickle card units that are being sold without all of the proper licenses; (e) any pickle card units or pickle cards that have been sold in violation of the Nebraska Pickle Card Lottery Act or any rules or regulations adopted and promulgated pursuant to such act; (f) any pickle cards or pickle card units in the possession of any licensee whose license has been revoked, canceled, or suspended or any pickle cards or pickle card units in the possession of any former licensee whose license has expired; or (g) any coin-operated or currency-operated pickle card dispensing device which contains any pickle cards deemed to be contraband goods pursuant to this subsection or any such device which does not have permanently and conspicuously affixed to it a current registration decal required by section 9-345.03.

(2) The Tax Commissioner may, upon satisfactory proof, direct return of any confiscated pickle cards or pickle card units when he or she has reason to believe that the entity from whom the pickle cards or pickle card units were confiscated has not willfully or intentionally evaded any tax or failed to comply with the Nebraska Pickle Card Lottery Act. Upon receipt of an affidavit of ownership, the Tax Commissioner shall relinquish possession of a seized coin-operated or currency-operated pickle card dispensing device to the lawful owners of the device if the device is not needed as evidence by the department, any county attorney, or the Attorney General at an administrative or judicial hearing, if contraband pickle cards have been removed from the device, and in the event the device was seized due to a violation of subsection (2) of section 9-345.03, if the entity who was utilizing the device has applied for and has received a current registration decal for the seized device.

(3) The Tax Commissioner may, upon finding that an entity in possession of contraband goods has willfully or intentionally evaded any tax or failed to comply with the act, confiscate such goods. Any pickle cards or pickle card units confiscated shall be destroyed.

(4) The seizure and destruction of coin-operated or currency-operated pickle card dispensing devices, pickle cards, or pickle card units shall not relieve any person from a fine, imprisonment, or other penalty for violation of the act.

(5) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, may seal any pickle cards, pickle card units, or coin-operated or currency-operated pickle card dispensing devices deemed to be contraband goods pursuant to this section. Such seal shall not be broken until authorized by the Tax Commissioner or his or her agents or employees. If the seal on a coin-operated or currency-operated pickle card dispensing device is broken prior to payment of the penalty and registration of the device required under section 9-345.03, the device shall be subject to forfeiture and sale by the Tax Commissioner.

(6) The Tax Commissioner or his or her agents or employees, when directed to do so by the Tax Commissioner, or any peace officer of this state shall not be responsible for negligence in any court for the sealing, seizure, or confiscation of any coin-operated or currency-operated pickle card dispensing device, pickle card, or pickle card unit pursuant to this section.

(7) Possession of pickle cards or pickle card units which are deemed to be contraband goods pursuant to this section shall be a violation of the Nebraska Pickle Card Lottery Act.

Source: Laws 1985, LB 408, § 29; R.S.Supp.,1985, § 9-187.02; Laws 1986, LB 1027, § 116; Laws 1991, LB 427, § 41; Laws 1995, LB 344, § 22; Laws 1997, LB 248, § 19.

9-351 Unauthorized sale or possession of pickle cards; violation; penalty.

(1) No person or organization other than those qualifying under section 9-326 and licensed pursuant to section 9-327 shall be permitted to conduct a lottery by the sale of pickle cards in this state.

(2) No person other than a licensed distributor or manufacturer shall possess pickle cards that are not properly printed with the information required in section 9-346.

(3) Any person who violates this section shall be guilty of a Class I misdemeanor.

Source: Laws 1983, LB 259, § 44; Laws 1984, LB 949, § 51; Laws 1985, LB 408, § 31; R.S.Supp.,1985, § 9-179; Laws 1986, LB 1027, § 117.

9-352 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who violates any provision of the Nebraska Pickle Card Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked. Such matters may also be referred to any other state licensing agencies for appropriate action.

(2) Each of the following violations of the Nebraska Pickle Card Lottery Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter;

(b) Making or receiving payment of a portion of the purchase price of pickle cards by a seller of pickle cards to a buyer of pickle cards to induce the purchase of pickle cards or to improperly influence future purchases of pickle cards;

(c) Using bogus, counterfeit, or nonopaque pickle cards, pull tabs, break opens, punchboards, jar tickets, or any other similar card, board, or ticket or substituting or using any pickle cards, pull tabs, or jar tickets that have been marked or tampered with;

(d) Intentionally employing or possessing any device to facilitate cheating in any lottery by the sale of pickle cards or use of any fraudulent scheme or technique in connection with any lottery by the sale of pickle cards when the amount gained or intended to be gained through the use of such items, schemes, or techniques is three hundred dollars or more;

(e) Knowingly filing a false report under the Nebraska Pickle Card Lottery Act;

(f) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery by the sale of pickle cards; or

(g) Knowingly selling or distributing or knowingly receiving with intent to sell or distribute pickle cards or pickle card units without first obtaining a license in accordance with the Nebraska Pickle Card Lottery Act pursuant to section 9-329, 9-329.03, 9-330, or 9-332.

(3) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(4) The failure to do any act required by or under the Nebraska Pickle Card Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(5) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 118; Laws 1987, LB 523, § 2; Laws 1988, LB 1232, § 50; Laws 1995, LB 344, § 23; Laws 1997, LB 248, § 20.

9-353 Violations; standing to sue.

Any person in this state, including any law enforcement official, who has cause to believe that (1) any licensed organization, (2) any employee or agent of such licensed organization, (3) any person acting in concert with such licensed organization, or (4) any person in connection with a lottery by the sale of pickle cards has engaged in or is engaging in any conduct in violation of the Nebraska Pickle Card Lottery Act or has aided or is aiding another in any conduct in violation of the act may commence a civil action in any district court of this state.

Source: Laws 1986, LB 1027, § 119.

9-354 Civil action; relief permitted.

In any civil action commenced pursuant to section 9-353, a court may allow:

(1) A temporary restraining order or injunction, with or without a bond as the court may direct, prohibiting a party to the action from continuing or engaging in such conduct, aiding in such conduct, or doing any act in furtherance of such conduct;

(2) A declaration that the conduct by a licensed organization or employee or agent of a licensed organization, which is a party to the action, constitutes a violation of the Nebraska Pickle Card Lottery Act and a determination of the number and times of violations for certification to the department for appropriate license revocation purposes;

(3) A permanent injunction under principles of equity and on reasonable terms;

(4) An accounting of the profits, earnings, or gains resulting directly and indirectly from such violations, with restitution or a distribution of such profits,

earnings, or gains to all licensed organizations existing at the time of such violations which apply to the court and show that they suffered monetary losses by reason of such violations and with distribution of any remaining profits, earnings, or gains to the state; and

(5) Reasonable attorney's fees and court costs.

Source: Laws 1986, LB 1027, § 120; Laws 1991, LB 427, § 42.

9-355 Civil procedure statutes; applicability.

Proceedings under section 9-353 shall be subject to and governed by the district court civil procedure statutes. Issues properly raised shall be tried and determined as in other civil actions in equity. All orders, judgments, and decrees rendered may be reviewed as other orders, judgments, and decrees.

Source: Laws 1986, LB 1027, § 121.

Cross References

Appeals, procedure, see section 25-1901 et seq.
Civil procedure statutes, see section 25-101 et seq.

9-356 Returns, reports, and records; disclosure; limitations; violation; penalty.

(1) Except in accordance with a proper judicial order or as otherwise provided by this section or other law, it shall be a Class I misdemeanor for the Tax Commissioner or any employee or agent of the Tax Commissioner to make known, in any manner whatsoever, the contents of any tax return or any reports or records submitted by a licensed distributor or manufacturer or the contents of any personal history reports submitted by any licensee or license applicant to the department pursuant to the Nebraska Pickle Card Lottery Act and any rules and regulations adopted and promulgated pursuant to such act.

(2) Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, licensee, or his or her duly authorized representative or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, a certified copy of any tax return or report or record, (b) the publication of statistics so classified as to prevent the identification of particular tax returns or reports or records, (c) the inspection by the Attorney General, a county attorney, or other legal representative of the state of tax returns or reports or records submitted by a licensed distributor or manufacturer when information on the tax returns or reports or records is considered by the Attorney General, county attorney, or other legal representative to be relevant to any action or proceeding instituted by the taxpayer or licensee or against whom an action or proceeding is being considered or has been commenced by any state agency or county, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner for the collection of delinquent taxes under the Nebraska Pickle Card Lottery Act, (f) the publication or disclosure of final administrative opinions and orders made by the Tax Commissioner in the adjudication of license denials, suspensions, cancellations, or revocations or the levying of fines, (g) the release of any application, without the contents of any submitted personal history report or social security number, filed with the department to obtain a license to conduct activities under the act, which shall be deemed a public record, (h) the release of any report filed

pursuant to section 9-349 or any other report filed by a licensed organization, sales agent, or pickle card operator pursuant to the act, which shall be deemed a public record, or (i) the notification of an applicant, a licensee, or a licensee's duly authorized representative of the existence of and the grounds for any administrative action to deny the license application of, to revoke, cancel, or suspend the license of, or to levy an administrative fine upon any agent or employee of the applicant, the licensee, or any other person upon whom the applicant or licensee relies to conduct activities authorized by the act.

(3) Nothing in this section shall prohibit the Tax Commissioner or any employee or agent of the Tax Commissioner from making known the names of persons, firms, or corporations licensed to conduct activities under the act, the locations at which such activities are conducted by license holders, or the dates on which such licenses were issued.

(4) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect a tax return or reports or records submitted by a licensed distributor or manufacturer pursuant to the act when information on the returns or reports or records is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(5) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit other tax officials of this state to inspect a tax return or reports or records submitted pursuant to the act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

Source: Laws 1988, LB 1232, § 51; Laws 1991, LB 427, § 43; Laws 1994, LB 694, § 93; Laws 1995, LB 344, § 24; Laws 2007, LB638, § 12.

ARTICLE 4

LOTTERIES AND RAFFLES

Section

Section

9-401 Act, how cited.

Sections 9-401 to 9-437 shall be known and may be cited as the Nebraska Lottery and Raffle Act.

Source: Laws 1986, LB 1027, § 122; Laws 1991, LB 427, § 44; Laws 1994, LB 694, § 94; Laws 1997, LB 248, § 21; Laws 2002, LB 545, § 37.

9-402 Purpose of act.

(1) The purpose of the Nebraska Lottery and Raffle Act is to protect the health and welfare of the public, to protect the economic welfare and interest in certain lotteries with gross proceeds greater than one thousand dollars and certain raffles with gross proceeds greater than five thousand dollars, to insure that the profits derived from the operation of any such lottery or raffle are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits are used for legitimate purposes, and to prevent the purposes for which the profits of any such lottery or raffle are to be used from being subverted by improper elements.

(2) The purpose of the Nebraska Lottery and Raffle Act is also to completely and fairly regulate each level of the traditional marketing scheme of tickets or stubs for such lotteries and raffles to insure fairness, quality, and compliance with the Constitution of Nebraska. To accomplish such purpose, the regulation and licensure of nonprofit organizations and any other person involved in the marketing scheme are necessary.

(3) The Nebraska Lottery and Raffle Act shall apply to all lotteries with gross proceeds in excess of one thousand dollars, except for lotteries by the sale of pickle cards conducted in accordance with the Nebraska Pickle Card Lottery Act, lotteries conducted by a county, city, or village in accordance with the Nebraska County and City Lottery Act, and lottery games conducted in accordance with the State Lottery Act, and to all raffles with gross proceeds in excess

of five thousand dollars. All such lotteries and raffles shall be played and conducted only by the methods permitted in the act. No other form, means of selection, or method of play shall be allowed.

Source: Laws 1986, LB 1027, § 123; Laws 1991, LB 849, § 49; Laws 1993, LB 138, § 7.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-403 Definitions, where found.

For purposes of the Nebraska Lottery and Raffle Act, unless the context otherwise requires, the definitions found in sections 9-404 to 9-417.02 shall be used.

Source: Laws 1986, LB 1027, § 124; Laws 1994, LB 694, § 95; Laws 2003, LB 3, § 3.

9-404 Allowable expenses, defined.

Allowable expenses shall mean:

(1) All costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed to participants such as tickets;

(2) All office expenses;

(3) All promotional expenses;

(4) The tax on gross proceeds prescribed in section 9-429;

(5) All license and permit fees prescribed by the Nebraska Lottery and Raffle Act;

(6) Any tax or fee imposed pursuant to section 9-433; and

(7) Any fee paid to any person associated with the operation of any lottery or raffle.

Source: Laws 1986, LB 1027, § 125; Laws 1994, LB 694, § 96.

9-405 Cancel, defined.

Cancel shall mean to discontinue all rights and privileges to hold a license or permit for up to three years.

Source: Laws 1986, LB 1027, § 126.

9-406 Department, defined.

Department shall mean the Department of Revenue.

Source: Laws 1986, LB 1027, § 127.

9-407 Gross proceeds, defined.

Gross proceeds shall mean the total receipts received from the conduct of the lottery or raffle without any reduction for prizes, discounts, taxes, or allowable expenses. Gross proceeds shall include receipts from any required admission costs or any other required purchase, to the extent such admission cost or

purchase itself constitutes a chance in the lottery or raffle, and the value of any free tickets or stubs or free plays used.

Source: Laws 1986, LB 1027, § 128; Laws 1994, LB 694, § 97.

9-408 Lawful purpose, defined.

(1) Lawful purpose shall mean charitable or community betterment purposes, including, but not limited to, one or more of the following:

(a) Benefiting persons by enhancing their opportunity for religious or educational advancement, by relieving or protecting them from disease, suffering, or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded;

(b) Initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures; and

(c) Lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people.

(2) Lawful purpose shall not include any activity consisting of an attempt to influence legislation or participate in any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

(3) Nothing in this section shall prohibit any organization licensed pursuant to the Nebraska Lottery and Raffle Act from using its proceeds or profits derived from activities under the act in any activity which benefits and is conducted by the organization, including any charitable, benevolent, humane, religious, philanthropic, recreational, social, educational, civic, or fraternal activity conducted by the organization for the benefit of its members.

Source: Laws 1986, LB 1027, § 129; Laws 1994, LB 694, § 98.

9-409 License, defined.

License shall mean any license to conduct a lottery or raffle as provided in section 9-424 or any license for a utilization-of-funds member as provided in such section.

Source: Laws 1986, LB 1027, § 130; Laws 1994, LB 694, § 99.

9-410 Licensed organization, defined.

Licensed organization shall mean a nonprofit organization or a volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad licensed to conduct a lottery or raffle under the Nebraska Lottery and Raffle Act.

Source: Laws 1986, LB 1027, § 131; Laws 2002, LB 545, § 38.

9-411 Lottery, defined.

(1) Lottery shall mean a gambling scheme in which (a) participants pay or agree to pay something of value for an opportunity to win, (b) winning opportunities are represented by tickets differentiated by sequential enumeration, and (c) winners are determined by a random drawing of the tickets or by the method set forth in section 9-426.01.

(2) Lottery shall not include (a) any raffle as defined in section 9-415, (b) any gambling scheme which uses any mechanical, computer, electronic, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value, (c) any activity which is authorized or regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, or (d) any activity which is prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 132; Laws 1991, LB 849, § 50; Laws 1993, LB 138, § 8; Laws 1997, LB 248, § 22.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
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.

9-412 Member, defined.

Member shall mean a person who is recognized and acknowledged by a licensed organization as a member for purposes other than conducting activities under the Nebraska Lottery and Raffle Act. Member shall not include social or honorary members.

Source: Laws 1986, LB 1027, § 133.

9-413 Permit, defined.

Permit shall mean a special permit to conduct one raffle and one lottery as provided in section 9-426.

Source: Laws 1986, LB 1027, § 134.

9-414 Profit, defined.

Profit shall mean the gross proceeds less reasonable sums necessarily and actually expended for prizes, taxes, and allowable expenses.

Source: Laws 1986, LB 1027, § 135.

9-415 Raffle, defined.

(1) Raffle shall mean a gambling scheme in which (a) participants pay or agree to pay something of value for an opportunity to win, (b) winning opportunities are represented by tickets differentiated by sequential enumeration, (c) winners are determined by a random drawing of the tickets or by the method set forth in section 9-426.01, and (d) at least eighty percent of all of the prizes to be awarded are merchandise prizes which are not directly or indirectly redeemable for cash by the licensed organization conducting the raffle or any agent of the organization.

(2) Raffle shall not include (a) any gambling scheme which uses any mechanical, computer, electronic, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value, (b) any activity which is authorized or regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small

Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, or (c) activity which is prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 136; Laws 1991, LB 849, § 51; Laws 1993, LB 138, § 9; Laws 1997, LB 248, § 23.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
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.

9-416 Revoke, defined.

Revoke shall mean to permanently void and recall all rights and privileges to obtain a license or permit.

Source: Laws 1986, LB 1027, § 137.

9-417 Suspend, defined.

Suspend shall mean to cause a temporary interruption of all rights and privileges of a license or permit or the renewal thereof.

Source: Laws 1986, LB 1027, § 138.

9-417.01 Utilization-of-funds member, defined.

Utilization-of-funds member shall mean a member of the organization who shall be responsible for supervising the conduct of a lottery or raffle and for the proper utilization of the gross proceeds derived from the conduct of a lottery or raffle.

Source: Laws 1994, LB 694, § 100.

9-417.02 Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, defined.

Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall mean a volunteer association or organization serving any city, village, county, township, or rural or suburban fire protection district in Nebraska by providing fire protection or emergency response services for the purpose of protecting human life, health, or property.

Source: Laws 2002, LB 545, § 39.

9-418 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To issue licenses, temporary licenses, and permits;

(2) To deny any license or permit application or renewal application for cause. Cause for denial of an application or renewal of a license or permit shall include instances in which the applicant individually or, in the case of a nonprofit organization, any officer, director, or employee of the applicant, licensee, or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant, licensee, or permittee which directly or indirectly receives compensation other than distributions from a bona fide retirement plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from

such applicant, licensee, or permittee for past or present services in a consulting capacity or otherwise, the licensee, the permittee, or any person with a substantial interest in the applicant, licensee, or permittee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery 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 or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;

(c) Obtained a license or permit pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where lottery or raffle activity required to be licensed under the Nebraska Lottery and Raffle Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed in accordance with the Nebraska Lottery and Raffle Act;

(i) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(j) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(k) Failed to demonstrate good character, honesty, and integrity;

(l) Failed to demonstrate, either individually or, in the case of a nonprofit organization, through its managers or employees, the ability, experience, or financial responsibility necessary to establish or maintain the activity for which the application is made; or

(m) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the

commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act.

No renewal of a license under the Nebraska Lottery and Raffle Act shall be issued when the applicant for renewal would not be eligible for a license upon a first application;

(3) To revoke, cancel, or suspend for cause any license or permit. Cause for revocation, cancellation, or suspension of a license or permit shall include instances in which the licensee or permittee individually or, in the case of a nonprofit organization, any officer, director, or employee of the licensee or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such licensee or permittee which directly or indirectly receives compensation other than distributions from a bona fide retirement plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such licensee or permittee for past or present services in a consulting capacity or otherwise, or any person with a substantial interest in the licensee or permittee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska Lottery and Raffle Act or any rules or regulations adopted and promulgated pursuant to the act;

(c) Obtained a license or permit pursuant to the act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where lottery or raffle activity required to be licensed under the Nebraska Lottery and Raffle Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(i) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(j) Failed to demonstrate good character, honesty, and integrity;

(k) Failed to demonstrate, either individually or, in the case of a nonprofit organization, through its managers or employees, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued; or

(l) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act;

(4) To issue an order requiring a licensee, permittee, or other person to cease and desist from violations of the Nebraska Lottery and Raffle Act or any rules or regulations adopted and promulgated pursuant to such act. The order shall give reasonable notice of the rights of the licensee, permittee, or other person to request a hearing and shall state the reason for the entry of the order. The notice of order shall be mailed by certified mail to or personally served upon the licensee, permittee, or other person. If the notice of order is mailed by certified mail, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee, permittee, or other person. A request for a hearing by the licensee, permittee, or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee, permittee, or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee, permittee, or other person shall be deemed in default and the proceeding may be determined against the licensee, permittee, or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To examine or to cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to lottery or raffle activities required to be licensed pursuant to the Nebraska Lottery and Raffle Act, to require by summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to require proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(6) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the violation and the extent thereof, and whether the violator has had previous violations of the act, rules, or regulations. A fine levied on a violator under this section shall not exceed one thousand dollars for each violation of the act or any rule or regulation adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from lottery or raffle gross proceeds of an organization and shall be remitted by the violator to the department within thirty days after the date of the order issued by the department levying such fine;

(7) Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid to the state as taxes imposed by the act in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(8) To collect license application, license renewal application, and permit fees imposed by the Nebraska Lottery and Raffle Act and to prorate license fees on an annual basis. The department shall establish, by rule and regulation, the conditions and circumstances under which such fees may be prorated;

(9) To confiscate and seize lottery or raffle tickets or stubs pursuant to section 9-432; and

(10) To adopt and promulgate such rules and regulations, prescribe such forms, and employ such staff, including inspectors, as are necessary to carry out the act.

Source: Laws 1986, LB 1027, § 139; Laws 1991, LB 427, § 45; Laws 1994, LB 694, § 101; Laws 1995, LB 344, § 25; Laws 1995, LB 574, § 10; Laws 1997, LB 248, § 25; Laws 2000, LB 1086, § 16; Laws 2002, LB 545, § 40; Laws 2002, LB 1126, § 3.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Liquor Control Act, see section 53-101.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-418.01 Denial of application; procedure.

(1) Before any application is denied pursuant to section 9-418, the department shall notify the applicant in writing by certified mail of the department's intention to deny the application and the reasons for the denial. Such notice shall inform the applicant of his or her right to request an administrative hearing for the purpose of reconsideration of the intended denial of the

application. The date the notice is mailed shall be deemed to be the date of service of notice to the applicant.

(2) A request for a hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the denial shall become final at the expiration of such period.

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least ten days before the hearing, serve notice upon the applicant by certified mail, return receipt requested, of the time, date, and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1991, LB 427, § 47; Laws 2002, LB 545, § 41.

Cross References

Administrative Procedure Act, see section 84-920.

9-418.02 Administrative fines; disposition; collection.

(1) All money collected by the department as an administrative fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund.

(2) Any administrative fine levied under section 9-418 and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violator resides or owns property.

Source: Laws 1991, LB 427, § 46; Laws 1994, LB 694, § 102.

9-419 Suspension of license or permit; limitation; procedure.

(1) The Tax Commissioner may suspend any license or permit, except that no order to suspend any license or permit shall be issued unless the department determines that the licensee or permittee is not operating in accordance with the purposes and intent of the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts.

(2) Before any license or permit is suspended prior to a hearing, notice of an order to suspend a license or permit shall be mailed to or personally served upon the licensee or permittee at least fifteen days before the order of suspension takes effect.

(3) The order of suspension may be withdrawn if the licensee or permittee provides the department with evidence that any prior findings or violations have been corrected and that the licensee or permittee is now in full compliance, whether before or after the effective date of the order of suspension.

(4) The Tax Commissioner may issue an order of suspension pursuant to subsections (1) and (2) of this section when an action for suspension, cancellation, or revocation is pending. The Tax Commissioner may also issue an order

of suspension after a hearing for a limited time of up to one year without an action for cancellation or revocation pending.

(5) The hearing for suspension, cancellation, or revocation of the license or permit shall be held within twenty days after the date the suspension takes effect. A request by the licensee or permittee to hold the hearing after the end of the twenty-day period shall extend the suspension until the hearing.

(6) The decision of the department shall be made within twenty days after the conclusion of the hearing. The suspension shall continue in effect until the decision is issued. If the decision is that an order of suspension, revocation, or cancellation is not appropriate, the suspension shall terminate immediately by order of the Tax Commissioner. If the decision is an order for the suspension, revocation, or cancellation of the license or permit, the suspension shall continue pending an appeal of the decision of the department.

(7) Any period of suspension prior to the issuance of an order of suspension shall count toward the total amount of time a licensee may be suspended from gaming activities under the Nebraska Lottery and Raffle Act. Any period of suspension prior to the issuance of an order of cancellation shall not reduce the period of the cancellation. Any period of suspension after the issuance of the order and during an appeal shall be counted as a part of the period of cancellation.

Source: Laws 1986, LB 1027, § 140; Laws 1991, LB 427, § 48; Laws 1995, LB 344, § 26.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
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.

9-420 Hearing; required; when; notice.

Before the adoption, amendment, or repeal of any rule or regulation, the suspension, revocation, or cancellation of any license or permit, or the levying of an administrative fine pursuant to section 9-418, the department shall set the matter for hearing. Such suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine shall be considered contested cases pursuant to the Administrative Procedure Act.

At least ten days before the hearing, the department shall (1) in the case of suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine, serve notice by personal service or certified mail, return receipt requested, upon the licensee, permittee, or violator of the time, date, and place of any hearing or (2) in the case of adoption, amendment, or repeal of any rule or regulation, issue a public notice of the time, date, and place of such hearing.

This section shall not apply to an order of suspension by the Tax Commissioner prior to a hearing as provided in section 9-419.

Source: Laws 1986, LB 1027, § 141; Laws 1991, LB 427, § 49; Laws 1994, LB 694, § 103; Laws 1995, LB 344, § 27.

Cross References

Administrative Procedure Act, see section 84-920.

9-421 Proceeding before department; service; security; appeal.

(1) A copy of the order or decision of the department in any proceeding before it, certified under the seal of the department, shall be served upon each party of record to the proceeding before the department. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the department shall enter his or her appearance and indicate to the department his or her address for the service of a copy of any order, decision, or notice. The mailing of any copy of any order or decision or of any notice in the proceeding, to such party at such address, shall be deemed to be service upon such party.

(2) At the time of making an appearance before the department, each party shall deposit in cash or furnish a sufficient security for costs in an amount the department deems adequate to cover all costs liable to accrue, including costs for (a) reporting the testimony to be adduced, (b) making up a complete transcript of the hearing, and (c) extending reporter's original notes in typewriting.

(3) Any decision of the department in any proceeding before it may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1986, LB 1027, § 142; Laws 1988, LB 352, § 16; Laws 1991, LB 427, § 50.

Cross References

Administrative Procedure Act, see section 84-920.

9-422 Lottery or raffle; restriction on gross proceeds; violation; penalty.

No person, except a licensed organization operating pursuant to the Nebraska Lottery and Raffle Act, shall conduct any lottery with gross proceeds in excess of one thousand dollars or any raffle with gross proceeds in excess of five thousand dollars. Any lottery or raffle conducted in violation of this section is hereby declared to be a public nuisance. Any person who violates this section shall be guilty of a Class III misdemeanor. Nothing in this section shall be construed to apply to any lottery conducted in accordance with the Nebraska County and City Lottery Act, any lottery by the sale of pickle cards conducted in accordance with the Nebraska Pickle Card Lottery Act, or any lottery game conducted pursuant to the State Lottery Act.

Source: Laws 1984, LB 949, § 63; R.S.Supp.,1984, § 9-199; Laws 1986, LB 1027, § 143; Laws 1991, LB 849, § 52; Laws 1993, LB 138, § 10.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-423 License; qualified applicants.

(1) Any nonprofit organization holding a certificate of exemption under section 501 of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad may apply for a license to conduct a lottery or raffle.

(2) Prior to applying for any license, an organization shall:

(a) Be incorporated in this state as a not-for-profit corporation or organized in this state as a religious or not-for-profit organization;

(b) Have at least ten members in good standing;

(c) Conduct activities within this state in addition to the conduct of lotteries or raffles;

(d) Be authorized by its constitution, articles, charter, or bylaws to further in this state a lawful purpose; and

(e) Operate without profit to its members, and no part of the net earnings of such organization shall inure to the benefit of any private shareholder or individual.

Source: Laws 1986, LB 1027, § 144; Laws 2002, LB 545, § 42.

9-424 License; application; contents; fee; duty to keep current.

(1) Each applicant for a license to conduct a lottery or raffle shall file with the department an application on a form prescribed by the department. Each application shall include:

(a) The name and address of the applicant and, if the applicant is an individual, his or her social security number;

(b) Sufficient facts relating to the incorporation or organization of the applicant to enable the department to determine if the applicant is eligible for a license under section 9-423;

(c) The name and address of each officer of the applicant organization;

(d) The name, address, social security number, date of birth, and years of membership of a bona fide and active member of the applicant organization to be licensed as a utilization-of-funds member. Such person shall have been an active and bona fide member of the applicant organization for at least one year preceding the date the application is filed with the department unless the applicant organization can provide evidence that the one-year requirement would impose an undue hardship on the organization. Such person shall sign a sworn statement indicating that he or she agrees to comply with all provisions of the Nebraska Lottery and Raffle Act and all rules and regulations adopted pursuant to the act, that no commission, fee, rent, salary, profits, compensation, or recompense will be paid to any person or organization except payments authorized by the act, and that all net profits will be spent only for lawful purposes. The department may prescribe a separate application for such license;

(e) A roster of members, if the department deems it necessary and proper;

(f) Other information which the department deems necessary; and

(g) A thirty-dollar biennial license fee for the organization and a forty-dollar biennial license fee for each utilization-of-funds member.

(2) The information required by this section shall be kept current. An organization shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

Source: Laws 1986, LB 1027, § 145; Laws 1994, LB 694, § 104; Laws 1997, LB 752, § 68; Laws 2007, LB638, § 13.

9-425 Licenses; renewal; application; requirements; temporary license; fee.

(1) All licenses to conduct a lottery or raffle and licenses issued to utilization-of-funds members shall expire as provided in this section and may be renewed biennially. An application for license renewal shall be submitted to the department at least thirty days prior to the starting date of the first lottery or raffle ticket sales for the biennial licensing period. The department may issue a temporary license prior to receiving all necessary information from the applicant.

(2) A license to conduct a lottery or raffle issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization-of-funds member for such nonprofit organization shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation. A license to conduct a lottery or raffle issued to a nonprofit organization holding a certificate of exemption under section 501 of the Internal Revenue Code, other than a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the code, or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, and any license issued to a utilization-of-funds member for such nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation.

Source: Laws 1986, LB 1027, § 146; Laws 1994, LB 694, § 105; Laws 2000, LB 1086, § 17; Laws 2002, LB 545, § 43; Laws 2007, LB638, § 14.

9-426 Special permit to conduct raffle and lottery; fee.

(1) A licensed organization may obtain from the department a special permit to conduct one raffle and one lottery. The cost of the special permit shall be ten dollars. The special permit shall exempt the licensed organization from subsections (2) and (3) of section 9-427 and from section 9-430. The organization shall comply with all other requirements of the Nebraska Lottery and Raffle Act.

(2) The special permit shall be valid for three calendar months and shall be issued by the department upon the proper application by the licensed organization. The special permit shall become invalid upon termination, revocation, or cancellation of the organization's license to conduct a lottery or raffle. The application shall be in such form and contain such information as the department may prescribe. No licensed organization may obtain more than one special permit for each twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation.

(3) No licensed organization conducting a raffle or lottery pursuant to a special permit shall pay persons selling tickets or stubs for the raffle or lottery, except that nothing in this subsection shall prohibit the awarding of prizes to such persons based on ticket or stub sales.

Source: Laws 1985, LB 486, § 1; R.S.Supp.,1985, § 9-199.01; Laws 1986, LB 1027, § 147; Laws 2000, LB 1086, § 18.

9-426.01 Race utilizing floating objects; requirements.

(1) Pursuant to a special permit obtained in accordance with section 9-426, a licensed organization may conduct a lottery or raffle in which the winners are to be determined by a race utilizing inanimate, buoyant objects floated along a river, canal, or other waterway. The objects shall each bear a number or other unique identifying mark which corresponds to sequentially numbered tickets which are sold to participants in the lottery or raffle. A licensed organization utilizing this method of winner determination shall comply with all other requirements of the Nebraska Lottery and Raffle Act and any rules and regulations adopted and promulgated pursuant to the act.

(2) The department may adopt and promulgate rules and regulations for the conduct of a lottery or raffle utilizing the method of winner determination provided by this section.

Source: Laws 1997, LB 248, § 24.

9-427 Lottery or raffle; gross proceeds; use; restrictions.

(1) The gross proceeds of any lottery or raffle shall be used solely for lawful purposes, awarding of prizes, and allowable expenses.

(2) Not less than sixty-five percent of the gross proceeds of any lottery shall be used for the awarding of prizes, and not more than ten percent of the gross proceeds shall be used to pay the allowable expenses of operating such scheme.

(3) Not less than sixty-five percent of the gross proceeds of any raffle shall be used for the awarding of prizes, and not more than ten percent of the gross proceeds shall be used to pay the allowable expenses of operating such scheme, except that if prizes are donated to the licensed organization to be awarded in connection with such raffle, the prizes awarded shall have a fair market value equal to at least sixty-five percent of the gross proceeds and the licensed organization shall use the proceeds for allowable expenses, optional additional prizes, and a lawful purpose.

Source: Laws 1983, LB 259, § 50; Laws 1984, LB 949, § 56; Laws 1985, LB 486, § 3; Laws 1985, LB 408, § 34; R.S.Supp.,1985, § 9-185; Laws 1986, LB 1027, § 148; Laws 1994, LB 694, § 106.

9-428 Segregation of gross proceeds; records; requirements.

The gross proceeds of any lottery or raffle shall be segregated from other revenue of any licensed organization conducting the lottery or raffle and placed in a separate account. Separate records shall be maintained by any licensed organization conducting a lottery or raffle. Each licensed organization conducting a lottery or raffle shall keep a record of all persons who are paid to sell tickets or stubs. Records required by the Nebraska Lottery and Raffle Act shall be preserved for at least three years. Any law enforcement agency or other agency of government shall have the authority to investigate the records relating to lotteries or raffles and gross proceeds from such lottery or raffle at any time. Organizations shall, upon proper written request, deliver all such records to the department or other law enforcement agency for investigation.

Source: Laws 1986, LB 1027, § 149.

9-429 Lottery or raffle; gross proceeds; tax; deficiencies.

Any licensed organization or any other organization or person conducting a lottery or raffle activity required to be licensed pursuant to the Nebraska

Lottery and Raffle Act shall pay to the department a tax of two percent of the gross proceeds of each lottery having gross proceeds of more than one thousand dollars or raffle having gross proceeds of more than five thousand dollars. Such tax shall be remitted quarterly, within thirty days of the end of the quarter, on forms approved and provided by the department. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. All deficiencies of the tax imposed by this section shall accrue interest and be subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

Source: Laws 1983, LB 259, § 61; Laws 1984, LB 949, § 70; R.S.Supp.,1984, § 9-196; Laws 1986, LB 1027, § 150; Laws 1991, LB 427, § 51; Laws 1994, LB 694, § 107.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

9-430 Participation; age limitation.

(1) No person under eighteen years of age shall participate in any way in any lottery or raffle, except that a person under eighteen years of age may participate in a lottery or raffle conducted by a licensed organization pursuant to a permit issued under section 9-426.

(2) No person, licensee, or permittee or employee or agent thereof shall knowingly permit an individual under eighteen years of age to play or participate in any way in a lottery or raffle conducted pursuant to the Nebraska Lottery and Raffle Act, excluding those conducted by a licensed organization with a special permit issued under section 9-426.

Source: Laws 1986, LB 1027, § 151; Laws 1997, LB 248, § 26.

9-431 Lottery or raffle ticket or stub; requirements.

Each licensed organization conducting a lottery or raffle conducted pursuant to the Nebraska Lottery and Raffle Act shall have its name and identification number clearly printed on each lottery or raffle ticket or stub used in such lottery or raffle. No such ticket or stub shall be sold unless such name and identification number is so printed thereon. In addition, all lottery or raffle tickets or stubs shall bear a number, which numbers shall be in sequence and clearly printed on the ticket or stub.

Each ticket or stub shall have an equal chance of being chosen in the drawing. Each ticket or stub shall be constructed of the same material, shall have the same surface, and shall be substantially the same shape, size, form and weight.

Each licensed organization conducting a lottery or raffle shall keep a record of all locations where its tickets or stubs are sold.

Source: Laws 1984, LB 949, § 62; R.S.Supp.,1984, § 9-198; Laws 1986, LB 1027, § 152.

9-432 Tax Commissioner; power to seize contraband; effect.

(1) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, or any peace officer of this state may seize, without a warrant, the following contraband goods found any place in this state: (a) Any lottery or raffle tickets or stubs that are being sold which are not properly

printed as required in section 9-431 or which do not meet the other requirements of such section; (b) any lottery or raffle tickets or stubs that are being sold without the proper license or permit; or (c) any lottery or raffle tickets or stubs that have been sold in violation of the Nebraska Lottery and Raffle Act or any rule or regulation adopted and promulgated pursuant to the act.

(2) The Tax Commissioner may, upon satisfactory proof, direct return of any confiscated lottery or raffle tickets or stubs when he or she has reason to believe that the owner has not willfully or intentionally failed to comply with the Nebraska Lottery and Raffle Act.

(3) The Tax Commissioner may, upon finding that an owner of contraband goods has willfully or intentionally failed to comply with the act, confiscate such goods. Any lottery or raffle tickets or stubs confiscated shall be destroyed.

(4) The seizure of lottery or raffle tickets or stubs under this section shall not relieve any person from a fine, imprisonment, or other penalty for violation of the act.

(5) The Tax Commissioner or his or her agents or employees, when directed to do so by the Tax Commissioner, or any peace officer of this state shall not be responsible for negligence in any court for the seizure or confiscation of any lottery or raffle ticket or stub pursuant to this section.

Source: Laws 1986, LB 1027, § 153.

9-433 Lottery or raffle; local control; section, how construed.

(1) Except as provided in subsection (2) of this section, any county or incorporated municipality may, by resolution or ordinance, tax, regulate, control, or prohibit any lottery or raffle within the boundaries of such county or the corporate limits of such incorporated municipality. No county may impose a tax or otherwise regulate, control, or prohibit any lottery within the corporate limits of an incorporated municipality. Any tax imposed pursuant to this subsection shall be remitted to the general fund of the county or incorporated municipality imposing such tax.

(2) No licensed organization may conduct a lottery or raffle and no person may engage in lottery or raffle activity within the boundaries of any Class 6 or Class 7 county as classified under section 23-1114.01 or within the corporate limits of any city of the metropolitan or primary class until specific authorization has been granted by ordinance or resolution of the city or county to conduct a lottery, raffle, or related activity. Any ordinance or resolution that provides specific authorization for a lottery, raffle, or related activity may tax, regulate, or otherwise control such lottery, raffle, or related activity.

(3) Nothing in this section shall be construed to authorize any lottery or raffle not otherwise authorized under Nebraska law.

Source: Laws 1983, LB 259, § 60; Laws 1984, LB 949, § 69; R.S.Supp.,1984, § 9-195; Laws 1986, LB 1027, § 154.

9-434 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of the Nebraska Lottery and Raffle Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee or employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first

offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Lottery and Raffle Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities authorized under Chapter 9 in consideration for obtaining any license, authorization, permission, or privileges to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter;

(b) Intentionally employing or possessing any device to facilitate cheating in any lottery or raffle or using any fraudulent scheme or technique in connection with any lottery or raffle when the amount gained or intended to be gained through the use of items, schemes, or techniques is three hundred dollars or more; or

(c) Knowingly filing a false report under the Nebraska Lottery and Raffle Act.

(3) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(4) The failure to do any act required by or under the Nebraska Lottery and Raffle Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(5) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 155; Laws 1987, LB 523, § 3; Laws 1995, LB 344, § 28; Laws 1997, LB 248, § 27.

9-435 Violations; standing to sue.

Any person in this state, including any law enforcement official, who has cause to believe that (1) any licensed organization, (2) any employee or agent of such licensed organization, (3) any person acting in concert with such licensed organization, or (4) any person in connection with a lottery or raffle has engaged in or is engaging in any conduct in violation of the Nebraska Lottery and Raffle Act or has aided or is aiding another in any conduct in violation of such act may commence a civil action in any district court of this state.

Source: Laws 1986, LB 1027, § 156.

9-436 Civil action; relief permitted.

In any civil action commenced pursuant to section 9-435, a court may allow:

(1) A temporary restraining order or injunction, with or without a bond as the court may direct, prohibiting a party to the action from continuing or

engaging in such conduct, aiding in such conduct, or doing any act in furtherance of such conduct;

(2) A declaration that the conduct by a licensed organization or employee or agent of a licensed organization, which is a party to the action, constitutes a violation of the Nebraska Lottery and Raffle Act and a determination of the number and times of violations for certification to the department for appropriate license or permit revocation purposes;

(3) A permanent injunction under principles of equity and on reasonable terms;

(4) An accounting of the profits, earnings, or gains resulting directly and indirectly from such violations, with restitution or a distribution of such profits, earnings, or gains to all licensed organizations existing at the time of such violations which apply to the court and show that they suffered monetary losses by reason of such violations and with distribution of any remaining profits, earnings, or gains to the state; and

(5) Reasonable attorney's fees and court costs.

Source: Laws 1986, LB 1027, § 157; Laws 1991, LB 427, § 52.

9-437 Civil procedure statutes; applicability.

Proceedings under section 9-435 shall be subject to and governed by the district court civil procedure statutes. Issues properly raised shall be tried and determined as in other civil actions in equity. All orders, judgments, and decrees rendered may be reviewed as other orders, judgments, and decrees.

Source: Laws 1986, LB 1027, § 158.

Cross References

Appeals, procedure, see section 25-1901 et seq.
Civil procedure statutes, see section 25-101 et seq.

ARTICLE 5
SMALL LOTTERIES AND RAFFLES

Section
9-501. Act, how cited.
9-502. Act, purpose.
9-503. Definitions, sections found.
9-504. Charitable or community betterment purposes, defined.
9-505. Expenses, defined.
9-506. Gross proceeds, defined.
9-507. Lottery, defined.
9-508. Qualifying nonprofit organization, defined.
9-509. Raffle, defined.
9-510. Nonprofit organization; conduct lotteries; conditions.
9-511. Nonprofit organization; conduct raffles; conditions.
9-511.01. Nonprofit organization; conduct lottery or raffle with winners determined by racing objects; conditions.
9-512. Department of Revenue; law enforcement agency; powers and duties.
9-513. Violations; penalties.

9-501 Act, how cited.

Sections 9-501 to 9-513 shall be known and may be cited as the Nebraska Small Lottery and Raffle Act.

Source: Laws 1986, LB 1027, § 159; Laws 2000, LB 1086, § 19.

9-502 Act, purpose.

The purpose of the Nebraska Small Lottery and Raffle Act is to allow qualifying nonprofit organizations to conduct lotteries with gross proceeds not greater than one thousand dollars or raffles with gross proceeds not greater than five thousand dollars subject to minimal regulation. The Nebraska Small Lottery and Raffle Act shall apply to all lotteries with gross proceeds not greater than one thousand dollars, except for lotteries by the sale of pickle cards conducted in accordance with the Nebraska Pickle Card Lottery Act, lotteries conducted by a county, city, or village in accordance with the Nebraska County and City Lottery Act, and lottery games conducted pursuant to the State Lottery Act, and to all raffles with gross proceeds not greater than five thousand dollars. All such lotteries and raffles shall be played and conducted only by the methods permitted in the act. No other form or method shall be authorized or permitted.

Source: Laws 1986, LB 1027, § 160; Laws 1991, LB 849, § 53; Laws 1993, LB 138, § 11.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-503 Definitions, sections found.

For purposes of the Nebraska Small Lottery and Raffle Act, unless the context otherwise requires, the definitions found in sections 9-504 to 9-509 shall be used.

Source: Laws 1986, LB 1027, § 161.

9-504 Charitable or community betterment purposes, defined.

(1) Charitable or community betterment purposes shall mean (a) benefiting persons by enhancing their opportunity for religious or educational advancement, by relieving or protecting them from disease, suffering, or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded, (b) initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures, and (c) lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people.

(2) Charitable or community betterment purposes shall not include any activity consisting of an attempt to influence legislation or participate in any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

(3) Nothing in this section shall prohibit any qualifying nonprofit organization from using its proceeds or profits derived from activities under the Nebraska Small Lottery and Raffle Act in any activity which benefits and is conducted by the qualifying nonprofit organization, including any charitable, benevolent, humane, religious, philanthropic, recreational, social, educational,

civic, or fraternal activity conducted by the organization for the benefit of its members.

Source: Laws 1986, LB 1027, § 162.

9-505 Expenses, defined.

Expenses shall mean (1) all costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed in the lottery or raffle, (2) all office or clerical expenses in connection with the lottery or raffle, (3) all promotional expenses, (4) all salaries of persons employed to operate, conduct, or supervise any lottery or raffle, (5) any rental or lease expense, and (6) any fee or commission paid to any person associated with the lottery or raffle.

Source: Laws 1986, LB 1027, § 163.

9-506 Gross proceeds, defined.

Gross proceeds shall mean the total aggregate receipts received from the conduct of any lottery or raffle conducted by any qualifying nonprofit organization without any reduction for prizes, discounts, or expenses and shall include receipts from admission costs, any consideration necessary for participation, and the value of any free tickets, games, or plays used.

Source: Laws 1986, LB 1027, § 164.

9-507 Lottery, defined.

(1) Lottery shall mean a gambling scheme in which (a) participants pay or agree to pay something of value for an opportunity to win, (b) winning opportunities are represented by tickets differentiated by sequential enumeration, (c) the winners are to be determined by a random drawing of the tickets or by the method set forth in section 9-511.01, and (d) the holders of the winning tickets are to receive something of value.

(2) Lottery shall not include (a) any raffle, (b) any gambling scheme which uses any mechanical, computer, electronic, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value, (c) any activity authorized or regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, or (d) any activity prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 165; Laws 1991, LB 849, § 54; Laws 1993, LB 138, § 12; Laws 2000, LB 1086, § 20.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-508 Qualifying nonprofit organization, defined.

Qualifying nonprofit organization shall mean any nonprofit organization holding a certificate of exemption under section 501 of the Internal Revenue Code or whose major activities, exclusive of conducting any lottery or raffle, are

conducted for charitable and community betterment purposes. A qualifying nonprofit organization shall have its principal office located in this state and shall conduct a majority of its activities in Nebraska.

Source: Laws 1986, LB 1027, § 166; Laws 1994, LB 694, § 108; Laws 1995, LB 574, § 11.

9-509 Raffle, defined.

(1) Raffle shall mean a gambling scheme in which (a) participants pay or agree to pay something of value for an opportunity to win, (b) winning opportunities are represented by tickets differentiated by sequential enumeration, (c) winners are to be determined by a random drawing of tickets or by the method set forth in section 9-511.01, and (d) at least eighty percent of all of the prizes to be awarded are merchandise prizes which are not directly or indirectly redeemable for cash by the qualifying nonprofit organization conducting the raffle or any agent of the organization.

(2) Raffle shall not include (a) any gambling scheme which uses any mechanical, computer, electronic, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value, (b) any activity authorized or regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, or (c) any activity prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 167; Laws 1991, LB 427, § 53; Laws 1991, LB 849, § 55; Laws 1993, LB 138, § 13; Laws 2000, LB 1086, § 21.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-510 Nonprofit organization; conduct lotteries; conditions.

Any qualifying nonprofit organization may conduct a lottery that has gross proceeds not greater than one thousand dollars. Each chance in such lottery shall have an equal likelihood of being a winning chance. The gross proceeds of the lottery shall be used solely for charitable or community betterment purposes, awarding of prizes, and expenses. No more than one lottery shall be conducted by any qualifying organization within any calendar month.

Source: Laws 1977, LB 38, § 231; Laws 1978, LB 351, § 51; Laws 1979, LB 152, § 10; Laws 1983, LB 259, § 40; Laws 1984, LB 949, § 74; R.S.1943, (1985), § 28-1115; Laws 1986, LB 1027, § 168.

9-511 Nonprofit organization; conduct raffles; conditions.

Any qualifying nonprofit organization may conduct a raffle that has gross proceeds not greater than five thousand dollars. Each chance in such raffle shall have an equal likelihood of being a winning chance. The gross proceeds shall be used solely for charitable or community betterment purposes, awarding of prizes, and expenses. Any qualifying nonprofit organization may conduct one

or more raffles in a calendar month if the total gross proceeds from such raffles do not exceed five thousand dollars during such month.

Source: Laws 1986, LB 1027, § 169.

9-511.01 Nonprofit organization; conduct lottery or raffle with winners determined by racing objects; conditions.

(1) A qualifying nonprofit organization may conduct a lottery or raffle in which the winners are to be determined by a race utilizing inanimate, buoyant objects floated along a river, canal, or other waterway. The objects shall each bear a number or other unique identifying mark which corresponds to sequentially numbered tickets which are sold to participants in the lottery or raffle. A qualifying nonprofit organization utilizing this method of winner determination shall comply with all other requirements of the Nebraska Small Lottery and Raffle Act and any rules and regulations adopted and promulgated pursuant to the act.

(2) The Department of Revenue may adopt and promulgate rules and regulations for the conduct of a lottery or raffle utilizing the method of winner determination provided by this section.

Source: Laws 2000, LB 1086, § 22.

9-512 Department of Revenue; law enforcement agency; powers and duties.

The Department of Revenue or any law enforcement agency may require any proper investigation or audit of any qualifying nonprofit organization which conducts any lottery or raffle under the Nebraska Small Lottery and Raffle Act, either for the specific purpose of determining whether the provisions of the Nebraska Small Lottery and Raffle Act are being complied with or for the specific purpose of ensuring that the provisions of the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act are not being violated. No audit or investigation shall be conducted under this section except as is absolutely necessary for the department or the agency to fulfill its necessary and proper duties.

Source: Laws 1986, LB 1027, § 170.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.

9-513 Violations; penalties.

Any person who violates any provision of the Nebraska Small Lottery and Raffle Act shall be guilty of a Class IV misdemeanor for the first offense and of a Class II misdemeanor for any second or subsequent offense.

Source: Laws 1986, LB 1027, § 171.

ARTICLE 6
COUNTY AND CITY LOTTERIES

Section
9-601. Act, how cited.
9-602. Purpose of act.

9-601 Act, how cited.

Sections 9-601 to 9-653 shall be known and may be cited as the Nebraska County and City Lottery Act.

Source: Laws 1986, LB 1027, § 172; Laws 1989, LB 767, § 47; Laws 1991, LB 427, § 54; Laws 1991, LB 795, § 4; Laws 1993, LB 563, § 2; Laws 2002, LB 545, § 44.

9-602 Purpose of act.

The purpose of the Nebraska County and City Lottery Act is to allow any county, city, or village to conduct a lottery for community betterment purposes. Any lottery conducted by a county, city, or village shall be conducted only by those methods and under those circumstances prescribed in the act. No other form or method shall be authorized or allowed.

Source: Laws 1986, LB 1027, § 173.

9-603 Definitions, where found.

For purposes of the Nebraska County and City Lottery Act, the definitions found in sections 9-603.02 to 9-618 shall be used.

Source: Laws 1986, LB 1027, § 174; Laws 1989, LB 767, § 48; Laws 2002, LB 545, § 45; Laws 2003, LB 3, § 4.

9-603.01 Transferred to section 9-603.03.

9-603.02 Authorized representative, defined.

Authorized representative shall mean any person designated by the county, city, or village or a joint entity created by the county, city, or village by entering into an agreement pursuant to the Interlocal Cooperation Act to examine, sign, and approve a lottery worker license application for submission to the department.

Source: Laws 2002, LB 545, § 46.

Cross References

Interlocal Cooperation Act, see section 13-801.

9-603.03 Cancel, defined.

Cancel shall mean to discontinue all rights and privileges to hold a license for up to three years.

Source: Laws 1989, LB 767, § 49; R.S.1943, (1997), § 9-603.01; Laws 2003, LB 3, § 5.

9-604 Community betterment purposes, defined.

(1) Community betterment purposes shall mean (a) benefiting persons by enhancing their opportunity for educational advancement, by relieving or protecting them from disease, suffering, or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, by providing them with opportunities to contribute to the betterment of the community, or by increasing their comprehension of and devotion to the principles upon which this nation was founded, (b) initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures, (c) lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people, or (d) providing tax relief for the community.

(2) Community betterment purposes shall not include any activity consisting of an attempt to influence legislation or participate in any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

Source: Laws 1986, LB 1027, § 175; Laws 1991, LB 427, § 55.

9-604.01 Department, defined.

Department shall mean the Department of Revenue.

Source: Laws 1989, LB 767, § 50.

9-605 Expenses, defined.

Expenses shall mean (1) all costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed in the lottery, (2) all office or clerical expenses in connection with the lottery, (3) all promotional expenses for the lottery, (4) all salaries of persons employed to operate, conduct, or supervise the lottery, (5) any rental or lease expense related to the lottery, (6) any fee or commission paid to any person associated with the lottery, (7) license fees paid to the department, and (8) any other costs associated with the conduct of a lottery by a county, city, or village. Expenses shall not include taxes paid pursuant to section 9-648 or prizes awarded to participants.

Source: Laws 1986, LB 1027, § 176; Laws 1989, LB 767, § 51.

9-605.01 Governing official, defined.

Governing official shall mean the chief executive officer of a county, city, village or any other elected or appointed official, including a governing board member, who has any decisionmaking responsibility regarding the conduct of the lottery.

Source: Laws 2002, LB 545, § 47.

9-606 Gross proceeds, defined.

Gross proceeds shall mean the total aggregate receipts received from the conduct of any lottery conducted by any county, city, or village without any reduction for prizes, discounts, taxes, or expenses and shall include receipts

from admission costs, any consideration necessary for participation, and the value of any free tickets, games, or plays used.

Source: Laws 1986, LB 1027, § 177.

9-606.01 License, defined.

License shall mean a license issued to any county, city, or village to conduct a lottery for community betterment purposes, any license issued to any lottery operator, any license issued to any manufacturer-distributor, any license issued to any authorized sales outlet location, and any license issued to any lottery worker.

Source: Laws 1989, LB 767, § 52; Laws 1993, LB 563, § 3; Laws 2002, LB 545, § 50.

9-606.02 Keno manager, defined.

Keno manager shall mean the shift manager, supervisor, or person in charge of the daily operation of a keno game at a location.

Source: Laws 2002, LB 545, § 48.

9-607 Lottery, defined; manner of play; designation.

(1) Lottery shall mean a gambling scheme in which:

(a) The players pay or agree to pay something of value for an opportunity to win;

(b) Winning opportunities are represented by tickets;

(c) Winners are solely determined by one of the following two methods:

(i) By a random drawing of tickets differentiated by sequential enumeration from a receptacle by hand whereby each ticket has an equal chance of being chosen in the drawing; or

(ii) By use of a game known as keno in which a player selects up to twenty numbers from a total of eighty numbers on a paper ticket and a computer, other electronic selection device, or electrically operated blower machine which is not player-activated randomly selects up to twenty numbers from the same pool of eighty numbers and the winning players are determined by the correct matching of the numbers on the paper ticket selected by the players with the numbers randomly selected by the computer, other electronic selection device, or electrically operated blower machine, except that no keno game shall permit or require player access or activation of lottery equipment and the random selection of numbers by the computer, other electronic selection device, or electrically operated blower machine shall not occur within five minutes of the completion of the previous selection of random numbers; and

(d) The holders of the winning paper tickets are to receive cash or prizes redeemable for cash. Selection of a winner or winners shall be predicated solely on chance.

(2) Lottery shall not include:

(a) Any gambling scheme which uses any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value;

(b) Any activity authorized or regulated under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12; or

(c) Any activity prohibited under Chapter 28, article 11.

(3) Notwithstanding the requirement in subdivision (1)(c)(ii) of this section that a player select up to twenty numbers, a player may select more than twenty numbers on a paper ticket when a top or bottom, left or right, edge, or way ticket is played. For a top or bottom ticket, the player shall select all numbers from one through forty or all numbers from forty-one through eighty. For a left or right ticket, the player shall select all numbers ending in one through five or all numbers ending in six through zero. For an edge ticket, the player shall select all of the numbers comprising the outside edge of the ticket. For a way ticket, the player shall select a combination of groups of numbers in multiple ways on a single ticket.

(4) A county, city, or village conducting a keno lottery shall designate the method of winning number selection to be used in the lottery and submit such designation in writing to the department prior to conducting a keno lottery. Only those methods of winning number selection described in subdivision (1)(c)(ii) of this section shall be permitted, and the method of winning number selection initially utilized may only be changed once during that business day as set forth in the designation. A county, city, or village shall not change the method or methods of winning number selection filed with the department or allow it to be changed once such initial designation has been made unless (a) otherwise authorized in writing by the department based upon a written request from the county, city, or village or (b) an emergency arises in which case a ball draw method of number selection would be switched to a number selection by a random number generator. An emergency situation shall be reported by the county, city, or village to the department within twenty-four hours of its occurrence.

Source: Laws 1986, LB 1027, § 178; Laws 1989, LB 767, § 53; Laws 1991, LB 795, § 7; Laws 1991, LB 849, § 56; Laws 1993, LB 563, § 4; Laws 1993, LB 138, § 14.

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.

9-608 Transferred to section 9-625.

9-609 Transferred to section 9-629.

9-610 Transferred to section 9-648.

9-611 Transferred to section 9-651.

9-612 Transferred to section 9-619.

9-613 Lottery equipment, defined.

Lottery equipment shall mean all proprietary devices, machines, and parts used in the manufacture or maintenance of equipment which is used in and is

an integral part of the conduct of any lottery activity authorized or regulated under the Nebraska County and City Lottery Act.

Source: Laws 1989, LB 767, § 54.

9-614 Lottery operator, defined.

Lottery operator shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which operates a lottery on behalf of a county, city, or village.

A lottery operator shall be a resident of Nebraska or, if a partnership, limited liability company, or corporation, shall be organized under the laws of this state as a partnership, formed under the Limited Liability Company Act, or incorporated under the Business Corporation Act.

Source: Laws 1989, LB 767, § 55; Laws 1990, LB 1055, § 6; Laws 1993, LB 121, § 114; Laws 1995, LB 109, § 194.

Cross References

Business Corporation Act, see section 21-2001.
Limited Liability Company Act, see section 21-2601.

9-615 Lottery supplies, defined.

Lottery supplies shall mean all tickets, cards, boards, sheets, or other supplies which are used in and are an integral part of the conduct of any lottery activity authorized or regulated under the Nebraska County and City Lottery Act.

Source: Laws 1989, LB 767, § 56.

9-615.01 Lottery worker, defined.

Lottery worker shall mean any person who performs work directly related to the conduct of a lottery, including, but not limited to, ticket writing, winning number selection, winning number verification, prize payment to winners, record keeping, shift checkout and review of keno writer banks, and security.

Source: Laws 2002, LB 545, § 49.

9-616 Manufacturer-distributor, defined.

Manufacturer-distributor shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which assembles, produces, makes, prints, or supplies lottery equipment or supplies for sale, use, or distribution in this state.

Source: Laws 1989, LB 767, § 57; Laws 1993, LB 121, § 115.

9-617 Revoke, defined.

Revoke shall mean to permanently void and recall all rights and privileges to obtain or hold a license.

Source: Laws 1989, LB 767, § 58.

9-618 Suspend, defined.

Suspend shall mean to cause a temporary interruption of all rights and privileges of a license or renewal thereof.

Source: Laws 1989, LB 767, § 59.

9-619 Regulation of lotteries; department; duty.

The department shall regulate lotteries conducted by counties, cities, and villages to insure fairness, equity, and uniformity.

Source: Laws 1986, LB 1027, § 183; R.S.1943, (1987), § 9-612; Laws 1989, LB 767, § 91.

9-620 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To issue licenses and temporary licenses;

(2) To deny any license application or renewal application for cause. Cause for denial of an application or renewal of a license shall include instances in which the applicant individually, or in the case of a business entity, any officer, director, employee, or limited liability company member of the applicant or licensee other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant or licensee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such applicant or licensee for past or present services in a consulting capacity or otherwise, the licensee, or any person with a substantial interest in the applicant or licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;

(c) Obtained a license or permit pursuant to such acts by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where activity required to be licensed under the Nebraska County and City Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed in accordance with the Nebraska County and City Lottery Act;

(i) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(j) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(k) Failed to demonstrate good character, honesty, and integrity;

(l) Failed to demonstrate, either individually or in the case of a business entity through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to establish or maintain the activity for which the application is made; or

(m) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act. No renewal of a license under the Nebraska County and City Lottery Act shall be issued when the applicant for renewal would not be eligible for a license upon a first application;

(3) To revoke, cancel, or suspend for cause any license. Cause for revocation, cancellation, or suspension of a license shall include instances in which the licensee individually, or in the case of a business entity, any officer, director, employee, or limited liability company member of the licensee other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such licensee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such licensee for past or present services in a consulting capacity or otherwise, or any person with a substantial interest in the licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska County and City Lottery Act or any rules or regulations adopted and promulgated pursuant to the act;

(c) Obtained a license pursuant to the Nebraska County and City Lottery Act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required

payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where activity required to be licensed under the Nebraska County and City Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(i) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(j) Failed to demonstrate good character, honesty, and integrity;

(k) Failed to demonstrate, either individually or in the case of a business entity through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued; or

(l) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act;

(4) To issue an order requiring a licensee or other person to cease and desist from violations of the Nebraska County and City Lottery Act or any rules or regulations adopted and promulgated pursuant to the act. The order shall give reasonable notice of the rights of the licensee or other person to request a hearing and shall state the reason for the entry of the order. The notice of order shall be mailed by certified mail to or personally served upon the licensee or other person. If the notice of order is mailed by certified mail, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee or other person. A request for a hearing by the licensee or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee or other person to whom a cease and desist order is

issued fails to appear at the hearing after being duly notified, the licensee or other person shall be deemed in default and the proceeding may be determined against the licensee or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the violation and the extent thereof, and whether the violator has had previous violations of the act and regulations. A fine levied on a violator under this section shall not exceed twenty-five thousand dollars for each violation of the act or any rules and regulations adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from lottery gross proceeds of the county, city, or village and shall be remitted by the violator to the department within thirty days from the date of the order issued by the department levying such fine;

(6) To enter or to authorize any law enforcement officer to enter at any time upon any premises where lottery activity required to be licensed under the act is being conducted to determine whether any of the provisions of the act or any rules or regulations adopted and promulgated under it have been or are being violated and at such time to examine such premises;

(7) To require periodic reports of lottery activity from licensed counties, cities, villages, manufacturer-distributors, and lottery operators and any other persons, organizations, limited liability companies, or corporations as the department deems necessary to carry out the act;

(8) To audit, examine, or cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to the conduct of a lottery, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to require proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. If the documents requested by the department are in the custody of a limited liability company, the court order may be directed to any member when management is reserved to the members or otherwise to any manager. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(9) Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid as taxes imposed by the act in the same

manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(10) To collect license application and license renewal application fees imposed by the Nebraska County and City Lottery Act and to prorate license fees on an annual basis. The department shall establish by rule and regulation the conditions and circumstances under which such fees may be prorated;

(11) To confiscate and seize lottery equipment or supplies pursuant to section 9-649;

(12) To investigate the activities of any person applying for a license under the act or relating to the conduct of any lottery activity under the act. Any license applicant or licensee shall produce such information, documentation, and assurances as may be required by the department to establish by a preponderance of the evidence the financial stability, integrity, and responsibility of the applicant or licensee, including, but not limited to, bank account references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, business entity and personal accounting records, and check records and ledgers. Any such license applicant or licensee shall authorize the department to examine bank accounts and other such records as may be deemed necessary by the department;

(13) To adopt and promulgate such rules and regulations and prescribe all forms as are necessary to carry out the act; and

(14) To employ staff, including auditors and inspectors, as necessary to carry out the act.

Source: Laws 1989, LB 767, § 60; Laws 1991, LB 427, § 56; Laws 1991, LB 849, § 57; Laws 1993, LB 563, § 5; Laws 1993, LB 138, § 15; Laws 1994, LB 884, § 17; Laws 1995, LB 344, § 29; Laws 1995, LB 574, § 12; Laws 1997, LB 248, § 28; Laws 2000, LB 1086, § 23; Laws 2002, LB 545, § 51; Laws 2002, LB 1126, § 4.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Liquor Control Act, see section 53-101.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-621 Administrative fines; disposition; collection.

(1) All money collected by the department as an administrative fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund.

(2) Any administrative fine levied under section 9-620 and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property.

Source: Laws 1989, LB 767, § 61; Laws 1993, LB 563, § 6.

9-622 Application; denial; hearing.

(1) Before any application is denied pursuant to section 9-620, the department shall notify the applicant in writing by certified mail of the department's intention to deny the application and the reasons for the denial. Such notice shall inform the applicant of his or her right to request an administrative hearing for the purpose of reconsideration of the intended denial of the application. The date the notice is mailed shall be deemed to be the date of service of notice to the applicant.

(2) A request for a hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the application denial shall become final at the expiration of such period.

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least ten days before the hearing, serve notice upon the applicant by certified mail, return receipt requested, of the time, date, and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1989, LB 767, § 62; Laws 2002, LB 545, § 52.

Cross References

Administrative Procedure Act, see section 84-920.

9-623 Hearing; required; when; notice.

Before the adoption, amendment, or repeal of any rule or regulation, the suspension, revocation, or cancellation of any license pursuant to section 9-620, or the levying of an administrative fine pursuant to such section, the department shall set the matter for hearing. Such suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine shall be contested cases pursuant to the Administrative Procedure Act.

At least ten days before the hearing, the department shall (1) in the case of suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine, serve notice upon the licensee or violator by personal service or certified mail, return receipt requested, of the time, date, and place of any hearing or (2) in the case of adoption, amendment, or repeal of any rule or regulation, issue a public notice of the time, date, and place of such hearing.

Source: Laws 1989, LB 767, § 63; Laws 1991, LB 427, § 57; Laws 1993, LB 563, § 7; Laws 1995, LB 344, § 30.

Cross References

Administrative Procedure Act, see section 84-920.

9-624 Proceeding before department; service; decision; appeal.

(1) A copy of the order or decision of the department in any proceeding before it pursuant to the Nebraska County and City Lottery Act shall be served upon each party of record to the proceeding before the department. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the department shall enter his or her appearance and indicate to the department his or her address for the service of a copy of any order, decision, or notice. The mailing of any copy of

any order or decision or of any notice in the proceeding, to such party at such address, shall be deemed to be service upon such party.

(2) Any decision of the department in any proceeding before it pursuant to the act may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1989, LB 767, § 64.

Cross References

Administrative Procedure Act, see section 84-920.

9-625 Lotteries; established by political subdivision; election; approval required; joint lottery.

Any county, city, or village may establish and conduct a lottery if an election is first held pursuant to this section. Only one scheme or type of lottery may be conducted by a county, city, or village at one time. No county, city, or village shall establish and conduct a lottery until such course of action has been approved by a majority of the registered voters of such county, city, or village casting ballots on the issue at a regular election or a special election called by the governing board of the county, city, or village for such purpose. This section shall not be construed to prohibit any county, city, or village from conducting a lottery if such course of action was approved prior to July 17, 1986, by a majority of the registered voters of such county, city, or village casting ballots on the issue.

Any lottery established pursuant to this section which is authorized by an election held on or after October 1, 1989, pursuant to this section that is not in operation for any ten consecutive years shall no longer be authorized under this section. If the voters in a county, city, or village approve a lottery on or after October 1, 1989, pursuant to this section but the lottery does not actually begin operation within ten years of the date that the results of the election are certified, the lottery shall no longer be authorized under this section. Any lottery no longer authorized under this section because it did not operate within the ten-year period provided in this section may be reauthorized by a majority vote of the registered voters of the county, city, or village casting ballots on the issue at a subsequent election pursuant to this section.

Except for any restriction imposed pursuant to section 9-643, any county, city, or village may conduct a lottery only within the boundaries of such county, city, or village, or within a licensed racetrack enclosure which abuts the corporate limits thereof or which is within the zoning jurisdiction of a city, except that nothing in this section shall prohibit a county, city, or village from entering into an agreement pursuant to the Interlocal Cooperation Act to conduct a joint lottery with another county, city, or village which has established a lottery in accordance with this section.

If any county, city, or village is conducting a lottery at the time it is consolidated into a municipal county and such county, city, or village is abolished as of the date of creation of the municipal county, the municipal county shall be subject to the same rights and obligations with respect to such lottery or lotteries as the counties, cities, and villages which were abolished, including any rights or obligations under lottery contracts of such counties, cities, and villages. Such lottery shall continue to be subject to all other provisions of the Nebraska County and City Lottery Act, except that such lottery shall not be expanded to any new location in any area of the municipal county

where such lottery was not previously authorized before the consolidation unless such expansion has been approved by a majority of the registered voters of such municipal county voting at a regular election or a special election called by the governing board of the municipal county for such purpose.

Source: Laws 1977, LB 38, § 232; Laws 1983, LB 259, § 62; Laws 1984, LB 949, § 75; R.S.1943, (1985), § 28-1116; Laws 1986, LB 1027, § 179; R.S.1943, (1987), § 9-608; Laws 1989, LB 767, § 65; Laws 1995, LB 344, § 31; Laws 2001, LB 142, § 20; Laws 2002, LB 545, § 53.

Cross References

Interlocal Cooperation Act, see section 13-801.

9-626 Continuation of lottery; election; form; restrictions.

(1) A governing board of a county, city, or village may submit to the registered voters of such county, city, or village the question whether an existing lottery should be continued. The question may be submitted at a regular election or a special election called by the governing board of the county, city, or village for such purpose.

(2) The question shall be submitted in substantially the following form:

Shall the (county, city, or village) of (here insert the name of the county, city, or village) continue operating a lottery pursuant to the Nebraska County and City Lottery Act?

. . . . . For continued operation of lottery

. . . . . Against continued operation of lottery

(3) A majority of the voters voting on the issue shall determine such issue. The vote shall be binding on the affected county, city, or village, and if the majority vote is to discontinue the lottery, such county, city, or village shall discontinue the lottery within sixty days of the certification of the election results.

(4) An election pursuant to this section shall not be held within two years of the election authorized under section 9-625 and shall not be held more often than once every two years.

(5) An election held by a county, city, or village pursuant to section 9-625 shall not be held within two years of an election authorized under this section and section 9-627 if such election results in the discontinuation of the lottery in the county, city, or village.

Source: Laws 1989, LB 767, § 66.

9-627 Continuation of lottery; petition; election.

(1) The registered voters of any county, city, or village shall have the right to vote on the question of whether an existing lottery should be continued. The question shall be submitted to such voters whenever petitions calling for its submission, signed by at least twenty percent of the number of persons voting in the county, city, or village at the last preceding general election, are presented to the governing board of the county, city, or village.

(2) Upon receipt of the petitions provided under subsection (1) of this section, it shall be the duty of the governing board to submit the question at a special election to be held not less than thirty nor more than forty-five days after

receipt of the petitions, except that if any other election is to be held in such county, city, or village within ninety days of receipt of the petitions, the governing board may provide for the holding of the lottery election on the same day.

(3) The governing board shall give notice of the submission of the question of whether an existing lottery should be continued, 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 of general circulation in the county, city, or village in which such question is to be submitted. Such notice shall be in addition to any other notice required under the general election laws of this state.

(4) The question shall be submitted to the registered voters in the form provided in subsection (2) of section 9-626.

(5) A majority of the voters voting on the issue shall determine such issue. The vote shall be binding on the affected county, city, or village, and if the majority vote is to discontinue the lottery, such county, city, or village shall discontinue the lottery within sixty days of the certification of the election results.

Source: Laws 1989, LB 767, § 67.

9-628 Contract; termination provision required.

On and after October 1, 1989, any contract entered into by a county, city, or village relating to the conduct of a lottery shall include a provision permitting the county, city, or village to terminate the contract by giving thirty days' notice to the other party if such lottery has been discontinued by an election authorized under section 9-626 or 9-627.

Source: Laws 1989, LB 767, § 68.

9-629 Gross proceeds; use; audit and legal expenses, defined.

(1) The gross proceeds of any lottery conducted by a county, city, or village shall be used solely for community betterment purposes, awarding of prizes, taxes, and expenses.

(2) Not less than sixty-five percent of the gross proceeds shall be used for the awarding of prizes, except that for purposes of conducting a lottery authorized by subdivision (1)(c)(ii) of section 9-607, not less than sixty-five percent of the gross proceeds during an annual period from July 1 to June 30 of each year shall be used for the awarding of prizes.

(3) Not more than fourteen percent of the gross proceeds shall be used to pay the expenses of operating the lottery, except that license fees paid to the department and audit or legal expenses incurred by the county, city, or village which relate directly to the conduct of operating such lottery need not be included in determining the fourteen-percent limitation on expenses.

(4) For purposes of this section, audit and legal expenses shall include all expenses relating to: (a) The governmental organization of the lottery; (b) government maintenance, monitoring, and examination of lottery records; and (c) enforcement, regulatory, administrative, investigative, and litigation functions undertaken by government, but shall not include the expenses of the actual conduct of the game. Audit and legal expenses during an annual period from July 1 to June 30 of each year in excess of one percent of gross proceeds or five thousand dollars, whichever is greater, shall be subject to the fourteen-

percent limitation on expenses under subsection (3) of this section. In the case of a joint lottery conducted pursuant to an interlocal agreement as provided for in section 9-625, the combined gross proceeds of the joint lottery shall be used to determine that portion of audit and legal expenses that are not subject to the fourteen-percent limitation on expenses.

Source: Laws 1983, LB 259, § 41; R.S.1943, (1985), § 28-1116.01; Laws 1986, LB 1027, § 180; R.S.1943, (1987), § 9-609; Laws 1989, LB 767, § 69; Laws 1991, LB 795, § 8; Laws 1991, LB 849, § 58; Laws 1993, LB 138, § 16; Laws 1994, LB 694, § 109; Laws 1995, LB 344, § 32.

9-629.01 Gross proceeds; use; professional baseball organization.

As authorized in section 19-4701, a city of the metropolitan or primary class or a county in which a city of the metropolitan class is located which conducts a lottery pursuant to the Nebraska County and City Lottery Act may use a portion of the gross proceeds from such lottery for the acquisition, purchase, and maintenance of a professional baseball organization.

Source: Laws 1991, LB 795, § 5.

9-629.02 Repealed. Laws 1995, LB 344, § 36.

9-630 Conduct of lottery; license required; application; contents; enumerated; duty to keep current.

(1) No county, city, village, or lottery operator shall conduct a lottery without having first been issued a license by the department. An applicant for such license shall apply on a form prescribed by the department.

(2) Each application by any county, city, or village shall include:

(a) The name and address of the applicant;

(b) A certified copy of the election results at which the lottery was approved by a majority of the registered voters of the county, city, or village in the manner prescribed in section 9-625;

(c) Any approval by ordinance or resolution approved by a governing board of a county, city, or village sanctioning the conduct of a lottery;

(d) The names, addresses, and dates of birth of each person employed by the county, city, or village to conduct the lottery;

(e) The name and address of at least one person employed by the county, city, or village who shall represent the county, city, or village in all matters with the department regarding the conduct of the lottery;

(f) A written statement describing the type of lottery to be conducted by the county, city, or village;

(g) If the county, city, or village enters into a written agreement with a lottery operator, a copy of the proposed contract or written agreement between the county, city, or village and the chosen lottery operator; and

(h) Any other information which the department deems necessary.

(3) Each application by any lottery operator shall include:

(a) The name, address, social security number, and date of birth of every individual who is the lottery operator, the sole proprietor, a partner, a member, or a corporate officer of the lottery operator, or a person or entity holding in

the aggregate ten percent or more of the debt or equity of the lottery operator if a corporation;

(b) The name and state identification number of the county, city, or village on whose behalf a lottery will be conducted;

(c) A statement signed by an authorized representative of the county, city, or village signifying that such county, city, or village approves the applicant to act as a lottery operator on behalf of such county, city, or village; and

(d) Any other information which the department deems necessary.

A separate license shall be obtained by a lottery operator for each county, city, or village on whose behalf a lottery will be conducted.

(4) The information required by this section shall be kept current. A county, city, village, or lottery operator shall notify the department within thirty days of any changes in the information originally submitted in the application form.

(5) The department may prescribe a separate application form for renewal purposes.

Source: Laws 1989, LB 767, § 70; Laws 1991, LB 427, § 58; Laws 1993, LB 121, § 116; Laws 1993, LB 563, § 8; Laws 1997, LB 248, § 29.

9-631 License to conduct lottery; renewal; fee.

(1) All licenses issued to any county, city, or village to conduct a lottery and licenses issued to any lottery operator or any authorized sales outlet location shall expire on May 31 of every even-numbered year, or such other date as the department may prescribe by rule and regulation, and may be renewed biennially. All licenses issued to any lottery worker shall expire on May 31 of every odd-numbered year, or such other date as the department may prescribe by rule and regulation, and may be renewed biennially. Applications for renewal of a county, city, or village license, a lottery operator license, an authorized sales outlet location license, or a lottery worker license shall be submitted to the department at least sixty days prior to the expiration date of the license.

(2) A biennial license fee of one hundred dollars shall be charged for each license issued to any county, city, or village to conduct a lottery. A biennial license fee of five hundred dollars shall be charged for each license issued to a lottery operator. No license fee shall be charged for an authorized sales outlet location or a lottery worker license.

Source: Laws 1989, LB 767, § 71; Laws 1991, LB 427, § 59; Laws 1993, LB 563, § 9; Laws 2002, LB 545, § 54.

9-631.01 Lottery workers; application; contents; duty to keep current; investigation; probationary license; regular license.

(1) No person shall be a lottery worker unless a lottery worker license application has been filed with the department. The application shall be on a form prescribed by the department and shall include:

(a) The name, address, date of birth, and social security number of the applicant;

(b) The name and state identification number of the county, city, or village, lottery operator, and sales outlet location or locations for which the applicant will be performing work;

(c) A description of the applicant's duties;

(d) A statement that the applicant has not been convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony within ten years preceding the date of the application or any felony or misdemeanor involving fraud, theft, or any gambling activity, willful failure to make required payments or reports, or filing false reports to a governmental agency at any level;

(e) The date of signing and the signature of the applicant, under penalty of perjury, verifying that the information is true and accurate;

(f) A statement signed by a governing official of the county, city, or village or the authorized representative signifying that such county, city, or village or authorized representative has examined the completed application and approved the application for submission to the department; and

(g) Any other information which the department deems necessary.

(2) The applicant shall complete and forward the application to the county, city, or village or authorized representative. Upon receipt of the completed application the governing official of the county, city, or village or the authorized representative shall examine the application and, if the governing official of the county, city, or village or the authorized representative approves the application for submission to the department, shall sign and file the application with the department. If the application is approved by an authorized representative, a copy of the application or the information contained in the application shall be filed with the county, city, or village.

(3) The department and the county, city, or village shall have the right to conduct an investigation concerning the applicant as may be necessary or appropriate to maintain the integrity of the game.

(4) The information required by this section shall be kept current, and a new application shall be filed with the department if any information on the application is no longer correct. A county, city, village, or lottery operator shall notify the department if the person to whom the license was originally issued is no longer working for such county, city, village, or lottery operator.

(5) Falsification of information on the application by the applicant shall disqualify such applicant from being a lottery worker in addition to any other penalties which may be imposed under the laws of this state.

(6) The applicant shall be granted a probationary license as a lottery worker which shall be valid for a period of one hundred twenty days after the application is filed with the department unless such application is denied by the department. An application shall be considered filed with the department upon receipt by the department or as of the date postmarked or transmitted by electronic facsimile to the department if the application is received by the department within ten days after the date postmarked or electronically transmitted. An application postmarked or electronically transmitted but not received by the department after ten days shall not be considered filed. If proceedings to deny the license application pursuant to section 9-622 have not been initiated by the department during such probationary period, the applicant shall be granted a regular lottery worker license. The license shall be valid to allow such person to perform work for the county, city, village, lottery operator, or sales outlet location or locations unless otherwise suspended, canceled, revoked, or denied by the department or unless the license otherwise

becomes invalid upon notification by the county, city, village, or lottery operator that the person to whom the license was originally issued is no longer working for such county, city, village, or lottery operator.

(7) An applicant may obtain a license as a lottery worker for more than one county, city, or village conducting a lottery pursuant to the Nebraska County and City Lottery Act if a separate application has been filed for such applicant with respect to each such county, city, or village.

(8) A lottery worker license is nontransferable and shall no longer be valid if a person is no longer employed as a lottery worker by the county, city, or village for which the lottery worker license was obtained.

(9) A person holding a license as a lottery worker under the Nebraska County and City Lottery Act shall not be connected with or interested in, directly or indirectly, any individual, sole proprietorship, partnership, limited liability company, corporation, or other party licensed as a distributor, manufacturer, or manufacturer-distributor under section 9-255.07, 9-255.09, 9-330, 9-332, or 9-632.

Source: Laws 1993, LB 563, § 10; Laws 1997, LB 248, § 30; Laws 2002, LB 545, § 55.

9-632 Manufacturer-distributor; license required; application; fee; expiration; renewal.

(1) No individual, sole proprietorship, partnership, limited liability company, or corporation shall manufacture, sell, print, or distribute lottery equipment or supplies for use or play in this state without having first been issued a manufacturer-distributor license by the department.

(2) The department shall charge a biennial license fee of one thousand five hundred twenty-five dollars for the issuance or renewal of a manufacturer-distributor license. The department shall remit the proceeds from such license fees to the State Treasurer for credit to the Charitable Gaming Operations Fund. All manufacturer-distributor licenses may be renewed biennially. The biennial expiration date shall be September 30 of every odd-numbered year or such other date as the department may prescribe by rule and regulation. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license.

(3) An applicant for issuance or renewal of a manufacturer-distributor license shall apply for a license on a form prescribed by the department. The application form shall include:

(a) The name and address of the applicant and the name and address of each of its separate locations manufacturing or distributing lottery equipment or supplies;

(b) The name and home address of all owners or members of the manufacturer-distributor business if the business is not a corporation. If the business is a corporation, the name and home address of each of the officers and directors of the corporation and of each stockholder owning ten percent or more of any class of stock in the corporation shall be supplied;

(c) If the applicant is an individual, the applicant's social security number;

(d) If the applicant is a foreign manufacturer-distributor, the full name, business address, and home address of the agent who is a resident of this state designated pursuant to section 9-633; and

(e) Such other information as the department deems necessary.

(4) The applicant shall notify the department within thirty days of any change in the information submitted on or with the application form. The applicant shall comply with all applicable laws of the United States and the State of Nebraska and all applicable rules and regulations of the department.

(5) Any person licensed as a manufacturer pursuant to section 9-255.09 or 9-332 or as a distributor pursuant to section 9-255.07 or 9-330 may act as a manufacturer-distributor pursuant to this section upon the filing of the proper application form and payment of a biennial license fee of one thousand five hundred twenty-five dollars.

Source: Laws 1989, LB 767, § 72; Laws 1991, LB 427, § 60; Laws 1993, LB 121, § 117; Laws 1993, LB 563, § 11; Laws 1994, LB 694, § 110; Laws 1997, LB 752, § 69.

9-633 Manufacturer-distributor; resident agent; when required.

Each manufacturer-distributor selling lottery equipment or supplies in this state that is not a resident of this state or is not a corporation shall designate a natural person who is a resident of and living in this state and is nineteen years of age or older as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the manufacturer-distributor. The name, business address where service of process and delivery of mail can be made, and home address of such agent shall be filed with the department.

Source: Laws 1989, LB 767, § 73.

9-634 Manufacturer-distributor; lottery supplies; approval required.

Each manufacturer-distributor shall receive departmental approval of lottery supplies prior to offering or marketing in this state any type of lottery supplies for use in a lottery conducted pursuant to the Nebraska County and City Lottery Act. Approval by the department shall be based upon, but not be limited to, conformance with specifications imposed by the department regarding the manufacture, assembly, and packaging of lottery supplies, the provisions of the act, and any other specifications imposed by rule or regulation adopted and promulgated pursuant to the act.

Source: Laws 1989, LB 767, § 74.

9-635 Manufacturer-distributor; lottery equipment; approval required; costs of examination.

(1) Each manufacturer-distributor shall receive departmental approval of lottery equipment prior to offering or marketing in this state any type of lottery equipment for use in a lottery conducted pursuant to the Nebraska County and City Lottery Act. Approval by the department shall be based upon, but not be limited to, conformance with the provisions of the act and any other specifications imposed by rule or regulation adopted and promulgated pursuant to the act.

(2) Lottery equipment shall not be submitted for approval by the department until the manufacturer-distributor has obtained a license as required in section 9-632.

(3) The department may require a manufacturer-distributor seeking approval of any lottery equipment to pay the anticipated actual costs of the examination of the equipment by the department. If required, such costs shall be paid in advance by the manufacturer-distributor. After completion of the examination, the department shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(4) Lottery equipment which does not conform in all respects to the requirements of the act and any other specifications imposed by the department by rule and regulation shall be contraband goods for purposes of section 9-649.

Source: Laws 1989, LB 767, § 75.

9-636 Lottery supplies; requirements.

(1) All lottery supplies shall be constructed to conform in all respects to the provisions and specifications imposed by the Nebraska County and City Lottery Act and the rules and regulations adopted and promulgated pursuant to the act as to the manufacture, assembly, printing, and packaging of lottery supplies.

(2) Any lottery supplies which do not conform in all respects to the requirements of the act and any other specifications imposed by the department by rule and regulation shall be contraband goods for purposes of section 9-649.

Source: Laws 1989, LB 767, § 76; Laws 1993, LB 563, § 12.

9-637 Ticket; purchase price limitation.

No ticket used in the conduct of any lottery shall have an individual purchase price in excess of one hundred dollars.

Source: Laws 1989, LB 767, § 77.

9-638 Manufacturer-distributor; information requirements.

Each manufacturer-distributor shall maintain the following information: (1) The name of each purchaser of lottery equipment or supplies; (2) relative to each sale, the quantity and type of lottery equipment or supplies sold; and (3) any other information concerning lottery equipment or supplies sold which the department deems necessary. Such information shall be made available to the department upon request.

Source: Laws 1989, LB 767, § 78; Laws 1997, LB 248, § 31.

9-639 Manufacturer-distributor; employee, agent, or spouse; restriction on activities.

No manufacturer-distributor shall be licensed to conduct any other activity under the Nebraska County and City Lottery Act. No manufacturer-distributor shall hold a license to conduct any other kind of gambling activity which is authorized or regulated under Chapter 9 except as provided in section 9-632. No manufacturer-distributor or employee, agent, or spouse of any manufacturer-distributor shall play in any lottery conducted by any county, city, or village or participate in the conduct or operation of any lottery conducted by any county, city, or village or any other kind of gambling activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her

statutory duties as a licensed manufacturer-distributor and as provided in sections 9-255.07, 9-255.09, 9-330, and 9-332.

Source: Laws 1989, LB 767, § 79; Laws 1991, LB 427, § 61; Laws 1993, LB 563, § 13; Laws 1994, LB 694, § 111.

9-640 Manufacturer-distributor; lottery equipment or supplies sales and leases; restrictions.

(1) No manufacturer-distributor shall sell, lease, or otherwise provide any lottery equipment or supplies to any person in Nebraska except a county, city, or village licensed to conduct a lottery, a licensed lottery operator, or another licensed manufacturer-distributor. No county, city, or village licensed to conduct a lottery or a licensed lottery operator shall purchase, lease, or otherwise obtain any lottery equipment or supplies except from a manufacturer-distributor licensed in Nebraska.

(2) Nothing in this section shall prohibit (a) a licensed county, city, village, or lottery operator which has purchased or intends to purchase new lottery equipment from selling or donating its old lottery equipment to another licensed county, city, village, or lottery operator if prior written approval has been obtained from the department or (b) a county, city, village, or lottery operator which has voluntarily canceled its license or allowed its license to lapse or which has had its license suspended, canceled, or revoked from selling or donating its lottery equipment to another licensed county, city, village, or lottery operator if prior written approval has been obtained from the department.

Source: Laws 1989, LB 767, § 80; Laws 1991, LB 427, § 62.

9-641 Manufacturer-distributor; records required.

Every licensed manufacturer-distributor shall keep and maintain a complete set of records which shall include all details of all activities of the licensee related to the conduct of the licensed activity as may be required by the department, including the total quantity and types of lottery equipment or supplies sold to any county, city, or village, to any licensed lottery operator, and to other licensed manufacturer-distributors. Such records shall be available for inspection by the department. The records shall be maintained for a period of not less than three years from the date of the end of the licensee's fiscal year.

Source: Laws 1989, LB 767, § 81.

9-642 Lottery operator; conflict of interest prohibited.

(1) No sole proprietor, partner in a partnership, member in a limited liability company, officer or director of a corporation, or individual with a substantial interest in a sole proprietorship, partnership, limited liability company, or corporation applying for a lottery operator license or licensed as a lottery operator shall be connected with or interested in, directly or indirectly, any person, partnership, limited liability company, firm, corporation, or other party licensed as a distributor, manufacturer, or manufacturer-distributor under section 9-255.07, 9-255.09, 9-330, 9-332, or 9-632.

(2) No member of the governing board or governing official of a county, city, or village shall be connected with or interested in, directly or indirectly, any

lottery operator with whom the county, city, or village contracts to conduct its lottery or any manufacturer-distributor.

Source: Laws 1989, LB 767, § 82; Laws 1991, LB 427, § 63; Laws 1993, LB 121, § 118; Laws 1993, LB 563, § 14; Laws 1994, LB 694, § 112; Laws 1994, LB 884, § 18.

9-642.01 Sales outlet location; qualification standards; notice to department; license; application; renewal.

(1) Prior to a county, city, village, or lottery operator conducting a lottery at a location other than the location of the lottery operator (a) the county, city, or village shall, by ordinance or resolution, establish qualification standards which shall be met by any individual, sole proprietorship, partnership, limited liability company, or corporation seeking to have its location qualify as an authorized sales outlet location for conducting a lottery and (b) the county, city, or village shall approve or disapprove each sales outlet location and individual, sole proprietorship, partnership, limited liability company, or corporation which desires to conduct the lottery at its sales outlet location solely on the basis of the qualification standards. A copy of the ordinance or resolution setting forth the qualification standards shall be filed with the department within thirty days of its adoption. A county, city, or village shall notify the department of all approved lottery locations within thirty days of approval.

(2) An authorized sales outlet location shall obtain a license issued by the department prior to conducting any lottery activity at such location pursuant to the Nebraska County and City Lottery Act. An applicant for a license as an authorized sales outlet location shall apply on a form prescribed by the department containing the information the department deems necessary, including documentation that reflects that the location has been approved by the county, city, or village in accordance with the qualification standards required by this section. If the applicant is an individual, the application shall include the applicant's social security number.

(3) The information required by this section shall be kept current and a new application shall be filed with the department if any information on the application is no longer correct.

Source: Laws 1991, LB 427, § 64; Laws 1993, LB 121, § 119; Laws 1993, LB 563, § 15; Laws 1997, LB 752, § 70; Laws 2002, LB 545, § 56.

9-643 Lottery; local control; section, how construed.

(1) Any county, city, or village may, by resolution or ordinance, tax, regulate, control, or prohibit any lottery conducted pursuant to the Nebraska County and City Lottery Act within the boundaries of such county, city, or village, except that no county may impose a tax or otherwise regulate, control, or prohibit any lottery within the corporate limits of a city or village. Any tax imposed pursuant to this subsection shall be remitted to the general fund of the county, city, or village imposing such tax.

(2) Nothing in this section shall be construed to authorize any lottery not otherwise authorized under Nebraska law.

Source: Laws 1989, LB 767, § 83; Laws 1993, LB 563, § 16.

9-644 Local control; annexation; effect.

If a city or village which has exercised its authority under section 9-643 to prohibit lotteries within its boundaries annexes any area in which a lottery is being lawfully conducted by a county, the county may continue the lottery for a period not to exceed the shorter of (1) the remainder of the term of the county's agreement with the lottery operator or (2) two years. The lottery shall be subject to all taxes, regulations, and controls imposed by the city or village under such section, whether imposed before or after annexation.

Source: Laws 1989, LB 767, § 84.

9-645 Licensees; exempt from Uniform Disposition of Unclaimed Property Act.

Any county, city, or village licensed to conduct a lottery pursuant to the Nebraska County and City Lottery Act shall be exempt from the Uniform Disposition of Unclaimed Property Act solely with respect to unclaimed lottery prizes.

Source: Laws 1989, LB 767, § 85.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

9-646 Participation; restrictions.

(1) No person under nineteen years of age shall play or participate in any way in any lottery conducted pursuant to the Nebraska County and City Lottery Act.

(2) A county, city, or village which authorizes the conduct of a lottery shall establish by ordinance or resolution the limitations, if any, on the playing of any lottery conducted by the county, city, or village by any member of the governing board, a governing official, or the immediate family of such member or official.

(3) No owner or officer of a lottery operator with whom the county, city, or village contracts to conduct its lottery shall play any lottery conducted by such county, city, or village. An owner or officer of an authorized sales outlet location for such county, city, or village may be prohibited from playing any lottery conducted by such county, city, or village by ordinance or resolution. No employee or agent of a county, city, village, lottery operator, or authorized sales outlet location shall play the lottery of the county, city, or village for which he or she performs work during such time as he or she is actually working at such lottery or while on duty.

(4) No person or licensee, or employee or agent thereof, shall knowingly permit an individual under nineteen years of age to play or participate in any way in any lottery conducted pursuant to the Nebraska County and City Lottery Act.

Source: Laws 1989, LB 767, § 86; Laws 1991, LB 427, § 65; Laws 1993, LB 563, § 17; Laws 1997, LB 248, § 32.

9-646.01 No extension of credit.

No person or licensee, or any employee or agent thereof, accepting wagers on a lottery conducted pursuant to the Nebraska County and City Lottery Act shall extend credit from the gross proceeds of a lottery to participants in the lottery for the purchase of lottery tickets. No person shall purchase or be allowed to

purchase any lottery ticket or make or be allowed to make any wager pursuant to the act unless he or she pays for such ticket or wager with cash. For purposes of this section, cash shall mean United States currency having the same face value as the price of the ticket or wager.

Source: Laws 1993, LB 563, § 18; Laws 1997, LB 248, § 33.

9-647 Lottery; time limitation.

No lottery shall be conducted between the hours of 1 a.m. and 6 a.m.

Source: Laws 1989, LB 767, § 94.

9-648 Gross proceeds; tax; collection.

Any county, city, or village which conducts a lottery shall submit to the department on a quarterly basis a tax of two percent of the gross proceeds. Such tax shall be remitted not later than thirty days from the close of the preceding quarter on forms provided by the department. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. All deficiencies of the tax imposed by this section shall accrue interest and be subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

Source: Laws 1986, LB 1027, § 181; R.S.1943, (1987), § 9-610; Laws 1989, LB 767, § 87; Laws 1993, LB 563, § 19.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

9-649 Tax Commissioner; power to seize contraband; effect.

(1) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, or any peace officer of this state may seize, without a warrant, the following contraband goods found any place in this state: (a) Any lottery equipment or supplies which do not conform in all respects to the requirements of the Nebraska County and City Lottery Act and any other specifications imposed by the department by rule and regulation; (b) any lottery equipment or supplies that are being sold without the proper license; (c) any lottery equipment or supplies that have been sold in violation of the act or any rule or regulation adopted and promulgated pursuant to the act; or (d) any lottery equipment or supplies used in connection with any lottery that has been or is being conducted in violation of the act or any rule or regulation adopted and promulgated pursuant to the act.

(2) The Tax Commissioner may, upon satisfactory proof, direct the return of any seized lottery equipment or supplies when he or she has reason to believe that the owner has not willfully or intentionally failed to comply with the act.

(3) The Tax Commissioner may, upon finding that an owner of contraband goods has willfully or intentionally failed to comply with the act, confiscate such goods. Any lottery equipment or supplies confiscated shall be destroyed.

(4) The seizure of contraband goods under this section shall not relieve any person from a fine, imprisonment, or other penalty for violation of the act.

(5) The Tax Commissioner or his or her agents or employees, when directed to do so by the Tax Commissioner, or any peace officer of this state shall not be

responsible for negligence in any court for the seizure or confiscation of any lottery equipment or supplies pursuant to this section.

Source: Laws 1989, LB 767, § 88; Laws 1991, LB 427, § 66.

9-650 Segregation of gross proceeds; use of interest; records; requirements.

The gross proceeds of any lottery, less the amount awarded in prizes and any salary, fee, or commission paid to a licensed lottery operator plus any interest on such funds, shall be segregated from any other revenue and placed in a separate account of the lottery operator and the county, city, or village. If a lottery operator is conducting a lottery on behalf of a county, city, or village, such proceeds, including any interest, shall be transferred from the lottery operator's separate account to a separate account of the county, city, or village. Any interest received by a county, city, or village from the proceeds of the lottery shall be used solely for community betterment purposes.

Separate records shall be maintained by such licensed county, city, or village. Records required by the Nebraska County and City Lottery Act shall be preserved for at least three years unless otherwise provided by rules and regulations adopted and promulgated by the department. Any law enforcement agency or other agency of government shall have the authority to investigate the records relating to lotteries and gross proceeds from such lottery at any time. Any county, city, or village shall, upon proper written request, deliver all such records to the department or other law enforcement agency for investigation.

Source: Laws 1989, LB 767, § 89; Laws 1991, LB 427, § 67; Laws 1993, LB 563, § 20.

9-651 Lottery ticket; requirements.

Each county, city, or village conducting a lottery shall have its name clearly printed on each ticket used in the lottery. No such ticket shall be sold unless the name is printed thereon.

Source: Laws 1986, LB 1027, § 182; R.S.1943, (1987), § 9-611; Laws 1989, LB 767, § 90.

9-652 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who knowingly or intentionally violates any provision of the Nebraska County and City Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state or any agencies or political subdivisions of this state any compensation or reward or share of the money for property paid or received through gambling activities regulated under the act in consideration for obtaining any license, authorization, permission, or privilege

to participate in any gaming operations except as authorized under the act or any rules and regulations adopted and promulgated pursuant to such act;

(b) Intentionally employing or possessing any device to facilitate cheating in any lottery or using any fraudulent scheme or technique in connection with any lottery when the amount gained or intended to be gained through the use of such device, scheme, or technique is three hundred dollars or more;

(c) Knowingly filing a false report under the act; or

(d) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery.

(3) It shall be the duty of the Attorney General or appropriate county attorney to prosecute and defend all proceedings initiated in any court or otherwise under the act.

(4) The failure to do any act required by or under the Nebraska County and City Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(5) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1989, LB 767, § 92; Laws 1993, LB 563, § 21; Laws 1995, LB 344, § 33; Laws 1997, LB 248, § 34.

9-653 Reports and records; disclosure; limitations; violation; penalty.

(1) Except in accordance with a proper judicial order or as otherwise provided by this section or other law, it shall be a Class I misdemeanor for the Tax Commissioner or any employee or agent of the Tax Commissioner to make known, in any manner whatsoever, the contents of any reports or records submitted by a licensed manufacturer-distributor or the contents of any personal history reports submitted by any licensee or license applicant to the department pursuant to the Nebraska County and City Lottery Act and any rules and regulations adopted and promulgated pursuant to the act.

(2) Nothing in this section shall be construed to prohibit (a) the delivery to a licensee, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any report or record, (b) the publication of statistics so classified as to prevent the identification of particular reports or records, (c) the inspection by the Attorney General, a county attorney, or other legal representative of the state of reports or records submitted by a licensed manufacturer-distributor when information on the reports or records is considered by the Attorney General, county attorney, or other legal representative to be relevant to any action or proceeding instituted by the licensee or against whom an action or proceeding is being considered or has been commenced by any state agency or county, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner for the collection of delinquent taxes under the act, (f) the publication or disclosure of final administrative opinions and orders made by the Tax Commissioner in the

adjudication of license denials, suspensions, cancellations, or revocations or the levying of fines, (g) the release of any application, without the contents of any submitted personal history report or social security number, filed with the department to obtain a license to conduct activities under the act, which application shall be deemed a public record, (h) the release of any report filed by a licensed county, city, village, or lottery operator pursuant to the act, which report shall be deemed a public record, or (i) the notification of an applicant, a licensee, or a licensee's duly authorized representative of the existence of and the grounds for any administrative action to deny the license application of, to revoke, cancel, or suspend the license of, or to levy an administrative fine upon any agent or employee of the applicant, the licensee, or any other person upon whom the applicant or licensee relies to conduct activities authorized by the act.

(3) Nothing in this section shall prohibit the Tax Commissioner or any employee or agent of the Tax Commissioner from making known the names of persons, firms, or corporations licensed to conduct activities under the act, the locations at which such activities are conducted by licensees, or the dates on which such licenses were issued.

(4) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect reports or records submitted by a licensed manufacturer-distributor pursuant to the act when information on the reports or records is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(5) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the other tax officials of this state to inspect reports or records submitted pursuant to the act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

Source: Laws 1989, LB 767, § 93; Laws 1991, LB 427, § 68; Laws 1993, LB 563, § 22; Laws 1995, LB 344, § 34; Laws 2002, LB 545, § 57.

ARTICLE 7

GIFT ENTERPRISES

Section
9-701. Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

9-701 Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

(1) For purposes of this section:

(a) Gift enterprise means a contest, game of chance, or game promotion which is conducted within the state or throughout the state and other states in connection with the sale of consumer or trade products or services solely as business promotions and in which the elements of chance and prize are

present. Gift enterprise does not include any scheme using the game of bingo or keno; any non-telecommunication-related, player-activated electronic or electromechanical facsimile of any game of chance; or any slot machine of any kind. A gift enterprise shall not utilize pickle cards as defined in section 9-315. Promotional game tickets may be utilized subject to the following:

(i) The tickets utilized shall be manufactured or imprinted with the name of the operator on each ticket;

(ii) The tickets utilized shall not be manufactured with a cost per play printed on them; and

(iii) The tickets utilized shall not be substantially similar to any type of pickle card approved by the Department of Revenue pursuant to section 9-332.01; and

(b) Operator means any person, firm, corporation, association, governmental entity, or agent or employee thereof who promotes, operates, or conducts a gift enterprise. Operator does not include any nonprofit organization or any agent or employee thereof, except that operator includes any credit union chartered under state or federal law or any agent or employee thereof who promotes, operates, or conducts a gift enterprise.

(2) Any operator may conduct a gift enterprise within this state in accordance with this section.

(3) An operator shall not:

(a) Design, engage in, promote, or conduct a gift enterprise in connection with the promotion or sale of consumer products or services in which the winner may be unfairly predetermined or the game may be manipulated or rigged;

(b) Arbitrarily remove, disqualify, disallow, or reject any entry;

(c) Fail to award prizes offered;

(d) Print, publish, or circulate literature or advertising material used in connection with such gift enterprise which is false, deceptive, or misleading; or

(e) Require an entry fee, a payment or promise of payment of any valuable consideration, or any other consideration as a condition of entering a gift enterprise or winning a prize from the gift enterprise, except that a contest, game of chance, or business promotion may require, as a condition of participation, evidence of the purchase of a product or service as long as the purchase price charged for such product or service is not greater than it would have been without the contest, game of chance, or business promotion. For purposes of this section, consideration shall not include (i) filling out an entry blank, (ii) entering by mail with the purchase of postage at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less, or (iii) entering by a telephone call to the operator of or for the gift enterprise at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less. When the only method of entry is by telephone, the cost to the entrant of the telephone call shall not exceed the cost of postage for a first-class letter weighing one ounce or less for any reason, including (A) whether any communication occurred during the call which was not related to the gift enterprise or (B) the fact that the cost of the call to the operator was greater than the cost to the entrant allowed under this section.

(4)(a) The Department of Revenue may adopt and promulgate rules and regulations necessary to carry out the operation of gift enterprises.

(b) Whenever the department has reason to believe that a gift enterprise is being operated in violation of this section or the department's rules and regulations, it may bring an action in the district court of Lancaster County in the name of and on behalf of the people of the State of Nebraska against the operator of the gift enterprise to enjoin the continued operation of such gift enterprise anywhere in the state.

(5)(a) Any person, firm, corporation, association, or agent or employee thereof who engages in any unlawful acts or practices pursuant to this section or violates any of the rules and regulations promulgated pursuant to this section shall be guilty of a Class II misdemeanor.

(b) Any person, firm, corporation, association, or agent or employee thereof who violates any provision of this section or any of the rules and regulations promulgated pursuant to this section shall be liable to pay a civil penalty of not more than one thousand dollars imposed by the district court of Lancaster County for each such violation which shall accrue to the permanent school fund. Each day of continued violation shall constitute a separate offense or violation for purposes of this section.

(6) In all proceedings initiated in any court or otherwise under this section, the Attorney General or appropriate county attorney shall prosecute and defend all such proceedings.

(7) This section shall not apply to any activity authorized and regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, or the Nebraska Small Lottery and Raffle Act.

Source: Laws 1977, LB 38, § 230; Laws 1983, LB 259, § 39; R.S.1943, (1985), § 28-1114; Laws 1986, LB 1027, § 184; Laws 1991, LB 427, § 69; Laws 1993, LB 54, § 1; Laws 1994, LB 694, § 113; Laws 2004, LB 999, § 20.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
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.

ARTICLE 8
STATE LOTTERY

Section

Section

9-801 Act, how cited.

Sections 9-801 to 9-841 shall be known and may be cited as the State Lottery Act.

Source: Laws 1991, LB 849, § 1; Laws 1993, LB 138, § 17; Laws 1994, LB 694, § 114; Laws 2006, LB 1039, § 1.

9-802 Purpose of act.

The purpose of the State Lottery Act is to establish lottery games which will raise revenue for the purposes set forth in section 9-812.

Source: Laws 1991, LB 849, § 2; Laws 1993, LB 138, § 18.

9-803 Terms, defined.

For purposes of the State Lottery Act:

(1) Director shall mean the Director of the Lottery Division;

(2) Division shall mean the Lottery Division of the Department of Revenue;

(3) Lottery contractor shall mean a lottery vendor or lottery game retailer with whom the division has contracted for the purpose of providing goods or services for the state lottery;

(4) Lottery game shall mean any variation of the following types of games:

(a) An instant-win game in which disposable tickets contain certain preprinted winners which are determined by rubbing or scraping an area or areas on the tickets to match numbers, letters, symbols, or configurations, or any combination thereof, as provided by the rules of the game. An instant-win game may also provide for preliminary and grand prize drawings conducted pursuant to the rules of the game. An instant-win game shall not include the use of any pickle card as defined in section 9-315; and

(b) An on-line lottery game in which lottery game retailer terminals are hooked up to a central computer via a telecommunications system through which (i) a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules or (ii) a player purchases a ticket bearing randomly selected numbers for eligibility in a drawing regularly scheduled in accordance with game rules.

Lottery game shall not be construed to mean any video lottery game;

(5) Lottery game retailer shall mean a person who contracts with or seeks to contract with the division to sell tickets in lottery games to the public;

(6) Lottery vendor shall mean any person who submits a bid, proposal, or offer as part of a major procurement;

(7) Major procurement shall mean any procurement or contract unique to the operation of the state lottery in excess of twenty-five thousand dollars for the printing of tickets used in any lottery game, security services, consulting services, advertising services, any goods or services involving the receiving or recording of number selections in any lottery game, or any goods or services involving the determination of winners in any lottery game. Major procurement shall include production of instant-win tickets, procurement of on-line gaming systems and drawing equipment, or retaining the services of a consultant who will have access to any goods or services involving the receiving or recording of number selections or determination of winners in any lottery game; and

(8) Ticket or lottery ticket shall mean any tangible evidence authorized by the division to prove participation in a lottery game.

Source: Laws 1991, LB 849, § 3; Laws 1993, LB 138, § 19; Laws 1994, LB 694, § 115; Laws 1995, LB 343, § 1; Laws 1999, LB 479, § 1; Laws 2007, LB638, § 15.

9-804 Lottery Division of the Department of Revenue; established; Director of the Lottery Division.

The Lottery Division of the Department of Revenue is hereby established. The division shall be administered by the Director of the Lottery Division who shall be appointed by and serve at the pleasure of the Tax Commissioner. The division shall administer and regulate the lottery games conducted pursuant to the State Lottery Act.

Source: Laws 1991, LB 849, § 4; Laws 1993, LB 138, § 20.

9-804.01 Repealed. Laws 1995, LB 275, § 27.

9-804.02 Transferred to section 83-162.01.

9-804.03 Transferred to section 83-162.02.

9-804.04 Transferred to section 83-162.03.

9-804.05 Transferred to section 83-162.04.

9-805 Tax Commissioner; agreements authorized.

The Tax Commissioner may enter into written agreements with one or more government-authorized lotteries to participate in the conduct and operation of lottery games and may enter into written agreements with one or more government-authorized lotteries or other persons, entities, organizations, or associations to purchase goods or services in support of lottery games when necessary or desirable to make lottery games more remunerative for the State of Nebraska so long as the games and purchases are consistent with the State Lottery Act. Major procurement purchase requirements under the act shall only apply to the Nebraska portion of any purchase made through the agreements.

Source: Laws 1991, LB 849, § 5; Laws 1993, LB 138, § 21; Laws 1999, LB 479, § 2.

9-806 Legislative intent.

In construing the State Lottery Act, it is the intent of the Legislature that the following policies be implemented:

(1) The lottery games shall be operated by the division;

(2) The lottery games shall be operated as a self-sufficient, revenue-raising operation after money generated from the conduct of the lottery is used to repay the initial appropriation plus interest;

(3) All contracts entered into by the division for the provision of goods and services shall be subject to the act and shall be exempt from any other state law concerning the purchase of goods or services;

(4) Preference for contracts shall be given to bidders and applicants based in Nebraska if the costs and benefits are equal or superior to those available from competing persons. All major procurements of goods or services essential to the operation of a lottery shall require that the person awarded the contract establish a permanent office in this state;

(5) Every entity submitting a bid, proposal, or offer to the division shall disclose all information required by the Tax Commissioner; and

(6) Every entity submitting a bid, proposal, or offer to the division shall be required to meet such other requirements as established by the Tax Commissioner, including the posting of a bond.

Source: Laws 1991, LB 849, § 6; Laws 1993, LB 138, § 22.

9-807 Division; personnel; bond or insurance.

(1) Other than the director, all employees of the division shall be classified employees under the rules and regulations of the personnel division of the Department of Administrative Services.

(2) Before entering upon the duties of the office, the director and each employee of the division shall be bonded or insured as required by section 11-201.

Source: Laws 1991, LB 849, § 7; Laws 1992, Third Spec. Sess., LB 14, § 1; Laws 1993, LB 138, § 23; Laws 1995, LB 343, § 3; Laws 2004, LB 884, § 7.

9-808 Division; personnel; investigators or security personnel; powers and duties; confidentiality; exception.

(1) The Tax Commissioner shall employ or contract with such personnel as necessary to carry out the responsibilities of the division. The Tax Commissioner shall employ investigators or security personnel who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue.

(2) Investigators or security personnel of the division may enter and search premises and seize all relevant materials pursuant to a warrant issued by a court.

(3)(a) Investigators or security personnel shall, as deemed necessary, conduct background investigations of all individuals seeking employment in the division. Such background investigations shall include, but not be limited to, police records checks, conviction records checks, national and statewide criminal records clearinghouse checks, and fingerprint checks.

(b) It shall be a condition of employment in the division that an individual supply investigators or security personnel with his or her fingerprints for the purpose of conducting a background investigation for employment purposes.

(c) Any individual convicted of any crime involving moral turpitude, fraud, theft, theft of services, and theft by deception and any individual whose constitutional rights have been forfeited and not restored shall not be eligible for employment in the division.

(d) All information obtained through a background investigation performed by the division shall be confidential, except that the Tax Commissioner may exchange such confidential information with state, federal, and local law enforcement agencies.

Source: Laws 1991, LB 849, § 8; Laws 1993, LB 138, § 24.

9-809 Auditor of Public Accounts; audit; Tax Commissioner; reports.

(1) The books, records, funds, and accounts of the division shall be audited at least annually by or under the direction of the Auditor of Public Accounts who

shall submit a report of the audit to the Governor and the Legislature. The expenses of the audit shall be paid from the State Lottery Operation Cash Fund.

(2) The Tax Commissioner shall make an annual written report by November 1 of each year to the Governor and the Legislature, which report shall include a summary of the activities of the division for the previous fiscal year through June 30, a statement detailing lottery revenue, prize disbursements, expenses of the division, and allocation of remaining revenue, and any recommendations for change in the statutes which the Tax Commissioner deems necessary or desirable. The report shall be a public record.

Source: Laws 1991, LB 849, § 9; Laws 1993, LB 138, § 25; Laws 1994, LB 694, § 116.

9-810 Lottery ticket; restrictions on sale and purchase; computation of retail sales; termination of liability; prize credited against certain tax liability or debt; procedure.

(1) A person under nineteen years of age shall not purchase a lottery ticket. No lottery ticket shall be sold to any person under nineteen years of age. No person shall purchase a lottery ticket for a person under nineteen years of age, and no person shall purchase a lottery ticket for the benefit of a person under nineteen years of age.

(2) No lottery ticket shall be sold and no prize shall be awarded to the Tax Commissioner, the director, or any employee of the division or any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of the Tax Commissioner, the director, or any employee of the division.

(3) With respect to a lottery game retailer under contract to sell lottery tickets whose rental payment for premises is contractually computed in whole or in part on the basis of a percentage of retail sales and when the computation of retail sales is not explicitly defined to include the sale of lottery tickets, the amount of retail sales for lottery tickets by the retailer for purposes of such a computation may not exceed the amount of compensation received by the retailer from the division.

(4) Once any prize is awarded in conformance with the State Lottery Act and any rules and regulations adopted under the act, the state shall have no further liability with respect to that prize.

(5) Prior to the payment of any lottery prize in excess of five hundred dollars for a winning lottery ticket presented for redemption to the division, the division shall check the name and social security number of the winner with a list provided by the Department of Revenue of people identified as having an outstanding state tax liability and a list of people certified by the Department of Health and Human Services as owing a debt as defined in section 77-27,161. The division shall credit any such lottery prize against any outstanding state tax liability owed by such winner and the balance of such prize amount, if any, shall be paid to the winner by the division. The division shall credit any such lottery prize against any certified debt in the manner set forth in sections 77-27,160 to 77-27,173. If the winner has both an outstanding state tax liability and a certified debt, the division shall add the liability and the debt together and pay the appropriate agency or person a share of the prize in the proportion

that the liability or debt owed to the agency or person is to the total liability and debt.

Source: Laws 1991, LB 849, § 10; Laws 1993, LB 563, § 23; Laws 1993, LB 138, § 26; Laws 1996, LB 1044, § 44; Laws 1997, LB 307, § 1.

9-811 Exemption from occupation tax.

Lottery games conducted pursuant to the State Lottery Act shall be exempt from any local or occupation tax levied or assessed by any political subdivision having the power to levy, assess, or collect such a tax.

Source: Laws 1991, LB 849, § 11; Laws 1993, LB 138, § 27.

9-811.01 Lottery Investigation Petty Cash Fund; establishment; use; investment; Tax Commissioner; department; duties; records and reports.

The Tax Commissioner may apply to the Director of Administrative Services and the Auditor of Public Accounts to establish and maintain a Lottery Investigation Petty Cash Fund. The money used to initiate and maintain the fund shall be drawn solely from the State Lottery Operation Cash Fund. The Tax Commissioner shall determine the amount of money to be held in the Lottery Investigation Petty Cash Fund, consistent with carrying out the duties and responsibilities of the division but not to exceed five thousand dollars for the entire division. This restriction shall not apply to funds otherwise appropriated to the State Lottery Operation Cash Fund for investigative purposes. When the Director of Administrative Services and the Auditor of Public Accounts have approved the establishment of the Lottery Investigation Petty Cash Fund, a voucher shall be submitted to the Department of Administrative Services accompanied by such information as the department may require for the establishment of the fund. The Director of Administrative Services shall issue a warrant for the amount specified and deliver it to the division. The fund may be replenished as necessary, but the total amount in the fund shall not exceed ten thousand dollars in any fiscal year. The fund shall be audited by the Auditor of Public Accounts.

Any prize amounts won, less any investigative expenditures, by department personnel with funds drawn from the Lottery Investigation Petty Cash Fund or reimbursed from the State Lottery Operation Cash Fund shall be deposited into the Lottery Investigation Petty Cash Fund.

For the purpose of establishing and maintaining legislative oversight and accountability, the Department of Revenue shall maintain records of all expenditures, disbursements, and transfers of cash from the Lottery Investigation Petty Cash Fund.

By September 15 of each year, the department shall report to the budget division of the Department of Administrative Services and to the Legislative Fiscal Analyst the unexpended balance existing on June 30 of the previous fiscal year relating to investigative expenses in the Lottery Investigation Petty Cash Fund and any funds existing on June 30 of the previous fiscal year in the possession of division personnel involved in investigations. 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 1994, LB 694, § 117; Laws 1995, LB 7, § 28.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; investment; unclaimed prize money; use.

(1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2)(a) Beginning October 1, 2003, and until July 1, 2009, a portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund, except that the dollar amount transferred shall not be less than the dollar amount transferred to the funds in fiscal year 2002-03.

(b) On and after July 1, 2009, at least twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817;

(b) Nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(c) Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the

Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Scholarship Fund;

(d) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(e) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(f) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817.

(4)(a) The Education Innovation Fund is created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement.

(b) For fiscal year 2005-06, the Education Innovation Fund shall be allocated as follows: The first one million dollars shall be transferred to the School District Reorganization Fund, and the remaining amount shall be allocated to the General Fund after operating expenses for the Excellence in Education Council are deducted.

(c) For fiscal year 2006-07, the Education Innovation Fund shall be allocated as follows: The first two hundred fifty thousand dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, the next one million dollars shall be transferred to the School District Reorganization Fund, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(d) For fiscal year 2007-08, the Education Innovation Fund shall be allocated as follows: The first five hundred thousand dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(e) For fiscal year 2008-09, the Education Innovation Fund shall be allocated as follows: The first seven hundred fifty thousand dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses,

for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(f) For fiscal years 2009-10 through 2015-16, the Education Innovation Fund shall be allocated as follows: The first one million dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(g) For fiscal year 2016-17 and each fiscal year thereafter, the Education Innovation Fund shall be allocated, after administrative expenses, for education purposes as provided by the Legislature.

(5) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(6) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Source: Laws 1991, LB 849, § 12; Laws 1992, LB 1257, § 57; Laws 1993, LB 563, § 24; Laws 1993, LB 138, § 28; Laws 1994, LB 647, § 5; Laws 1994, LB 694, § 119; Laws 1994, LB 1066, § 11; Laws 1995, LB 275, § 1; Laws 1995, LB 860, § 1; Laws 1996, LB 900, § 1015; Laws 1996, LB 1069, § 1; Laws 1997, LB 118, § 1; Laws 1997, LB 347, § 1; Laws 1997, LB 710, § 1; Laws 1997, LB 865, § 1; Laws 1998, LB 924, § 16; Laws 1998, LB 1228, § 7; Laws 1998, LB 1229, § 1; Laws 1999, LB 386, § 1; Laws 2000, LB 659, § 2; Laws 2000, LB 1243, § 1; Laws 2001, LB 797, § 1; Laws 2001, LB 833, § 1; Laws 2001, Spec. Sess., LB 3, § 1; Laws 2002, LB 1105, § 418; Laws 2002, LB 1310, § 3; Laws 2002, Second Spec. Sess., LB 1, § 1; Laws 2003, LB 367, § 1; Laws 2003, LB 574, § 21; Laws 2004, LB 1083, § 83; Laws 2004, LB 1091, § 1; Laws 2006, LB 1208, § 1; Laws 2007, LB638, § 16.

Cross References

Attracting Excellence to Teaching Program Act, see section 79-8,132.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Environmental Trust Act, see section 81-15,167.
Nebraska State Funds Investment Act, see section 72-1260.

9-813 Lottery game retailer; Tax Commissioner; powers and duties; deposit of funds; liability for tickets.

(1) The Tax Commissioner may require each lottery game retailer to deposit all money received by the lottery game retailer from the sale of lottery tickets, less the amount, if any, retained as compensation for the sale of lottery tickets and less the amount, if any, paid in prizes, in financial institutions designated by the State Treasurer for credit to the State Lottery Operation Trust Fund and to file with the Tax Commissioner or his or her designated agent reports of the lottery game retailer's receipts and transactions regarding the sale of lottery

tickets in such form and containing such information as the Tax Commissioner requires.

(2) The Tax Commissioner may make such arrangements for any person, including a financial institution, to perform any functions, activities, or services in connection with the operation of lottery games pursuant to the State Lottery Act and the rules and regulations as he or she deems advisable, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person.

(3) The Tax Commissioner may authorize the electronic transfer of funds from the accounts of lottery game retailers to the State Lottery Operation Trust Fund.

(4) All lottery game retailers shall be fully liable for the face value of all lottery tickets in their possession and shall deliver to the division upon demand all unsold lottery tickets or all money that would have been received by the lottery game retailers had the lottery tickets been sold less the amount, if any, retained as compensation for the sale of lottery tickets and less the amount, if any, paid in prizes.

Source: Laws 1991, LB 849, § 13; Laws 1993, LB 138, § 34.

9-814 Prohibited acts; violations; penalties.

(1) It shall be a Class II misdemeanor for a lottery game retailer to fail to separate and keep separate all money received from the sale of lottery tickets less the amount, if any, retained as compensation for the sale of lottery tickets and less the amount, if any, paid in prizes or to fail to make available to the division all records pertaining to separate accounts maintained for revenue derived from the sale of lottery tickets.

(2) It shall be a Class II misdemeanor for any lottery game retailer or his or her employee to knowingly sell a lottery ticket to any person under nineteen years of age.

(3) It shall be a Class IV misdemeanor for a person under nineteen years of age to knowingly purchase a lottery ticket under the State Lottery Act.

(4) It shall be a Class I misdemeanor for any person to sell lottery tickets without holding a valid contract with the division to sell such tickets.

(5) It shall be a Class I misdemeanor for a lottery game retailer to sell lottery tickets at any price other than that established by the division.

(6) It shall be a Class I misdemeanor to release any information obtained through a background investigation performed by the division without the prior written consent of the subject of the investigation except as provided in subdivision (3)(d) of section 9-808.

(7) It shall be a Class III felony to alter or attempt to alter a lottery ticket for the purpose of defrauding a lottery game conducted pursuant to the State Lottery Act.

(8) It shall be a Class IV felony to falsify information provided to the division for purposes of applying for a contract with the division or for purposes of completing a background investigation pursuant to the act.

Source: Laws 1991, LB 849, § 14; Laws 1993, LB 138, § 35; Laws 1994, LB 694, § 120.

9-815 Repealed. Laws 1993, LB 138, § 83.

9-816 Conflicts of interest; enumerated; compliance with other laws; violation; removal from office.

(1) The Tax Commissioner, the director, and other employees of the division or their immediate families shall not, while employed with the division, directly or indirectly (a) knowingly hold a financial interest or acquire stocks, bonds, or any other interest in any entity which is a party or subcontracts with a party to a major procurement with the division or (b) have a financial interest in the ownership or leasing of property used by or for the division.

(2) Neither the director, any employee of the division, nor any member of their immediate families shall ask for, offer to accept, or receive any gift, gratuity, or other thing of value which would inure to that person's benefit from (a) any entity contracting or seeking to contract with the state to supply equipment or materials for use by the division, (b) any applicant for a contract to act as a lottery game retailer to be awarded by the division, or (c) any lottery game retailer.

(3) No (a) person, corporation, association, or organization contracting or seeking to contract to supply equipment or materials for use by the division, (b) applicant for a contract to act as a lottery game retailer to be awarded by the division, or (c) lottery game retailer shall offer or give the Tax Commissioner, the director, or any employee of the division or a member of his or her immediate family any gift, gratuity, or other thing of value which would inure to the recipient's personal benefit.

(4) For purposes of this section:

(a) Gift, gratuity, or other thing of value shall mean a payment, subscription, advance, forbearance, honorarium, campaign contribution, or rendering of deposit of money, services, or anything of value, the value of which exceeds twenty-five dollars in any one-month period, unless consideration of equal or greater value is received in return. Gift, gratuity, or other thing of value shall not include:

(i) A campaign contribution otherwise reported as required by the Nebraska Political Accountability and Disclosure Act;

(ii) A commercially reasonable loan made in the ordinary course of business;

(iii) A gift received from a member of the recipient's immediate family or the spouse of any such family member;

(iv) A breakfast, luncheon, dinner, or other refreshment consisting of food and beverage provided for immediate consumption;

(v) Any admission to a facility or event;

(vi) Any occasional provision of transportation within the State of Nebraska; or

(vii) Anything of value received in legitimate furtherance of the objectives of the State Lottery Act; and

(b) Member of his or her immediate family shall mean such person's parent, child, brother, sister, or spouse.

(5) The director and other employees of the division shall comply with all state laws applicable to ethics in government, conflict of interest, and financial disclosure.

(6) Any employee of the division other than the director who violates this section may be removed from his or her position after notice and a hearing before the Tax Commissioner or his or her representative.

Source: Laws 1991, LB 849, § 16; Laws 1993, LB 138, § 36.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

9-817 Director and employees of the division; investigatory and enforcement powers; application to district court; contempt.

The director and any employee of the division, when authorized by the director or Tax Commissioner, shall have the power (1) to make a thorough investigation into all the records and affairs of any person, organization, or corporation when, in the judgment of the director, such investigation is necessary to the proper performance of the division's duties and the efficient enforcement of the laws, including the power to administer oaths, (2) to examine under oath any person or any officer, employee, or agent of any organization or corporation, (3) to compel by subpoena the production of records, and (4) to compel by subpoena the attendance of any person in this state to testify before the Tax Commissioner or his or her designated representative. If any person willfully refuses to testify or obey a subpoena, the director may apply to a judge of the district court of Lancaster County for an order directing such person to comply with the subpoena. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court.

Source: Laws 1991, LB 849, § 17; Laws 1993, LB 138, § 37.

9-818 Attorney General and other law enforcement authority; powers and duties.

The Tax Commissioner or the director may confer with the Attorney General or his or her designee as he or she deems necessary and advisable to carry out the responsibilities of the division. Upon request of the director with the approval of the Tax Commissioner, it shall be the duty of the Attorney General and any other law enforcement authority to whom a violation is reported to investigate and cause appropriate proceedings to be instituted without delay.

Source: Laws 1991, LB 849, § 18; Laws 1993, LB 138, § 38.

9-819 Lottery administration; hearings; rules and regulations; director; Tax Commissioner; duties; exempt from Administrative Procedure Act.

(1) The director shall develop rules and regulations concerning lottery administration for consideration by the Tax Commissioner. Rules and regulations shall be adopted, promulgated, amended, or repealed only after a public hearing by the Tax Commissioner. Notice of the hearing shall be given at least twenty days in advance in a newspaper of general circulation in the state. The Tax Commissioner shall either approve or disapprove the proposed adoption, promulgation, amendment, or repeal of such rules and regulations within ten days of the hearing.

(2) Certified copies of any rules and regulations, for informational purposes only, shall be submitted to the Attorney General and the Secretary of State. Copies of the rules and regulations in force shall be made available to any person upon request.

(3) The Tax Commissioner shall adopt and promulgate rules and regulations for the conduct of all hearings.

(4) For the purpose of adopting, amending, or repealing rules and regulations pursuant to the State Lottery Act, the Tax Commissioner and the division shall be exempt from the Administrative Procedure Act.

Source: Laws 1991, LB 849, § 19; Laws 1993, LB 138, § 39.

Cross References

Administrative Procedure Act, see section 84-920.

9-820 Contracts awarded by Tax Commissioner; notices of hearings; orders and decisions; delivery.

Notices of hearings related to contracts awarded by the Tax Commissioner and copies of all orders and decisions of the Tax Commissioner concerning such contracts shall be sent by certified or registered mail, return receipt requested, to the address of record of the appropriate party or parties.

Source: Laws 1991, LB 849, § 20; Laws 1993, LB 138, § 40.

9-821 District court of Lancaster County; jurisdiction; appeal.

The district court of Lancaster County shall have exclusive original jurisdiction of all legal proceedings, except criminal actions, related to the administration, enforcement, or fulfillment of the responsibilities, duties, or functions of the division. An aggrieved party seeking review of an order or decision of the Tax Commissioner shall file an appeal with the district court of Lancaster County within thirty days after the date of such order or decision. All such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1991, LB 849, § 21; Laws 1993, LB 138, § 41.

Cross References

Administrative Procedure Act, see section 84-920.

9-822 Books and records; requirements.

The director shall make and keep books and records which accurately and fairly reflect transactions of the lottery games conducted pursuant to the State Lottery Act, including the distribution of tickets to lottery game retailers, receipt of funds, prize claims, prizes paid, expenses, and all other activities and financial transactions involving revenue generated by such lottery games, so as to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain daily accountability.

Source: Laws 1991, LB 849, § 22; Laws 1993, LB 138, § 42.

9-823 Rules and regulations; enumerated; Tax Commissioner; duties.

The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out the State Lottery Act. The rules and regulations shall include provisions relating to the following:

(1) The lottery games to be conducted subject to the following conditions:

(a) No lottery game shall use the theme of dog racing or horseracing;

(b) In any lottery game utilizing tickets, each ticket in such game shall bear a unique number distinguishing it from every other ticket in such lottery game;

(c) No name of an elected official shall appear on the tickets of any lottery game; and

(d) In any instant-win game, the overall estimated odds of winning some prize shall be printed on each ticket and shall also be available at the office of the division at the time such lottery game is offered for sale to the public;

(2) The retail sales price for lottery tickets;

(3) The types and manner of payment of prizes to be awarded for winning tickets in lottery games;

(4) The method for determining winners, the frequency of drawings, if any, or other selection of winning tickets subject to the following conditions:

(a) No lottery game shall be based on the results of a dog race, horserace, or other sports event;

(b) If the lottery game utilizes the drawing of winning numbers, a drawing among entries, or a drawing among finalists (i) the drawings shall be witnessed by an independent certified public accountant, (ii) any equipment used in the drawings shall be inspected by the independent certified public accountant and an employee of the division or designated agent both before and after the drawing, and (iii) the drawing shall be recorded on videotape with an audio track; and

(c) Drawings in an instant-win game, other than grand prize drawings or other runoff drawings, shall not be held more often than weekly. Drawings or selections in an on-line game shall not be held more often than daily;

(5) The validation and manner of payment of prizes to the holders of winning tickets subject to the following conditions:

(a) The prize shall be given to the person who presents a winning ticket, except that for awards in excess of five hundred dollars, the winner shall also provide his or her social security number or tax identification number;

(b) A prize may be given to only one person per winning ticket, except that a prize shall be divided between the holders of winning tickets if there is more than one winning ticket per prize;

(c) For the convenience of the public, the director may authorize lottery game retailers to pay winners of up to five hundred dollars after performing validation procedures on their premises appropriate to the lottery game involved;

(d) No prize shall be paid to any person under nineteen years of age, and any prize resulting from a lottery ticket held by a person under nineteen years of age shall be awarded to the parent or guardian or custodian of the person under the Nebraska Uniform Transfers to Minors Act;

(e) No prize shall be paid for tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the division by acceptable deadlines, lacking in captions that confirm and agree with the lottery play symbols as appropriate to the lottery game involved, or not in compliance with additional specific rules and regulations and public or confidential validation and security tests appropriate to the particular lottery game involved;

(f) No particular prize in any lottery game shall be paid more than once. In the event of a binding determination by the director that more than one

claimant is entitled to a particular prize, the sole right of such claimants shall be the award to each of them of an equal share in the prize; and

(g) After the expiration of the claim period for prizes for each lottery game, the director shall make available a detailed tabulation of the total number of tickets actually sold in the lottery game and the total number of prizes of each prize denomination that were actually claimed and paid;

(6) Requirements for eligibility for participation in grand prize drawings or other runoff drawings, including requirements for submission of evidence of eligibility;

(7) The locations at which tickets may be sold except that no ticket may be sold at a retail liquor establishment holding a license for the sale of alcoholic liquor at retail for consumption on the licensed premises unless the establishment holds a Class C liquor license with a sampling designation as provided in subdivision (5) of section 53-124;

(8) The method to be used in selling tickets;

(9) The contracting with persons as lottery game retailers to sell tickets and the manner and amount of compensation to be paid to such retailers;

(10) The form and type of marketing of informational and educational material;

(11) Any arrangements or methods to be used in providing proper security in the storage and distribution of tickets or lottery games; and

(12) All other matters necessary or desirable for the efficient and economical operation and administration of lottery games and for the convenience of the purchasers of tickets and the holders of winning tickets.

Source: Laws 1991, LB 849, § 23; Laws 1992, LB 907, § 25; Laws 1992, LB 1257, § 58; Laws 1993, LB 138, § 43; Laws 1994, LB 1313, § 1; Laws 1995, LB 343, § 4.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

9-824 Lottery game retailer; contract with division; considerations.

No person shall sell tickets without first contracting with the division as a lottery game retailer. Persons shall be awarded contracts as lottery game retailers in a manner which best serves the public convenience. Before awarding a contract, the director shall consider the financial responsibility and security of the applicant, the applicant's business or activity, the accessibility of the applicant's place of business or activity to the public, the efficiency of existing lottery game retailers in serving the public convenience, and the volume of expected sales. Political subdivisions or agencies or departments of such political subdivisions may be awarded contracts as lottery game retailers. Notwithstanding this or any other section of the State Lottery Act, nothing shall prohibit an onsite employee of a lottery game retailer from selling lottery tickets.

Source: Laws 1991, LB 849, § 24; Laws 1993, LB 138, § 44.

9-825 Lottery game retailer; division; sale of tickets; when.

A lottery game retailer shall not engage in business exclusively to sell tickets, except that the director or Tax Commissioner may award a temporary contract

to permit a lottery game retailer to sell tickets to the public at special events approved by the Tax Commissioner. Nothing in the State Lottery Act shall prohibit the division or employees of the division from selling tickets to the public.

Source: Laws 1991, LB 849, § 25; Laws 1993, LB 138, § 45.

9-826 Lottery game retailer; award of contract; director; findings required.

A contract may be awarded to an applicant to operate as a lottery game retailer only after the director finds all of the following:

(1) The applicant is at least nineteen years of age;

(2) The applicant has not been convicted of a felony or misdemeanor involving gambling, moral turpitude, dishonesty, or theft and the applicant has not been convicted of any other felony within ten years preceding the date such applicant applies for a contract;

(3) The applicant has not been convicted of a violation of the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or Chapter 28, article 11;

(4) The applicant has not previously had a license revoked or denied under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or Chapter 28, article 11;

(5) The applicant has not had a license or contract to sell tickets for a lottery in another jurisdiction revoked by the authority regulating such lottery or by a court of such jurisdiction;

(6) The applicant has demonstrated financial responsibility, as determined in rules and regulations of the division, sufficient to meet the requirements of a lottery game retailer;

(7) All persons holding at least a ten percent ownership interest in the applicant's business or activity have been disclosed;

(8) The applicant has been in substantial compliance with Nebraska tax laws as determined by the director based on the severity of any possible violation for the five years prior to applying, is not delinquent in the payment of any Nebraska taxes at the time of application, and is in compliance with Nebraska tax laws at the time of application; and

(9) The applicant has not knowingly made a false statement of material fact to the director.

For purposes of this section, applicant shall include the entity seeking the contract and every sole proprietor, partner in a partnership, member in a limited liability company, officer of a corporation, shareholder owning in the aggregate ten percent or more of the stock of a corporation, and governing officer of an organization or political subdivision.

Source: Laws 1991, LB 849, § 26; Laws 1993, LB 138, § 46; Laws 1994, LB 694, § 121; Laws 1994, LB 884, § 19.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.

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.

9-827 Lottery game retailer; cooperation with director; termination of contract.

A lottery game retailer shall cooperate with the director by using point-of-purchase materials, posters, and other educational, informational, and marketing materials when requested to do so by the director. Lack of cooperation shall be sufficient cause for termination of a contract.

Source: Laws 1991, LB 849, § 27; Laws 1993, LB 138, § 47.

9-828 Director; powers relating to contracts and fees.

The director may contract with lottery game retailers on a permanent, seasonal, or temporary basis and may require payment of an initial application fee or an annual fee, or both, as provided in rules and regulations. All fees shall be credited to the State Lottery Operation Trust Fund.

Source: Laws 1991, LB 849, § 28; Laws 1993, LB 138, § 48.

9-829 Ticket sales; restrictions.

A lottery game retailer shall sell tickets only on the premises stated in the contract. No ticket shall be sold over a telephone or through the mail. No credit shall be extended by the lottery game retailer for the purchase of a ticket. No lottery tickets shall be sold through a vending or dispensing device.

Source: Laws 1991, LB 849, § 29; Laws 1993, LB 138, § 49.

9-830 Lottery game retailer; bond; requirements.

(1) The director may require a bond from each lottery game retailer in an amount, as provided by rule or regulation, graduated according to the volume of expected sales of tickets by the retailer or may purchase a blanket surety bond or bonds covering the activities of all or selected retailers. The total and aggregate liability of a surety on any bond shall be limited to the amount specified in the bond.

(2) A bond shall not be canceled by a surety on less than thirty days' notice in writing to the director. If a bond is canceled following proper written notice, the lottery game retailer shall file a new bond with the director in the required amount on or before the effective date of cancellation of the previous bond. Failure to do so shall result in the automatic suspension of the lottery game retailer's contract. A suspended contract shall be terminated upon proper notice if the requirements of this subsection are not met within thirty days of the suspension.

Source: Laws 1991, LB 849, § 30; Laws 1993, LB 138, § 50.

9-831 Advertising on problem gambling prevention, education, and awareness messages; requirements.

The division shall spend not less than five percent of the advertising budget for the state lottery on problem gambling prevention, education, and awareness messages. The division shall coordinate messages developed under this section with the prevention, education, and awareness messages in use on July 14, 2006, by or developed in conjunction with the Compulsive Gamblers Assistance

Program established pursuant to section 71-817. For purposes of this section, the advertising budget for the state lottery includes amounts budgeted and spent for advertising, promotions, incentives, public relations, marketing, or contracts for the purchase or lease of goods or services that include advertising, promotions, incentives, public relations, or marketing, but does not include in-kind contributions by media outlets.

Source: Laws 2006, LB 1039, § 2.

9-832 Refusal to award contract; termination of contract; fine; procedure; appeal.

The director may refuse to award a contract to any applicant and may terminate the contract of or initiate an administrative action to levy a fine against a lottery game retailer who violates any provision of the State Lottery Act or any rule or regulation adopted pursuant to the act. A fine may be levied against a lottery game retailer by the Tax Commissioner and shall not exceed one thousand dollars per violation. In determining whether to impose a fine and the amount of the fine if any fine is imposed, the Tax Commissioner shall take into consideration the seriousness of the violation and the extent to which the lottery game retailer derived financial gain as a result of the violation. All money collected by the division as a fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund. Any fine imposed by the Tax Commissioner and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violator resides or owns property. If the director decides to terminate a contract or initiate an administrative action to levy a fine, the aggrieved party shall be entitled to a hearing before the Tax Commissioner or his or her designee by filing a written request with the Tax Commissioner within ten days after notification of the director's intention to terminate a contract or initiate an administrative action to levy a fine. Upon receipt of such request, the Tax Commissioner shall set a hearing date which shall be within thirty days of receipt of the request and shall notify the aggrieved party, in writing, of the time and place for the hearing. Such notice shall be given as soon as the date is set and at least seven days in advance of the hearing date. The Tax Commissioner or his or her designee may stay the termination of a contract pending the outcome of the hearing if so requested by the aggrieved party at the time of filing the written request for hearing.

The Tax Commissioner may affirm, reverse, or modify the action of the director. The order or decision of the Tax Commissioner may be appealed to the district court of Lancaster County in the manner prescribed in section 9-821.

Source: Laws 1991, LB 849, § 32; Laws 1993, LB 138, § 51; Laws 1994, LB 694, § 122.

9-833 Procurement of goods or services; director; powers; limitation.

The director may contract for, purchase, or lease goods or services necessary for effectuating the purpose of the State Lottery Act. All procurements shall be subject to the act and shall be exempt from any other state law concerning the

purchase of any goods or services, and all purchases in excess of twenty-five thousand dollars shall be subject to approval by the Tax Commissioner.

Source: Laws 1991, LB 849, § 33; Laws 1993, LB 138, § 52; Laws 2007, LB638, § 17.

9-834 Major procurement; lottery vendor; disclosures required; contract approval; requirements; section, how construed.

(1) To enable the division to review and evaluate the competence, integrity, background, character, qualifications, and nature of the ownership and control of lottery vendors for major procurements, such vendors shall disclose the following information:

(a) The lottery vendor's name, address, and type of business entity and, as applicable, the name and address of the following:

(i) If the lottery vendor is a corporation, the officers, directors, and each stockholder in the corporation, except that in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own or have a beneficial interest in ten percent or more of such securities need to be disclosed;

(ii) If the lottery vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) If the lottery vendor is a subsidiary, the officers, directors, and each stockholder of the parent corporation, except that in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own or have a beneficial interest in ten percent or more of such securities need to be disclosed;

(iv) If the lottery vendor is a limited liability company, the members and any managers;

(v) If the lottery vendor is a partnership or joint venture, the general partners, limited partners, or joint venturers;

(vi) If the parent company, general partner, limited partner, or joint venturer of the lottery vendor is itself a corporation, trust, association, subsidiary, partnership, limited liability company, or joint venture, all the information required in subdivision (a) of this subsection shall be disclosed for such other entity as if it were itself a lottery vendor so that full disclosure of ultimate ownership is achieved;

(vii) If any parent, child, brother, sister, or spouse of the lottery vendor is involved in the vendor's business in any capacity, all of the information required in subdivision (a) of this subsection shall be disclosed for such family member as if he or she were a lottery vendor; and

(viii) If the lottery vendor subcontracts any substantial portion of the work to be performed to a subcontractor, all of the information required in subdivision (a) of this subsection shall be disclosed for each subcontractor as if it were itself a lottery vendor;

(b) The place of the lottery vendor's incorporation, if any;

(c) The name, address, and telephone number of a resident agent to contact regarding matters of the lottery vendor and for service of process;

(d) The name, address, and telephone number of each attorney and law firm representing the lottery vendor in this state;

(e) The name, address, and telephone number of each of the lottery vendor's accountants;

(f) The name, address, and telephone number of each attorney, law firm, accountant, accounting firm, public relations firm, consultant, sales agent, or other person engaged by the lottery vendor or involved in aiding the vendor's efforts to obtain the contract and the procurement involved at the time of disclosure or during the prior year;

(g) The states and jurisdictions in which the lottery vendor does business or has contracts to supply goods or services related to lottery games, the nature of the business or the goods or services involved for each such state or jurisdiction, and the entities to which the vendor is supplying goods or services;

(h) The states and jurisdictions in which the lottery vendor has applied for, sought renewal of, received, been denied, or had revoked a gaming contract or license of any kind, and the status of such application, contract, or license in each state or jurisdiction. If any gaming contract or license has been revoked or has not been renewed or if any gaming contract or license application either has been denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive or retain such a contract or license shall be disclosed. For purposes of this subdivision, gaming contract or license shall mean a contract or license for the conduct of or any activity related to the operation of any lottery game or other gambling scheme;

(i) The details of any conviction or judgment of any state or federal court against the lottery vendor relating to any felony and any other criminal offense other than a traffic violation;

(j) The details of any bankruptcy, insolvency, reorganization, or pending litigation involving the lottery vendor;

(k) The identity of any entity with which the lottery vendor has a joint venture or other contractual agreement to supply any state or jurisdiction with goods or services related to lottery games, including, with regard to such entity, all the information requested under subdivisions (a) through (j) of this subsection;

(l) The lottery vendor's financial statements for the three years prior to disclosure and a list of all liens filed on or filed against the entity or filed on or filed against persons with a substantial interest in the entity;

(m) At the director's request, the lottery vendor's federal and state income tax returns for the three years prior to disclosure. Such information shall be considered confidential in any review in conjunction with any pending major procurement and shall not be disclosed except pursuant to appropriate judicial order;

(n) The identity and nature of any interest known to the lottery vendor of any past or present director or other employee of the division who, directly or indirectly, is an officer, director, limited liability company member, agent, consultant, independent contractor, stockholder, debt holder, principal, or employee of or who has any direct or indirect financial interest in any lottery vendor. For purposes of this subdivision, financial interest shall mean ownership of any interest or involvement in any relationship from which or as a result of which a person within the five years prior to disclosure has received, is receiving at the time of disclosure, or in the future will be entitled to receive over a five-year period more than one thousand dollars or its equivalent;

(o) The details of any contribution to or independent expenditure for a candidate for a state elective office as defined in section 49-1444 made by the lottery vendor after March 1, 1995, and within three years prior to disclosure. The lottery vendor shall be considered to have made a contribution or independent expenditure if the contribution or independent expenditure was made by the lottery vendor, by an officer of the lottery vendor, by a separate segregated political fund established by the lottery vendor as provided in section 49-1469, or by a person acting on behalf of the vendor, officer, or fund;

(p) The names, street addresses, and mailing addresses of all lobbyists representing the vendor in Nebraska, and all accounts and money managed by those lobbyists; and

(q) Such additional disclosures and information as the Tax Commissioner may determine to be appropriate for the major procurement involved.

(2) The disclosures required by subsection (1) of this section may be required only once of a lottery vendor. The vendor shall file an addendum to the original filing by August 1 of each year showing any changes from the original filing or the latest addendum.

(3) No contract shall be approved by the Tax Commissioner or signed or entered into by the director unless the lottery vendor has complied with this section. Any contract entered into with a vendor who has not complied with this section shall be void.

(4) If a contract is to be entered into as a result of competitive procurement procedures, the required disclosures, if not already on file with the director, shall be made prior to or concurrent with the submission of a bid, proposal, or offer. If the contract is entered into without a competitive procurement procedure, such disclosures shall be required prior to execution of the contract.

(5) No major procurement with any lottery vendor shall be entered into if any person with a substantial interest in the lottery vendor has been convicted of a felony or misdemeanor involving gambling, moral turpitude, dishonesty, or theft. No major procurement with any lottery vendor shall be entered into if any person with a substantial interest in the lottery vendor has been convicted of any other felony within ten years preceding the date of submission of information required under this section. For purposes of this subsection, person with a substantial interest shall mean any sole proprietor, partner in a partnership, member or manager of a limited liability company, officer of a corporation, shareholder owning in the aggregate ten percent or more of the stock in a corporation, or governing officer of an organization or other entity.

(6) This section shall be construed broadly and liberally to achieve the end of full disclosure of all information necessary to allow for a full and complete evaluation by the director of the competence, integrity, background, character, qualifications, and nature of the ownership and control of lottery vendors for major procurements.

Source: Laws 1991, LB 849, § 34; Laws 1993, LB 121, § 120; Laws 1993, LB 138, § 53; Laws 1994, LB 694, § 123; Laws 1994, LB 884, § 20; Laws 1995, LB 28, § 1; Laws 1996, LB 1069, § 2.

9-835 Major procurement; director; Tax Commissioner; powers and duties; limitation; assignment of contract.

(1) Subject to the approval of the Tax Commissioner, the director may request proposals for or enter into major procurements for effectuating the purpose of the State Lottery Act. In awarding contracts in response to requests for proposals, the director shall award such contracts to the responsible vendor who submits the lowest and best proposal which maximizes the benefits to the state in relation to the cost in the areas of security, competence, quality of product, capability, timely performance, and maximization of net revenue to benefit the public purpose of the act. All contract awards made by the director exceeding twenty-five thousand dollars shall be approved by the Tax Commissioner.

(2) The director may not award and the Tax Commissioner may not approve a contract with a person to serve as a lottery contractor for a major procurement if the person has made a contribution to a candidate for a state elective office as defined in section 49-1444 after March 1, 1995, and within three years preceding the award of the contract. A person shall be considered to have made a contribution if the contribution is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in section 49-1469, or by anyone acting on behalf of the person, officer, or fund. Any contract awarded in violation of the subsection shall be void.

(3) No contract may be assigned by a lottery contractor except by a written agreement approved by the Tax Commissioner and signed by the director.

Source: Laws 1991, LB 849, § 35; Laws 1993, LB 138, § 54; Laws 1995, LB 28, § 2; Laws 2007, LB638, § 18.

9-836 Major procurement; lottery contractor; performance bond.

Each lottery contractor for a major procurement shall, at the time of executing the contract with the director, post a performance bond with the director, using a surety acceptable to the director, in an amount equal to the full amount estimated to be paid annually to the contractor under the contract.

Source: Laws 1991, LB 849, § 36; Laws 1993, LB 138, § 55.

9-836.01 Division; sale of tangible personal property; distribution of profits.

The division may endorse and sell for profit tangible personal property related to the lottery. Any money received as profit by the division pursuant to this section shall be remitted to the State Treasurer for credit to the State Lottery Operation Trust Fund to be distributed to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund pursuant to the requirements of section 9-812.

Source: Laws 1994, LB 694, § 118; Laws 1998, LB 924, § 17; Laws 2003, LB 574, § 22.

9-837 Lottery contractor; perform contract in compliance with other laws; failure; effect.

Each lottery contractor shall perform its contract consistent with the laws of this state, federal laws, and the laws of the state or states in which such contractor is performing or producing, in whole or in part, any of the goods or services for which the division contracted. No contracts with any lottery

contractor who fails to comply with such laws shall be entered into by the director or shall be enforceable by the contractor.

Source: Laws 1991, LB 849, § 37; Laws 1993, LB 138, § 56.

9-838 Attorney General; Nebraska State Patrol; duties.

Upon request of the director or Tax Commissioner, the Attorney General and the Nebraska State Patrol shall furnish to the director any information which they may have in their possession as may be necessary to ensure security, honesty, fairness, and integrity in the operation and administration of lottery games conducted pursuant to the State Lottery Act, including investigative reports and computerized information or data. For the purpose of requesting and receiving such information, the division shall be considered to be a criminal justice agency and shall be furnished such information without charge upon proper written request.

Source: Laws 1991, LB 849, § 38; Laws 1993, LB 138, § 57; Laws 1995, LB 343, § 5.

9-839 Civil and criminal proceedings; jurisdiction.

The failure to do any act required by or pursuant to or the performance of any act prohibited by the State Lottery Act shall be deemed an act in part in the principal office of the division. Any criminal prosecution under the act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred or is deemed to have occurred.

Source: Laws 1991, LB 849, § 39; Laws 1993, LB 138, § 58.

9-840 Director; studies and report.

(1) The director shall make a continuous study of the State Lottery Act to ascertain any defects in the act or in the rules and regulations promulgated pursuant to the act which could result in abuses in the administration and operation of lottery games or the act or in any evasion of such act or rules and regulations and shall report his or her findings to the Tax Commissioner for the purpose of making recommendations for improvement in the act.

(2) The director shall make a continuous study of the operation and the administration of similar laws which may be in effect in other states, any written materials on the subject which are published or available, any federal laws which may affect the operation of the state lottery, and the reaction of citizens to existing and potential features of the state lottery in order to recommend changes which will serve the purposes of the act.

Source: Laws 1991, LB 849, § 40; Laws 1993, LB 138, § 59.

9-841 Act; intent; preemption of state or local laws or regulations.

It is the intent of the State Lottery Act that all matters related to the operation of the lottery games conducted pursuant to the act shall be governed solely by the act and shall be free from regulation or legislation by all local governments. No other state or local law or regulation providing any penalty, restriction, regulation, or prohibition on the manufacture, transportation, storage, distribution, advertisement, possession, or sale of any tickets or for the

operation of any lottery game shall apply to the tickets or lottery games conducted pursuant to the act.

Source: Laws 1991, LB 849, § 41; Laws 1993, LB 138, § 60.

9-842 Repealed. Laws 1993, LB 138, § 83.

ARTICLE 9
GAMING TAX AND LICENSE FEE

Section
9-901. Repealed. Laws 2007, LB 64, § 1.
9-902. Repealed. Laws 2007, LB 64, § 1.
9-903. Repealed. Laws 2007, LB 64, § 1.
9-904. Repealed. Laws 2007, LB 64, § 1.

9-901 Repealed. Laws 2007, LB 64, § 1.

9-902 Repealed. Laws 2007, LB 64, § 1.

9-903 Repealed. Laws 2007, LB 64, § 1.

9-904 Repealed. Laws 2007, LB 64, § 1.

CHAPTER 10
BONDS

Article.
1. General Provisions. 10-101 to 10-145.
2. Uniform Registration and Cancellation of Bonds. 10-201 to 10-209.
3. Compromise of Indebtedness. 10-301 to 10-305.
4. Internal Improvement Bonds. 10-401 to 10-411.
5. Funding Bonds of Counties. 10-501 to 10-509.
6. Funding Bonds; General. 10-601 to 10-617.
7. School District Bonds. 10-701 to 10-719.
8. County Aid Bonds. 10-801 to 10-807.
9. Refinancing General Indebtedness by Issuing Bonds or Borrowing Money. Repealed.
10. Private Activity Bonds. 10-1001.
11. Nebraska Governmental Unit Security Interest Act. 10-1101 to 10-1106.

Cross References

Constitutional provisions:
Limitation of state on indebtedness, see Article XIII, section 1, Constitution of Nebraska.
Special acts of Legislature authorizing indebtedness, void, see Article III, section 18, Constitution of Nebraska.
Agricultural societies, refunding provisions, see sections 2-1301 and 2-1302.
Aviation fields:
City airport authorities, see Chapter 3, articles 3 and 5, and Chapter 18, article 15.
County airport authorities, see Chapter 3, article 6.
Joint airport authorities, see Chapter 3, article 7.
Bonds of cities:
Cities of the first class, see Chapter 16.
Cities of the metropolitan class, see Chapter 14.
Cities of the primary class, see Chapter 15.
Cities of the second class and villages, see Chapter 17.
Various classes of cities and villages, see Chapters 18 and 19.
Bonds of counties:
Bridge construction and repair, see sections 23-397 and 23-398.
Courthouse and other county buildings, see section 23-120.
Other building bonds, see Chapter 23, article 3.
Road construction and improvement, see section 39-1906.
Bridges, see sections 39-835 to 39-842 and 39-856 to 39-867.
Building commissions, see section 13-1301 et seq.
Cemeteries, municipal, see Chapter 12, article 10.
Coal discovery aid bonds, see section 57-106.
Community Development Law, see section 18-2101 et seq.
Cooperative financing of municipal projects, see section 18-2401 et seq.
Docks, see section 13-1416.
Drainage districts, see Chapter 31, articles 1, 3, 4, and 5.
Fire department equipment, bonds for, see sections 18-1201 and 18-1202.
Funding bonds, issuance by:
Cities of the first class, see section 16-214.
Cities of the metropolitan class, see section 14-524.
Cities of the second class and villages, see sections 10-606 et seq. and 17-146.
Health districts, bonds for, see section 71-1622.
Heating systems, lighting systems, ice plants, see sections 19-1401 to 19-1404.
Hospitals, county, see Chapter 23, article 35.
Industrial development, revenue bonds, see section 13-1101 et seq.
Interest, general provisions, see Chapter 45.
Interlocal Cooperation Act, see section 13-801 et seq.
Irrigation district bonds, see Chapter 46.
Jail, bonds for construction of, see section 47-305.
Nebraska Investment Finance Authority, bonds authorized, see section 58-252 et seq.
Official bonds, see Chapter 11.
Park board, joint facilities, see sections 13-306 and 13-307.
Power district bonds, see Chapter 70, article 6.
Public safety equipment, bonds for, see sections 18-1201 and 18-1202.
Rail line assistance, bonds authorized, see sections 74-1428.01 to 74-1428.03.
Reclamation districts, see sections 46-567.01 to 46-567.04.
Sanitary and improvement districts, see Chapter 31, article 7.

Sanitary drainage districts, see Chapter 31, article 5.
Sewerage systems in cities, bonds for, see Chapter 18, article 5.
Sinking funds, investment of, see sections 77-2334 and 77-2341.
Special road improvement districts, see sections 39-1616 and 39-1628 to 39-1632.
State highway bonds, see section 39-2223.
Townships, road construction and improvement, see section 39-1906.

ARTICLE 1
GENERAL PROVISIONS

Section

Section
10-142. Refunding bonds; issuance; conditions; application of proceeds.
10-143. Sections, how construed.
10-144. Bonds issued by agency or political subdivision; registration not required.
10-145. Political subdivision; Internet auction system; authorized.

10-101 State and county treasurers as fiscal agents; exception; bonds; where payable; coupon notes, interest on.

Except as provided in sections 10-134 to 10-141, the State Treasurer shall be the state fiscal agent, and all bonds and coupons issued by the state shall be made payable at the office of the State Treasurer. Except as provided in sections 10-134 to 10-141, the county treasurer shall be the county fiscal agent, and all bonds and coupons issued by any county, township, precinct, city, village, school district, or other political subdivision of a county shall be made payable at the office of the county treasurer, except that all revenue bonds and coupons of cities of the first class may at the discretion of such city be payable at the office of the city treasurer. If the interest on any such bonds is represented by coupon notes, such coupon notes shall contain a provision fixing the rate of interest they shall bear after due until they are paid. When any of the political subdivisions as above enumerated lies in two or more counties, the bonds shall be payable at the office of either one of the county treasurers as may be provided in the history and in the bonds or as provided in sections 10-134 to 10-141.

Source: Laws 1913, c. 15, § 1, p. 78; R.S.1913, § 365; Laws 1917, c. 7, § 1, p. 60; C.S.1922, § 282; Laws 1925, c. 90, § 1, p. 270; C.S.1929, § 11-101; R.S.1943, § 10-101; Laws 1967, c. 30, § 1, p. 148; Laws 1969, c. 51, § 1, p. 273; Laws 1983, LB 421, § 10.

10-102 Remittances; how made; expenses.

All officers, designated by law for the purpose, shall remit to the State Treasurer, or county treasurer, at least ten days before maturity of any bonds or coupons heretofore or hereafter made payable at the office of the State Treasurer, or the office of any county treasurer, sufficient money out of the tax collected for the purpose, for the redemption of such bonds and coupons. All expenses for exchange and postage, shall be a proper charge against the state, county, city, township, precinct, village, school district or other political subdivision, for which such money is remitted, and shall be allowed the treasurer in his settlement. Any and all such bonds and coupons as shall be paid by any county treasurer shall be a charge against the proper fund of any township, precinct, city, village, school district or other political subdivision for which he has collected taxes or received the funds. Each county treasurer in making remittance for the payment of bonds and coupons shall make such remittance either in New York bank exchange or federal reserve bank exchange or its equivalent.

Source: Laws 1913, c. 15, § 2, p. 78; R.S.1913, § 366; Laws 1917, c. 7, § 1, p. 61; C.S.1922, § 283; C.S.1929, § 11-102.

10-103 Payment; cancellation and return; duty of state agent.

On receipt of any funds by the state agent, it shall be the duty of such agent to notify the officer from whom received, of the receipt thereof; and immediately on the payment of such bonds or coupons for which funds were remitted, said

coupons or bonds shall be canceled and returned to the officer from whom such funds were received.

Source: Laws 1913, c. 15, § 4, p. 79; R.S.1913, § 368; C.S.1922, § 285; C.S.1929, § 11-104.

10-104 Repealed. Laws 1983, LB 421, § 18.

10-105 Donations to railroad corporations; conditions; noncompliance; effect.

No proposition shall be submitted to the electors of any county for donations of bonds or any other valuables to any railroad corporation, unless said railroad corporation, through its authorized and responsible agent, files for record in the county clerk's office, where such donations of bonds or any other valuables are to be voted upon, a plat of the survey showing the exact line of route through said county, within at least two weeks previous to such election; and no such bonds, or other evidences of indebtedness, or donations, shall be valid if they are voted, unless said railroad corporation builds its line of road within forty rods of the survey as filed in the county clerk's office.

Source: Laws 1879, § 1, p. 151; R.S.1913, § 370; C.S.1922, § 287; C.S. 1929, § 11-106.

10-106 County bonds; registration; procedure; certified statement; record.

The officers of any county in this state issuing bonds shall register in a book kept for that purpose (1) the notice of election, the manner and time of publication, the question submitted, and the adoption of the proposition pursuant to which such bonds were issued and (2) the date, the amount, the number, the maturity, and the place of payment of such bonds, the rate of interest thereon, and the time when and place where such interest is payable. They shall, at the time such bonds are issued, make out and transmit to the county clerk a certified statement of such registry, which shall be attested by the county clerk under his or her official seal. The county clerk, upon the receipt of such statement, shall, in a book kept for that purpose, make an accurate record of the same.

Source: Laws 1875, § 1, p. 169; R.S.1913, § 371; C.S.1922, § 288; C.S. 1929, § 11-107; R.S.1943, § 10-106; Laws 2001, LB 420, § 3.

This section applies to refunding bonds. State ex rel. Niles v. Weston, 67 Neb. 175, 93 N.W. 182 (1903).

10-107 County bonds; statement of county indebtedness; duties of county clerk; compensation.

At such times as the Auditor of Public Accounts may request, the county clerk shall make out, certify, and transmit to the auditor a full and complete statement of the bonded indebtedness of every description of such county at the date of such statement, particularly setting forth the nature of such bonds and the purpose for which the same were issued. The county clerk shall receive the same compensation for services rendered under this section and section 10-106 as is allowed by law for a copy of like records. Such compensation shall be paid by the county.

Source: Laws 1875, § 2, p. 170; R.S.1913, § 372; C.S.1922, § 289; C.S. 1929, § 11-108; R.S.1943, § 10-107; Laws 2001, LB 420, § 4.

Mandamus petition must show that Auditor of Public Accounts was furnished with necessary data. State ex rel. Niles v. Weston, 67 Neb. 175, 93 N.W. 182 (1903).

10-108 Repealed. Laws 2001, LB 420, § 38.

10-109 Repealed. Laws 2001, LB 420, § 38.

10-110 County bonds; retirement; taxes; levy and collection; duties of county clerk.

The county clerk shall ascertain from the assessment roll of the county the amount of taxable property in such county and the percentage required to be levied thereon to pay the interest and to create a sinking fund. The county clerk shall levy such percentage upon the taxable property of the county and shall place the same upon the tax roll of the county in a separate column or columns, designating the purposes for which the taxes are levied. The taxes shall be collected by the county treasurer in the same manner that other taxes are collected.

Source: Laws 1875, § 5, p. 171; R.S.1913, § 375; C.S.1922, § 292; C.S. 1929, § 11-111; R.S.1943, § 10-110; Laws 2001, LB 420, § 5.

Sinking fund tax is levied for public loans, not for floating indebtedness. Union P. Ry. Co. v. York County, 10 Neb. 612, 7 N.W. 270 (1880); Union P. R. R. Co. v. Buffalo County, 9 Neb. 449, 4 N.W. 53 (1880).

10-111 County bonds; retirement; interest; payment; sinking fund; investment; conditions.

Upon the receipt of such money by the county treasurer, he shall, out of the same, at once proceed to pay off the interest accrued upon such registered bonds, at the place where such interest is made payable. The county treasurer shall cause the coupons for all interest thus paid to be surrendered, which coupons shall be filed with and canceled by the county clerk, and his receipt taken therefor and retained by said treasurer. The money thus collected and remaining in the hands of the county treasurer after the payment of the said interest as herein provided, except a sufficient amount to pay the accruing interest upon such bonds for the current year, shall be retained as a sinking fund for the final redemption of such bonds, and shall be invested by the county treasurer, when so ordered by the county board, (1) in redeeming the bonds of the county issuing the same, (2) in the bonds of the State of Nebraska, and (3) in the bonds of the United States; *Provided*, the bonds thus purchased shall in all cases be purchased at the lowest market price, after twenty days' notice by publication in at least one newspaper published and in general circulation at the capital city or town of the state; the cost of which advertising, at legal rates, shall be paid out of the sinking fund for the redemption of such bonds.

Source: Laws 1875, § 6, p. 171; R.S.1913, § 376; C.S.1922, § 293; C.S. 1929, § 11-112.

10-112 County bonds; retirement; payment out of state; procedure.

When the interest and principal, or interest only, of any registered bonds are payable in New York City, or elsewhere out of the state, payment shall be then made at the place so designated in such bond or coupon, or at the financial agency of the state for such purposes. In order that the funds may not be misapplied, the county treasurer shall procure a draft for the amount, to be transmitted by drawing his check on some bank in this state, and both check

and draft shall be so endorsed as to show upon what bond or bonds the funds shall be applied; or at the request of the party holding or owning such bonds, payment may be made at the office of said treasurer.

Source: Laws 1875, § 7, p. 172; R.S.1913, § 377; C.S.1922, § 294; C.S. 1929, § 11-113.

10-113 County treasurer; liability for bond funds.

The tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, until fully satisfied, and the county treasurer shall be liable on his official bond for the faithful disbursement of all money so collected or received by him.

Source: Laws 1875, § 8, p. 172; R.S.1913, § 378; C.S.1922, § 295; C.S. 1929, § 11-114.

10-114 County bonds; payment; cancellation at maturity; procedure; expenses.

When any registered bonds mature, they shall be paid off by the county treasurer at the place where payable out of any money in his or her hands or under his or her control for that purpose, and when so paid the bonds shall be endorsed Canceled by the county treasurer on the face thereof, together with the date of payment, and filed with the county clerk, who shall enter satisfaction of such bonds. If the bonds are payable out of the state, an allowance of one-fourth of one percent shall be made to the county treasurer for the expense attendant in making such payment, to be deducted from any money in his or her hands remaining after payment of such matured bonds.

Source: Laws 1875, § 9, p. 172; R.S.1913, § 379; C.S.1922, § 296; C.S. 1929, § 11-115; R.S.1943, § 10-114; Laws 1990, LB 924, § 1.

10-115 Statement of business transacted; duties of county treasurer and county clerk.

The county treasurer and county clerk shall, when ordered by the county board, publish a detailed statement of the business transacted by them under the provisions of sections 10-101 to 10-125.

Source: Laws 1875, § 10, p. 173; R.S.1913, § 380; C.S.1922, § 297; C.S.1929, § 11-116.

10-116 Repealed. Laws 1983, LB 421, § 18.

10-117 Village and city of the second class; certified transcript of proceedings; duties of village or city clerk; lost records.

The clerk of any village or city of the second class in which any bonds are issued shall furnish a duly certified transcript to the holder of any bond of any such village or city on demand of such holder, except that if the records of such proceedings have been destroyed by fire or other public calamity, a certified statement of the clerk of all proceedings had prior to the issuance of such bonds

shall, when approved by resolution of the city council or village board, have the same force and effect as such certified transcript would have had.

Source: Laws 1885, c. 7, § 3, p. 93; R.S.1913, § 382; Laws 1921, c. 191, § 1, p. 709; C.S.1922, § 299; C.S.1929, § 11-118; R.S.1943, § 10-117; Laws 2001, LB 420, § 6.

Certified history of proceedings for issuance of bonds is required. Belza v. Village of Emerson, 159 Neb. 651, 68 N.W.2d 272 (1955).

This section requires city clerk to furnish Auditor of Public Accounts with a certified transcript of all proceedings had previous to the issuance of bonds, and when it appears therefrom that bonds were legally issued for a lawful purpose it is the auditor's duty to register them. State ex rel. City of Tekamah v. Marsh, 108 Neb. 835, 189 N.W. 381 (1922).

10-118 Repealed. Laws 2001, LB 420, § 38.

10-118.01 Repealed. Laws 2001, LB 420, § 38.

10-119 Precinct bonds; retirement; taxes; levy and collection; duties of county board and county treasurer.

The county board shall, at the usual time of levying taxes in each year, levy a tax upon all the property of the proper precinct, sufficient to pay the annual interest on the bonds and the principal thereof, in accordance with the terms of the proposition under which the bonds were issued. Taxes so levied shall be collected by the county treasurer as other taxes are collected, and the proceeds of the levy shall be retained by the county treasurer and used for the payment of interest on the bonds and the principal thereof as the same become due to the holder thereof, except that in cities having a population of more than fifty thousand inhabitants, the money so collected shall be forwarded to or retained in the treasury of the city for the payment of bonds and interest for which the money was collected.

Source: Laws 1885, c. 8, § 2, p. 95; R.S.1913, § 384; Laws 1921, c. 191, § 2, p. 710; C.S.1922, § 301; C.S.1929, § 11-120; R.S.1943, § 10-119; Laws 2001, LB 420, § 7.

10-120 Precinct refunding bonds; sale authorized; use of proceeds.

When the county board of any county issues bonds to refund the bonded indebtedness of any precinct in the State of Nebraska, and in case an exchange of said refunding bonds cannot be effected, the county board is hereby authorized to sell said refunding bonds from time to time, in such sums as may be necessary to create a fund for the redemption of the outstanding bonds aforesaid and pay interest on such bonds to the date of redemption. The money realized from the sale of said refunding bonds shall not be expended or used for any other purpose than for refunding said outstanding bonds and interest on the bonds.

Source: Laws 1885, c. 9, § 1, p. 95; R.S.1913, § 385; C.S.1922, § 302; C.S.1929, § 11-121; R.S.1943, § 10-120; Laws 1983, LB 421, § 12.

10-121 Repealed. Laws 2001, LB 420, § 38.

10-122 Repealed. Laws 2001, LB 420, § 38.

10-123 Precinct, township, or school district bonds; duty of local boards.

Precinct, township, or school district boards or officers shall file for record with the county clerk the question submitted, the notice and proof of publication, and the return of votes for and against all bonds issued by such precinct, township, or school district.

Source: G.S.1873, c. 63, § 1, p. 883; R.S.1913, § 388; C.S.1922, § 305; C.S.1929, § 11-124; R.S.1943, § 10-123; Laws 1990, LB 924, § 2.

Certificate of registration on back of bonds is evidence of corporate existence of school district. State ex rel. Hopkins v. School Dist. No. 7, of Sherman County, 21 Neb. 725, 33 N.W. 266 (1887).

Act of 1875, amending this section and relating to levy of taxes, was invalid because it contained more than one subject and was broader than the title. B. & M. R. R. Co. v. Board of County Comrs. of Saunders County, 9 Neb. 507, 4 N.W. 240 (1880).

Power to borrow money to erect schoolhouse did not authorize issuance of negotiable bonds. Ashuelot Nat. Bank of Keene v. School Dist. No. 7, of Valley County, 56 F. 197 (8th Cir. 1893).

10-124 Precinct, township, or school district bonds; duty of county clerk; record; contents; fee.

It shall be the duty of the county clerk, in a book prepared for that purpose, to record the question submitted, the notice and proof of publication, the return of votes for and against; and the fee for so doing, to be paid by the precinct, township, or school district board or officers, as the case may be, shall be the same as charged for the recording of deeds and mortgages.

Source: G.S.1873, c. 63, § 2, p. 884; R.S.1913, § 389; C.S.1922, § 306; C.S.1929, § 11-125.

10-125 Repealed. Laws 1949, c. 12, § 1.

10-126 Bonds; when redeemable; exceptions; call premium, when authorized; procedure for calling; resolution, when required; notice; prepayment.

(1) All bonds of indebtedness, issued after September 7, 1947, by any county, precinct, city, village, school district, drainage district, or irrigation district or any other municipal corporation or governmental subdivision of the state shall be redeemable at the option of the governmental subdivision or municipal corporation issuing such bonds at any time on or after five years from the date of issuance, except that this provision shall not apply to (a) bonds of public power districts, public power and irrigation districts, metropolitan utilities districts, cities of the metropolitan and primary classes, and housing authorities of any city or village, (b) issues of revenue bonds exceeding one million dollars of cities of the first and second classes and of villages, (c) issues of bonds exceeding ten million dollars of any school district of one thousand or more students in membership as provided in the fall school district membership report pursuant to subsection (4) of section 79-528 immediately preceding the issuance of bonds, or (d) bonds issued by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges. Bonds of a district created under Chapter 31 or 39 shall in addition, after annexation of the district by any municipality, be redeemable at the option of the annexing municipality at any time after annexation of such district if at the time of redemption at least five years have elapsed from date of issuance. Such condition shall be plainly set forth in all bonds of any governmental subdivision of the state or municipal corporation hereafter issued to which it applies.

(2) The issuer, except districts organized under Chapter 31 or 39, of any such bonds of indebtedness, when the total amount of bonds at par value authorized as a single issue is five hundred thousand dollars or more, may agree to pay a call premium of not to exceed four percent of the par value for the redemption

of such bonds. Districts organized under Chapter 31 or 39 may agree to pay a call premium of not to exceed two percent of the par value of such bonds when a single issue is five hundred thousand dollars or more, and bonds of such districts shall have no other bond redemption call or prepayment restrictions except as provided in this section. Bonds listed in subdivisions (1)(a) through (1)(d) of this section may contain such provisions with respect to their redemption as the public power district, public power and irrigation district, metropolitan utilities district, city, village, housing authority, school district, Board of Regents, or Board of Trustees shall provide.

(3) All bonds issued which do not provide a special procedure for calling and prepayments shall be called by a resolution passed by the governing body of the obligor, which resolution shall designate the bond or bonds to be prepaid by stating the date of the bonds, the purpose for which the bonds were issued, the bond numbers of the bonds so called, and the date set for prepayment. The issuer of any bonds which are required by this section to be issued subject to an option of redemption shall, at least thirty days prior to the date set for prepayment of such bonds, send notice by mail of the call to each holder of the called bonds as shown in its records. A true copy of the resolution shall be filed by the obligor with the paying agent on or before the call date.

(4) If the obligor deposits sufficient funds with the paying agent to pay the called bonds and accrued interest to date of call in full on or before the call date, the bonds shall cease to be a liability of the obligor, otherwise the call shall be revoked, and the bonds continue in effect the same as though no call had been made.

Source: Laws 1947, c. 15, § 1, p. 81; Laws 1961, c. 23, § 1, p. 131; Laws 1961, c. 24, § 1, p. 133; Laws 1963, c. 36, § 1, p. 199; Laws 1965, c. 35, § 1, p. 226; Laws 1967, c. 31, § 1, p. 149; Laws 1969, c. 48, § 1, p. 264; Laws 1975, LB 446, § 1; Laws 1976, LB 825, § 1; Laws 1992, LB 746, § 58; Laws 2000, LB 968, § 1; Laws 2001, LB 420, § 8; Laws 2002, LB 957, § 14.

10-127 Replacement bond; issuance authorized; when.

The State Highway Commission, any county, city, village, municipal county, school district, drainage district, irrigation district, public power district, public power and irrigation district, metropolitan utilities district, the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, community colleges, sanitary and improvement districts, rural water districts, airport authorities, hospital authorities, or any other municipal corporation or governmental subdivision of the state which has the power to issue bonds or other evidences of indebtedness may issue bonds or other evidences of indebtedness of like date, tenor, amount, and maturity to replace mutilated, destroyed, stolen, or lost bonds or other evidences of indebtedness previously issued and having attached thereto the same corresponding unmatured coupons, if any, as were attached to the mutilated, destroyed, stolen, or lost bonds or other evidences of indebtedness. Issuance of replacement bonds or other evidences of indebtedness of like date, tenor, amount, and maturity may be made (1) in exchange and in substitution for such mutilated bond or other evidence of indebtedness and attached unmatured coupons, if any, upon surrender of such mutilated bond or other evidence of indebtedness and attached unmatured coupons, if any, or (2) in lieu of and in substitution for the

destroyed, stolen, or lost bond or other evidence of indebtedness and attached unmatured coupons. In the event such bond or other evidence of indebtedness and attached unmatured coupons, if any, have been destroyed, stolen, or lost, the holder thereof shall first file with the issuer evidence satisfactory to it that such bond or other evidence of indebtedness and attached unmatured coupons have been destroyed, stolen, or lost and of such holder's ownership thereof and shall in any event furnish the issuer with indemnity satisfactory to it and shall comply with any statutory requirements and with such other requirements as the issuer may require. A charge, not exceeding the actual cost thereof, shall be imposed upon such owner to reimburse the issuer for the expenses for issuing each such new bond or evidence of indebtedness, which cost shall be paid before the delivery of the new bond or evidence of indebtedness. Instead of issuing a substituted bond or evidence of indebtedness or instead of delivery of any coupon for a bond or evidence of indebtedness, as the case may be, which has matured or which is about to mature and instead of issuing a substituted bond or other evidence of indebtedness for a bond or other evidence of indebtedness which has been called for redemption, the issuer, upon receiving evidence and being indemnified as provided in this section, at its option may pay the bond or other evidence of indebtedness or such coupon from any source lawfully available therefor without the surrender thereof.

Source: Laws 1971, LB 873, § 1; Laws 1988, LB 802, § 1; Laws 2000, LB 1135, § 2; Laws 2001, LB 142, § 21.

10-128 Replacement bond; issuance; procedure.

Each replacement bond or other evidence of indebtedness shall be authorized by a resolution of the governing body of the issuer and shall be executed by the then appropriate officers thereof.

Source: Laws 1971, LB 873, § 2; Laws 1990, LB 924, § 3; Laws 2001, LB 420, § 9.

10-129 Replacement bond; issuance; notice.

Upon the issuance of any replacement bond or other evidence of indebtedness the issuer shall notify the paying agent with respect thereto and such paying agent shall not make payment of any portion of the principal or interest of any such mutilated, destroyed, stolen or lost bond or other evidence of indebtedness which has been replaced and shall promptly notify the issuer of such bond or other evidence of indebtedness if and when any such bond or other evidence of indebtedness so replaced is ever presented for payment.

Source: Laws 1971, LB 873, § 3.

10-130 Replacement bond; blank bond; printing authorized.

When any of the issuing bodies described in section 10-127 issues bonds or other evidences of indebtedness after April 30, 1971, such body may cause to be printed a sufficient number of blank bonds or other evidences of indebtedness as it shall deem necessary to provide for future requirements with respect to the issuance of replacement bonds or other evidences of indebtedness.

Source: Laws 1971, LB 873, § 4.

10-131 Bonds of municipal corporation or political subdivision; signatures.

Notwithstanding any other provisions of the statutes of the State of Nebraska with respect to the issuance of bonds, interest coupons, and other evidence of indebtedness by any county, city, village, municipal county, school district, public power district, public power and irrigation district, airport authority, sanitary and improvement district, or any other municipal corporation or political subdivision, if any bond or other evidence of indebtedness is signed by more than one officer of such issuer, one of the signatures shall be manually affixed thereto and the other signatures may be facsimile signatures of such officers, and with respect to any interest coupons appertaining to any bond or evidence of indebtedness, the signatures on such interest coupon may be facsimile signatures.

Source: Laws 1977, LB 265, § 1; Laws 2001, LB 142, § 22.

10-132 Bonds of municipal corporation or political subdivision; seal.

If any public officer, county clerk, city clerk, or secretary of any governing body is required to affix the seal of his or her office to any such bond or evidence of indebtedness, the seal may be a facsimile of such seal printed on the bond or evidence of indebtedness.

Source: Laws 1977, LB 265, § 2; Laws 2001, LB 420, § 10.

10-133 Bonds of municipal corporation or political subdivision; fiscal and consultant fees; how paid.

Any county, city, village, municipal county, school district, public power district, public power and irrigation district, airport authority, sanitary and improvement district, or any other municipal corporation or political subdivision is hereby authorized to pay fiscal and consultant fees incurred with respect to issuance and sale of any bonds, notes, or other evidence of indebtedness out of the proceeds from the sale of such bonds or any other funds available to the issuer, and such payment shall not constitute or be considered as a discount with respect to the sale price of the bonds, notes, or other evidence of indebtedness.

Source: Laws 1977, LB 265, § 4; Laws 2001, LB 142, § 23.

10-134 Terms, defined.

As used in sections 10-134 to 10-141, unless the context otherwise requires:

(1) Bond shall mean any bonds, notes, interim certificates, evidences of bond ownership, bond anticipation notes, warrants, or other evidence of indebtedness;

(2) Bond ordinance shall mean the ordinance or resolution adopted by the governing body of an issuer authorizing an issue of bonds and shall include any indenture or similar instrument executed by the issuer in connection with a bond issue;

(3) Fully registered bond shall mean a bond, without interest coupons, as to which the principal and interest are payable to the person shown on the records of the registrar as the owner of the bond as of each interest or principal record payment date designated by the issue in the bond ordinance;

(4) Governing body shall mean the council, board, or other legislative body having charge of the governance of the issuer;

(5) Issuer shall mean any county, city, village, school district, sanitary and improvement district, fire protection district, public corporation, or any other governmental body or political subdivision of the State of Nebraska; and

(6) Paying agent or registrar shall mean: (a) The treasurer or finance officer of the issuer; (b) any national or state bank having trust powers or any trust company; (c) any municipal securities dealer registered under Section 15B of the Securities Exchange Act of 1934, except that such a dealer may act as a paying agent or registrar only with respect to warrants or an issue of bonds maturing within five years from the date of issuance; or (d) the county treasurer of the county in which the issuer is located if such treasurer shall agree to perform such duty. The paying agent and registrar for a bond issue may be, but are not required to be, the same person or entity.

Source: Laws 1983, LB 421, § 1.

10-135 Fully registered bonds; issuance authorized.

Any issuer, otherwise authorized to issue bonds, is hereby authorized to issue such bonds as fully registered bonds pursuant to sections 10-134 to 10-141. Fully registered bonds shall be issued on such terms as the authorizing laws shall permit, except as otherwise specifically provided in sections 10-134 to 10-141, and in cases of conflict, the terms of sections 10-134 to 10-141 shall govern. Fully registered bonds shall bear interest at such rate or rates, be in such denominations, be in such form and contain such provisions for registration, reissue, and transfer, be executed in such manner, be payable at such place and by any such paying agent, and be sold in such manner and for such prices as the governing body of the issuer shall determine. Fully registered bonds may be executed with the facsimile signature of the officers of the issuer designated to execute such bonds and need not be manually executed by any officers of the issuers, except that each bond shall be authenticated as to its validity in the manner designated by the governing body of the issuer in the bond ordinance. Fully registered bonds may bear the facsimile seal of the issuer printed on the bond.

Source: Laws 1983, LB 421, § 2.

10-136 Fully registered bonds; issuer; registrar; powers and duties.

For each issue of fully registered bonds, the issuer shall designate a registrar and one or more paying agents. The registrar shall have such duties with respect to maintaining records as to ownership of fully registered bonds and handling transfers of ownership as the governing body shall determine and the registrar shall accept. To carry out transfers of ownership of bonds, the registrar may be authorized to issue replacement bonds to replace previously issued bonds or to issue other evidence of ownership of bonds, and all replacement bonds or ownership documents shall be on the same terms as the bonds initially issued by the issuer for which the replacement bonds or other ownership documents are issued. No issuer shall be responsible for payment on any bonds of any issue in excess of (1) the principal amount of the bonds of such issue plus interest on the principal, (2) any applicable redemption premium, and (3) any fees and expenses of the registrar and paying agents which the issuer has agreed to pay. An issuer may designate in the bond ordinance a record payment date for payment of interest and the record payment date may be prior to the due date for interest on any bond. Any issuer may authorize and

provide for ownership of fully registered bonds to be in book-entry form with ownership being evidenced only on the books of the registrar or in such other manner as the issuer shall provide in the bond ordinance.

Source: Laws 1983, LB 421, § 3.

10-137 Bond anticipation notes; issuance authorized; conditions.

Any issuer, except a sanitary and improvement district, which is authorized to issue warrants to pay costs of any water, sanitary, or storm sewer or other utility improvement or any street improvement, pending permanent financing by issuance of bonds, is hereby authorized to provide temporary financing for costs of such improvements by issuance of bond anticipation notes in lieu of issuing warrants. Such notes may be issued in the amount of the estimated cost of the improvements to be financed, including interest to accrue on such notes, as such estimated costs shall be determined by the governing body. Such notes shall be paid from the proceeds of bonds which the issuer is otherwise authorized to issue for such improvements and from any other funds available for the purpose. Bond anticipation notes may be issued on such terms and conditions and sold in such manner and at such prices as the governing body of the issuer shall determine. An issuer which has issued and has outstanding bond anticipation notes pursuant to this section may issue refunding notes with which to call and redeem all or any part of the outstanding notes at or before maturity or the redemption day of the notes. Such refunding notes may be issued in an amount sufficient to pay any redemption premium and interest to accrue and become payable on the notes being refunded to the date of payment of such notes. The refunding notes may be issued on such terms and conditions and sold in such manner and at such prices as the governing body of the issuer shall determine and shall be payable from the same sources as would have been available for payment of the notes being refunded.

Source: Laws 1983, LB 421, § 4.

10-138 Refunding warrants; issuance authorized; conditions.

Any issuer, except a sanitary and improvement district, which has issued outstanding warrants may issue refunding warrants with which to pay and redeem all or any part of the outstanding warrants, including interest to accrue and become payable on the warrants being refunded. Such refunding warrants may be issued on such terms and conditions and sold at such prices as the governing body of the issuer shall determine. Refunding warrants shall be payable from the same sources as would have been available for payment of the warrants being refunded.

Source: Laws 1983, LB 421, § 5.

10-139 County treasurer or other officer holding funds; duties.

Any county treasurer or other officer holding any funds of an issuer shall transfer to the issuer or to a paying agent all or such portion of such funds as the governing body or treasurer of the issuer shall request. The county treasurer or officer making payment to the issuer or to a paying agent as requested shall have no further responsibility for the funds so transferred. Upon request, one payment shall be for the funds collected or received during the previous calendar month and shall be paid not later than the fifteenth of the following month. A second demand may be made prior to the fifteenth of the month on

taxes and special assessments collected or received, during the first fifteen days of the month. The second demand shall be paid not later than the last day of the month.

Source: Laws 1983, LB 421, § 6; Laws 1998, LB 1104, § 3.

10-140 Issuance of bonds; recording requirements.

Within sixty days after the initial issuance and delivery of all fully registered bonds, the issuer shall maintain a record of the issuance including (1) the following information: (a) The name of the issuer; (b) the title or designation of the bonds; (c) the total principal amount of such bonds initially issued; (d) the date or dates of maturity of principal and the amount of principal maturing on such date or dates; (e) the interest rate or rates and the date or dates such interest is payable; (f) the place or places where the principal of and interest on the bonds are payable; (g) the costs of issuance paid and to whom; and (h) the principal purpose for which such bonds were issued and (2) a copy of the form filed for the bonds pursuant to section 149(e) of the Internal Revenue Code. Within sixty days after the initial issuance and delivery of all fully registered bonds, the issuer shall also file a record of the information required by this section with the Auditor of Public Accounts who shall maintain such information for public inspection.

Source: Laws 1983, LB 421, § 7; Laws 1986, LB 425, § 1; Laws 1993, LB 516, § 2; Laws 1995, LB 574, § 13; Laws 2001, LB 420, § 11.

10-141 Registrar's records; available for inspection; when.

The records of ownership of fully registered bonds maintained by a registrar shall not be deemed to be public records and shall be available for inspection solely pursuant to a court order or a subpoena of any governmental agency having jurisdiction to issue such subpoena or in accordance with the bond ordinance governing the fully registered bonds.

Source: Laws 1983, LB 421, § 8.

10-142 Refunding bonds; issuance; conditions; application of proceeds.

Any county, city, village, municipal county, school district, drainage district, irrigation district, metropolitan utilities district, rural water district, airport authority, or hospital authority, the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, the governing board of any community college, or any other municipal or public corporation, governmental subdivision, or body politic or corporate created under Nebraska law exercising essential public functions of the state which has issued or shall issue bonds for any purpose, and such bonds or any part of such bonds remain unpaid and are a legal liability against such issuer and are bearing interest, is hereby authorized to issue refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the maturity or the redemption date of such bonds. Such issuer may include various series and issues of the outstanding bonds in a single issue of refunding bonds and issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the governing body of such issuer determines to be in its best interests. The proceeds derived from the sale

of the refunding bonds issued pursuant to this section may be invested in obligations of or guaranteed by the United States Government pending the time the proceeds are required for the purposes for which such refunding bonds were issued. To further secure the refunding bonds, any such issuer may enter into a contract with any bank or trust company within or without the state with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment. All bonds issued under the provisions of this section shall be redeemable at such times and under such conditions as the governing body of the issuer shall determine at the time of issuance.

Any outstanding bonds or other evidences of indebtedness issued by any such issuer for which sufficient funds or obligations of or guaranteed by the United States Government have been pledged and set aside in safekeeping to be applied for the complete payment of such bonds or other evidence of indebtedness at maturity or upon redemption prior to maturity, interest thereon, and redemption premium, if any, shall not be considered as outstanding and unpaid.

Each new refunding bond so issued shall state on the bond (1) the object of its issue, (2) this section or sections of the law under which such issue was made, including a statement that the issue is made in pursuance of such section or sections, and (3) the date and principal amount of the bond or bonds for which the refunding bonds are being issued.

Source: Laws 1983, LB 421, § 14; Laws 1990, LB 692, § 1; Laws 2001, LB 142, § 24.

10-143 Sections, how construed.

Sections 10-134 to 10-142 shall be deemed to provide an additional alternative and complete method for doing of the things authorized in such sections and shall be deemed and construed to be supplemental and additional to powers conferred by any other laws or home rule charters and shall not be regarded to be in degradation of any powers existing on March 10, 1983, except that insofar as provisions of sections 10-134 to 10-142 are inconsistent with any other law or home rule charter, the provisions of sections 10-134 to 10-142 shall be controlling.

Source: Laws 1983, LB 421, § 16.

10-144 Bonds issued by agency or political subdivision; registration not required.

Bonds issued after May 8, 2001, by any agency or political subdivision of the state shall not be registered in the office of the Auditor of Public Accounts.

Source: Laws 2001, LB 420, § 1.

10-145 Political subdivision; Internet auction system; authorized.

Any political subdivision may, at the discretion of the governing body of the subdivision, sell bonds which the political subdivision is authorized to issue under any provision of law using an Internet auction system. The governing body shall comply with all other statutory requirements for the issuance of the bonds.

Source: Laws 2003, LB 175, § 16.

ARTICLE 2
UNIFORM REGISTRATION AND CANCELLATION OF BONDS

Section
10-201. Repealed. Laws 2001, LB 420, § 38.
10-201.01. Repealed. Laws 2001, LB 420, § 38.
10-202. Repealed. Laws 2001, LB 420, § 38.
10-203. Repealed. Laws 1990, LB 924, § 7.
10-204. Repealed. Laws 1990, LB 924, § 7.
10-205. Repealed. Laws 1990, LB 924, § 7.
10-206. Repealed. Laws 1990, LB 924, § 7.
10-207. Repealed. Laws 1990, LB 924, § 7.
10-208. Repealed. Laws 1990, LB 924, § 7.
10-209. Registration by paying agent; when; content; interest requirement; procedure; order of payment.

10-201 Repealed. Laws 2001, LB 420, § 38.

10-201.01 Repealed. Laws 2001, LB 420, § 38.

10-202 Repealed. Laws 2001, LB 420, § 38.

10-203 Repealed. Laws 1990, LB 924, § 7.

10-204 Repealed. Laws 1990, LB 924, § 7.

10-205 Repealed. Laws 1990, LB 924, § 7.

10-206 Repealed. Laws 1990, LB 924, § 7.

10-207 Repealed. Laws 1990, LB 924, § 7.

10-208 Repealed. Laws 1990, LB 924, § 7.

10-209 Registration by paying agent; when; content; interest requirement; procedure; order of payment.

Except as otherwise expressly specified by statute or the ordinance, resolution, or instrument authorizing the issuance of any bond or interest coupon mentioned in this section, whenever a bond or an interest coupon appertaining thereto issued by a county, city, village, school district, irrigation district, or other municipal or public corporation or political subdivision of the State of Nebraska is presented for payment to the county treasurer, city treasurer, or other person or corporation designated as the paying agent and there is not sufficient money to pay the same in the fund out of which such bond or coupon is payable, the county treasurer, city treasurer, or other person or corporation designated by law as the paying agent shall register such bond or coupon in a book kept by him or her for that purpose. No such bond or coupon shall be presented or registered prior to its maturity date. Each such bond or coupon so registered shall be registered in order of its presentation for payment, and in the event that several of such bonds or coupons are presented for payment simultaneously, such bonds or coupons shall be registered in accordance with the numbers assigned to such bonds at the time of their issue or in accordance with the numbers assigned to the bonds to which such coupons appertain at the time of their issue. Thereafter money coming into such fund shall be applied to payment of such bonds or interest coupons, as the case may be, in the order of their registration. The county treasurer, city treasurer, or other person or

corporation designated by law as the paying agent shall keep a record of such registrations showing the time, date, and serial number of each registration, the name of the county, city, village, irrigation district, or other municipal or public corporation or political subdivision of the state or the corporate name of the school district as described in section 79-405 issuing such bond or coupon, the date, kind, and serial number of such registered bond and of the bond to which each registered coupon appertains, the maturity date, the principal amount of the bond or coupon so registered, and the name and address of the person presenting such bond or coupon for payment. On the back of each of such bonds or coupons, the county treasurer, city treasurer, or other person or corporation designated by law as the paying agent shall enter the word Registered with the time, date, and serial number of such registration and return such bond or coupon to the person who has so presented the same for payment. All such bonds and coupons shall contain a provision fixing the rate of interest they shall bear after due if the paying agent does not have sufficient money to pay such bonds or coupons on the due date thereof, but if any such bonds or coupons shall not contain such provision, such bonds or coupons shall bear interest at the rate of nine percent per annum from due date until the paying agent has funds to pay such bonds or coupons and interest thereon.

Source: Laws 1935, c. 157, § 1, p. 579; C.S.Supp.,1941, § 11-210; R.S. 1943, § 10-209; Laws 1972, LB 983, § 1; Laws 1988, LB 1142, § 1; Laws 1996, LB 900, § 1016.

ARTICLE 3

COMPROMISE OF INDEBTEDNESS

Section
10-301. Power and duty of political subdivisions.
10-302. Conditions; procedure.
10-303. Coupon bonds; issuance; conditions; limitations.
10-304. Coupon bonds; terms; rate of interest; tax levy.
10-305. Coupon bonds; record; duty of local board.

10-301 Power and duty of political subdivisions.

Any county, precinct, township or town, city, village or school district is hereby authorized and required to compromise its indebtedness in the manner hereinafter provided.

Source: Laws 1903, c. 10, § 1, p. 63; R.S.1913, § 400; C.S.1922, § 317; C.S.1929, § 11-301.

10-302 Conditions; procedure.

Whenever the county board of any county, the city council of any city, the board of trustees of any village, or the school board of any school district, shall be satisfied by petition or otherwise, that any such county, precinct, township or town, city, village or school district, is unable to pay in full its indebtedness, and one-third of the resident freeholders of such county, precinct, township or town, city, village or school district shall by petition ask that such county, precinct, township or town, city, village or school district compromise such indebtedness, it is hereby required to enter into negotiations with the owner or owners, holder or holders of any such indebtedness, of whatever form, for scaling, discounting or compromising the same.

Source: Laws 1903, c. 10, § 2, p. 63; R.S.1913, § 401; C.S.1922, § 318; C.S.1929, § 11-302.

10-303 Coupon bonds; issuance; conditions; limitations.

Whenever satisfactory arrangements are made with the owner or owners, holder or holders, or any of them, of such indebtedness, for the payment of the same, the county board, for and on behalf of any such county, precinct, township or town, or the city council of any such city, or the board of trustees of any such village, or the school board of any such school district, upon petition of two-thirds of the resident freeholder of such county, precinct, township or town, village or school district shall have the authority, and it is hereby required to issue the coupon bonds of such county, precinct, township or town, city, village or school district, and after registration to deliver the same to the owner or owners, holder or holders of such indebtedness, in satisfaction of the same, not exceeding the amount of the original indebtedness; *Provided*, the amount of bonds issued under sections 10-301 to 10-305 shall not exceed the total amount of bonded indebtedness which any such county, precinct, township or town, city, village or school district may be empowered to issue by law; *provided further*, sections 10-301 to 10-305 shall not be construed to permit the issuance under any form or authority whatever of a greater bonded indebtedness than is specifically authorized by law; *provided further*, that said sections shall not be used as a subterfuge or for any purpose for the payment of any claims for which the county, precinct, township or town, city, village or school district is authorized to issue bonds by virtue of any other specific act, nor to satisfy any claim or debt which has been wrongfully or illegally authorized.

Source: Laws 1903, c. 10, § 3, p. 63; R.S.1913, § 402; Laws 1921, c. 209, § 1, p. 744; C.S.1922, § 319; C.S.1929, § 11-303.

10-304 Coupon bonds; terms; rate of interest; tax levy.

Before issuing bonds under the provisions of sections 10-301 to 10-303, the board issuing the same shall by resolution entered upon its records recite the number and denomination of the bonds to be issued, the rate of interest, and to whom and when payable. Such bonds shall be payable in not more than twenty years from the date of their issue, or at any time on or after five years from the date of issuance thereof, at the option of the board issuing the same. They shall bear interest payable annually or semiannually, as provided in said bonds. Said board shall levy a tax on all the taxable property in such county, precinct, township or town, city, village or school district in addition to other taxes, to pay the interest and principal of said bonds as the same shall mature.

Source: Laws 1903, c. 10, § 4, p. 64; R.S.1913, § 403; C.S.1922, § 320; C.S.1929, § 11-304; R.S.1943, § 10-304; Laws 1947, c. 15, § 3, p. 83; Laws 1969, c. 51, § 2, p. 273.

10-305 Coupon bonds; record; duty of local board.

Every board issuing bonds under the provisions of sections 10-301 to 10-304 shall keep a complete record of all transactions connected therewith.

Source: Laws 1903, c. 10, § 5, p. 64; R.S.1913, § 404; C.S.1922, § 321; C.S.1929, § 11-305.

ARTICLE 4
INTERNAL IMPROVEMENT BONDS

Section

10-401 County and city bonds; issuance; conditions; limitations.

Any county or city in the State of Nebraska is hereby authorized to issue bonds to aid in the construction of any railroad or other work of internal improvement in an amount to be determined by the county board of such county or the city council of such city not exceeding three and five-tenths percent of the taxable valuation of all taxable property in the county or city. The county board or city council shall first submit the question of the issuing of such bonds to a vote of the legal voters of the county or city in the manner provided by law for submitting to the people of a county the question of borrowing money.

Source: Laws 1869, § 1, p. 92; R.S.1913, § 405; C.S.1922, § 322; C.S. 1929, § 11-401; R.S.1943, § 10-401; Laws 1979, LB 187, § 18; Laws 1992, LB 719A, § 16.

1. Constitutionality
2. Internal improvements
3. Submission of proposition
4. Issuance of bonds
5. Limitation on amount
6. Miscellaneous

1. Constitutionality

Act constituting this article sustained as constitutional. Colburn v. McDonald, 72 Neb. 431, 100 N.W. 961 (1904); Dawson County v. McNamar, 10 Neb. 276, 4 N.W. 991 (1880); Hollenbeck v. Hahn, 2 Neb. 377 (1871).

2. Internal improvements

Beet sugar mill not grinding for toll is not work of internal improvement, and bonds cannot be issued to aid in construction. Getchell v. Benton, 30 Neb. 870, 47 N.W. 468 (1890).

A bridge across a river is a work of internal improvement, and county bonds voted to erect it are valid even though entire bridge is within limits of county. State ex rel. Peterson v. Keith County, 16 Neb. 508, 20 N.W. 856 (1884).

A steam gristmill is not a work of internal improvement for which bonds may be voted. State ex rel. Bowen v. Adams County, 15 Neb. 568, 20 N.W. 96 (1884).

A water gristmill is a work of internal improvement for which bonds may be voted. Traver v. Merrick County, 14 Neb. 327, 15 N.W. 690 (1883).

A courthouse is not a work of internal improvement under this article. Dawson County v. McNamar, 10 Neb. 276, 4 N.W. 991 (1880).

Precinct may issue bonds for bridge as internal improvement. South Platte Land Co. v. Buffalo County, 7 Neb. 253 (1878).

Precinct bonds may be issued to aid in building wagon bridge across river as work of internal improvement, even though builders of bridge are authorized to collect tolls. Fremont Bldg. Assn. v. Sherwin, 6 Neb. 48 (1877).

What constitutes a work of internal improvement must be tested by the benefits to be derived by the public, and not by its extent or cost, and under this test a bridge across the Platte River is a work of internal improvement. Union P. Ry. Co. v. Colfax County Comrs., 4 Neb. 450 (1876).

Bonds to aid on construction of irrigation canal are authorized. Date of issuance is when county parts with money and recital of date in bonds is not conclusive. Chicago, B. & Q. R. R. Co. v. Dundy County, 3 Neb. Unof. 391, 91 N.W. 554 (1902).

Bonds may be issued to aid in improving the water power of a river for the purpose of propelling public gristmills as a work of

internal improvement. Blair v. Cuming County, 111 U.S. 363 (1884).

A steam gristmill is not a work of internal improvement. Osborne v. Adams County, 106 U.S. 181 (1882) affirmed on rehearing 109 U.S. 1 (1883).

A bridge may be a work of internal improvement for which a precinct may issue bonds, notwithstanding it is to be maintained as a toll bridge. County Commissioners v. Chandler, 96 U.S. 205 (1877).

Bonds may be issued as a donation to a railroad company outside of county, and even outside of state, if the purpose of the road is to give to the county a connection which is desirable with some other region. Railroad Co. v. County of Otoe, 83 U.S. 667 (1872).

Bonds may be issued as a work of internal improvement to aid in construction of canals for irrigation purposes. Keith County v. Citizen's Saving & Loan Assn., 116 F. 13 (8th Cir. 1902).

Statutory authorization to construct canals for irrigation and water power as works of internal improvement is not invalid on ground that a canal so constructed might be devoted primarily to private use, since aid can only be given to construction of waterworks devoted to public use. City of Kearney v. Woodruff, 115 F. 90 (8th Cir. 1902).

A canal constructed for the purpose of irrigating lands in the State of Nebraska is a work of internal improvement for which a county may issue bonds, although its waters are drawn from sources outside of the state. Perkins County v. Graff, 114 F. 441 (8th Cir. 1902).

Building of courthouse is not a work of internal improvement for which bonds may be issued, while building of bridges is. Lewis v. Board of County Comrs. of Sherman County, 5 F. 269 (Cir. Ct., D. Neb. 1881).

3. Submission of proposition

Issuance of revenue bonds by county to defray cost of construction of interstate bridge requires affirmative approval at an election duly held. Ahern v. Richardson County, 127 Neb. 659, 256 N.W. 515 (1934).

Where vote upon issuance of bonds by county to aid railroad is induced by false representations of ownership of railroad by another railroad, bond issue will be enjoined. Nash v. Baker, 37 Neb. 713, 56 N.W. 376 (1893).

Proposition submitted must provide for levying of tax to pay principal as well as interest of bonds sought to be issued. Cook v. City of Beatrice, 32 Neb. 80, 48 N.W. 828 (1891).

A city created out of a village may, prior to election of mayor and council, order an election and issue bonds through the instrumentality of village officers. State ex rel. Fremont, E. & M. V. R. R. Co. v. Babcock, 25 Neb. 709, 41 N.W. 654 (1889).

Under this section, question of issuing bonds must be submitted to a vote of the legal voters. State ex rel. City of Fremont v. Babcock, 25 Neb. 500, 41 N.W. 450 (1889).

4. Issuance of bonds

Bonds authorized by electors to be issued to two individuals to aid in building mill cannot be issued to a partnership having additional members. George v. Cleveland, 53 Neb. 716, 74 N.W. 266 (1898).

The provisions of section 10-104 apply to bonds issued under this article. Brinkworth v. Grable, 45 Neb. 647, 63 N.W. 952 (1895).

Where road is not built by donee, neither donee nor vendee is entitled to bonds. Township of Midland v. Gage County Board, 37 Neb. 582, 56 N.W. 317 (1893).

Bonds issued to alternative donee are voidable only, and innocent purchaser can enforce them. North v. Platte County, 29 Neb. 447, 45 N.W. 692 (1890).

Where bonds are to be issued when railroad is completed and ready for running of trains, railroad company is entitled to bonds although it fails to construct depot within specified time. Townsend v. Lamb, 14 Neb. 324, 15 N.W. 727 (1883).

Bonds signed and sealed outside county may be valid. Jones v. Hurlburt, 13 Neb. 125, 13 N.W. 5 (1882).

Precincts may issue bonds in aid of works of internal improvement, and remedy to enforce payment of bonds is to mandamus county commissioners to levy and collect tax. State ex rel. Chandler v. Bd. of County Comrs. of Dodge County, 10 Neb. 20, 4 N.W. 370 (1880).

Bonds sought to be issued in excess of ten percent of the assessed valuation of county are invalid. Reineman v. C. C. & B. H. Ry., 7 Neb. 310 (1878).

Authorization by vote to subscribe for stock in a railroad company did not empower county commissioners of county to donate bonds to railroad company. Hamlin v. Meadville, 6 Neb. 227 (1877).

Bonds issued under this article without registration and certification are unenforceable. Frank v. Butler County, 139 F. 119 (8th Cir. 1905).

5. Limitation on amount

Precinct may issue bonds in addition to county limit. State ex rel. A. & N. R. R. v. County Comrs. of Lancaster County, 6 Neb. 214 (1877).

Bonds issued in excess of ten percent of assessed valuation are invalid, and fact that bonds were registered and stated they were issued according to law does not estop county from asserting invalidity. Dixon County v. Field, 111 U.S. 83 (1884).

6. Miscellaneous

Issuance of bonds by sanitary district is not controlled by this section. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

Bonds issued by a city for waterworks which are owned by the city are not donations, and are not to be included in determining aggregate of evidences of indebtedness donated for works of internal improvements. State ex rel. City of Lincoln v. Babcock, 19 Neb. 230, 27 N.W. 98 (1886).

Electors cannot delegate to commissioners power to decide between two donees. Spurck v. L. & N. W. R. R. Co., 14 Neb. 293, 15 N.W. 701 (1883); Jones v. Hurlburt, 13 Neb. 125, 13 N.W. 5 (1882).

Unpaid interest not figured in aggregate. Jones v. Hurlburt, 13 Neb. 125, 13 N.W. 5 (1882).

Petition for mandamus must show particular description of works of internal improvement. State ex rel. Osborne v. Thorne, 9 Neb. 458, 4 N.W. 63 (1880).

In federal court, county may be sued at law on bonds issued by precinct to aid in construction of internal improvements. Nemaha County v. Frank, 120 U.S. 41 (1887).

Action at law lies in federal court against county on bonds issued by precinct, as mandamus is only granted in federal courts in aid of existing jurisdiction. Davenport v. County of Dodge, 105 U.S. 377 (1881).

Bonds issued by precinct are obligations of the county, and suit thereon against county may be maintained at law in federal court. Clapp v. Otoe County, 104 F. 473 (8th Cir. 1900).

10-402 County and city bonds; election; proposition; contents.

The proposition of the question must be accompanied by a provision to levy a tax annually for the payment of the interest on said bonds as it becomes due;

Provided, an additional amount shall be levied and collected to pay the principal of said bonds when it shall become due.

Source: Laws 1869, § 2, p. 92; Laws 1870, § 1, p. 15; R.S.1913, § 406; C.S.1922, § 323; C.S.1929, § 11-402.

Where proposition submitted provides for levying tax to pay interest but fails to provide levy for principal, bond issue may be enjoined. Cook v. City of Beatrice, 32 Neb. 80, 48 N.W. 828 (1891).

Submission of proposition to levy tax is mandatory and must be complied with in issuing bonds. State ex rel. Berry v. Babcock, 21 Neb. 599, 33 N.W. 247 (1887).

If proposition submitted does not include provision to levy tax for payment of interest, bonds are void. Hamlin v. Meadville, 6 Neb. 227 (1877).

10-403 County and city bonds; proposition; rate of interest.

The proposition shall state the rate of interest such bond shall draw, and when the principal and interest shall be made payable.

Source: Laws 1869, § 3, p. 92; R.S.1913, § 407; C.S.1922, § 324; C.S. 1929, § 11-403.

10-404 County and city bonds; publication required; resubmission limited.

Upon a majority of the votes cast being in favor of the proposition submitted, the county board, in the case of a county, and the city council, in the case of a city, shall cause the proposition and the result of the vote to be entered upon the records of said county or city, and a notice of its adoption to be published for two successive weeks in any newspaper in said county or city, if there be one, and if not, then without such publication; and shall thereupon issue said bonds, which shall be and continue a subsisting debt against such county or city until they are paid and discharged; *Provided*, that the question of bond issues in such county or city, when defeated, shall not be resubmitted in substance for a period of six months from and after the date of said election.

Source: Laws 1869, § 4, p. 92; R.S.1913, § 408; C.S.1922, § 325; Laws 1923, c. 69, § 1, p. 206; C.S.1929, § 11-404; R.S.1943, § 10-404; Laws 1971, LB 534, § 2.

Section is specifically limited to counties and cities. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

If notice is not published, bonds are void. Wilbur v. Wyatt, 63 Neb. 261, 88 N.W. 499 (1901).

10-405 County and city bonds; payment; tax levy.

It shall be the duty of the proper officers of such county or city to cause to be annually levied, collected and paid to the holders of such bonds a special tax on all taxable property within said county or city sufficient to pay the annual interest as the same becomes due. When the principal of said bonds becomes due such officers shall in like manner levy and collect an additional amount sufficient to pay the same as it becomes due; *Provided*, not more than twenty percent of the principal of said bonds shall be collected in any one year.

Source: Laws 1869, § 5, p. 93; Laws 1870, § 2, p. 15; R.S.1913, § 409; C.S.1922, § 326; C.S.1929, § 11-405; R.S.1943, § 10-405; Laws 1947, c. 15, § 4, p. 83.

Sanitary districts never have been included. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

Where bonds are issued by county to aid in construction of a railroad, taxable property in territory added to the county after the voting of bonds is liable to taxation for their payment. Chicago, St. P., M. & O. Ry. Co. v. Cuming County, 31 Neb. 374, 47 N.W. 1121 (1891).

10-406 Railroad aid bonds; precinct, township, city of the second class, or village; petition; election; issuance; conditions; limitations.

Any precinct, township, city of the second class, or village organized according to law is hereby authorized to issue bonds in aid of the construction of steam railroads, or railroads using electricity or gasoline as motive power, of standard gauge, to an extent not exceeding three and five-tenths percent of the taxable value of the taxable property at the last assessment within such precinct, township, city of the second class, or village, in the manner provided in this section:

(1) A petition for such purpose signed by not less than fifty freeholders or by not less than ten percent of all the freeholders, whichever number is the least, of the precinct, township, city of the second class, or village shall be presented to the county board, city council of cities of the second class, board of trustees of villages, or the board authorized by law to conduct the business of such precinct, township, city of the second class, or village. 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 the bonds will run, which in no event shall be less than five years nor more than twenty years from the date thereof. The petitioners shall give bond, to be approved by the county board, city council of cities of the second class, or board of trustees of villages, for the payment of expenses of the election in the event that the proposition fails to receive a majority of the votes cast at such election;

(2) Upon receiving such petition, the county board, city council of cities of the second class, or board of trustees of villages shall give notice and call an election in the precinct, township, city of the second class, or village, as the case may be. The notice, call, and election shall be governed by the laws regulating the election for voting bonds for a county; and

(3) Upon a majority of the votes cast being in favor of the proposition submitted, the county board, city council of cities of the second class, or board of trustees of villages, as the case may be, shall issue the bonds in accordance with the petition and notice of election. Such bonds shall be signed by the chairperson of the county board and attested by the county clerk in the case of precinct or township bonds, by the mayor and city clerk in the case of city bonds, and by the chairperson of the board of trustees and village clerk in case of village bonds and shall be attested by their respective seals. Such bonds shall be a subsisting debt against such precinct, township, city of the second class, or village until they are paid and discharged.

Source: Laws 1909, c. 79, § 1, p. 341; R.S.1913, § 410; C.S.1922, § 327; Laws 1929, c. 164, § 1, p. 569; C.S.1929, § 11-406; R.S.1943, § 10-406; Laws 1947, c. 15, § 5, p. 83; Laws 1969, c. 51, § 3, p. 274; Laws 1971, LB 534, § 3; Laws 1979, LB 187, § 19; Laws 1992, LB 719A, § 17.

10-407 Courthouse bonds; city of the second class; election; proposition; issuance; conditions; limitations; resubmission.

The mayor and council of cities of the second class shall have the power to borrow money and pledge the property and credit of such city upon its negotiable bonds in an amount not to exceed one and eight-tenths percent of the taxable valuation of the taxable property within the limits of such city for the purpose of aiding in the building, erecting, constructing, or repairing and furnishing of a county courthouse, in addition to bonds already voted by the county, if authority for the issuance of such bonds has first been obtained by a

majority vote of the qualified electors of such city voting on a proposition for such purpose at any general or special election. Such proposition shall be submitted to such electors in the manner provided by law for the submission of propositions to aid in the construction of railroads and other internal improvements. Such bonds shall be sold for not less than par and shall run not to exceed twenty years. The proposition to submit the issue of creating bonded indebtedness therein shall not be resubmitted on the same subject at an election within six months after such proposition has failed to pass.

Source: Laws 1889, c. 9, § 1, p. 81; R.S.1913, § 411; C.S.1922, § 328; Laws 1923, c. 142, § 1, p. 354; C.S.1929, § 11-407; R.S.1943, § 10-407; Laws 1969, c. 51, § 4, p. 275; Laws 1971, LB 534, § 4; Laws 1979, LB 187, § 20; Laws 1980, LB 599, § 1; Laws 1992, LB 719A, § 18.

10-408 Courthouse bonds; election; procedure.

The election at which any such proposition shall be voted upon shall in all respects be conducted and the returns shall be canvassed and declared in the manner now provided by law for such purposes at general elections held in such cities.

Source: Laws 1889, c. 9, § 2, p. 82; R.S.1913, § 412; C.S.1922, § 329; C.S.1929, § 11-408.

10-409 Precinct, township, city of the second class, or village bonds; petition; election; issuance; conditions; limitations; tax levy.

Any precinct, township, city of the second class, or village organized according to law is hereby authorized to issue bonds in aid of works of internal improvements, such as improving streets in cities of the second class and villages, highways, bridges, jails, city and town halls, high schools, county high schools, school dormitories, and the drainage of swamp and wet lands, within such municipal divisions, and for the construction or purchase of a telephone system for use of the inhabitants thereof, 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 precinct, township, 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 precinct, township, city of the second class, or village shall be presented to the county board, city council of cities of the second class, board of trustees of villages, or the board authorized by law to conduct the business of such precinct, township, city of the second class, or village. 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 the bonds will run, which in no event shall be less than two years nor more than twenty years from the date thereof. The petitioners shall give bond, to be approved by the county board, 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 county board, city council of cities of the second class, or board of trustees of villages shall give notice and call an election in the precinct, township, city of the second class, or village, as the case may be. Such notice, call, and election shall be governed by the laws

regulating an election for voting bonds for a county. When a proposition is submitted for the issuance of bonds for the acquisition of a site or the construction of a single building to be used as a city hall, auditorium, fire station, or community house in cities of the second class, 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 city as shown by the last assessment within such city. The mayor and council in cities of the second class upon the issuance of bonds shall have the power to levy a tax each year 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 for the purpose of maintaining the city hall constructed as provided in this section.

Source: Laws 1885, c. 58, § 1, p. 268; Laws 1899, c. 49, § 1, p. 261; Laws 1907, c. 76, § 1, p. 286; R.S.1913, § 413; Laws 1921, c. 58, § 1, p. 241; C.S.1922, § 330; C.S.1929, § 11-409; Laws 1931, c. 23, § 1, p. 96; Laws 1939, c. 5, § 1, p. 64; C.S.Supp.,1941, § 11-409; R.S.1943, § 10-409; Laws 1947, c. 15, § 6, p. 84; Laws 1953, c. 287, § 1, p. 926; Laws 1955, c. 45, § 1, p. 160; Laws 1967, c. 33, § 1, p. 153; Laws 1969, c. 51, § 5, p. 275; Laws 1971, LB 534, § 5; Laws 1979, LB 187, § 21; Laws 1980, LB 599, § 2; Laws 1992, LB 719A, § 19.

1. Election proceeding
2. Bonds authorized
3. Miscellaneous

1. Election proceeding

Precinct special election to issue bridge bonds held valid. Petition, notice, and official ballot considered and held sufficient. Lewis v. Eyerly, 120 Neb. 343, 232 N.W. 570 (1930).

Nonresident freeholders owning land in precinct may join in petition. Brooks v. MacLean, 95 Neb. 16, 144 N.W. 1067 (1914).

Terms of proposition set forth in notice of election define authority of county board in contracting with reference to work of internal improvement. Keith County v. Ogallala Power Irrigation Co., 64 Neb. 35, 89 N.W. 375 (1902).

Married woman who is freeholder is lawful petitioner. Cummings v. Hyatt, 54 Neb. 35, 74 N.W. 411 (1898).

To confer jurisdiction on county commissioners to order election to vote bonds by a township in aid of internal improvements, it is necessary that a petition be presented signed by not less than fifty freeholders of the township. Hoxie v. Scott, 45 Neb. 199, 63 N.W. 387 (1895).

Where signing of petition is induced by false representations, bond issue will be enjoined. Wullenwaber v. Dunigan, 30 Neb. 877, 47 N.W. 420 (1890).

President and board of trustees, before election of mayor and council, may call election. State ex rel. Fremont, E. & M. V. R. R. Co. v. Babcock, 25 Neb. 709, 41 N.W. 654 (1889).

In absence of petition signed by fifty freeholders setting forth the nature of the work contemplated, the amount of bonds to be voted, the rate of interest, and date when principal and interest become due, proceedings are invalid. Adoption of amount of tax to be levied is mandatory. State ex rel. Omaha & R. V. R. R. Co. v. Babcock, 21 Neb. 187, 31 N.W. 682 (1887).

2. Bonds authorized

Authority is provided for issuance of bonds for minor political subdivisions. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

Bonds for normal school are not authorized, as it is not one of the objects enumerated in qualifying clause for which bonds may be issued. State ex rel. Ainsworth Precinct v. Weston, 69 Neb. 695, 96 N.W. 668 (1903).

Bonds for irrigation purposes are authorized. Cummings v. Hyatt, 54 Neb. 35, 74 N.W. 411 (1898); Chicago, B. & Q. R.R. Co. v. Dundy County, 3 Neb. Unof. 391, 91 N.W. 554 (1902).

Bonds issued under this section to aid in construction of courthouse are valid in hands of bona fide purchaser, even though petition asking for calling of election was signed by less than fifty freeholders. Chilton v. Town of Gratton, 82 F. 873 (Cir. Ct., D. Neb. 1897).

3. Miscellaneous

County is liable for expense of publishing notice of township election. Kearney County v. Stein, 26 Neb. 132, 41 N.W. 1071 (1889).

10-410 Precinct, township, city of the second class, or village bonds; issuance; conditions; record.

If a majority of the votes cast at such election are in favor of the proposition, the county board, 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 chairperson of the county board, or the person authorized to sign county bonds, and be attested by the county clerk, mayor and city clerk of cities of the second class, chairperson of the board of trustees and village clerk of villages, and be attested by the respective seals. The county clerk, 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 1885, c. 58, § 2, p. 269; Laws 1899, c. 49, § 2, p. 262; R.S.1913, § 414; Laws 1917, c. 8, § 1, p. 62; C.S.1922, § 331; C.S.1929, § 11-410; R.S.1943, § 10-410; Laws 1967, c. 33, § 2, p. 154; Laws 1971, LB 534, § 6; Laws 2001, LB 420, § 12.

Two-thirds majority vote is required to give validity to bonds. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

10-411 Precinct, township, city of the second class, or village bonds; payment; taxes; levy and collection.

The county boards, 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 10-409 be paid, levy upon the taxable property in the precinct, township, 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 said bonds.

Source: Laws 1885, c. 58, § 3, p. 270; Laws 1899, c. 49, § 3, p. 263; R.S.1913, § 415; C.S.1922, § 332; C.S.1929, § 11-411.

Levy of tax for sanitary drainage district authorized. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

ARTICLE 5

FUNDING BONDS OF COUNTIES

Section
10-501. Issuance; conditions; limitations.
10-502. Terms; conditions.
10-503. Sale; price; duties of county board; vote.
10-504. Sale; proceeds; disposition; exchange.
10-505. Payment; notice to holders; cancellation; form.
10-506. Record; contents; duty of county treasurer.
10-507. Tax levy; limit.
10-508. County board; adopt rules and regulations.
10-509. Prohibited acts; penalty.

10-501 Issuance; conditions; limitations.

The county board of any county in the State of Nebraska is hereby empowered to issue coupon bonds of any denomination, as it deems best, sufficient to pay the outstanding and unpaid bonds, warrants, and indebtedness of such county. The county board of any county may limit the provisions of sections 10-501 to 10-509 to any fund or funds of the county. No bonds shall be issued to a greater amount than three and five-tenths percent of the taxable valuation of

such county, and the county board shall first submit the question of issuing bonds to a vote of the qualified electors of such county.

Source: Laws 1879, § 132, p. 387; Laws 1883, c. 28, § 1, p. 191; R.S.1913, § 416; C.S.1922, § 333; C.S.1929, § 11-501; R.S.1943, § 10-501; Laws 1979, LB 187, § 22; Laws 1992, LB 719A, § 20.

There was no authority to issue refunding bonds prior to act of 1883. State ex rel. Otoe County v. Babcock, 23 Neb. 802, 37 N.W. 645 (1888).

Bonds held valid by federal court in hands of a bona fide holder may be compromised and bonds issued under this article to refund prior issue. State ex rel. Leese v. Wilkinson, 20 Neb. 610, 31 N.W. 376 (1887).

County commissioners have no authority to employ private parties to refund county bonds, and divert a portion of the amount received therefor from the public treasury. State ex rel. Webster v. Board of County Comrs. of Lancaster County, 20 Neb. 419, 30 N.W. 538 (1886).

Total issues restricted to ten percent of assessed valuation. State ex rel. Wiant v. Babcock, 18 Neb. 141, 24 N.W. 556 (1885).

This section does not authorize levy of sinking fund tax to pay floating indebtedness. Union P. R. R. Co. v. Buffalo County, 9 Neb. 449, 4 N.W. 53 (1880).

Limitation of amount of bonds to ten percent of assessed valuation applies only to bonds issued under this article without regard to bonds previously issued. Valley County v. McLean, 79 F. 728 (8th Cir. 1897).

10-502 Terms; conditions.

Any bonds hereafter issued under the provisions of sections 10-501 to 10-509 shall be for the payment by the county issuing the same of the sum specified therein, made payable at the office of the county treasurer, and to run not more than twenty years nor less than five years, with interest payable semiannually; the bonds and coupons shall be signed by the chairman of the board, and countersigned by the county clerk of the county; *Provided*, such bonds may be made redeemable at any time after five years, at the option of the county board.

Source: Laws 1879, § 133, p. 387; R.S.1913, § 417; C.S.1922, § 334; C.S.1929, § 11-502; R.S.1943, § 10-502; Laws 1969, c. 51, § 6, p. 277.

Antedating, not to evade law, does not invalidate bonds. State ex rel. Hoffman v. Moore, 46 Neb. 590, 65 N.W. 193 (1895).

10-503 Sale; price; duties of county board; vote.

It shall be the duty of the county board of any county issuing bonds under the provisions of sections 10-501 to 10-509 to ascertain the highest price at which said bonds can be negotiated and to embrace in the proposition submitted to the qualified electors under said sections the minimum price at which said bonds shall be sold. If by the issuance of the proposed bonds, the rate of interest on the said indebtedness will be reduced, and the amount of the indebtedness will not be increased, a majority of the votes cast shall be sufficient to adopt the proposition.

Source: Laws 1879, § 134, p. 388; Laws 1883, c. 28, § 1, p. 192; R.S.1913, § 418; C.S.1922, § 335; C.S.1929, § 11-503; R.S.1943, § 10-503; Laws 1983, LB 421, § 13.

Constitutionality of 1883 amendment sustained permitting issuance of refunding bonds by majority vote. State ex rel. Douglas County v. Cornell, 54 Neb. 72, 74 N.W. 432 (1898).

10-504 Sale; proceeds; disposition; exchange.

It shall be the duty of the board issuing bonds under the provisions of sections 10-501 to 10-509 to negotiate said bonds, and all the proceeds arising from the sale of said bonds shall be paid into the county treasury of said county, and shall be applied solely to the redemption and payment of the unpaid bonds,

warrants and indebtedness of said county; *Provided*, the county board of any county may exchange such bonds at not less than their par value, for the outstanding indebtedness of such county; *provided further*, no bonds shall be issued, for the purpose of such exchange, for a less sum than fifty dollars.

Source: Laws 1879, § 135, p. 388; Laws 1883, c. 28, § 1, p. 192; R.S.1913, § 419; C.S.1922, § 336; C.S.1929, § 11-504.

10-505 Payment; notice to holders; cancellation; form.

Whenever bonds subject to sections 10-501 to 10-509 are sold and the proceeds paid into the county treasury, it shall be the duty of the county treasurer to immediately notify the holders of all bonds, warrants, orders, certificates, or audited accounts intended to be redeemed and paid under the provisions of sections 10-501 to 10-509; and the holders of such bonds, warrants, orders, certificates, or audited accounts, dated prior to the issuing of such bonds, shall present the same for payment, and the county treasurer shall pay the same out of the funds so provided, and the county treasurer shall forthwith cancel such bonds, warrants, orders, certificates, or audited accounts so presented and paid, by writing across the face of each of them with red ink, plainly and legibly, the following words (properly filling the blank): ''Canceled from bonds and warrants, bond funds this ..... day of ..... 20..... .

Signed ....., county treasurer. Signed ....., holder.''

Source: Laws 1879, § 136, p. 388; Laws 1883, c. 28, § 1, p. 192; R.S.1913, § 420; C.S.1922, § 337; C.S.1929, § 11-505; R.S.1943, § 10-505; Laws 2004, LB 813, § 1.

10-506 Record; contents; duty of county treasurer.

The treasurer of said county shall record in a book kept for that purpose a statement of all the bonds issued, giving the number, amount, date, and to whom issued; and shall also keep and record in said book a statement of all the bonds, warrants, orders, certificates and audited accounts so taken, giving their number, date, amount of principal and interest, if any, to whom issued, by whom presented for redemption, and as often as he may be called upon by the said board so to do, he shall present a statement thereof, and of all his doings in the premises, to the said county board.

Source: Laws 1879, § 137, p. 389; Laws 1883, c. 28, § 1, p. 193; R.S.1913, § 421; C.S.1922, § 338; C.S.1929, § 11-506.

10-507 Tax levy; limit.

The county board of any county issuing bonds under the provisions of sections 10-501 to 10-509 shall levy a tax annually for the payment of the interest on said bonds as it becomes due; *Provided*, an additional amount shall be levied and collected sufficient to pay the principal of such bonds at maturity; *and provided*, not more than twenty percent of the principal of said bonds shall be levied and collected in any one year.

Source: Laws 1879, § 138, p. 389; R.S.1913, § 422; C.S.1922, § 339; C.S.1929, § 11-507.

10-508 County board; adopt rules and regulations.

The county board is hereby directed to adopt such rules and regulations governing all officers and other persons in the payment, redemption, cancellation and destruction of such warrants, orders, certificates and audited accounts as it deems necessary and sufficient to protect the interests of the county in furtherance of the provisions of sections 10-501 to 10-509.

Source: Laws 1879, § 139, p. 389; R.S.1913, § 423; C.S.1922, § 340; C.S.1929, § 11-508.

10-509 Prohibited acts; penalty.

If any person or officer, contrary to the provisions of sections 10-501 to 10-509, shall knowingly issue or deliver, or put in circulation, use, or in any manner dispose of, contrary to law, any warrant, order, certificate or audited account, intended to be redeemed or paid under the provisions of said sections, either before or after the same has been paid or canceled, and thereby defraud, or attempt to defraud, any corporation, county, state or person, he shall be guilty of a Class IV felony.

Source: Laws 1879, § 140, p. 389; R.S.1913, § 424; C.S.1922, § 341; C.S.1929, § 11-509; R.S.1943, § 10-509; Laws 1977, LB 40, § 69.

ARTICLE 6

FUNDING BONDS; GENERAL

Section

10-601 Repealed. Laws 1983, LB 421, § 18.

10-602 Repealed. Laws 1983, LB 421, § 18.

10-603 Repealed. Laws 1983, LB 421, § 18.

10-604 Repealed. Laws 1983, LB 421, § 18.

10-605 Repealed. Laws 1983, LB 421, § 18.

10-606 City of the second class and village; issuance; limitations; election; notice.

Any city of the second class and any village in the State of Nebraska may issue bonds for the purpose of funding any and all indebtedness now existing or hereafter created, now due or to become due; *Provided*, said bonds shall be payable in not less than two years and not more than twenty years from date of their issue, and that said bonds shall bear interest at a rate set by the governing body, with interest coupons attached, payable annually or semiannually; and may levy a tax on all the taxable property in the city or village in addition to other taxes for the payment of said coupons as they respectively become due, and the taxes levied to pay the same shall be payable only in cash or coupons; *Provided*, the city council of said cities or said board of trustees of said villages shall further authorize the issuing of said bonds by ordinance when so instructed by a majority of all of the votes cast at an election held in such city or village for that purpose; notice of said election shall be published in four issues of some legal newspaper, published in the city or village seeking to issue bonds, or if there be no newspaper published in said city or village then by posting said notices in five conspicuous places in said city or village for at least four weeks prior to the date of said election.

Source: Laws 1881, c. 19, § 1, p. 161; Laws 1911, c. 22, § 1, p. 142; R.S.1913, § 429; C.S.1922, § 346; Laws 1925, c. 42, § 1, p. 162; C.S.1929, § 11-605; R.S.1943, § 10-606; Laws 1969, c. 51, § 10, p. 279.

A claim sounding in contract, which may be enforced in the courts, is an indebtedness for the payment of which funding bonds may be issued. State ex rel. City of Tekamah v. Marsh, 108 Neb. 835, 189 N.W. 381 (1922).

10-607 City of the second class; internal improvement and railroad aid refunding bonds; issuance; conditions; limitations; election.

Any city of the second class in the State of Nebraska which has heretofore voted and issued bonds to aid in the construction of any railroad or other work of internal improvement and which bonds or any part thereof still remain unpaid and are a legal liability against such city, and have been finally so determined by a court of competent jurisdiction, and bearing interest at ten percent per annum, is hereby authorized to issue coupon bonds at a rate of interest set by the governing body, to be substituted in place of and exchanged for such bonds heretofore issued, whenever such city can effect such substitution and exchange, which substitution and exchange shall not exceed dollar for dollar; *Provided*, such substitution and exchange shall have first been duly authorized by a majority vote of the people of said city at an election to be held for the purpose as provided in section 10-606.

Source: Laws 1881, c. 19, § 2, p. 162; R.S.1913, § 430; C.S.1922, § 347; C.S.1929, § 11-606; R.S.1943, § 10-607; Laws 1969, c. 51, § 11, p. 280.

10-608 City of the second class; internal improvement and railroad aid refunding bonds; issuance; requirements.

The bonds issued under the provisions of section 10-607 shall have recited therein the object of their issue, and the section of the law under which the issue is made, stating the issue to be in pursuance thereof, and shall also state the number, date and amount of the bond or bonds for which it was substituted, and such new bond shall not be delivered until the surrender of the bond or bonds so designated.

Source: Laws 1881, c. 19, § 3, p. 162; R.S.1913, § 431; C.S.1922, § 348; C.S.1929, § 11-607.

10-609 Precinct refunding bonds; issuance; condition.

Whenever it shall be determined by the final judgment of any court of competent jurisdiction, that any bonds purporting to have been issued by the county board of any county not under township organization for or on behalf of any precinct or de facto precinct within said county, for a lawful debt of said county payable by a tax levy upon the property in the said precinct or de facto precinct, said county board is hereby authorized to issue special precinct refunding bonds for the purpose of paying said indebtedness.

Source: Laws 1901, c. 10, § 1, p. 61; R.S.1913, § 432; C.S.1922, § 349; C.S.1929, § 11-608.

10-610 Precinct refunding bonds; terms; recitals; remedies.

The said funding bonds shall be in such denominations as the board shall elect, shall mature not later than twenty years from their date, and may be payable at an earlier date if the county board so decides, shall bear interest which in rate and amount per annum shall not be greater than that of the bonds originally issued, payable annually or semiannually, shall bear coupons for the amount of the annual interest, shall contain a recital of the indebtedness for which they were issued, and shall have the same remedies for the enforcement as the original debt which they are intended to refund.

Source: Laws 1901, c. 10, § 2, p. 61; R.S.1913, § 433; C.S.1922, § 350; C.S.1929, § 11-609; R.S.1943, § 10-610; Laws 1969, c. 51, § 12, p. 280.

10-611 Precinct refunding bonds; payable to bearer; delivery; sale; price.

The said bonds shall be payable to bearer and may be delivered either to the holders and owners of the judgments for the payment of which they are issued, or may be sold under the direction of the county board and delivered to the purchasers and the proceeds used to pay the judgments; but the said funding bonds shall not be sold for less than their par value.

Source: Laws 1901, c. 10, § 4, p. 62; R.S.1913, § 434; C.S.1922, § 351; C.S.1929, § 11-610.

10-612 Precinct refunding bonds; payment; tax levy.

For the purpose of meeting the indebtedness evidenced by the said funding bonds the county board shall cause to be annually levied upon all the real and personal property within the precinct or within the limits of the former or de facto precinct against which the said bonds have been adjudged to be a liability, a tax sufficient to pay the annual interest upon the said funding bonds, and not less than five percent of the principal, for the purpose of creating a sinking fund to pay the principal at maturity, and at the tax levy preceding the maturity of such bonds shall levy an amount sufficient to pay the principal and the remaining interest due on said bonds.

Source: Laws 1901, c. 10, § 5, p. 62; R.S.1913, § 435; C.S.1922, § 352; C.S.1929, § 11-611.

10-613 Repealed. Laws 1987, LB 623, § 4.

10-614 Repealed. Laws 1987, LB 623, § 4.

10-615 Refunding bonds; sanitary and improvement district; road improvement district; fire protection district; issuance; conditions.

Any sanitary and improvement district, any road improvement district, and any fire protection district in the State of Nebraska which has issued or which will issue bonds for any purpose, and such bonds or any part of such bonds are unpaid, are a legal liability against such district, and are bearing interest, may issue refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the maturity or the redemption date of such bonds, may include various series and issues of the outstanding bonds in a single issue of refunding bonds, and may issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded or refunding bonds issued. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the governing body or the administrator determines to be in the best interest of any such district. The proceeds derived from the sale of the refunding bonds issued pursuant to this section may be invested in obligations of or guaranteed by the United States Government pending the time the proceeds are required for the purpose for which such refunding bonds were issued. To further secure the refunding bonds, any such district may enter into a contract with any bank or trust company, within or without the state, with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment of such proceeds. Any outstanding bonds, which shall have been called for redemption and which have sufficient funds or obligations of or guaranteed by the United States Government set aside in safekeeping to be applied for the complete payment of such bonds, interest on such bonds, and redemption premium, if any, on the redemption date, shall not be considered as outstanding and unpaid, and such bonds shall be fully secured by and be payable from such funds or obligations so deposited. Each new refunding bond so issued shall state on the bond (1) the object of its issue, (2) this section of the law under which such issue was made, including a statement that the issue is made pursuant to such section, and (3) the date and principal amount of the bond or bonds for which the refunding bonds are being issued.

Source: Laws 1987, LB 623, § 1.

10-616 Refunding bonds; issuance by annexing city or village.

Any city or village which has annexed all or part of any sanitary and improvement district, any road improvement district, or any fire protection district and has become legally liable for the bonds or warrants of the district or any part thereof shall also be authorized to exercise the powers set forth in section 10-615 with respect to such bonds or to issue refunding bonds upon such terms as the governing body shall deem appropriate to call and redeem such warrants at or before maturity.

Source: Laws 1987, LB 623, § 2.

10-617 Refunding bonds; construction of sections.

Sections 10-615 and 10-616 shall be deemed to provide an additional, alternative, and complete method for doing the things authorized in such sections, shall be deemed and construed to be supplemental and additional to the powers conferred by any other laws, and shall not be regarded to be in degradation of any powers existing on April 7, 1987, except that insofar as sections 10-615 and 10-616 are inconsistent with any other law or home rule charter, such sections shall be controlling.

Source: Laws 1987, LB 623, § 3.

ARTICLE 7
SCHOOL DISTRICT BONDS

Section

10-701 Issuance; purposes; power of district officers.

The district officers of any school district in Nebraska shall have power, on the terms and conditions set forth in sections 10-702 to 10-716, to issue the bonds of the district for the purpose of (1) purchasing a site for and erecting thereon a schoolhouse or schoolhouses or a teacherage or teacherages, or for such purchase or erection, or purchasing an existing building or buildings for use as a schoolhouse or schoolhouses, including the site or sites upon which such building or buildings are located, and furnishing the same, in such district, (2) retiring registered warrants, and (3) paying for additions to or repairs for a schoolhouse or schoolhouses or a teacherage or teacherages.

Source: Laws 1879, § 1, p. 170; R.S.1913, § 447; C.S.1922, § 365; C.S. 1929, § 11-901; R.S.1943, § 10-701; Laws 1949, c. 13, § 1, p. 75; Laws 1951, c. 15, § 1, p. 93; Laws 1969, c. 49, § 1, p. 266.

Procedure for issuance of bonds by school district is authorized. State ex rel. School Dist. v. Board of Equalization, 166 Neb. 785, 90 N.W.2d 421 (1958).

Posted notices of election to vote school bonds is sufficient in districts of less than one hundred fifty pupils. Union P. R. R. Co. v. School Dist. No. 9, of Merrick County, 114 Neb. 578, 208 N.W. 738 (1926).

Prior to 1879, upon division of school district which was subject to bonded indebtedness, territory detached from district was liable for its proportionate share of indebtedness. Manahan v. Adams County, 77 Neb. 829, 110 N.W. 860 (1906).

Where every voter then in the district was present at school meeting at which bonds were voted, lack of request for calling of special meeting and want of notice did not invalidate bonds.

State ex rel. Hopper v. School Dist. No. 13 of Webster County, 13 Neb. 466, 14 N.W. 382 (1882).

10-702 Issuance; election required; resubmission limited; submission at a statewide election; resolution; notice; counting boards.

The question of issuing school district bonds may be submitted at a special election or such question may be voted on at an election held in conjunction with the statewide primary or statewide general election. No bonds shall be issued 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 have voted in favor of issuing the same, at an election called for the purpose, upon notice given by the officers of the district at least twenty days prior to such election. If the election for issuing bonds is held as a special election, the procedures provided in section 10-703.01 shall be followed. The question of bond issues in such districts, when defeated, shall not, except in case of fire or other disaster or in the case of a newly created district, be resubmitted in substance for a period of six months from and after the date of such election.

When the question of issuing bonds is to be submitted at a statewide primary or statewide general election as ordered by a resolution of a majority of the members of the board of education, such order shall be made in writing and filed with the county clerk or election commissioner not less than fifty days prior to the statewide primary or statewide general election. The order calling for the school bond election shall be filed with the county clerk or election commissioner in the county having the greatest number of electors entitled to vote on the question. The county clerk or election commissioner receiving such order shall conduct the school bond election for the school district as provided in the Election Act.

A special notice of the election shall be published by the board of education in a newspaper or newspapers of general circulation within the district stating the day of the election, the hours during which the polls will be open, and any other information deemed necessary in informing the public of the bond issue. The notice shall be made at least twenty days prior to the election.

If the question of submitting bonds for the school district is voted upon in one or more counties and the ballots have been certified across county lines, the election boards in the counties where the ballots are cast shall count the ballots on election day the same as all other ballots are counted and seal the same in their ballots-cast container along with other ballots.

The canvassing boards in each county shall canvass the returns in the same manner as other returns are canvassed.

The county clerk or election commissioner in any adjoining county voting on the bond issue shall certify the returns to the county clerk or election commissioner of the county having the greatest number of electors entitled to vote on the question of issuing bonds.

The county clerk or election commissioner in such county shall enter the total returns from any adjoining county or counties to the total votes recorded in his or her official book of votes cast and shall certify the returns to the board of education for which such bond election was held.

Source: Laws 1879, § 2, p. 170; R.S.1913, § 448; Laws 1917, c. 9, § 1, p. 65; C.S.1922, § 366; C.S.1929, § 11-902; R.S.1943, § 10-702;

Laws 1949, c. 13, § 2, p. 75; Laws 1965, c. 36, § 1, p. 228; Laws 1967, c. 34, § 1, p. 157; Laws 1971, LB 534, § 7; Laws 1973, LB 550, § 1; Laws 1984, LB 920, § 28; Laws 1994, LB 76, § 465.

Cross References

Election Act, see section 32-101.

Issuance of bonds by school district required authorization by fifty-five percent of legal votes cast at election. Haggard v. Misko, 164 Neb. 778, 83 N.W.2d 483 (1957).

Ballots improperly cast or rejected for illegality cannot be counted in determining vote cast. Greathouse v. Dix Rural High School Dist., 155 Neb. 883, 54 N.W.2d 58 (1952).

Under a requirement that a proposal for issuance of school district bonds be adopted by three-fifths of the ballots cast, ballots improperly cast or rejected for illegality cannot be counted. Miller v. Mersch, 152 Neb. 746, 42 N.W.2d 652 (1950).

This section is not the only valid legislation under which bonds may be voted for repairing, remodeling, and enlarging schoolhouse. Taxpayers League of Wayne County v. Benthack, 136 Neb. 277, 285 N.W. 577 (1939).

Posted notices of election to vote school bonds is sufficient in districts of less than one hundred fifty pupils. Union P. R. R. Co. v. School Dist. No. 9, of Merrick County, 114 Neb. 578, 208 N.W. 738 (1926).

Statutory provision for publishing notice of school bond election is directory, and posting of notice did not invalidate election where result of election could not possibly have been changed. State ex rel. School Dist. No. 2 of Pierce County v. Marsh, 108 Neb. 749, 189 N.W. 283 (1922).

Notice of election published in a weekly paper for a period of twenty days was sufficient. State ex rel. School Dist. of the City of Lincoln v. Barton, 91 Neb. 357, 136 N.W. 22 (1912).

Under prior act, two-thirds of those present and voting was necessary to vote bonds. Allen v. School Dist. Nos. 19 and 41, Joint, of Buffalo and Hall Counties, 89 Neb. 205, 130 N.W. 1050 (1911).

Women, entitled to vote at school elections, may vote on bonds. Olive v. School Dist. No. 1, 86 Neb. 135, 125 N.W. 141 (1910).

10-703 Issuance; election; resolution of board; petition; form; content; exception.

A vote shall be ordered upon the issuance of such bonds, either (1) upon resolution of a majority of the members of the school board or board of education, or (2) whenever a petition shall be presented to the district board suggesting that a vote be taken for or against the issuing of such amount of bonds as may therein be asked for (a) to purchase a site for or build a schoolhouse or schoolhouses or a teacherage or teacherages, or to purchase an existing building or buildings for use as a schoolhouse or schoolhouses, including the site or sites upon which such building or buildings are located, (b) for furnishing the necessary furniture and apparatus for the same, (c) for retiring registered warrants, (d) for paying for additions to or repairs for a schoolhouse or schoolhouses or a teacherage or teacherages, or (e) for all of these purposes, which petition shall be signed by at least ten percent of the qualified voters of such district.

Source: Laws 1879, § 3, p. 171; Laws 1887, c. 75, § 1, p. 596; R.S.1913, § 449; C.S.1922, § 367; C.S.1929, § 11-903; R.S.1943, § 10-703; Laws 1949, c. 13, § 3, p. 75; Laws 1969, c. 49, § 2, p. 267.

This section does not apply to school district of Lincoln. State ex rel. School Dist. of the City of Lincoln v. Barton, 91 Neb. 357, 136 N.W. 22 (1912).

School board is without power to call an election to issue bonds for any purpose not suggested in petition signed by the necessary number of electors of district. Allen v. School Dist. Nos. 19 and 41, Joint, of Buffalo and Hall Counties, 89 Neb. 205, 130 N.W. 1050 (1911).

Petition to call election is condition precedent to issuance of bonds, and decision of board on sufficiency of petition is not conclusive but is a judicial question cognizable by the courts. Fullerton v. School Dist. of the City of Lincoln, 41 Neb. 593, 59 N.W. 896 (1894).

Bonds may be issued for either one or all of the purposes stated in this section. School Dist. No. 11, of Dakota County v. Chapman, 152 F. 887 (8th Cir. 1907).

10-703.01 Issuance; election; notice; counting of ballots; canvass of vote.

In all special elections called for voting on the question of issuing bonds of the school district, the county clerk or election commissioner or, if the school district lies in more than one county, the county clerk or election commissioner in the county having the greatest number of electors entitled to vote on the question shall designate the polling places and appoint the election officials,

who need not be the regular election officials, and otherwise conduct the election as provided under the Election Act except as otherwise specifically provided in this section. Any special election held under this section shall be subject to section 32-405. The school district shall designate the form of ballot and reimburse the county clerk or election official for the expenses of conducting the election as provided in sections 32-1201 to 32-1208. The school district officers shall give notice of the election at least twenty days prior to the election and cause the sample ballot to be published in a newspaper of general circulation in the school district one time not more than ten days nor less than three days prior to the election, and no notice of the election shall be required to be given by the county clerk or election commissioner. The notice of election shall state where ballots for early voting may be obtained.

The ballots shall be counted by the county clerk or election commissioner conducting the election and two disinterested persons appointed by him or her. When the polls are closed, the receiving board shall deliver the ballots to the county clerk or election commissioner conducting the election who, with the two disinterested persons appointed by him or her, shall proceed to count the ballots.

Ballots for early voting shall be furnished to the county clerk or election commissioner and ready for distribution by the county clerk or election commissioner conducting the election not less than fifteen days prior to the election.

When a school district lies in more than one county, the county clerk or election commissioner in any other county containing part of such school district shall, upon request, certify its registration books for those precincts in which the school district is located to the county clerk or election commissioner conducting the election and shall immediately forward all requests for ballots for early voting to the county clerk or election commissioner charged with the issuing of such ballots. Not less than five days prior to the election, the school district officers shall certify to the county clerk or election commissioner conducting the election a list of all registered voters of the school district in any other county or counties qualified to vote on the bond issue.

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 school board or board of education of the district in which the election was held for the purpose of making a canvass thereof.

The two disinterested persons appointed on the counting board shall receive wages at the minimum rate set in section 48-1203 for each hour of service rendered.

Source: Laws 1957, c. 352, § 1, p. 1198; Laws 1959, c. 26, § 1, p. 175; Laws 1972, LB 661, § 2; Laws 1973, LB 550, § 2; Laws 1979, LB 421, § 1; Laws 1984, LB 920, § 29; Laws 1992, LB 424, § 1; Laws 1994, LB 76, § 466; Laws 1997, LB 764, § 2; Laws 2002, LB 935, § 1; Laws 2003, LB 521, § 1; Laws 2005, LB 98, § 1.

Cross References

Election Act, see section 32-101.

In school district election, mail ballots are required to be endorsed by election official. Mommsen v. School Dist. No. 25, 181 Neb. 187, 147 N.W.2d 510 (1966).

This section is not unconstitutional because it delegates to school board the power to designate the polling places at which election is held. Peterson v. Cook, 175 Neb. 296, 121 N.W.2d 399 (1963).

10-704 Issuance; amount; exceptions.

Except as otherwise provided in this section, the aggregate amount of school bonds issued for all purposes in Class I or Class II school districts shall in no event exceed fourteen percent of the taxable valuation of all property in such school district. This section does not apply (1) to the issuance of refunding or compromise of indebtedness bonds by any such school district for the purpose of retiring outstanding bonds, warrants, or other indebtedness or (2) to any Class II school district which currently receives or has received in either of the two previous school fiscal years federal funds in excess of twenty-five percent of its general fund budget of expenditures as defined in section 79-1003.

Source: Laws 1921, c. 66, § 2, p. 254; C.S.1922, § 368; C.S.1929, § 11-904; Laws 1933, c. 22, § 1, p. 193; C.S.Supp.,1941, § 11-904; R.S.1943, § 10-704; Laws 1949, c. 13, § 4, p. 76; Laws 1979, LB 187, § 23; Laws 1992, LB 719A, § 21; Laws 2003, LB 67, § 1.

10-705 Terms; rate of interest.

The bonds issued under sections 10-701 to 10-716 shall draw such interest as shall be agreed upon.

Source: Laws 1879, § 6, p. 171; Laws 1907, c. 130, § 1, p. 430; R.S.1913, § 452; C.S.1922, § 369; C.S.1929, § 11-905; R.S.1943, § 10-705; Laws 1969, c. 51, § 14, p. 282.

10-706 Repealed. Laws 1983, LB 421, § 18.

10-707 Issuance; statement; contents; certification.

It shall be the duty of the proper officers of any school district in which any bonds may be voted under the authority of any law of this state, before the issuance of such bonds, to 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 children of school age residing in the district, and the total bonded indebtedness of the school district voting such bonds. Such statement shall be certified to under oath by the proper school board of the district.

Source: Laws 1879, § 8, p. 172; R.S.1913, § 454; C.S.1922, § 371; C.S. 1929, § 11-907; R.S.1943, § 10-707; Laws 1979, LB 187, § 24; Laws 1992, LB 719A, § 22; Laws 2001, LB 420, § 13.

10-708 Repealed. Laws 1983, LB 421, § 18.

10-709 Repealed. Laws 1983, LB 421, § 18.

10-710 Repealed. Laws 1983, LB 421, § 18.

10-711 Tax levy; sinking fund; exception; funds; distribution.

It shall be the duty of the county board in each county to levy annually upon all the taxable property in each school district in such county a tax sufficient to pay the interest accruing upon any bonds issued by such school 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 paid over to the county treasurer of the county in which the administrative office of such school district is located and shall remain in the hands of such county treasurer as a specific fund for the payment of the interest upon such bonds and for the final payment of the same at maturity. At the request of the school board of any district, the county board shall omit making a levy to pay the principal of the bonds when no bonds will be due within fifteen years thereafter.

Source: Laws 1879, § 13, p. 173; R.S.1913, § 458; C.S.1922, § 375; C.S.1929, § 11-911; Laws 1933, c. 22, § 2, p. 193; C.S.Supp.,1941, § 11-911; R.S.1943, § 10-711; Laws 1969, c. 50, § 1, p. 269; Laws 1990, LB 924, § 6.

In absence of an order by the school board to county treasurer to pay school bonds out of sinking fund, county is not liable for interest accruing on such bonds even though bonds were payable and sinking fund sufficient to discharge them. School District No. 22, of Harlan County v. Harlan County, 127 Neb. 4, 254 N.W. 701 (1934).

Levy of tax for bonds is subject to tax limitation for all school purposes. School Dist. of Central City v. Chicago, B. & Q. R. R. Co., 60 Neb. 454, 83 N.W. 667 (1900).

District liable to holder of bond where county treasurer deposited fund in insolvent bank. Jacobson v. Cary, 51 Neb. 762, 71 N.W. 723 (1897).

Where levy of taxes in one year to pay bonds issued by a school district would be a burden on taxpayers, court on mandamus may apportion the levy over a number of years. State ex rel. Gregory v. School Dist. No. 7, of Sherman County, 22 Neb. 700, 36 N.W. 278 (1888).

Transfer from sinking fund to general fund enjoined. Levy beyond limit is not authorized. Union P. Ry. Co. v. Dawson County, 12 Neb. 254, 11 N.W. 307 (1882).

10-712 School district, defined.

The phrase school district, as used in section 10-711, is hereby declared to mean the school district as it existed immediately prior to and at the time of the issuance of any bonds by said school district, including all lands, property and inhabitants contained in said school district at the time of the issuance of any bonds, and all portions of said district subsequently separated from said district, whether by the formation of a new district or by any change of boundaries of the original district.

Source: Laws 1879, § 14, p. 173; R.S.1913, § 459; C.S.1922, § 376; C.S.1929, § 11-912.

New consolidated district held liable for bonds of one of two former districts comprised therein, notwithstanding this section. Clother v. Maher, 15 Neb. 1, 16 N.W. 902 (1883).

10-713 Sinking fund; investment; requirements; interest earned; how credited.

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 school 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 school board or board of education, (1) in bonds, treasury bills or notes of the United States, or (2) in interest-bearing time certificates of deposit in depositories approved and authorized to receive county money, but in no greater amount in any such depository than the same is authorized to receive deposits of county funds. The interest earned on such investments shall be credited to the sinking fund from which the invested funds were drawn.

Source: Laws 1879, § 15, p. 174; R.S.1913, § 460; C.S.1922, § 377; Laws 1923, c. 50, § 1, p. 170; C.S.1929, § 11-913; R.S.1943, § 10-713; Laws 1965, c. 37, § 1, p. 229.

School district sinking fund should be invested by county treasurer only when ordered by school board. School District No. 22, of Harlan County, v. Harlan County, 127 Neb. 4, 254 N.W. 701 (1934).

10-714 Payment out of state; procedure.

When the interest and principal, or interest only, of such registered bonds are payable in New York City, or elsewhere out of the state, payment shall be therein made at the place so designated in such bond or coupon, or at the commercial agency of the state for such purposes. In order that the funds may not be misapplied, the treasurer shall procure a draft for the amount to be transmitted by drawing his check on some bank in this state, and both check and draft shall be so endorsed as to show upon what bond or bonds the funds shall be applied; or, at the request of the party holding or owning said bonds, payment may be made at the office of said treasurer.

Source: Laws 1879, § 16, p. 174; R.S.1913, § 461; C.S.1922, § 378; C.S.1929, § 11-914.

10-715 Sinking fund; liability of county treasurer; unexpended balance; disposition.

The tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, 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 1879, § 17, p. 175; Laws 1885, c. 82, § 1, p. 331; R.S.1913, § 462; C.S.1922, § 379; C.S.1929, § 11-915.

Failure to make provision for transfer from general fund to building fund indicates legislative intent to withhold authority for such transfer. State ex rel. School Dist. v. Board of Equalization, 166 Neb. 785, 90 N.W.2d 421 (1958).

10-716 Payment; duty of county treasurer; expenses; record; duty of county clerk.

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 be filed with the clerk, who shall enter satisfaction of such bonds upon the records of such school district. In case such bonds are payable out of the state, an allowance of one-fourth of one percent shall be made to the treasurer for the expense attendant in making such payment, to be deducted from any money in his hands remaining after payment of such matured bonds.

Source: Laws 1879, § 18, p. 175; R.S.1913, § 463; C.S.1922, § 380; C.S.1929, § 11-916.

10-716.01 Affiliated districts; issuance; purposes; levy prorated.

Following the affiliation of two or more school districts, bonds may be issued pursuant to sections 10-701 to 10-716 for purposes of capital additions to or

improvements or replacement of high school facilities upon the approval of a majority of the legal voters of the high school district and affiliated Class I district or districts or portions thereof voting on the issue as a combined voting unit. The bond levy necessary to redeem the bonds issued pursuant to this section shall be prorated to reflect projected student utilization of planned facilities based on criteria established by the State Department of Education if the facility will be used by elementary as well as high school students. The pro rata share of the costs of the facility to be assigned to the high school program shall be included in the statement required pursuant to section 10-707.

Source: Laws 1990, LB 259, § 20; Laws 1991, LB 511, § 1; Laws 1992, LB 245, § 7; Laws 1993, LB 348, § 1; Laws 2001, LB 420, § 14.

10-717 Refunding bonds; authorized; limitation.

Any school district in the State of Nebraska which has heretofore voted and issued, or which shall hereafter vote and issue, bonds to build or furnish a schoolhouse, 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, is hereby authorized to issue refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the maturity or the redemption date thereof, and may include various series and issues of the outstanding bonds in a single issue of refunding bonds, and issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the school district determines to be in the best interest of the district. The proceeds derived from the sale of refunding bonds issued pursuant to this section may be invested in obligations of, or guaranteed by, the United States Government pending the time the proceeds are required for the purposes for which such refunding bonds were issued. To further secure the refunding bonds, the school district may enter into a contract with any bank or trust company, within or without the state, with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment. Any outstanding bonds, which shall have been called for redemption and which have sufficient funds or obligations of, or guaranteed by, the United States Government set aside in safekeeping to be applied for the complete payment of such bonds, interest thereon, and redemption premium, if any on the redemption date, shall not be considered as outstanding and unpaid bonds. All bonds issued under the provisions of sections 10-717 to 10-719 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 1879, § 1, p. 176; Laws 1893, c. 32, § 1, p. 360; Laws 1905, c. 139, § 1, p. 574; R.S.1913, § 464; C.S.1922, § 381; C.S.1929, § 11-917; R.S.1943, § 10-717; Laws 1955, c. 16, § 1, p. 86; Laws 1969, c. 51, § 15, p. 282; Laws 1981, LB 313, § 1.

10-718 Refunding bonds; required statement.

Each new refunding bond so issued shall state therein (1) the object of its issue, (2) the section or sections of the law under which the issue thereof was

made, including a statement that the issue is made in pursuance thereof, and (3) the date and principal amount of the bond or bonds for which the refunding bonds are being issued.

Source: Laws 1879, § 2, p. 177; R.S.1913, § 465; C.S.1922, § 382; C.S. 1929, § 11-918; R.S.1943, § 10-718; Laws 1955, c. 16, § 2, p. 87; Laws 1981, LB 313, § 2.

10-719 Refunding bonds; election not required; payment; tax levy.

The new bonds as issued shall not require a vote of the people to authorize such issue, and they shall be paid, and the levy be made and tax collected for their payment, in accordance with laws governing the said bonds heretofore issued.

Source: Laws 1879, § 3, p. 176; R.S.1913, § 466; C.S.1922, § 383; C.S. 1929, § 11-919.

ARTICLE 8

COUNTY AID BONDS

Section
10-801. Issuance; purposes; limit; election required; power of county board.
10-802. Issuance; terms; election; notice; vote.
10-803. Election; proposition; contents; proceeds of sale of bonds; disposition; procedure; expenses.
10-804. Election; proposition; contents; payment; tax levy.
10-805. Election; proposition; contents; sinking fund; creation; use.
10-806. Bondholders' rights.
10-807. Misrepresentations for aid; penalty.

10-801 Issuance; purposes; limit; election required; power of county board.

The county board of any county of this state shall have authority to issue the bonds of such county in an amount not to exceed one and eight-tenths percent of the taxable valuation of the county and not to exceed one million dollars for the purpose of raising money to be advanced or loaned by such county to destitute and needy sufferers from cyclone, tornado, or destructive windstorm in such county. No such bonds shall be issued until the question of the issuing of the same has been submitted to the electors of the county at a general or special election as provided by sections 10-801 to 10-807.

Source: Laws 1913, c. 229, § 1, p. 662; R.S.1913, § 471; C.S.1922, § 388; C.S.1929, § 11-1001; R.S.1943, § 10-801; Laws 1979, LB 187, § 25; Laws 1980, LB 599, § 3; Laws 1992, LB 719A, § 23.

10-802 Issuance; terms; election; notice; vote.

If the people of any county in the State of Nebraska, or a considerable number thereof, shall be in destitute, dependent, or needy circumstances on account of any cyclone, tornado or destructive windstorm, the county board of such county may call an election, and said board and the county clerk of such county shall give notice of such election by publication in two consecutive issues of one or more newspapers published and of general circulation in such county, and by posting a notice at the polling places in each election precinct therein. If a majority of the votes cast at such election shall be in favor of issuing said bonds, the county board shall issue the bonds of the county payable in not more than ten years, with interest payable semiannually. The county

shall reserve to itself the privilege of paying off all or any part of said bonds, at any time on or after five years, by inserting a provision to that effect in the proposition submitting said bonds, and in the bonds when issued.

Source: Laws 1913, c. 229, § 2, p. 663; R.S.1913, § 472; C.S.1922, § 389; C.S.1929, § 11-1002; R.S.1943, § 10-802; Laws 1947, c. 15, § 7, p. 86; Laws 1969, c. 51, § 16, p. 282.

10-803 Election; proposition; contents; proceeds of sale of bonds; disposition; procedure; expenses.

The proceeds of such bonds shall be used for the purpose of assisting destitute or needy sufferers from any cyclone, tornado or destructive windstorm, to repair or rebuild their homes or dwelling houses, damaged or destroyed by such cyclone, tornado or windstorm, such assistance to be provided in the following manner: The county may loan or advance to any such destitute or needy sufferer, for the purpose of repairing or rebuilding his or her dwelling house, such sum as may be determined upon by the county board or by the board named by the county board for that purpose, upon the borrower executing his or her note to the county, secured by a mortgage upon the premises upon which such dwelling house or home is or is to be located. The county may at any time transfer or assign such note and mortgage for a valuable consideration, upon approval by the county board. Such note and mortgage may be executed for a period of not more than ten years. The loans of such money shall be made by a board of five resident freeholders of such county, who shall be appointed by the county board thereof, and shall be named in the proposition submitting such bonds to the vote of the electors of the county. The county board shall provide the details for effecting the loans, and the manner in which and the conditions under which the same shall be made; but all such provisions shall be determined upon by the county board prior to the submission of such bonds, and shall be set forth in the proposition submitting the same to the vote of the electors. The county board may use or set aside not more than five percent of the proceeds of the sale of such bonds for the purpose of paying the expenses of the board provided for, and its employees, in administering and carrying out the provisions of sections 10-801 to 10-807.

Source: Laws 1913, c. 229, § 3, p. 663; R.S.1913, § 473; C.S.1922, § 390; C.S.1929, § 11-1003.

10-804 Election; proposition; contents; payment; tax levy.

The proposition, when submitted, shall state the amount necessary to be raised each year for the payment of the interest on said bonds, and for the payment of the principal thereof at maturity. When such bonds shall have been issued, the proper officers of such county shall cause to be annually levied and collected a special tax upon all taxable property of such county to raise the annual amount designated in said proposition, and to pay the interest and principal of said bonds as the same become due and payable.

Source: Laws 1913, c. 229, § 5, p. 664; R.S.1913, § 475; C.S.1922, § 392; C.S.1929, § 11-1005.

10-805 Election; proposition; contents; sinking fund; creation; use.

The proposition, when submitted to the electors, shall provide for a sinking fund, to which shall be credited the proceeds of loans sold by or repaid to the county; and such fund, when available, shall be used to pay the interest on said bonds and the principal thereof at maturity; *Provided, however*, any part of the sinking fund may be reloaned for the purposes specified in sections 10-801 to 10-807, when authorized by the county board.

Source: Laws 1913, c. 229, § 6, p. 664; R.S.1913, § 476; C.S.1922, § 393; C.S.1929, § 11-1006.

10-806 Bondholders' rights.

Any county which shall have issued its bonds pursuant to sections 10-801 to 10-807 shall be estopped from pleading want of consideration therefor, and the proper officers of such county may be compelled by mandamus, or otherwise, to levy the tax herein authorized.

Source: Laws 1913, c. 229, § 7, p. 665; R.S.1913, § 477; C.S.1922, § 394; C.S.1929, § 11-1007.

10-807 Misrepresentations for aid; penalty.

Any person who shall make any false statement to the county board or to the board provided for in sections 10-801 to 10-807, or to any of its assistants or employees, for the purpose of obtaining a loan or aid of any kind, as a sufferer from cyclone, tornado or destructive windstorm, shall be guilty of a Class I misdemeanor.

Source: Laws 1913, c. 229, § 4, p. 664; R.S.1913, § 474; C.S.1922, § 391; C.S.1929, § 11-1004; R.S.1943, § 10-807; Laws 1977, LB 40, § 70.

ARTICLE 9

REFINANCING GENERAL INDEBTEDNESS BY ISSUING BONDS OR BORROWING MONEY

Section
10-901. Repealed. Laws 1947, c. 179, § 3.
10-902. Repealed. Laws 1947, c. 179, § 3.
10-903. Repealed. Laws 1947, c. 179, § 3.
10-904. Repealed. Laws 1947, c. 179, § 3.
10-905. Repealed. Laws 1947, c. 179, § 3.
10-906. Repealed. Laws 1947, c. 179, § 3.
10-907. Repealed. Laws 1947, c. 179, § 3.
10-908. Repealed. Laws 1947, c. 179, § 3.
10-909. Repealed. Laws 1947, c. 179, § 3.
10-910. Repealed. Laws 1947, c. 179, § 3.
10-911. Repealed. Laws 1947, c. 179, § 3.

10-901 Repealed. Laws 1947, c. 179, § 3.

10-902 Repealed. Laws 1947, c. 179, § 3.

10-903 Repealed. Laws 1947, c. 179, § 3.

10-904 Repealed. Laws 1947, c. 179, § 3.

10-905 Repealed. Laws 1947, c. 179, § 3.

10-906 Repealed. Laws 1947, c. 179, § 3.

10-907 Repealed. Laws 1947, c. 179, § 3.

10-908 Repealed. Laws 1947, c. 179, § 3.

10-909 Repealed. Laws 1947, c. 179, § 3.

10-910 Repealed. Laws 1947, c. 179, § 3.

10-911 Repealed. Laws 1947, c. 179, § 3.

ARTICLE 10

PRIVATE ACTIVITY BONDS

Section
10-1001. Governor; powers.

10-1001 Governor; powers.

To permit the orderly continuation of the issuance of private activity bonds pursuant to the Internal Revenue Code, the Governor may by executive order:

(1) Allocate or establish a method for the allocation of the private activity bond state ceiling set forth in the Internal Revenue Code among any or all entities in the State of Nebraska having the authority to issue private activity bonds or governmental bonds; and

(2) Delegate any administrative authority vested in him or her under this section to any state agency or any instrumentality which exercises essential public functions.

Source: Laws 1988, LB 1233, § 1; Laws 1995, LB 574, § 14.

ARTICLE 11

NEBRASKA GOVERNMENTAL UNIT SECURITY INTEREST ACT

Section
10-1101. Act, how cited.
10-1102. Applicability of act.
10-1103. Terms, defined.
10-1104. Perfection.
10-1105. Priority.
10-1106. Enforcement; determination of default.

10-1101 Act, how cited.

Sections 10-1101 to 10-1106 shall be known and may be cited as the Nebraska Governmental Unit Security Interest Act.

Source: Laws 2000, LB 929, § 17.

10-1102 Applicability of act.

The creation of security interests and pledges by governmental units is controlled by other provisions of law. The Nebraska Governmental Unit Security Interest Act governs the perfection, priority, and enforcement of all security interests created by governmental units.

Source: Laws 2000, LB 929, § 18.

10-1103 Terms, defined.

For purposes of the Nebraska Governmental Unit Security Interest Act:

(1) Authorizing statute means any statute which authorizes the issuance of bonds;

(2) Bond means any bond, note, warrant, loan agreement, lease, lease-purchase agreement, pledge agreement, or other evidence of indebtedness for which a security interest is granted or a pledge made upon revenue or other property, including any limited tax revenue, to provide for payment or security;

(3) Governmental unit means the State of Nebraska, any county, school district, city, village, public power district, sanitary and improvement district, educational service unit, community college area, natural resources district, airport authority, fire protection district, hospital authority, joint entity created under the Interlocal Cooperation Act, joint public agency, instrumentality, or any other district, authority, or political subdivision of the State of Nebraska and governmental units as defined in subdivision (a)(45) of section 9-102, Uniform Commercial Code;

(4) Measure means any ordinance, resolution, or other enactment authorizing the issuance of bonds or authorizing an indenture with respect to bonds pursuant to an authorizing statute; and

(5) Owner means any holder, registered owner, or beneficial owner of a bond.

Source: Laws 2000, LB 929, § 19.

Cross References

Interlocal Cooperation Act, see section 13-801.

10-1104 Perfection.

Any security interest created by a governmental unit pursuant to an authorizing statute is perfected by the adoption of the measure or measures from the date on which the measure takes effect without the need for any physical delivery, filing, or recording in any office.

Source: Laws 2000, LB 929, § 20.

10-1105 Priority.

The priority of any security interest created by a governmental unit shall be governed by the contractual terms set forth in the measure or measures, including the terms of any indenture or any other agreement approved by the measure or measures, adopted by the governmental unit. No security interest having priority over an existing security interest may be created in violation of the terms of an existing measure governing outstanding bonds.

Source: Laws 2000, LB 929, § 21.

10-1106 Enforcement; determination of default.

The terms of any applicable authorizing statute shall govern the enforcement of any security interest to the extent that the authorizing statute contains express provisions relating to enforcement or authorizes a governmental unit to contract with respect to enforcement. In the absence of any such express provisions in an authorizing statute, the following provisions apply:

(1) Any measure may include provisions determining what events constitute events of default. In the absence of any express provision relating to default in any measure, the governmental unit is in default so long as any default in payment with respect to principal, interest, or premium on a bond has occurred and remains uncured;

(2) Any trustee designated in or under the terms of a measure shall have the right, if a default has occurred, to have a receiver appointed for the collection of any revenue or property in which a security interest is granted, and if the revenue is from any revenue-producing undertaking, any such receiver may also be appointed to operate and manage such revenue-producing undertaking for the benefit of the owners of the bonds in accordance with the terms of the measure or measures authorizing their issuance;

(3) If there is no trustee designated in or under the terms of a measure, any owner of a bond shall have the right, if a default has occurred, to have a receiver appointed for the collection of any revenue or property in which a security interest is granted and, if the revenue is from any revenue-producing undertaking, any such receiver may also be appointed to operate and manage such revenue-producing undertaking for the benefit of the owners of the bonds in accordance with the terms of the measure or measures authorizing their issuance;

(4) Any trustee designated in or under the terms of any measure or any owner of a bond, if there is no trustee designated, shall have the right to bring proceedings against the governing body of the governmental unit to order the imposing of rates or charges with respect to any revenue-producing undertaking sufficient to provide for payment of principal, interest, and premium on a bond or bonds as the same fall due; and

(5) Any trustee designated in or under the terms of any measure or any owner of a bond shall have the right to exercise any other remedy provided by law.

Source: Laws 2000, LB 929, § 22.

CHAPTER 11
BONDS AND OATHS, OFFICIAL

Article.
1. Official Bonds and Oaths. 11-101 to 11-130.
2. State Bond Approval. 11-201 to 11-204.

Cross References

Constitutional provisions:
Bonds required of government officers, see Article IV, section 26, Constitution of Nebraska.
Official oath, see Article XV, section 1, Constitution of Nebraska.

Actions upon official bonds:
By whom and how brought, see sections 25-2101 and 25-2102.
Limitation of action, see section 25-209.
Venue, see section 25-403.01.

ARTICLE 1
OFFICIAL BONDS AND OATHS

Section
11-101. Oath of office; officers of state and political subdivisions, except constitutional officers; form; endorsement on bonds; filing.
11-101.01. Oath of office; state and political subdivisions; employees; form.
11-101.02. Oath of office; false statement; penalty.
11-101.03. Oath; affirmation; effect.
11-101.04. Repealed. Laws 1985, LB 7, § 1.
11-102. Bonds; state officers; form.
11-103. Bonds; county, township, school district, precinct officers; form.
11-104. Bonds or insurance coverage; municipal officers; form.
11-105. Bonds and oaths; filing; time.
11-106. Bonds; state and district officers; approval; filing; place; recording.
11-107. Bonds; county, precinct, township officers; approval; filing; place; recording.
11-108. Bonds; state officers; sureties; number; qualification; affidavits required.
11-109. Bonds; county and precinct officers; sureties; number; qualification.
11-110. Bonds; recording; copies; fee.
11-111. Bonds; endorsement of approval required.
11-112. Bonds; terms.
11-113. Bonds; irregularities; effect.
11-114. Bonds; sureties; public officers or deputies and attorneys, ineligible.
11-115. Bonds; failure to furnish; show cause order; effect.
11-116. Bonds; officers appointed to fill vacancies; requirements.
11-117. Bonds and oaths; officers reelected, reappointed, holding over; requirements.
11-118. Bonds; successive terms; sureties; qualification.
11-119. Bonds; officers; penal sums.
11-120. Repealed. Laws 1978, LB 653, § 40.
11-121. Bond or insurance; persons entrusted with public funds; penal sum; approval.
11-122. Bonds; county treasurer; power of county board to require; failure to furnish; effect.
11-123. Bonds; guaranty companies; eligibility; approval.
11-124. Bonds; guaranty companies; failure to pay judgment; penalty.
11-125. Bonds; county officers; premium paid by county; conditions.
11-126. Bonds; deputies or employees of county officers; alternatives.
11-127. Bonds; premium paid by county; manner of paying.
11-128. Bond; State Treasurer; premium paid by state; conditions.

11-101 Oath of office; officers of state and political subdivisions, except constitutional officers; form; endorsement on bonds; filing.

All state, district, county, precinct, township, municipal, and especially appointed officers, except those mentioned in Article XV, section 1, of the Constitution of the State of Nebraska, shall, before entering upon their respective duties, take and subscribe the following oath, which shall be endorsed upon their respective bonds:

I, ..., do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nebraska, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely and without mental reservation or for purpose of evasion; and that I will faithfully and impartially perform the duties of the office of ....., according to law, and to the best of my ability. And I do further swear that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am in this position I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence. So help me God.

If any such officer is not required to give bond, the oath shall be filed in the office of the Secretary of State, or of the clerk of the county, city, village, or other municipal subdivision of which he shall be an officer.

Source: Laws 1881, c. 13, § 1, p. 94; R.S.1913, § 5707; C.S.1922, § 5037; C.S.1929, § 12-101; R.S.1943, § 11-101; Laws 1951, c. 206, § 2, p. 766.

1. Effect of failure to take oath
2. Officers required to take oath
3. Officers not required to take oath

1. Effect of failure to take oath

Failure of acting county attorney to take oath and give bond does not subject his acts to collateral attack. State ex rel. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

County judge justified in refusing to approve bond of county officer where oath not endorsed thereon, and mandamus will not lie to compel approval unless bond complies with statute. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

Failure of acting deputy clerk of district court to take oath and give bond does not deprive court of jurisdiction to enter judgment in cases where the acting deputy clerk filed petition and issued summons. Haskell v. Dutton, 65 Neb. 274, 91 N.W. 395 (1902).

2. Officers required to take oath

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).

Road overseer of township must take and subscribe oath under section 23-242, and filing of oath and bond under this section is not sufficient. State ex rel. Luckey v. Weber, 124 Neb. 84, 245 N.W. 407 (1932).

County judge should take the oath provided by Article XV, section 1, of the Constitution, and not the oath under this section, but taking wrong oath does not operate to vacate office. Duffy v. State ex rel. Edson, 60 Neb. 812, 84 N.W. 264 (1900).

3. Officers not required to take oath

A person designated by court to make sale of mortgaged premises under foreclosure decree need not take and file oath. Wright v. Stevens, 55 Neb. 676, 76 N.W. 441 (1898).

Person designated by court to hold sale need not take the oath prescribed by this section. Northwestern Mutual Life Ins. Co. v. Mulvihill, 53 Neb. 538, 74 N.W. 78 (1898).

Special master appointed by court in foreclosure proceedings need not take and file an oath, or execute a bond. Omaha L. & T. Co. v. Bertrand, 51 Neb. 508, 70 N.W. 1120 (1897).

School district officers are not required to take oath prescribed by this section, as the term "district" applies only to judicial districts, and the term "municipal" to villages, towns, and cities. Frans v. Young, 30 Neb. 360, 46 N.W. 528 (1890).

11-101.01 Oath of office; state and political subdivisions; employees; form.

All persons in Nebraska, with the exception of executive and judicial officers and members of the Legislature who are required to take the oath prescribed by

Article XV, section 1, of the Constitution of Nebraska, who are paid from public funds for their services, including teachers and all other employees paid from public school funds, shall be required to take and subscribe an oath in writing, before a person authorized to administer oaths in this state, and file same with the Department of Administrative Services, or the county clerk of the county where such services are performed, which oath shall be as follows:

I, ..., do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of Nebraska, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or for purpose of evasion; and that I will faithfully and impartially perform the duties of the office of ..... according to law, and to the best of my ability. And I do further swear that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am in this position I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence. So help me God.

Source: Laws 1951, c. 206, § 1, p. 765; Laws 1967, c. 35, § 1, p. 158.

11-101.02 Oath of office; false statement; penalty.

If any false statement is made in taking either of the oaths prescribed in sections 11-101 and 11-101.01, the person making such false statement shall be deemed guilty of a Class IV felony. No person convicted of perjury in taking the oath as prescribed in either section 11-101 or 11-101.01, shall hold any nonelective position, job, or office for the State of Nebraska, or any political subdivision thereof, where the remuneration of such position, job, or office is paid in whole or in part by public money or funds of the State of Nebraska, or of any political subdivision thereof.

Source: Laws 1951, c. 206, § 3, p. 767; Laws 1977, LB 40, § 71.

11-101.03 Oath; affirmation; effect.

Whenever an oath is required by section 11-101 or 11-101.01, the affirmation of a person conscientiously scrupulous of taking an oath shall have the same effect.

Source: Laws 1951, c. 206, § 5, p. 768.

11-101.04 Repealed. Laws 1985, LB 7, § 1.

11-102 Bonds; state officers; form.

All official bonds of state officers must be in form joint and several, and made payable to the State of Nebraska in such penalty and with such conditions as required by sections 11-101 to 11-122, or the law creating or regulating the office; *Provided, however*, all bonds of state officers in excess of one hundred thousand dollars, when executed by more than one guaranty, surety, fidelity or bonding company as sureties, may be several in form and limit the liability of

any one company to an amount less than the total penalty of the bond, provided that the aggregate amount shall not be less than the penalty required by law.

Source: Laws 1881, c. 13, § 2, p. 94; R.S.1913, § 5708; C.S.1922, § 5038; C.S.1929, § 12-102; Laws 1935, c. 21, § 1, p. 104; C.S.Supp.,1941, § 12-102.

Bond of village treasurer, joint and several in form, is not void as to surety because of failure of principal to sign it. Village of Hampton v. Gausman, 136 Neb. 550, 286 N.W. 757 (1939).

11-103 Bonds; county, township, school district, precinct officers; form.

All official bonds of county, township, school district, and precinct officers must be in form joint and several, and made payable to the county in which the officer giving the same shall be elected or appointed, in such penalty and with such conditions as required by sections 11-101 to 11-122 or the law creating or regulating the duties of the office.

Source: Laws 1881, c. 13, § 3, p. 95; R.S.1913, § 5709; C.S.1922, § 5039; C.S.1929, § 12-103.

1. Form
2. Validity
3. Effect

1. Form

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).

Term of office need not be set out in bond. Perkins County v. Miller, 55 Neb. 141, 75 N.W. 577 (1898).

Bond of deputy sheriff must run to county. Riggs v. Miller, 34 Neb. 666, 52 N.W. 567 (1892).

Failure to insert names of sureties in body of bond is immaterial. Stewart v. Carter, 4 Neb. 564 (1876).

2. Validity

Bond given by one entrusted with state or county funds is an official bond, and a provision therein which is in violation of statute and requires an official duty of the officer which is not required by law is against public policy and void. United States F. & G. Co. v. McLaughlin, 76 Neb. 307, 107 N.W. 577 (1906).

Joint bond is good as to sureties. Clark v. Douglas, 58 Neb. 571, 79 N.W. 158 (1899).

Official bond being in form joint, instead of joint and several, is not void. Perkins County v. Miller, 55 Neb. 141, 75 N.W. 577 (1898).

Until delivery of bond to proper officer and its approval, bond is not binding upon the obligors, and withdrawal of surety and erasure of name prior to delivery without knowledge or consent of others releases all. Hagler v. State, 31 Neb. 144, 47 N.W. 692 (1891).

A constable's bond, voluntarily given with a reasonable sum fixed as penalty therein, is binding on sureties. Noble v. Himeo, 12 Neb. 193, 10 N.W. 499 (1881); Williams v. Golden, 10 Neb. 432, 6 N.W. 766 (1880).

Bond running to ''the people of the State of Nebraska'', instead of to Dodge County was merely irregular, which could not be taken advantage of by officer or his surety in action on bond. Kopplekom v. Huffman, 12 Neb. 95, 10 N.W. 577 (1881).

Official bond of sheriff is not void because given to state instead of proper county as obligee. Huffman v. Koppelkom, 8 Neb. 344, 1 N.W. 243 (1879).

3. Effect

While all official bonds of county officers must be payable to county, one who performs duties of deputy county officer, holding himself out as such, is officer de facto and liable to prosecution, notwithstanding failure to take oath or give bond. Baker v. State, 112 Neb. 654, 200 N.W. 876 (1924).

Sureties on official bond are not liable for acts which are not required by law to be performed by officers. Ottenstein v. Alpaugh, 9 Neb. 237, 2 N.W. 219 (1879).

11-104 Bonds or insurance coverage; municipal officers; form.

(1) All official bonds of officers of cities, towns, and villages shall be executed pursuant to section 11-103, except that they shall be made payable to the city, town, or village in which the officers giving such bonds shall be elected or appointed, in such penalty as the city council or board of trustees of the village may fix.

(2) In any city or village, in place of the individual bonds required to be furnished by municipal officers, a schedule, position, blanket bond or undertaking, or evidence of equivalent insurance may be given by municipal officers, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking, or evidence of insurance coverage covering all the officers, including

officers required by law to furnish an individual bond or undertaking, may be furnished. The municipality may pay the premium for the bond or insurance coverage. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by law or by the person, council, or board authorized by law to fix the amounts and with such terms and conditions as may be required.

Source: Laws 1881, c. 13, § 4, p. 95; R.S.1913, § 5710; C.S.1922, § 5040; C.S.1929, § 12-104; Laws 2007, LB347, § 1.

Police officers of Omaha are required to give bond to city as obligee for faithful performance of official duty. Curnyn v. Kinney, 119 Neb. 478, 229 N.W. 894 (1930).

11-105 Bonds and oaths; filing; time.

Official bonds, with the oath endorsed thereon, shall be filed in the proper office within the following time: Of all officers elected at any general election, not later than ten days before the first Thursday after the first Tuesday in January next succeeding the election; of all appointed officers, within thirty days after their appointment; of officers elected at any special election, and city and village officers, within thirty days after the canvass of the votes of the election at which they were chosen.

Source: Laws 1881, c. 13, § 5, p. 95; R.S.1913, § 5711; C.S.1922, § 5041; C.S.1929, § 12-105; R.S.1943, § 11-105; Laws 1976, LB 534, § 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).

It is the duty of person elected to county office to file bond in amount required by statute, with oath endorsed thereon, on or before specified time. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

Sureties have right at any time before bond is delivered to revoke their principal's authority to bind them, but until such revocation the right of the principal to deliver bond is presumed to continue. The failure of officer to file his bond and have it approved within time creates a vacancy in the office. Paxton v. State, 59 Neb. 460, 81 N.W. 383 (1899).

Failure to file is excused by neglect or omission of officers to issue certificate of election. State ex rel. Barton v. Frantz, 55 Neb. 167, 75 N.W. 546 (1898).

One who is reelected to office is required to file a new oath and bond. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895).

When an incumbent of an office holds over on account of the nonelection of a successor he must file oath and bond within ten days from time at which his successor, if elected, should have qualified. State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892).

11-106 Bonds; state and district officers; approval; filing; place; recording.

The official bonds of all state and district officers except Governor shall be approved by the Governor, and filed and recorded in the office of the Secretary of State. The official bond of the Governor shall be approved by the Chief Justice of the Supreme Court. The official bond of the Secretary of State shall be filed and recorded in the office of the Director of Administrative Services.

Source: Laws 1881, c. 13, § 6, p. 95; R.S.1913, § 5712; C.S.1922, § 5042; C.S.1929, § 12-106.

The Governor, not the Secretary of State, approves the bond of State Treasurer, and Secretary of State can only receive, file, and record the bond. State v. Paxton, 65 Neb. 110, 90 N.W. 983 (1902); Paxton v. State, 60 Neb. 763, 84 N.W. 254 (1900).

11-107 Bonds; county, precinct, township officers; approval; filing; place; recording.

The official bonds of all county, precinct and township officers shall be approved by the county board, except the official bonds of the county commissioners or supervisors, which shall be approved by the county judge. All such bonds shall be filed and recorded in the office of the county clerk, except the bonds of the county clerk and members of the county board, which shall be

filed and recorded in the office of the county judge. The official bond of a school district treasurer must be approved by the president and secretary, and filed in the office of the treasurer of the county.

Source: Laws 1881, c. 13, § 7, p. 95; R.S.1913, § 5713; C.S.1922, § 5043; C.S.1929, § 12-107; R.S.1943, § 11-107; Laws 1959, c. 27, § 1, p. 177.

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).

County judge will not be compelled by mandamus to approve bond of county commissioner where oath not endorsed thereon. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

Bond must be filed and approved, or no action can be had against sureties. Fire Assn. of Philadelphia v. Ruby, 58 Neb. 730, 79 N.W. 723 (1899).

All bonds of county officers, except commissioners and supervisors, are required to be approved by the county board and filed and recorded in the office of the county clerk, but sureties cannot escape liability because bond was not filed and approved in time. Holt County v. Scott, 53 Neb. 176, 73 N.W. 681 (1897).

In approving bonds, county board acts as a body, and the approval is not the act of a member or individual members thereof as persons. Board must approve bond of county treasurer. Stoner v. Keith County, 48 Neb. 279, 67 N.W. 311 (1896).

Until bond of officer is filed and approved, he is not a de jure officer. McMillin v. Richards, 45 Neb. 786, 64 N.W. 242 (1895).

11-108 Bonds; state officers; sureties; number; qualification; affidavits required.

Each official bond of a state officer shall be executed by the officer as principal and by at least three residents of the state as sureties who shall be worth in the aggregate the amount of the bond over and above all their present indebtedness; and affidavits of the sureties, showing the value of the property owned by each and subject to levy and sale under execution in this state, shall be made and presented to the officer approving such bond, and shall be filed therewith; or the bond of any state officer may be executed by the officer as principal and by a guaranty, surety, fidelity or bonding company as surety, or by two or more of such companies as sureties. Only such companies as are legally authorized to transact business in this state shall be eligible to suretyship on the bond of a state officer.

Source: Laws 1881, c. 13, § 8, p. 96; Laws 1905, c. 10, § 1, p. 63; R.S.1913, § 5714; C.S.1922, § 5044; C.S.1929, § 12-108.

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).

When an officer writes his name in the body of paper prepared by himself as an official bond, and subscribes his oath of office endorsed thereon, which instrument is delivered, accepted and approved as his official bond, it is valid even though the signature of the officer is omitted at the bottom of the bond. State v. Hill, 47 Neb. 456, 66 N.W. 541 (1896).

11-109 Bonds; county and precinct officers; sureties; number; qualification.

All official bonds of county, precinct and other local officers shall be executed by the principal named in such bonds and by at least two sufficient sureties who shall be freeholders of the county in which such bonds are given; or any official bond of a county, precinct or local officer may be executed by the officer as principal and by a guaranty, surety, fidelity or bonding company as surety, or by two or more of such companies. Only such companies as are legally authorized to transact business in this state shall be eligible to suretyship on the bond of a county, precinct or other local officer.

Source: Laws 1881, c. 13, § 9, p. 96; Laws 195, c. 10, § 1, p. 63; R.S.1913, § 5715; C.S.1922, § 5045; C.S.1929, § 12-109.

Principal is required to execute bond. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Expense of county treasurer's bond, when legally executed, with qualified bonding company as surety, and approved is a binding obligation of county. Haase v. Buffalo County, 86 Neb. 145, 124 N.W. 1130 (1910).

11-110 Bonds; recording; copies; fee.

The officers with whom any official bonds are required by law to be filed shall carefully record and preserve the same in their respective offices, and shall give certified copies thereof, when required, under the seal of their office, and shall be entitled to receive for the same the usual fee allowed by law for certified copies of records in other cases.

Source: Laws 1881, c. 13, § 10, p. 96; R.S.1913, § 5716; C.S.1922, § 5046; C.S.1929, § 12-110.

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).

11-111 Bonds; endorsement of approval required.

The approval of each official bond shall be endorsed upon such bond by the officer approving the same, and no bond shall be filed and recorded until so approved.

Source: Laws 1881, c. 13, § 11, p. 97; R.S.1913, § 5717; C.S.1922, § 5047; C.S.1929, § 12-111.

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).

County judge will not be compelled by mandamus to approve bond of county commissioner where oath not endorsed thereon. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

If bond is executed by sufficient competent sureties, approval may be compelled by mandamus. Woodward v. State ex rel. Thomssen, 58 Neb. 598, 79 N.W. 164 (1899).

11-112 Bonds; terms.

All official bonds shall obligate the principal and sureties for the faithful discharge of all duties required by law of such principal, and shall inure to the benefit of any persons injured by a breach of the conditions of such bonds.

Source: Laws 1881, c. 13, § 12, p. 97; R.S.1913, § 5718; C.S.1922, § 5048; C.S.1929, § 12-112.

Sheriff and surety on his official bond are required to respond in damages to any person for a breach of duty imposed by law. O'Dell v. Goodsell, 149 Neb. 261, 30 N.W.2d 906 (1948).

Statute, by construction, constitutes part of bond, and the scope of statutory obligation cannot validly be limited by any other provision in the instrument. Village of Hampton v. Gausman, 136 Neb. 550, 286 N.W. 757 (1939).

County judge is liable on his official bond for trust funds lost by reason of insolvency of bank in which he deposited them though he acted in good faith and without negligence in selecting depository. Ericsson v. Streitz, 132 Neb. 692, 273 N.W. 17 (1937).

Recovery authorized thereon by person injured by negligent acts committed by policeman in exercise of municipal authority, although bond runs to city as obligee. Curnyn v. Kinney, 119 Neb. 478, 229 N.W. 894 (1930).

A bond given for the faithful discharge of the duties of one legally entrusted with state and county funds is an official bond, and the statutory provisions relative thereto enter and become a part of the contract. United States Fidelity & Guaranty Co. v. McLaughlin, 76 Neb. 307, 107 N.W. 577 (1906).

This section requires of a principal, who is a custodian of public money, the absolute accounting for and payment over of money coming into his official position. Adams v. Weisberger, 62 Neb. 326, 87 N.W. 16 (1901).

Money paid to the clerk of district court by referee in partition proceeding, in obedience to court order directing money to be brought into court, is received by the clerk in his official capacity. Dirks v. Juel, 59 Neb. 353, 80 N.W. 1045 (1899).

Counties may recover on official bonds of their officers for all damages caused by their neglect of duty. Toncray v. Dodge County, 33 Neb. 802, 51 N.W. 235 (1892).

Liability on bond is original and primary, and action may be brought against both principal and sureties without suit having first been brought against the officer for the tort. Kane v. Union Pacific Railroad, 5 Neb. 105 (1876).

11-113 Bonds; irregularities; effect.

No official bond shall be rendered void by reason of any informality or irregularity in its execution or approval.

Source: Laws 1881, c. 13, § 13, p. 97; R.S.1913, § 5719; C.S.1922, § 5049; C.S.1929, § 12-113.

Bond of public officer, joint and several in form, is not void as to surety because of failure of principal to sign it. Village of Hampton v. Gausman, 136 Neb. 550, 286 N.W. 757 (1939).

Approval of bond after instead of before filing thereof is an irregularity which has no effect upon its validity. State v. Paxton, 65 Neb. 110, 90 N.W. 983 (1902).

The making of official bond joint in form, instead of joint and several, is a mere irregularity which does not invalidate the instrument. Term need not be stated. Perkins County v. Miller, 55 Neb. 141, 75 N.W. 577 (1898).

11-114 Bonds; sureties; public officers or deputies and attorneys, ineligible.

No state or county officers, or their deputies, shall be taken as security on the bond of any administrator, executor, or other officer from whom by law bond is or may be required, and no practicing attorney shall be taken as surety on any official bond, or bond in any legal proceedings in the district in which he may reside.

Source: Laws 1881, c. 13, § 14, p. 97; R.S.1913, § 5720; C.S.1922, § 5050; C.S.1929, § 12-114.

A practicing attorney should not sign in a legal proceeding as surety, but if bond is approved, the attorney is estopped from alleging its invalidity and it may be enforced against him. In re Estate of Kothe, 131 Neb. 531, 268 N.W. 464 (1936), judgment of affirmance vacated on rehearing, 131 Neb. 780, 270 N.W. 117 (1936).

A practicing attorney is not a proper surety on an appeal bond, but bond is not invalid. Chase v. Omaha L. & T. Co., 56 Neb. 358, 76 N.W. 896 (1898).

Attorney should not become a surety upon a bond in a legal proceeding, and if he signs such a bond the clerk should not approve it. If it is approved, the surety is bound thereby. Luce v. Foster, 42 Neb. 818, 60 N.W. 1027 (1894); Tessier v. Crowley, 17 Neb. 207, 22 N.W. 422 (1885).

11-115 Bonds; failure to furnish; show cause order; effect.

If any person elected or appointed to any office shall neglect to have his official bond executed and approved as provided by law, and filed for record within the time limited by sections 11-101 to 11-122, the officer with whom the bond is required to be filed shall immediately issue an order to such person to show cause why he has failed to properly file such bond and why his office should not be declared vacant. If such person properly files the official bond within ten days of the issuance of the show cause order for appointed officials or before the date for taking office for elected officials, such filing shall be deemed to be in compliance with sections 11-101 to 11-122. If such person does not file the bond within ten days of the issuance of such order for appointed officials or before the date for taking office for elected officials, and sufficient cause is not shown within that time, his office shall thereupon ipso facto become vacant, and such vacancy shall thereupon immediately be filled by election or appointment as the law may direct in other cases of vacancy in the same office.

Source: Laws 1881, c. 13, § 15, p. 97; R.S.1913, § 5721; C.S.1922, § 5051; C.S.1929, § 12-115; R.S.1943, § 11-115; Laws 1976, LB 534, § 2.

1. Vacancy
2. Effect
3. Miscellaneous

1. Vacancy

Where school district treasurer fails to have official bond executed, approved, and filed, the office becomes ipso facto vacant. School District of Omaha v. Adams, 151 Neb. 741, 39 N.W.2d 550 (1949).

Failure of person reelected or reappointed to take oath and give bond within time provided creates vacancy the same as with newly elected or appointed officer. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895).

2. Effect

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).

Where person elected to county office fails to file bond in required amount, with oath endorsed thereon, on or before time specified, approval will not be compelled by mandamus. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

If newly appointed officer fails to qualify, incumbent may qualify anew under section 11-117. State ex rel. Shaw v. Rosewater, 79 Neb. 450, 113 N.W. 206 (1907).

Where bond was presented in time but not approved by reason of neglect of approving officer, no forfeiture of office results. Duffy v. State ex rel. Edson, 60 Neb. 812, 84 N.W. 264 (1900).

Incumbent has right, within ten days after his successor is declared ineligible, to give bond, qualify, and hold over until successor is elected and qualified. Richards v. McMillin, 36 Neb. 352, 54 N.W. 566 (1893).

3. Miscellaneous

Official bond, after approval, should be returned to obligor, and by him filed in proper office, and until so filed, it is not effective. Paxton v. State, 59 Neb. 460, 81 N.W. 383 (1899).

This section does not apply to a claimant who through carelessness, negligence or willful omission of election board failed to receive certificate of election. State ex rel. Barton v. Frantz, 55 Neb. 167, 75 N.W. 546 (1898).

This section does not apply where the incumbent holds over on account of the failure to elect a successor. State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892).

This section does not apply to school district officers. Frans v. Young, 30 Neb. 360, 46 N.W. 528 (1890).

11-116 Bonds; officers appointed to fill vacancies; requirements.

Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

Source: Laws 1881, c. 13, § 16, p. 97; R.S.1913, § 5722; C.S.1922, § 5052; C.S.1929, § 12-116.

11-117 Bonds and oaths; officers reelected, reappointed, holding over; requirements.

When the incumbent of an office is reelected or reappointed he shall qualify by taking the oath and giving the bond as above directed, but when such officer has had public funds or property in his control, his bond shall not be approved until he has produced and fully accounted for such funds and property. When it is ascertained that the incumbent of an office holds over by reason of the nonelection or nonappointment of a successor, or of the neglect or refusal of the successor to qualify, he shall qualify anew within ten days from the time at which his successor, if elected, should have qualified.

Source: Laws 1881, c. 13, § 17, p. 97; R.S.1913, § 5723; C.S.1922, § 5053; C.S.1929, § 12-117.

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).

Township officer must in addition to filing oath and bond under this section comply with requirements of section 23-242. State ex rel. Luckey v. Weber, 124 Neb. 84, 245 N.W. 407 (1932).

Death of newly elected officer before beginning of term, without qualifying, does not create a vacancy where there is a qualified member who qualifies anew and whose term of office does not expire until successor is elected. State ex rel. Schroeder v. Swanson, 121 Neb. 459, 237 N.W. 407 (1931).

Where officer appointed to fill vacancy is entitled to hold over, and files proper bond in due time, fact that county board refused to act upon same within time prescribed by law will not create vacancy. State ex rel. County Attorney v. Willott, 103 Neb. 798, 174 N.W. 429 (1919).

If newly elected or appointed officer fails to qualify, present incumbent may qualify anew. State ex rel. Shaw v. Rosewater, 79 Neb. 450, 113 N.W. 206 (1907).

Provisions of section are mandatory; incumbents reelected must qualify anew; and must render an accounting of all public funds on hand before bond can be approved. Woodward v. State ex rel. Thomssen, 58 Neb. 598, 79 N.W. 164 (1899).

Officers or incumbents, reelected, reappointed, or holding over where successor has been elected but fails to qualify, must qualify in same manner as newly elected officers. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895).

Incumbent holding over must qualify anew within ten days from time at which his successor should have qualified. State ex rel. Roche v. Cosgrove, 34 Neb. 386, 51 N.W. 974 (1892).

11-118 Bonds; successive terms; sureties; qualification.

No person shall be surety for the same officer for more than two successive terms of the same office; but this provision shall not apply to incorporated surety companies.

Source: Laws 1881, c. 13, § 18, p. 98; Laws 1905, c. 11, § 1, p. 64; R.S.1913, § 5724; C.S.1922, § 5054; C.S.1929, § 12-118.

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).

11-119 Bonds; officers; penal sums.

The following named officers shall execute a bond with penalties of the following amounts:

(1) The Governor, one hundred thousand dollars;

(2) The Lieutenant Governor, one hundred thousand dollars;

(3) The Auditor of Public Accounts, one hundred thousand dollars;

(4) The Secretary of State, one hundred thousand dollars;

(5) The Attorney General, one hundred thousand dollars;

(6) The State Treasurer, not less than one million dollars and not more than double the amount of money that may come into his or her hands, to be fixed by the Governor;

(7) Each county attorney, a sum not less than one thousand dollars to be fixed by the county board;

(8) Each clerk of the district court, not less than five thousand dollars or more than one hundred thousand dollars to be determined by the county board;

(9) Each county clerk, not less than one thousand dollars or more than one hundred thousand dollars to be determined by the county board, except that when a county clerk also has the duties of other county offices the minimum bond shall be two thousand dollars;

(10) Each county treasurer, not less than ten thousand dollars and not more than the amount of money that may come into his or her hands, to be determined by the county board;

(11) Each sheriff, in counties of not more than twenty thousand inhabitants, five thousand dollars, and in counties over twenty thousand inhabitants, ten thousand dollars;

(12) Each district superintendent of public instruction, one thousand dollars;

(13) Each county surveyor, five hundred dollars;

(14) Each county commissioner or supervisor, in counties of not more than twenty thousand inhabitants, one thousand dollars, in counties over twenty thousand and not more than thirty thousand inhabitants, two thousand dollars, in counties over thirty thousand and not more than fifty thousand inhabitants, three thousand dollars, and in counties over fifty thousand inhabitants, five thousand dollars;

(15) Each register of deeds in counties having a population of more than sixteen thousand five hundred inhabitants, not less than two thousand dollars or more than one hundred thousand dollars to be determined by the county board;

(16) Each township clerk, two hundred fifty dollars;

(17) Each township treasurer, two thousand dollars;

(18) Each county assessor, not more than five thousand dollars and not less than two thousand dollars;

(19) Each school district treasurer, not less than five hundred dollars or more than double the amount of money that may come into his or her hands, the amount to be fixed by the president and secretary of the district;

(20) Each road overseer, two hundred fifty dollars;

(21) Each member of a county weed district board and the manager thereof, such amount as may be determined by the county board of commissioners or supervisors of each county with the same amount to apply to each member of any particular board; and

(22) In any county, in lieu of the individual bonds required to be furnished by county officers, a schedule, position, or blanket bond or undertaking may be given by county officers, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking covering all the officers, including officers required by law to furnish an individual bond or undertaking, may be furnished. The county may pay the premium for the bond. The bond shall be, at a minimum, an aggregate of the amounts fixed by law or by the person or board authorized by law to fix the amounts, and with such terms and conditions as may be required by sections 11-101 to 11-130.

All other state officers, department heads, and employees shall be bonded or insured as required by section 11-201.

Source: Laws 1881, c. 13, § 19, p. 98; Laws 1901, c. 11, § 1, p. 63; Laws 1905, c. 12, § 1, p. 66; R.S.1913, § 5725; Laws 1917, c. 110, § 1, p. 282; C.S.1922, § 5055; Laws 1927, c. 156, § 1, p. 417; C.S. 1929, § 12-119; Laws 1933, c. 115, § 1, p. 460; Laws 1935, c. 22, § 1, p. 105; C.S.Supp.,1941, § 12-119; R.S.1943, § 11-119; Laws 1947, c. 16, § 4, p. 97; Laws 1951, c. 14, § 1, p. 89; Laws 1963, c. 38, § 1, p. 206; Laws 1965, c. 538, § 31, p. 1716; Laws 1967, c. 36, § 1, p. 160; Laws 1969, c. 52, § 1, p. 350; Laws 1971, LB 298, § 1; Laws 1972, LB 1032, § 93; Laws 1973, LB 226, § 1; Laws 1974, LB 7, § 1; Laws 1975, LB 103, § 1; Laws 1978, LB 653, § 6; Laws 1983, LB 369, § 1; Laws 1988, LB 1030, § 1; Laws 1995, LB 179, § 1; Laws 1999, LB 272, § 1; Laws 2004, LB 884, § 8.

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).

Deputy attorney general is required to give bond while assistant attorney general is not. Carlsen v. State, 127 Neb. 11, 254 N.W. 744 (1934).

Approval of bond in double amount required for particular office will not be compelled by mandamus. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

The amendment of 1901 to this section was unconstitutional because broader than title. Prowett v. Nance County, 82 Neb. 400, 117 N.W. 996 (1908); Knight v. Lancaster County, 74 Neb. 82, 103 N.W. 1064 (1905).

11-120 Repealed. Laws 1978, LB 653, § 40.

11-121 Bond or insurance; persons entrusted with public funds; penal sum; approval.

Any officer or person who is entrusted with funds belonging to the State of Nebraska or any county thereof, which may come into his or her possession by any appropriation or otherwise, shall be responsible for the same upon his or her bond or equivalent commercial insurance policy. When any officer or person is entrusted with any such fund and there is no provision of law requiring him or her to give a bond or equivalent commercial insurance policy

in a certain specified sum, he or she shall give bond or equivalent commercial insurance policy in double the amount of the sum so entrusted to him or her, which in the case of state funds shall be approved by the Chief Justice of the Supreme Court, and deposited in the office of the Secretary of State. In the case of county funds, such bonds or equivalent commercial insurance policy shall be approved by the county board and deposited in the county clerk's office. No warrant shall be issued or money paid over to such officer or person until the bond is filed as provided in this section. This section shall not be construed to require any additional bond or insurance to be furnished by state officers or employees bonded or insured as specified in section 11-201.

Source: Laws 1881, c. 13, § 21, p. 100; Laws 1905, c. 11, § 2, p. 64; R.S.1913, § 5727; C.S.1922, § 5057; C.S.1929, § 12-121; R.S. 1943, § 11-121; Laws 1978, LB 653, § 7; Laws 2004, LB 884, § 9.

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).

It is the duty of board to effect a settlement with county treasurer and approve his bond, if on a settlement, all funds in his hands are accounted for. State ex rel. Clark v. Vinnedge, 79 Neb. 270, 112 N.W. 858 (1907).

Bonds given by state or county officers are official bonds, and statutory provisions relative thereto enter into and become part of contract. United States F. & G. Co. v. McLaughlin, 76 Neb. 307, 107 N.W. 577 (1906), affirmed on rehearing 76 Neb. 310, 109 N.W. 390 (1906).

Purpose of Legislature was to make the county treasurer an insurer. Thomssen v. Hall County, 63 Neb. 777, 89 N.W. 389, 57 L.R.A. 303 (1902).

Sureties, executing county treasurer's bond with this section in view as forming part of their contract, are not released by board requiring and taking additional sureties. Holt County v. Scott, 53 Neb. 176, 73 N.W. 681 (1897).

Treasurer is insurer of all money officially coming into his hands; bondsmen are liable for all money lost. Bush v. Johnson County, 48 Neb. 1, 66 N.W. 1023 (1896).

This section does not impliedly prohibit the deposit for safekeeping of funds received by officer. State v. Hill, 47 Neb. 456, 66 N.W. 541 (1896).

11-122 Bonds; county treasurer; power of county board to require; failure to furnish; effect.

The county board of any one of the counties of this state may require the county treasurer to give additional surety or sureties whenever in its opinion the existing security shall have become insufficient, and such board is hereby also empowered to demand and receive from such county treasurer an additional bond as required by law with good and sufficient surety or sureties in such sum as said board, or a majority thereof, may direct, whenever in its opinion more money shall have passed or is about to pass into the hands of such treasurer than is or would be recovered under the penalty in the previous bond. If any county treasurer shall fail or refuse to give such additional security or bond for and during the time of ten days from and after the day on which said board shall have required such treasurer so to do, his office shall be considered vacant, and another treasurer shall be appointed agreeable to the provisions of law.

Source: Laws 1881, c. 13, § 21, p. 100; Laws 1905, c. 11, § 2, p. 65; R.S.1913, § 5727; C.S.1922, § 5057; C.S.1929, § 12-121.

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).

No officer of the state is authorized to demand additional sureties of the State Treasurer after his bond has been approved and filed. Paxton v. State, 59 Neb. 460, 81 N.W. 383 (1899).

Provision for requiring and receiving additional bond is sufficient consideration for execution of second bond. Stoner v. Keith County, 48 Neb. 279, 67 N.W. 311 (1896).

11-123 Bonds; guaranty companies; eligibility; approval.

Whenever any recognizance, stipulation, bond or undertaking, conditioned for the faithful performance of any duty or for doing or refraining from doing

anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of this state, required or permitted to be given with one surety or with two or more sureties, the execution of the same, or the guaranteeing of the performance of the conditions thereof, shall be sufficient when executed or guaranteed solely by a corporation duly organized and existing under the laws of this state, or of any state of the United States, having a paid-up capital of not less than one hundred thousand dollars and having power under its charter to guarantee or insure the fidelity of persons holding places of public and private trust, to become surety on bonds and obligations of persons and corporations, and to become surety on any bond, recognizance or other writing in the nature of a bond, in the same manner that natural persons may, subject to all the rights and liabilities of such persons; *Provided*, such corporation is approved as surety upon such recognizance, stipulation, bond or undertaking by the head of the department, court, judge, officer, board or body executive, legislative or judicial, required or authorized to approve or accept the same.

Source: Laws 1895, c. 22, § 1, p. 122; R.S.1913, § 5728; C.S.1922, § 5058; C.S.1929, § 12-122; Laws 1935, c. 98, § 3, p. 327; C.S.Supp.,1941, § 12-122.

This section as originally enacted in 1895 was unconstitutional. Fidelity & Deposit Co. of Maryland v. Libby, 72 Neb. 850, 101 N.W. 994 (1904).

Surety company must be empowered to transact business in Nebraska before mandamus will lie to compel approval of bond. Woodward v. State ex rel. Thomssen, 58 Neb. 598, 79 N.W. 164 (1899).

11-124 Bonds; guaranty companies; failure to pay judgment; penalty.

If any such corporation fails, neglects, or refuses to pay any fine, judgment, or decree rendered against it upon any such recognizance, stipulation, bond, or undertaking, from which no appeal, writ of error, or supersedeas is taken for ninety days after the entry of such judgment or decree, it shall forfeit all rights to do business in this state until such judgment or decree is fully paid or satisfied.

Source: Laws 1895, c. 22, § 3, p. 123; R.S.1913, § 5730; C.S.1922, § 5059; C.S.1929, § 12-123; R.S.1943, § 11-124; Laws 2000, LB 921, § 1.

11-125 Bonds; county officers; premium paid by county; conditions.

If any county treasurer, county attorney, clerk of the district court, county clerk, county judge, clerk magistrate, county assessor, register of deeds, county sheriff, county commissioner or supervisor, or acting officer who is appointed as provided by section 32-561 furnishes a bond executed by a surety company authorized by the laws of this state to execute such bond and such bond is approved by the county board, then the county may pay the premium for such bond. Any surety bond so executed and approved shall contain a covenant to the effect that when the stated term of the bond is reduced to a shorter term by reason of the death, resignation, or removal from office of such official for a cause not imposing liability on the bond, the obligor shall refund to the county the unearned portion of the premium so paid for the term of the bond subject to a reasonable minimum premium charge.

Source: Laws 1905, c. 49, § 1, p. 294; R.S.1913, § 5731; C.S.1922, § 5060; C.S.1929, § 12-124; Laws 1935, c. 25, § 1, p. 118; Laws

1941, c. 17, § 1, p. 101; C.S.Supp.,1941, § 12-124; Laws 1943, c. 21, § 1(1), p. 112; R.S.1943, § 11-125; Laws 1972, LB 1032, § 94; Laws 1994, LB 76, § 467; Laws 1999, LB 272, § 2.

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).

It is mandatory that county board pays premiums upon bonds of officers and employees designated, if and when bonds are approved. Douglas County v. Belitz, 142 Neb. 376, 6 N.W.2d 370 (1942).

The expense of county treasurer's bond legally executed by qualified bonding company as surety, approved and accepted by board, is a binding obligation of county. Haase v. Buffalo County, 86 Neb. 145, 124 N.W. 1130 (1910).

11-126 Bonds; deputies or employees of county officers; alternatives.

Whenever any deputy or employee of any county treasurer, county attorney, clerk of the district court, county clerk, county assessor, register of deeds, county sheriff, or county commissioner or supervisor shall be required by law or the order of the county board of any county to supply bond, either (1) such deputy or employee shall furnish a bond by a surety company, which bond shall be approved by the county board, and the county may pay the premium for such bond; or (2) the county board may arrange and pay for the writing of a blanket corporate surety bond for the benefit of the county, bonding (a) all such employees of the county or (b) all such deputy county officials or (c) both subdivisions (a) and (b) of this subdivision.

Source: Laws 1941, c. 17, § 1, p. 101; C.S.Supp.,1941, § 12-124; Laws 1943, c. 21, § 1(2), p. 113; R.S.1943, § 11-126; Laws 1947, c. 78, § 1, p. 245; Laws 1983, LB 369, § 2; Laws 1999, LB 272, § 3.

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).

11-127 Bonds; premium paid by county; manner of paying.

Upon the execution and approval of the bonds upon which the county pays premium, the county board shall direct the county clerk to draw warrants upon the county treasurer in payment of such premiums against the general fund of the county, such warrants to be signed by the chairman of the county board, countersigned by the county clerk, and sealed with the county seal.

Source: Laws 1905, c. 49, § 2, p. 295; C.S.1913, § 5732; C.S.1922, § 5061; C.S.1929, § 12-125; Laws 1941, c. 17, § 2, p. 102; C.S.Supp.,1941, § 12-125.

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).

11-128 Bond; State Treasurer; premium paid by state; conditions.

Whenever the State Treasurer in giving the bond required from him by law shall furnish a bond executed by a surety company authorized by the laws of this state to execute such bond, and such bond shall be approved by the Governor, then in each case the state shall pay the premium for such bond, not to exceed one-half of one percent per annum of the penalty in the bond so executed and approved.

Source: Laws 1905, c. 209, § 1, p. 703; R.S.1913, § 5733; C.S.1922, § 5062; C.S.1929, § 12-126; Laws 1935, c. 24, § 1, p. 117; C.S.Supp.,1941, § 12-126.

11-129 Bond; premium paid by state; manner of paying.

Upon the execution of such bond it shall be the duty of the Director of Administrative Services to draw a warrant for the payment of such premium, countersigned by the State Treasurer and paid out of the appropriation made therefor.

Source: Laws 1905, c. 209, § 3, p. 703; R.S.1913, § 5734; C.S.1922, § 5063; C.S.1929, § 12-127; R.S.1943, § 11-129; Laws 1969, c. 53, § 1, p. 353.

11-130 Bonds; suretyship; joint control of funds.

It shall be lawful for any person of whom a bond, undertaking or other obligation is required, to agree with his surety or sureties for the deposit of any or all money and assets for which he and his surety or sureties are or may be held responsible, with a bank, savings bank, safe-deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such sureties, or upon an order of court, or a judge thereof, made on such notice to such surety or sureties as such court or judge may direct. Such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

Source: Laws 1943, c. 23, § 1, p. 115.

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 2

STATE BOND APPROVAL

Section

11-201 Bonds or insurance; state officers and employees; Risk Manager; Secretary of State; Attorney General; powers and duties.

It shall be the duty of the Risk Manager:

(1) To prescribe the amount, terms, and conditions of any bond or equivalent commercial insurance when the amount or terms are not fixed by any specific statute. The Risk Manager, in prescribing the amount, deductibles, conditions, and terms, shall consider the type of risks, the relationship of the premium to risks involved, the past and projected trends for premiums, the ability of the Tort Claims Fund, the State Self-Insured Property Fund, and state agencies to pay the deductibles, and any other factors the manager may, in his or her discretion, deem necessary in order to accomplish the provisions of sections 2-1201, 3-103, 8-104, 8-105, 9-807, 11-119, 11-121, 11-201, 11-202, 37-110, 48-158, 48-609, 48-618, 48-721, 48-804.03, 53-109, 54-191, 55-123, 55-126,

55-127, 55-150, 57-917, 60-1303, 60-1502, 71-222.01, 72-1241, 77-366, 80-401.02, 81-111, 81-151, 81-8,128, 81-8,141, 81-1108.14, 81-2002, 83-128, 84-106, 84-206, and 84-801;

(2) To pass upon the sufficiency of and approve the surety on the bonds or equivalent commercial insurance of all officers and employees of the state, when approval is not otherwise prescribed by any specific statute;

(3) To arrange for the writing of corporate surety bonds or equivalent commercial insurance for all the officers and employees of the state who are required by statute to furnish bonds;

(4) To arrange for the writing of the blanket corporate surety bond or equivalent commercial insurance required by this section; and

(5) To order the payment of corporate surety bond or equivalent commercial insurance premiums out of the State Insurance Fund created by section 81-8,239.02.

All state employees not specifically required to give bond by section 11-119 shall be bonded under a blanket corporate surety bond or insured under equivalent commercial insurance for faithful performance and honesty in an amount not to exceed one million dollars.

The Risk Manager may separately bond any officer, employee, or group thereof under a separate corporate surety bond or equivalent commercial insurance policy for performance and honesty pursuant to the standards set forth in subdivision (1) of this section if the corporate surety or commercial insurer will not bond or insure or excludes from coverage any officer, employee, or group thereof under the blanket bond or commercial insurance required by this section, or if the Risk Manager finds that the reasonable availability or cost of the blanket bond or commercial insurance required under this section is adversely affected by any of the following factors: The loss experience, types of risks to be bonded or insured, relationship of premium to risks involved, past and projected trends for premiums, or any other factors.

Surety bonds of collection agencies, as required by section 45-608, and detective agencies, as required by section 71-3207, shall be approved by the Secretary of State. The Attorney General shall approve all bond forms distributed by the Secretary of State.

Source: Laws 1945, c. 13, § 1, p. 112; Laws 1955, c. 17, § 1, p. 88; Laws 1967, c. 36, § 3, p. 162; Laws 1969, c. 54, § 1, p. 354; Laws 1978, LB 653, § 8; Laws 1981, LB 273, § 1; Laws 1994, LB 1210, § 1; Laws 1996, LB 1044, § 45; Laws 1998, LB 922, § 392; Laws 2000, LB 901, § 1; Laws 2003, LB 242, § 1; Laws 2004, LB 884, § 10; Laws 2007, LB334, § 2.

11-201.01 Bonds or insurance; officers and employees; benefits; inure to state; exception.

No bond or equivalent commercial insurance determined by the Risk Manager to be furnished by officers and employees pursuant to subdivision (1) of section 11-201 shall be considered an official bond or insurance policy of such officers or employees, and no bond or policy so required by the Risk Manager

shall inure to the benefit of other than the State of Nebraska, unless otherwise provided by the provisions of such bond or policy.

Source: Laws 1967, c. 36, § 5, p. 162; Laws 1981, LB 273, § 2; Laws 2004, LB 884, § 11.

11-202 Bonds or insurance; officers and employees; premiums; payment.

The premiums written pursuant to section 11-201, shall be paid by the State of Nebraska out of such funds as may be appropriated therefor by the Legislature, upon the order of the Risk Manager. No officer, department, board, commission, or other agency of the state shall pay, or cause to be paid, the cost of or the premium of any officer or employee of the state out of public funds unless an order for such payment has been obtained from the Risk Manager.

Source: Laws 1945, c. 13, § 2, p. 113; Laws 1955, c. 17, § 2, p. 89; Laws 1967, c. 36, § 4, p. 162; Laws 1981, LB 273, § 3; Laws 2004, LB 884, § 12.

11-203 Bonds; state officers and employees; Risk Manager; file list with Clerk of the Legislature.

The Risk Manager shall, during each regular session of the Legislature, file with the Clerk of the Legislature a complete list of the officers and employees who are bonded and the amount of each bond.

Source: Laws 1945, c. 13, § 3, p. 113; Laws 1955, c. 17, § 3, p. 89; Laws 1981, LB 273, § 4.

11-204 Repealed. Laws 1959, c. 264, § 1.

CHAPTER 12
CEMETERIES

Article.
1. Wyuka Cemetery. 12-101 to 12-105.
2. Condemnation Proceedings. 12-201 to 12-205.
3. Endowment of Cemeteries. 12-301, 12-302.
4. Cemeteries in Cities of Less than 25,000 Population and Villages. 12-401 to 12-403.
5. Cemetery Associations. 12-501 to 12-530.
6. Mausoleums.
   (a) Mausoleum Associations. 12-601 to 12-605.
   (b) Public Mausoleums and Other Burial Structures. 12-606 to 12-618.
7. Cemetery Lots, Abandonment and Reversion. 12-701, 12-702.
8. Maintenance and Improvement of Cemeteries. 12-801 to 12-811.
9. Cemetery Districts. 12-901 to 12-923.
10. Municipal Cemeteries. 12-1001 to 12-1004.
11. Burial Pre-Need Sales. 12-1101 to 12-1121.
12. Unmarked Human Burial Sites. 12-1201 to 12-1212.
13. State Veteran Cemetery System. 12-1301.
14. Statewide Cemetery Registry. 12-1401.

Cross References

Constitutional provision:
Property exempt from taxation, see Article VIII, section 2, Constitution of Nebraska.
Cities of the first class, powers, see sections 16-241 to 16-245.
Cities of the metropolitan class, powers, see sections 14-102 and 14-103.
Cities of the primary class, powers, see sections 15-239 to 15-243.
Cities of the second class, powers, see sections 17-926 and 17-933 to 17-947.
Counties under township organization, powers, see section 23-224.
Dead human bodies, use for medical education and research, see sections 71-1001 to 71-1007.
Death certificates, permits for cremation, disinterment, and transit, see Chapter 71, article 6.
Documentary stamp tax, exemption for cemetery deeds, see section 76-902.
Exemptions of cemetery property from taxation, see sections 77-202 and 77-202.03.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Offenses relating to dead human bodies, see sections 28-1301 to 28-1302.
Pioneers' Memorial Day observance, see section 82-112.
School lands, acquisition for cemetery purposes, see section 72-220.
State Anatomical Board, see sections 71-1001 to 71-1007.
State-owned land occupied by a cemetery, sale, see sections 72-227 and 72-228.
Veterans, burial and monuments, see Chapter 80, articles 1, 2, and 4.
Villages, powers, see sections 17-926 and 17-933 to 17-947.

ARTICLE 1
WYUKA CEMETERY

Section
12-101. Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports.
12-102. Portion under joint control of trustees and Department of Health and Human Services.
12-103. Rules and regulations; revenue; investment; treasurer; bond.
12-104. Soldiers burial grounds; selection; acquisition; use.
12-105. Soldiers burial grounds; joint control.

12-101 Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports.

(1) The cemetery in Lincoln, Nebraska, known as Wyuka Cemetery, is hereby declared to be a public charitable corporation. The general control and man-

agement of the affairs of such cemetery shall be vested in a board of three trustees who shall serve without compensation and who shall be a body corporate to be known as Wyuka Cemetery, with power to sue and be sued, to contract and to be contracted with, acquire, hold, and convey both real and personal property for all purposes consistent with the provisions of sections 12-101 to 12-105, and to have the power of eminent domain to be exercised in the manner provided in section 12-201.

(2) The trustees of Wyuka Cemetery shall have the power, by resolution duly adopted by a majority vote, to authorize one of their number to sign a petition for paving, repaving, curbing, recurbing, grading, changing grading, guttering, resurfacing, relaying existing pavement, or otherwise improving any street, streets, alley, alleys, or public ways or grounds abutting cemetery property. When such improvements have been ordered, the trustees shall pay, from funds of the cemetery, such special taxes or assessments as may be properly determined.

(3) The trustees of Wyuka Cemetery shall be appointed by the Governor of the State of Nebraska at the expiration of each trustee's term of office. The first appointed trustee shall serve until January 1, 1965, the second trustee until January 1, 1967, and the third trustee until January 1, 1969. Thereafter, each trustee shall be appointed by the Governor for a term of six years. In the event of a vacancy occurring among the members of the board, the vacancy shall be filled by appointment by the Governor, and such appointment shall continue for the unexpired term.

(4) The board of trustees of Wyuka Cemetery shall file with the Secretary of State, on or before the second Tuesday in March of each year, an itemized report of all the receipts and expenditures in connection with its management and control of the cemetery.

(5) The trustees of Wyuka Cemetery shall have the power to provide, in their discretion, retirement benefits for present and future employees of the cemetery, and to establish, participate in, and administer plans for the benefit of its employees or its employees and their dependents, which may provide disability, hospitalization, medical, surgical, accident, sickness and life insurance coverage, or any one or more coverages, and which shall be purchased from a corporation or corporations authorized and licensed by the Department of Insurance.

(6)(a) Beginning December 31, 1998, and each December 31 thereafter, the trustees shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code 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 trustees 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 trustees 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 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 1927, c. 197, § 1, p. 560; C.S.1929, § 13-101; R.S.1943, § 12-101; Laws 1953, c. 15, § 1, p. 81; Laws 1959, c. 28, § 1, p. 179; Laws 1967, c. 38, § 1, p. 167; Laws 1998, LB 1191, § 3; Laws 1999, LB 795, § 2.

This section authorizes Wyuka Cemetery to sell personal property so closely connected to its cemetery operation as grave markers and monuments. Speidell Monuments v. Wyuka Cemetery, 242 Neb. 134, 493 N.W.2d 336 (1992).

Wyuka Cemetery is a body politic and corporate, and legacy to it is subject to inheritance tax. In re Estate of Rudge, 114 Neb. 335, 207 N.W. 520 (1926).

12-102 Portion under joint control of trustees and Department of Health and Human Services.

The trustees shall subdivide, set apart and dedicate that portion of said cemetery located at Lincoln which has heretofore been used for the burial of the dead from the various state institutions and which is legally described as follows, to wit: Beginning at a point 749 feet North and 392 feet East of the S.W. corner of the E ½ of the SE ¼ of Section 19, T. 10, N.R. 7, E. 6th P.M. which is 46 ½ feet North of the S.W. corner of lot 2911 in burial Section No. 9 in Wyuka Cemetery, thence North 75 feet to the N.W. corner of the Home for the Friendless Plot, according to the original plat of said cemetery, thence on a curve through an arc of 58 degrees 25' having a radius of 128 feet, the center of which is 183 feet North and 60 feet East of the place of beginning, to a point 77 feet North and 126 feet East of the place of beginning, and thence on a curve through an arc of 81 degrees 06' having a radius of 100 feet the center of which is 17 feet South and 163 feet East of the place of beginning, to a point at the East end of the Home for the Friendless Plot aforesaid, which is 37 ½ feet North and 250 feet East of the place of beginning; thence on a curve through an arc of 81 degrees 06' having a radius of 100 feet the center of which is 88 feet North and 165 feet East of the place of beginning to a point 3 feet South and 125 feet East, of the place of beginning; thence on a curve through an arc of 58 degrees

25' having a radius of 128 feet the center of which is 107 feet South and 57 feet East of the place of beginning, to the place of beginning, containing 15,835 square feet, or 0.36 acres, situated in Lancaster County, Nebraska. The part so set aside and dedicated shall be under the joint control of the trustees of Wyuka Cemetery and the Department of Health and Human Services.

Source: Laws 1927, c. 197, § 2, p. 561; C.S.1929, § 13-102; R.S.1943, § 12-102; Laws 1996, LB 1044, § 46.

12-103 Rules and regulations; revenue; investment; treasurer; bond.

The trustees shall have power to prescribe all needful rules and regulations for the government of said cemetery. The trustees shall set aside a part of the purchase price of each burial lot sold, for the permanent maintenance of said cemetery, to be invested in any of the investments authorized by the provisions of section 30-3201. No part of the principal of this fund shall be used except for investment purposes as aforesaid. Each investment shall be approved by the unanimous vote of the board of trustees and entered upon the records of Wyuka Cemetery. The trustees shall appoint a treasurer to have custody of its funds who shall give a surety company bond in a sum not less than the amount of cash in his hands, conditioned for the safekeeping of such funds.

Source: Laws 1927, c. 197, § 3, p. 561; C.S.1929, § 13-103; R.S.1943, § 12-103; Laws 1953, c. 16, § 1, p. 83.

12-104 Soldiers burial grounds; selection; acquisition; use.

A piece or parcel of land not exceeding in extent one acre not otherwise used or appropriated, in such place and in such form as shall be selected and agreed upon between the trustees of Wyuka Cemetery and a committee to be selected by the Grand Army of the Republic of Lincoln, Nebraska, is hereby appropriated and dedicated to the use and for the purpose of a soldiers burial ground. Such ground shall be selected in the manner described in this section, out of the South Half of the East Half of the Southeast Quarter of Section Nineteen, Township Ten, Range Seven East of the Sixth P.M., otherwise known as Wyuka Cemetery, and such plot of ground shall be used for the burial of all discharged or separated soldiers, sailors, marines, and army nurses, as they or their friends shall desire to bury therein, together with such members of their immediate families as the committee from the Grand Army of the Republic shall direct. The trustees of Wyuka Cemetery may appropriate and dedicate for the use and purpose of soldiers burial grounds such other pieces or parcels of ground in Wyuka Cemetery, acquired by the cemetery, as may in the opinion of such trustees be proper and sufficient. Such pieces or parcels of ground so appropriated and dedicated shall be used for the burial of all discharged or separated soldiers, sailors, marines, and army nurses who served in the army or navy of the United States in any war, together with such members of their immediate families as shall be selected by William Lewis Camp of Lincoln, Nebraska, of the United Spanish War Veterans, by Lincoln Post No. 3 of the Department of Nebraska of the American Legion, or by the Lincoln, Nebraska, camp, post, or other local body of any other national organization of war veterans, to be designated by the trustees of Wyuka Cemetery, which admits all discharged or separated soldiers, sailors, marines, and nurses who served in any war of the

United States without limitation as to the branch, time, or place of service, or the sex, color, nativity, or religion of the member.

Source: Laws 1927, c. 197, § 4, p. 562; C.S.1929, § 13-104; R.S.1943, § 12-104; Laws 2005, LB 54, § 1.

12-105 Soldiers burial grounds; joint control.

Such soldiers burial grounds shall at all times be subject to all rules and regulations of Wyuka Cemetery; all such soldiers burial grounds selected and appropriated prior to January 1, 1927, shall be under the joint control of the trustees of Wyuka Cemetery and such committee as shall be designated by the Lincoln, Nebraska, post of the Grand Army of the Republic, so long as there shall be a post of the Grand Army of the Republic in Lincoln, Nebraska; and all such soldiers burial grounds selected and appropriated on or after January 1, 1927, shall be under the joint control of the trustees of Wyuka Cemetery and of such officers or committees as shall be from time to time appointed for that purpose by William Lewis Camp of United Spanish War Veterans, by Lincoln Post No. 3, American Legion, Department of Nebraska, and by such other war veterans local body as shall hereafter be designated by the trustees as provided in section 12-104.

Source: Laws 1927, c. 197, § 5, p. 563; C.S.1929, § 13-105.

ARTICLE 2

CONDEMNATION PROCEEDINGS

Section
12-201. Condemnation; conditions; procedure.
12-202. Repealed. Laws 1951, c. 101, § 127.
12-203. Repealed. Laws 1951, c. 101, § 127.
12-204. Repealed. Laws 1951, c. 101, § 127.
12-205. Repealed. Laws 1973, LB 276, § 2.

12-201 Condemnation; conditions; procedure.

Any incorporated city or village, any incorporated cemetery association, and any religious or church parish exercising ownership or control over any existing cemetery or burial ground may secure additional lands adjoining for cemetery and burial purposes in the manner hereinafter set forth. Whenever it shall become necessary to enlarge any such cemetery grounds by adding thereto lands adjoining the same and the owner or owners of such lands will not or cannot sell and convey the same to the city or village, cemetery association or parish, or where the owner or owners and the authorities controlling such cemetery cannot agree upon the price to be paid for such land so needed for cemetery extension, such land may be acquired by the exercise of the power of eminent domain. The procedure to condemn property shall be exercised as set forth in sections 76-704 to 76-724.

Source: Laws 1915, c. 172, § 1, p. 357; C.S.1922, § 414; C.S.1929, § 13-201; R.S.1943, § 12-201; Laws 1951, c. 101, § 31, p. 460.

Village was authorized to condemn land for cemetery purposes. Hueftle v. Eustis Cemetery Assn., 171 Neb. 293, 106 N.W.2d 400 (1960).

12-202 Repealed. Laws 1951, c. 101, § 127.

12-203 Repealed. Laws 1951, c. 101, § 127.

12-204 Repealed. Laws 1951, c. 101, § 127.

12-205 Repealed. Laws 1973, LB 276, § 2.

ARTICLE 3
ENDOWMENT OF CEMETERIES

Section
12-301. Endowments authorized.
12-302. Endowments; exemption from taxation and certain claims.

12-301 Endowments authorized.

Any person or corporation, private or municipal, or the state, any city, any county or subdivision thereof, owning or managing any cemetery, mausoleum or burial place in this state, is hereby authorized and empowered to receive by gift, grant, deed of conveyance, bequest or devise, money, stocks, bonds, or other valuable income-producing personal property, or any real estate, from any person, firm or corporation, for the purpose of endowing such cemetery, mausoleum, or burial place with a permanent fund, for any lawful purpose, the income from which shall be used for the exclusive benefits and purposes, and in the manner designated by the endower.

Source: Laws 1915, c. 173, § 1, p. 357; C.S.1922, § 415; C.S.1929, § 13-301.

12-302 Endowments; exemption from taxation and certain claims.

Such endowment funds or property shall be exempt from all taxation, attachment, execution and claims whatsoever except for labor and material furnished in the performance of the purposes of the endowment.

Source: Laws 1915, c. 173, § 1, p. 357; C.S.1922, § 415; C.S.1929, § 13-301.

ARTICLE 4
CEMETERIES IN CITIES OF LESS THAN 25,000 POPULATION AND VILLAGES

Section
12-401. Cemetery board; members; appointment; terms; vacancies.
12-402. Cemetery fund; disbursement; tax levy; limit; collection; perpetual fund; use authorized.
12-403. Cemetery board; officers; employees.

12-401 Cemetery board; members; appointment; terms; vacancies.

The mayor of any city having less than twenty-five thousand inhabitants, by and with the consent of the council or a majority thereof, and the chairman of the board of trustees of any village, by and with the consent of the village board or a majority thereof, may appoint a board of six members, to be known as the cemetery board, from among the citizens at large of such city or village, who shall serve without pay and shall have entire control and management of any cemetery belonging to such city or village. Neither the mayor nor any member of the council, nor the chairman nor any member of the village board of trustees may be members of the cemetery board. At the time of establishing said cemetery board, two members shall be appointed for a term of one year, two

for a term of two years, and two for a term of three years, and thereafter two members shall be appointed each year for a term of three years. Vacancies in the membership of the board shall be filled in like manner as regular members of the board are appointed.

Source: Laws 1917, c. 207, § 1, p. 496; C.S.1922, § 4492; C.S.1929, § 13-401.

12-402 Cemetery fund; disbursement; tax levy; limit; collection; perpetual fund; use authorized.

(1) The mayor and council or the board of trustees, for the purpose of defraying the cost of the care, management, improvement, beautifying, and welfare of such cemeteries, may each year levy a tax not exceeding five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village subject to taxation for general purposes. The tax shall be collected and paid to the city or village as taxes for general purposes are collected and paid to the city or village. All taxes collected for this purpose shall constitute and be known as the cemetery fund and shall be used for the general care, management, improvement, beautifying, and welfare of such cemetery. Warrants upon this fund shall be drawn by the cemetery board and shall be paid by the city or village treasurer.

(2) If the mayor and council or the board of trustees sets aside the proceeds from the sale of lots as a perpetual fund, the principal of the fund that is attributable to such proceeds, or attributable to any 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.

(3) 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 1917, c. 207, § 2, p. 496; C.S.1922, § 4493; C.S.1929, § 13-402; R.S.1943, § 12-402; Laws 1953, c. 17, § 1, p. 84; Laws 1979, LB 187, § 26; Laws 1992, LB 719A, § 24; Laws 2005, LB 262, § 1.

12-403 Cemetery board; officers; employees.

The members of the cemetery board may select such officers from among their own number as they may deem necessary, and shall have the power to employ such labor and assistants as they may deem necessary from persons not belonging to said board.

Source: Laws 1917, c. 207, § 3, p. 497; C.S.1922, § 4494; C.S.1929, § 13-403.

ARTICLE 5
CEMETERY ASSOCIATIONS

Section
12-501. Formation; trustees; election; notice; clerk; right to establish cemetery limited.

Section

12-501 Formation; trustees; election; notice; clerk; right to establish cemetery limited.

Every cemetery hereafter established, other than those owned, operated and maintained by towns, villages and cities, by churches, and by fraternal and benevolent societies, shall be owned, conducted and managed by cemetery associations organized and incorporated as hereinafter provided. The establishment of a cemetery by any agency other than those enumerated herein shall constitute a nuisance, and its operation may be enjoined at the suit of any taxpayer in the state. It shall be lawful for any number of persons, not less than five, who are residents of the county in which they desire to form themselves into an association, to form themselves into a cemetery association, and to elect

any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the society; all such elections shall take place at a meeting of four or more members of such association by a majority vote of those present; *Provided*, a notice for such meeting shall have been published in a local newspaper, or posted in three places within the precinct or township, at least fifteen days prior to said meeting.

Source: R.S.1866, c. 25, § 45, p. 205; Laws 1905, c. 38, § 1, p. 274; R.S.1913, § 679; C.S.1922, § 588; C.S.1929, § 13-501; Laws 1935, c. 27, § 1, p. 121; C.S.Supp.,1941, § 13-501.

This section contains the provisions under which cemetery association is established. Root v. Morning View Cemetery Assn., 174 Neb. 438, 118 N.W.2d 633 (1962).

Presumption of continued existence arises after proper organization. Tetschner v. Cram, 157 Neb. 734, 61 N.W.2d 378 (1953).

Amendment to bylaws of association organized under this article (sections 12-501 to 12-529), made without any notice whatever to members, is void, where bylaws required notice, but did not prescribe the manner thereof. State ex rel. Craig v. Offutt, 121 Neb. 76, 236 N.W. 174 (1931).

Property involved belonged to a private corporation organized under this section. Greenwood Cemetery v. City of Wayne, 110 Neb. 300, 193 N.W. 734 (1923).

Receiver denied for corporation organized under this article. Youngers v. Exeter Cemetery Assn., 85 Neb. 314, 123 N.W. 95 (1909).

Corporations organized under this article are private corporations. Pokrok Zapadu Publishing Co. v. Zizkovsky, 42 Neb. 64, 60 N.W. 358 (1894).

This article divests cities of control of cemeteries. State ex rel. Wyuka Cemetery Assn. v. Bartling, 23 Neb. 421, 36 N.W. 811 (1888).

12-502 Formation; record of proceedings; certification; effect; certified transcript as evidence; duty of county clerk; fees.

The clerk, hereinbefore authorized to be appointed, shall forthwith make out a true record of the proceedings of the meeting provided for by section 12-501, and certify and deliver the same to the clerk of the county in which such meeting shall be held, together with the name by which such association shall desire to be known; and it shall be the duty of each county clerk in the state, immediately upon the receipt of such certified statement, to record the same in a book by him provided for that purpose at the expense of the county; and the clerk shall be entitled to the same fees for his services as he is entitled to demand for other similar services; and from and after the making of such record by the county clerk, the said trustees, and their associated members and successors, shall be invested with the powers, privileges and immunities incident to aggregate corporations; and a certified transcript of the record, herein authorized to be made by the county clerk, shall be deemed and taken in all courts and places whatsoever within this state as prima facie evidence of the existence of such cemetery association.

Source: R.S.1866, c. 25, § 46, p. 205; R.S.1913, § 680; C.S.1922, § 589; C.S.1929, § 13-502.

This section contains directions as to the details of organization and recording of articles of association. Root v. Morning View Cemetery Assn., 174 Neb. 438, 118 N.W.2d 633 (1962).

As soon as the county clerk enters of record the true record of the meeting at which the association is organized and the first trustees are elected, the association is a corporation. State ex rel. Craig v. Offutt, 121 Neb. 76, 236 N.W. 174 (1931).

12-503 Trustees; perpetual succession; general powers; service of process.

The trustees who may be appointed under the provisions of section 12-501 shall have perpetual succession, and shall be capable in law of contracting, and prosecuting and defending suits at law and in equity. The cemetery association may be served in the manner provided for service of a summons on a corporation.

Source: R.S.1866, c. 25, § 47, p. 206; R.S.1913, § 681; C.S.1922, § 590; C.S.1929, § 13-503; R.S.1943, § 12-503; Laws 1983, LB 447, § 2.

Trustees of the association chosen from time to time have perpetual succession. State ex rel. Craig v. Offutt, 121 Neb. 76, 236 N.W. 174 (1931).

12-504 General powers.

Such association may have power to prescribe the terms on which members may be admitted, the number of its trustees and other officers (subject to the limitations set forth in section 12-501), and the time and manner of their election and appointment, and the time and place of meeting for the trustees and for the association, and to pass all such other bylaws as may be necessary for the good government of such association, not inconsistent with this or any other statutes of the state, nor in violation of the Constitution.

Source: R.S.1866, c. 25, § 48, p. 206; R.S.1913, § 682; Laws 1919, c. 27, § 1, p. 93; C.S.1922, § 591; C.S.1929, § 13-504.

Association has power to prescribe terms of membership, number of trustees, time and manner of their election, time and place of meetings, and to pass bylaws. State ex rel. Craig v. Offutt, 121 Neb. 76, 236 N.W. 174 (1931).

12-505 Lots; resale or reclamation; conditions; notice; requirements.

(1) If the purchase price, or any portion thereof, of any lot or subdivision of a lot shall remain unpaid for three years or more, or if the general assessments, annual care assessments, or other levies or charges made by such association shall remain unpaid on any lot or subdivision of a lot for three years or more, such association shall have authority to sell the unused portion of such lot or fractional part thereof as though the original title remained in such association, proceeding under the general bylaws of the association. Such association shall distinctly mark and set off the used portion of any such lot or subdivision and shall give notice of its intention to sell such lot or subdivision. Such notice shall be in writing and served personally upon the owner of such lot or subdivision, not less than sixty days before such lot or subdivision shall be held for sale, and proof thereof filed and recorded in the office of the register of deeds. If it is impossible to serve such notice personally, notice shall be given by publication in a legal newspaper published in the county where the cemetery is located, or if none is published in such county in a legal newspaper of general circulation in the county where the cemetery is located, for three successive weeks. The last publication shall be not less than sixty days before such lot or subdivision shall be offered for sale. Proof of publication shall be filed and recorded in the office of the register of deeds, together with the affidavit of the secretary of the association showing that diligent effort has been made to locate the owner and that personal notice cannot be given to such owner. The association may purchase any such lot or subdivision sold pursuant to this subsection.

(2) When there has been no burial in any such lot or subdivision and no payment of annual assessments for a period of twenty years, the association may reclaim the unused portion of such lot or subdivision after publishing notice of its intention to do so. Such notice shall be published once each week for four weeks in a legal 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. 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 association 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: R.S.1866, c. 25, § 49, p. 206; R.S.1913, § 682; Laws 1919, c. 27, § 1, p. 93; C.S.1922, § 591; C.S.1929, § 13-504; R.S.1943, § 12-505; Laws 1959, c. 29, § 1, p. 181; Laws 1963, c. 39, § 1, p. 210; Laws 1986, LB 960, § 5.

12-506 Real estate; power to acquire; exemption from taxation and legal process; revenue; disbursement.

Such association shall have the power to purchase or take by gift, devise, or by exercising the power of eminent domain, and to hold lands, not exceeding three hundred and sixty acres, and improvements thereon, exempt from taxation, execution, or from any appropriation of public purchasers, if the same are used exclusively for cemetery purposes and in nowise with a view to profit. After such land is paid for, all the future receipts and income of such association, whether from the sale of lots, from donations, or otherwise, shall be applied exclusively to laying out, protecting, preserving, and embellishing the cemetery and the avenues leading thereto, to the erection of such building or buildings, vault or vaults, chapel, crematory, mausoleum, and other structures as may be deemed necessary for the cemetery purposes, and to paying the necessary expenses of the association. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: R.S.1866, c. 25, § 49, p. 206; Laws 1885, c. 22, § 1, p. 181; Laws 1905, c. 39, § 1, p. 275; Laws 1911, c. 27, § 1, p. 176; R.S.1913, § 683; Laws 1917, c. 12, § 1, p. 71; C.S.1922, § 592; Laws 1925, c. 138, § 1, p. 365; C.S.1929, § 13-505; Laws 1941, c. 18, § 1, p. 103; C.S.Supp.,1941, § 13-505; R.S.1943, § 12-506; Laws 1951, c. 101, § 33, p. 461.

This section does not prohibit a devise of land to cemetery association in excess of three hundred sixty acres. Root v. Morning View Cemetery Assn., 174 Neb. 438, 118 N.W.2d 633 (1962).

Receipts from sale of lots are subject to the payment of any debt contracted for the purchase price of the cemetery property, and extends to money borrowed to take up purchase money notes. Townsend v. Beatrice Cemetery Assn., 188 F. 1 (8th Cir. 1911).

12-507 Debts; power to contract; limitations.

No debts shall be contracted in the anticipation of future receipts except for purchasing, laying out, enclosing and embellishing the grounds and avenues, and erecting buildings, vaults, a chapel, a crematory, a mausoleum and other structures, for which a debt or debts may be contracted, not exceeding eighty-five thousand dollars in the aggregate, to be paid out of future receipts.

Source: R.S.1866, c. 25, § 49, p. 207; Laws 1885, c. 22, § 1, p. 182; Laws 1905, c. 39, § 1, p. 275; Laws 1911, c. 27, § 1, p. 177; R.S.1913, § 683; Laws 1917, c. 12, § 1, p. 71; C.S.1922, § 592; Laws 1925, c. 138, § 1, p. 365; C.S.1929, § 13-505; Laws 1941, c. 18, § 1, p. 104; C.S.Supp.,1941, § 13-505.

Cemetery association is authorized to incur indebtedness not exceeding eighty-five thousand dollars. Root v. Morning View Cemetery Assn., 174 Neb. 438, 118 N.W.2d 633 (1962).

Funds may be appropriated to improvement of avenues leading thereto. Greenwood Cemetery v. City of Wayne, 110 Neb. 300, 193 N.W. 734 (1923).

12-508 Lots; receptacles; sale; power to regulate.

Such association shall have power to adopt such rules and regulations as it deems expedient for disposing of and conveying burial lots, crypts, niches and other places for the disposal of the dead.

Source: R.S.1866, c. 25, § 50, p. 207; Laws 1885, c. 22, § 1, p. 182; Laws 1905, c. 39, § 1, p. 276; Laws 1911, c. 27, § 1, p. 177; R.S.1913, § 683; Laws 1917, c. 12, § 1, p. 72; C.S.1922, § 592; Laws 1925, c. 138, § 1, p. 366; C.S.1929, § 13-505; Laws 1941, c. 18, § 1, p. 104; C.S.Supp.,1941, § 13-505.

12-509 Perpetual care fund; power to establish; sources; investment; protection; disbursement of income; requirements.

Such association shall have the power to establish a fund to be known as the perpetual care fund, placing therein such money as it may from time to time determine, out of its general funds; and it shall have the authority to receive gifts or bequests of money and other personal property, and devises of real estate and interests therein, to be placed in the perpetual care fund. The principal of the perpetual care fund shall be forever held inviolate as a perpetual trust by said association, and shall be maintained separate and distinct from any other funds. The principal of the perpetual care fund shall be invested and from time to time reinvested and kept invested (1) in securities authorized by section 30-3209, for the investment of retirement and pension funds other than funds held by corporate trustees or (2) as provided in the trust agreement or articles of incorporation of the association, and the income earned therefrom shall be used solely for the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the association may from time to time determine to be for the best interest of the cemetery.

Source: Laws 1941, c. 18, § 1, p. 104; C.S.Supp.,1941, § 13-505; R.S. 1943, § 12-509; Laws 1980, LB 909, § 1.

Cemetery association is authorized to establish a perpetual care fund. Root v. Morning View Cemetery Assn., 174 Neb. 438, 118 N.W.2d 633 (1962).

Mausoleum association may create a perpetual care fund. Omaha Nat. Bank v. West Lawn Mausoleum Assn., 158 Neb. 412, 63 N.W.2d 504 (1954).

Cemetery association had authority to create a perpetual care fund. Tetschner v. Cram, 157 Neb. 734, 61 N.W.2d 378 (1953).

12-510 Perpetual special care trusts; power to act as trustee; investment of funds; disbursement of income.

Such association shall be authorized to receive as trustee, money and other personal property, and real estate and interests therein, transferred or conveyed to it in trust for the purpose of providing for the care, embellishment or decoration of burial lots, graves, tombs, vaults, crypts, niches, tombstones, and other monuments and decorations. It shall have power to administer such trust and to invest and perpetuate such trust funds, under such terms and conditions as may be prescribed by the bylaws of such association, and shall have power to enter into contracts with the owners of such graves, vaults, burial lots, crypts, niches, or other places for the disposal of the dead, for the perpetual care thereof. Said trusts shall be known as perpetual special care trusts, and shall be invested and from time to time reinvested and kept invested in securities authorized by the laws of Nebraska for the investment of trust funds. The income earned thereon shall be used solely for the purposes of perpetual special care as set forth in the respective trust agreements made between the

association and said donors. A separate individual account shall be kept by the association of each of the perpetual special care trusts so that the condition of each may be determined on the books of the association at any time; but said perpetual special care trust funds may be commingled for investment, in which event the income therefrom shall be divided between the various perpetual special care trusts in the proportion that each trust fund contributes to the principal sum so invested. All such funds shall be held in the name of the cemetery association as trustee, except as hereinafter provided.

Source: Laws 1905, c. 39, § 1, p. 276; Laws 1911, c. 27, § 1, p. 177; R.S.1913, § 683; Laws 1917, c. 12, § 1, p. 72; C.S.1922, § 592; Laws 1925, c. 138, § 1, p. 366; C.S.1929, § 13-505; Laws 1941, c. 18, § 1, p. 104; C.S.Supp.,1941, § 13-505.

This section deals with the subject of specific gifts for special purposes. Root v. Morning View Cemetery Assn., 174 Neb. 438, 118 N.W.2d 633 (1962).

Cemetery association had authority to receive property as trustee. Tetschner v. Cram, 157 Neb. 734, 61 N.W.2d 378 (1953).

12-511 Perpetual care funds; perpetual special care trusts; use; exemption from taxation and certain claims; declaration of policy.

The perpetual care funds and perpetual special care trusts shall be used and administered solely for cemetery purposes, and shall be subject to the rules prescribed by the association. They shall be exempt from taxation, execution, attachment or any other claim, lien or process whatever, if used for the purpose hereinbefore stated, and not for profit. The perpetual care funds and perpetual special care trusts authorized by section 12-510 are hereby expressly permitted and shall be deemed to be for charitable and benevolent uses. Such contributions are a provision for the discharge of a duty due from the persons contributing to the person or persons interred or to be interred in the cemetery, and likewise a provision for the benefit and protection of the public by aiding to preserve, beautify and keep cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated.

Source: Laws 1941, c. 18, § 1, p. 105; C.S.Supp.,1941, § 13-505.

This section deals with the subject of specific gifts for special purposes. Root v. Morning View Cemetery Assn., 174 Neb. 438, 118 N.W.2d 633 (1962).

The fact that Nebraska law defined bequest in favor of nonprofit cemetery as charitable did not necessarily mean that bequest was deductible for federal estate tax purposes. First Nat. Bank of Omaha v. United States, 532 F.Supp. 251 (D. Neb. 1981).

12-512 Perpetual care funds; perpetual special care trusts; acquisition of property under; validity.

No payment, gift, grant, bequest, or other contribution for such purpose shall be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating such funds, nor shall any of such funds or any contribution thereto be invalidated as violating any rule against perpetuities or suspension of the power of alienation of title to property.

Source: Laws 1941, c. 18, § 1, p. 105; C.S.Supp.,1941, § 13-505.

Bequest for maintenance of cemetery was valid. Tetschner v. Cram, 157 Neb. 734, 61 N.W.2d 378 (1953).

12-512.01 Perpetual care trust fund; trustees; duties.

Every association organized after September 14, 1953, under the provisions of Chapter 12, article 5, shall provide for and select trustees, other than officers

or members of the association, who shall be selected, as provided for in section 12-512.03, to invest, safeguard, and look after certain funds of the association, including the sums provided for by section 12-512.02 and any other money acquired for the purposes of such fund, in a perpetual care trust fund, the income therefrom to be used for the perpetual care of the cemetery by the association.

Source: Laws 1953, c. 20, § 1, p. 89.

12-512.02 Perpetual care trust fund; proceeds; investment.

The cemetery association shall place at least the following sums into the perpetual care trust fund: (1) Monument plan cemeteries, fifty cents per square foot of each cemetery lot sold; (2) park plan or memorial plan cemeteries, twenty-five cents per square foot of each cemetery lot sold; and (3) combined monument and park plan cemeteries, fifty cents per square foot of each cemetery lot sold. Such funds shall be paid by the cemetery association to the trustees of the perpetual care trust fund, who shall invest the funds under the same conditions and restrictions as trust funds are invested under the provisions of section 30-3201; *Provided*, that when any lots are sold on contract, thirty percent of all payments received on the contract shall be paid to the trustee or trustees of the perpetual care trust fund until the entire payments required by this section are made.

Source: Laws 1953, c. 20, § 2, p. 89; Laws 1955, c. 18, § 1, p. 91.

12-512.03 Perpetual care trust fund; trustees; qualifications; appointment; bond.

The trustee or trustees of the perpetual care trust fund shall consist of (1) at least three disinterested persons, who have been residents of the county in which the cemetery is located for a period of at least one year prior to their appointment, or (2) a disinterested trust company organized to do business in and located in the State of Nebraska. The trustees or trustee, as the case may be, shall be selected by the officers of the cemetery association. If individual trustees are selected, they shall give a corporate surety bond in a sum not less than one thousand dollars.

Source: Laws 1953, c. 20, § 3, p. 90; Laws 1955, c. 18, § 2, p. 92; Laws 1980, LB 909, § 2.

12-512.04 Perpetual care trust fund; audit; filing; expense.

On June 30 of each year, the individual trustees or corporate trustee, as the case may be, of such perpetual care trust fund shall have an audit of the perpetual care trust fund made by a certified public accountant and the report of such audit by the auditor shall be filed within thirty days after June 30 of such year with the county clerk of the county in which the cemetery is located. The expense of the audit and the filing fee of the report shall be paid by the cemetery association.

Source: Laws 1953, c. 20, § 4, p. 90.

12-512.05 Perpetual care and maintenance guarantee fund; establish; amount required.

Every association organized after September 18, 1955, under the provisions of Chapter 12, article 5, shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of not less than two thousand five hundred dollars in cash to be administered by the trustee or trustees of the perpetual care fund selected as provided in section 12-512.03.

Source: Laws 1955, c. 18, § 3, p. 92; Laws 1967, c. 39, § 1, p. 169.

12-512.06 Perpetual care trust fund; withdrawal; when authorized; amount.

The initial perpetual care fund established for any cemetery shall remain an irrevocable trust fund until such time as this fund, together with accumulations and additions thereto from funds derived as provided in section 12-512.02, shall have reached twenty-five thousand dollars when it may be withdrawn at the rate of one thousand dollars from the original five thousand dollars for each additional two thousand dollars added to the fund, until all of the five thousand dollars has been withdrawn.

Source: Laws 1955, c. 18, § 4, p. 92.

12-512.07 Perpetual care trust fund; violations; penalty.

Any person, firm or corporation violating any of the provisions of sections 12-512.01 to 12-512.08 shall be guilty of a Class IV misdemeanor.

Source: Laws 1955, c. 18, § 5, p. 93; Laws 1977, LB 40, § 72.

12-512.08 Perpetual care trust fund; violations; separate offenses; what constitutes.

Each day any person, firm, or corporation violates any provisions of sections 12-512.01 to 12-512.08 shall be deemed to be a separate and distinct offense.

Source: Laws 1955, c. 18, § 6, p. 93.

12-513 Repealed. Laws 1951, c. 101, § 127.

12-514 Repealed. Laws 1951, c. 101, § 127.

12-515 Real estate; acquisition by condemnation; lands subject.

No land shall be thus taken by eminent domain either for the location of or addition to any cemetery which shall be within one mile of the limits of any city. Whenever a cemetery association organized in the state has been in existence twenty years or more and has within its burial ground one hundred or more bodies interred, and lands adjoining the cemetery ground are within corporate limits of a city or village but are used for agricultural and pasturage purposes, condemnation proceedings may be maintained against such lands as provided in section 12-506.

Source: Laws 1911, c. 27, § 1, p. 178; R.S.1913, § 683; Laws 1917, c. 12, § 1, p. 73; C.S.1922, § 592; Laws 1925, c. 138, § 1, p. 367; C.S.1929, § 13-505; Laws 1941, c. 18, § 1, p. 106; C.S.Supp.,1941, § 13-505; R.S.1943, § 12-515; Laws 1951, c. 101, § 34, p. 461.

Prohibition against acquisition of land within one mile of the limits of any city did not apply to a village. Hueftle v. Eustis Cemetery Assn., 171 Neb. 293, 106 N.W.2d 400 (1960).

12-516 Trustees; bond; terms; approval; filing; fee; cost paid by association.

Whenever the trustees of any cemetery association organized under sections 12-501 to 12-505 shall receive the gift of any property, real or personal, in their own name, in trust, for the perpetual care of said cemetery, or anything connected therewith, said trustees shall, upon the enactment of bylaws to that effect by the association, give a bond to said association of at least one thousand dollars, conditioned for the faithful administration of said trust and care of said funds and property. Said bond shall be filed with, and approved by the county clerk of the county wherein said association is located, and the clerk shall be paid the same fee for approving and filing said bond as is now fixed by law for approving and filing official bonds. The cost of said bond shall be paid by said cemetery association.

Source: Laws 1925, c. 138, § 1, p. 367; C.S.1929, § 13-505; Laws 1941, c. 18, § 1, p. 106; C.S.Supp.,1941, § 13-505; R.S.1943, § 12-516; Laws 1980, LB 909, § 3.

12-517 Lots; use; exemption from taxation and other claims.

Burial lots sold by such association shall be for the sole purpose of interments, shall be subject to the rules prescribed by the association, and shall be exempt from taxation, execution, attachment, or any other claim, lien or process whatever, if used exclusively for burial purposes and in nowise with a view to profit.

Source: R.S.1866, c. 25, § 50, p. 207; R.S.1913, § 684; C.S.1922, § 593; C.S.1929, § 13-506.

Unsold burial lots are not exempt from special improvement assessment. Greenwood Cemetery v. City of Wayne, 110 Neb. 300, 193 N.W. 734 (1923).

12-518 Lots; plat; care, improvement, adornment; annual exhibit; powers and duties of association.

Such association shall cause a plat of its grounds, and of the lots by it laid out, to be made and recorded, such lots to be numbered by regular consecutive numbers. It shall have power to enclose, improve and adorn the grounds and avenues, and erect buildings for the use of the association; to prescribe rules for the enclosing and adorning of lots, and for erecting monuments in the cemetery; and to prohibit any use, division, improvement or adornment of a lot which it may deem improper. An annual exhibit shall be made of the affairs of the association.

Source: R.S.1866, c. 25, § 51, p. 207; R.S.1913, § 685; C.S.1922, § 594; C.S.1929, § 13-507.

This section makes definite the purposes for which expenditure of funds may be made. Root v. Morning View Cemetery Assn., 174 Neb. 438, 118 N.W.2d 633 (1962).

12-519 Repealed. Laws 1984, LB 1045, § 1.

12-520 Grounds; sale on execution; taxation; partition; exemption.

Lands appropriated and set apart as burial grounds, either for public or private use, and so recorded in the county clerk's office of the county where such lands are situated, shall not be subject to sale on execution on any judgment to be hereafter recovered, to taxation, nor to compulsory partition.

Source: R.S.1866, c. 25, § 53, p. 208; R.S.1913, § 687; C.S.1922, § 596; C.S.1929, § 13-509.

Exemption from sale on execution and from taxation does not include special assessments for a public improvement. Greenwood Cemetery v. City of Wayne, 110 Neb. 300, 193 N.W. 734 (1923).

Real estate dedicated as cemetery is exempt from execution though owner receives revenue from sale of lots. First Nat. Bank of Pawnee City v. Hazels, 63 Neb. 844, 89 N.W. 378 (1902).

This section does not exempt proceeds of sale of cemetery lots from being subjected to payment of debt for money borrowed and used to take up purchase money notes. Townsend v. Beatrice Cemetery Assn., 188 F. 1 (8th Cir. 1911).

12-521 Grounds; abandonment; sale; disposition; procedure; petition; contents; requirements.

When any cemetery association in this state owning or having title to any real estate therein which has been used or set apart as a cemetery or a place of burial for the dead, or intended for such use, shall for any reason deem it prudent and for the best interests of the association and the public that the same shall not be used for such purposes, but that the use of the same as a burial place for the dead should be prohibited and the said real estate, or such portion thereof as shall not be actually occupied by graves of persons buried therein by permission or authority of said association, be sold or otherwise disposed of and the proceeds of any sale turned over to and transferred to some other like association having a place of burial for the dead in actual use in the vicinity of the one so desired to be prohibited from future use, or the proceeds set apart to be used for the establishment of a new cemetery in the vicinity of the one so desired to be prohibited from future use, such cemetery association, or the majority of its members or a majority of its board of trustees, may, by resolution for that purpose, direct its president or some other chief officer of said association, to file a petition in the district court of the county in which said real estate is situated, in the name of said association, setting forth (1) the reasons why said real estate, or any part thereof, should be discontinued from use as a cemetery or prohibited from future use as a cemetery or as a place of burial for the dead, (2) the desire of such association to sell or otherwise dispose of such portion of its said real estate as shall not be actually occupied by graves of persons buried therein by permission or authority of such association, (3) its desire as to what disposition shall be made of the proceeds of any such sale, and what disposition of or provisions for the future care and management of such portion of any such real estate as shall be actually occupied by graves of persons buried therein by permission or authority of such association, if any, it desires made, and (4) a prayer for an order or decree of said court that the said cemetery association be allowed to discontinue or prohibit the use of said real estate as a place of burial for the dead, for license to sell or otherwise dispose of any portion of such real estate not actually occupied by graves of persons buried therein by permission or authority of such association, to dispose of the proceeds of any such sale, and of any other funds and property of such association, in the manner desired by such association, to wind up the affairs and business of such association, and to dissolve the same if desired, and such other and further relief in the premises as to the court shall seem just and proper. If the trustees deem it prudent and for the best interests of the association that all or a portion of its real estate be given to another nonprofit entity organized solely for educational, charitable, historic, conservation, or religious purposes or to the State of Nebraska rather than being sold, the district court may authorize such conveyance after such compliance with the provisions of sections 12-522 to 12-529 as the court shall deem applicable.

Source: Laws 1907, c. 27, § 1, p. 146; R.S.1913, § 688; C.S.1922, § 597; C.S.1929, § 13-510; R.S.1943, § 12-521; Laws 1974, LB 645, § 1.

12-522 Grounds; abandonment; sale; notice of petition; contents; form.

Upon the filing of such petition, due notice of the same shall be given all the members of such association, and all other persons interested therein, and in the real estate or other property of such association, by causing a notice of the application to be published in some weekly newspaper printed and published and of general circulation in the county where the action is brought for three successive weeks, which notice shall be substantially in the following form:

LEGAL NOTICE

The members of the ..... Cemetery Association of ....., Nebraska, and all other persons interested in the association and in the real estate or other property of the association, are hereby notified that on the ..... day of ..... 20...., the association, filed its petition in the district court of ..... County, Nebraska, the object and prayer of which is (here set forth in at least a general way the object sought and relief prayed for in the petition).

Any person desiring to oppose the granting of the relief sought by or the prayer of the petition is required to file an objection in writing with the clerk of the district court as required by law on or before Monday, the .... day of ..... 20.... . Dated ....., 20.... .

. . . . . Cemetery Association of

. . . . . , NE.

Petitioner.

Source: Laws 1907, c. 27, § 2, p. 147; R.S.1913, § 689; C.S.1922, § 598; C.S.1929, § 13-511; R.S.1943, § 12-522; Laws 2004, LB 813, § 2.

12-523 Grounds; abandonment; sale; objections; reply.

Any person desiring to oppose the said application may, within the time specified in such notice, which shall not be sooner than the third Monday nor longer than the fifth Monday next after the last publication thereof, file a statement of his objections duly verified, and the said applicant may on or before the second Monday after the time specified for filing such objection, reply thereto, which reply shall be verified.

Source: Laws 1907, c. 27, § 3, p. 148; R.S.1913, § 690; C.S.1922, § 599; C.S.1929, § 13-512.

12-524 Grounds; abandonment; sale; time for hearing.

Said application and proceeding shall stand for hearing before the district court at any time after issue joined therein; or if no objection has been filed, then any time after the time for filing objections shall have expired, satisfactory proof having been made to the court of the publication of the notice required by section 12-522.

Source: Laws 1907, c. 27, § 4, p. 148; R.S.1913, § 691; C.S.1922, § 600; C.S.1929, § 13-513.

12-525 Grounds; abandonment; sale; hearing; finding; decree.

If, upon the hearing of said petition before the court, the court shall be of the opinion that it is for the best interest of said association and the public that the said real estate, or any part thereof, should be prohibited from use as a cemetery and prohibited from future use for cemetery purposes, and that the

same or any part thereof should be sold, it shall so find and decree. It may in that event also order and direct the manner in which and by whom the sale of the said real estate shall be conducted and upon what terms, and require the person making such sale to report and return the proceeds of said sale to the district court; and in the event of a decree for the sale of any such real estate, the court shall also determine and direct what disposition shall be made of the proceeds of such sale. The court shall have full authority in such proceedings to make all such orders and decrees as it may deem necessary or proper to fully wind up the affairs and business of such association, to dispose of its assets and property, and to dissolve said corporation; *Provided, however*, the court shall order that sufficient of the money received from the proceeds of such sale shall be preserved and held in trust for the maintenance, in suitable condition, of that part of the cemetery actually occupied by graves.

Source: Laws 1907, c. 27, § 5, p. 148; R.S.1913, § 692; C.S.1922, § 601; C.S.1929, § 13-514.

12-526 Grounds; abandonment; sale; confirmation of sale.

When any sale shall have been made as hereinbefore provided, and reported to the court, the court shall examine the record of the proceedings of such sale, and if the court shall find that the sale has been regularly and fairly made, it shall confirm the same, and direct that a deed in the name of such association be duly executed, acknowledged and delivered by the president thereof, or some other officer of such association designated by the court, to the purchaser of said real estate, and that the proceeds of such sale be by said association disposed of and transferred in conformity to the order of the court made in the premises. If for any reason such sale should be set aside, said real estate shall be again offered for sale and such further proceedings had as may be necessary to carry out the orders and decrees of the court made in said proceeding.

Source: Laws 1907, c. 27, § 6, p. 149; R.S.1913, § 693; C.S.1922, § 602; C.S.1929, § 13-515.

12-527 Grounds; abandonment; sale; costs and expenses.

The court shall make such order in regard to the taxation and payment of costs in the premises as to the court shall seem just and proper, and the court shall have authority in such case to provide for the payment of the costs and expenses of said proceeding out of the funds belonging to the said cemetery association or the proceeds of the sale of any such real estate.

Source: Laws 1907, c. 27, § 7, p. 149; R.S.1913, § 694; C.S.1922, § 603; C.S.1929, § 13-516.

12-528 Grounds; abandonment; sale; appeal.

Any person aggrieved by the order or decree of the district court in any such case shall have the right of appeal to the Court of Appeals, which appeal shall be taken within the time and proceeded with in the manner provided by law for appeals in other civil actions.

Source: Laws 1907, c. 27, § 8, p. 150; R.S.1913, § 695; C.S.1922, § 604; C.S.1929, § 13-517; R.S.1943, § 12-528; Laws 1991, LB 732, § 17.

12-529 Grounds; abandonment; sale; scope and application of law.

The provisions of sections 12-521 to 12-529 shall apply only to such cemetery associations, and to the real estate and property thereof, as the court shall find should be prohibited from further using any of its real estate as a place to bury the dead, and where the court shall find that a portion of its real estate may be sold without detriment to or impairing the usefulness of that portion of its grounds actually occupied by graves of persons theretofore buried therein by permission or authority of such association, and where the court shall also find that it is for the best interest of the persons interested in said association and cemetery and the public, that such portion should be sold and the proceeds of such sale turned over and transferred in trust to some other like association, having a place of burial for the dead in actual use in the same vicinity, or used for the establishment of a new cemetery in the same vicinity.

Source: Laws 1907, c. 27, § 9, p. 150; R.S.1913, § 696; C.S.1922, § 605; C.S.1929, § 13-518.

12-530 Transfer of cemetery to city or village; powers and duties; effect.

(1) The mayor and council of a city or the board of trustees of a village may accept ownership of a cemetery from a cemetery association formed under the provisions of sections 12-501 to 12-529 or 17-944 to 17-947 and may manage and operate the cemetery as a municipal cemetery.

(2) Upon the transfer of the cemetery from the cemetery association to the city or village, the following shall occur:

(a) All property and money under the control of the cemetery association shall vest in the city or village, and all money in the control of the cemetery association shall be turned over to the city or village;

(b) The deeds to all burial lots and other property of the cemetery association shall be transferred to the city or village. If any real estate of the cemetery association was acquired by gift or devise, the city or village shall take title subject to the conditions imposed by the donor. Upon acceptance by the city or village, the conditions shall be binding on such city or village;

(c) Any funds or any money credited to the cemetery association's perpetual care fund created under section 12-509 shall be transferred by the cemetery association to the city or village and placed in a new or existing fund dedicated to the general care, management, maintenance, improvement, beautification, and welfare of the cemetery; and

(d) All endowments received by the cemetery association under section 12-301 shall vest absolutely in the city or village to whom the control and management of such cemetery has been transferred. The city or village shall use any such endowment for the exclusive benefits and purposes designated by the endower.

(3) After the transfer of the cemetery from the cemetery association to the city or village is complete, the cemetery association shall be deemed to be disbanded.

Source: Laws 2005, LB 355, § 1.

ARTICLE 6
MAUSOLEUMS

(a) MAUSOLEUM ASSOCIATIONS

(b) PUBLIC MAUSOLEUMS AND OTHER BURIAL STRUCTURES

(a) MAUSOLEUM ASSOCIATIONS

12-601 Formation; trustees; election; notice; terms; officers.

It shall be lawful for any number of persons not less than five, who are residents of the State of Nebraska, to form themselves into a mausoleum association, and to elect not less than three nor more than five trustees, who shall conduct the business of the association, except as may be directed by a majority of all the members of the association, at a meeting called by personal notice through the mail, where addresses of members are known, and by publication, or both, when addresses are in part unknown, at least fifteen days prior to said meeting. Said trustees shall be elected at a meeting of the members called as above provided, for a term to be fixed by the bylaws, and shall require a plurality vote of all members present. The trustees shall immediately thereafter organize by the election of the necessary officers from their own membership.

Source: Laws 1913, c. 168, § 1, p. 511; R.S.1913, § 709; C.S.1922, § 618; C.S.1929, § 13-601.

Powers of a mausoleum association are such only as the statutes confer. Omaha Nat. Bank v. West Lawn Mausoleum Assn., 158 Neb. 412, 63 N.W.2d 504 (1954).

Association involved in case was tax-free, nonprofit association organized under this article. Bigelow v. Bigelow, 131 Neb. 201, 267 N.W. 409 (1936).

12-602 Formation; certificate; contents; filing; effect; certified copy as evidence; amendments to bylaws; certification; filing.

Upon organization, and before commencing business, the trustees shall cause to be filed in the office of the county clerk of the county in which the

association shall have its principal place of business, a certificate showing the names of the incorporators and officers authorized to conduct its business, with their addresses, the name of the association, its principal place of business, and a copy of its bylaws. A copy of the certificate shall be filed in the office of the Secretary of State. Upon the filing of this certificate, the trustees and their associated members and successors, shall be invested with full corporate powers, and a certified copy of said certificate shall be deemed and taken in all courts as prima facie proof of the existence of such association. Amendments of the bylaws must likewise be filed and recorded in the office of the county clerk, when properly certified as having been legally adopted, before becoming operative.

Source: Laws 1913, c. 168, § 2, p. 512; R.S.1913, § 710; C.S.1922, § 619; C.S.1929, § 13-602.

Filing of certificate is required. Omaha Nat. Bank v. West Lawn Mausoleum Assn., 158 Neb. 412, 63 N.W.2d 504 (1954).

12-603 Powers; rights; laws governing.

The association shall have all the powers and rights, now conferred by law upon cemetery associations organized with no view to profit, and shall be governed by the provisions of law applicable to such associations, except that, as to the provisions for a perpetual care fund, such association shall comply with the provisions of this section and sections 12-606 to 12-618, and shall not be subject to the provisions of sections 12-501 to 12-512.08, except as modified by the provisions of sections 12-601 to 12-605, or laws amendatory thereto.

Source: Laws 1913, c. 168, § 3, p. 512; R.S.1913, § 711; C.S.1922, § 620; C.S.1929, § 13-603; R.S.1943, § 12-603; Laws 1957, c. 18, § 14, p. 149.

Unsold crypts, rights, and lots are subject to payment of indebtedness. Omaha Nat. Bank v. West Lawn Mausoleum Assn., 158 Neb. 412, 63 N.W.2d 504 (1954).

12-604 Bonds and other evidences of indebtedness; acquisition of property; contracts with members; powers; limitations.

The association is empowered to issue bonds and other evidences of indebtedness, to an amount, including all indebtedness of whatever nature, not exceeding ninety percent of the taxable value of the real property of the association and improvements thereon or to be placed thereon from the proceeds thereof, not including the parts sold to individual owners, and to pledge the unsold crypts, rights, or lots and the future receipts of the association, such obligations to be paid out of the future receipts of the association. Real property, money, and other personalty received by the association as trustees may also be received for the purpose of providing crypts, lots, and monuments as may thereafter be selected and as provided in the bylaws. The association shall have the power to enter into contracts with its members or other persons for providing burial lots, monuments, crypts, tombs, vaults, niches, and other places for the disposal of the dead or for the embellishment or perpetual care thereof and for the payment of burial expenses.

Source: Laws 1913, c. 168, § 4, p. 512; R.S.1913, § 712; C.S.1922, § 621; C.S.1929, § 13-604; R.S.1943, § 12-604; Laws 1992, LB 719A, § 25.

Future receipts from sales of crypts, rights, or lots may be used to satisfy mortgage. Omaha Nat. Bank v. West Lawn Mausoleum Assn., 158 Neb. 412, 63 N.W.2d 504 (1954).

12-605 Lots, receptacles; sale; limitation; exempt from taxation and other claims.

Crypts, lots, tombs, niches or vaults sold by such associations or contracted therefor, shall be for the sole purpose of interment and expenses incident thereto, and shall be subject to the rules prescribed by the association. They shall be exempt from taxation, execution, attachment or any other lien or process whatever, if used or held for burial purposes only and in nowise with a view to profit.

Source: Laws 1913, c. 168, § 5, p. 513; R.S.1913, § 713; C.S.1922, § 622; C.S.1929, § 13-605.

Mausoleum property is not subject to sale by mortgage foreclosure. Omaha Nat. Bank v. West Lawn Mausoleum Assn., 158 Neb. 412, 63 N.W.2d 504 (1954).

(b) PUBLIC MAUSOLEUMS AND OTHER BURIAL STRUCTURES

12-606 Construction; location.

No person, firm, partnership, limited liability company, corporation, or association shall construct any vault, crypt, columbarium, or mausoleum for public use, wholly or partially above the surface of the ground, to be used to contain the body of any dead person unless the same is located within the confines of an established cemetery, which cemetery has been in existence and operation for a period of at least five years immediately preceding the time of erection thereof.

Source: Laws 1957, c. 18, § 1, p. 145; Laws 1969, c. 55, § 1, p. 355; Laws 1993, LB 121, § 121.

12-607 Repealed. Laws 1996, LB 1155, § 121.

12-608 Repealed. Laws 1996, LB 1155, § 121.

12-609 Repealed. Laws 1996, LB 1155, § 121.

12-610 Repealed. Laws 1996, LB 1155, § 121.

12-611 Repealed. Laws 1996, LB 1155, § 121.

12-612 Repealed. Laws 1996, LB 1155, § 121.

12-612.01 Repealed. Laws 1996, LB 1155, § 121.

12-613 Trust fund for perpetual care.

It shall be unlawful for any person, firm, partnership, limited liability company, corporation, or association to sell, transfer, or assign any niche or crypt in a columbarium or mausoleum without establishing a trust fund for the perpetual care and maintenance of such columbarium or mausoleum as provided by sections 12-603 and 12-606 to 12-618.

Source: Laws 1957, c. 18, § 8, p. 148; Laws 1993, LB 121, § 124.

12-614 Sale of crypts or niches; amount set aside for maintenance.

Any person, partnership, limited liability company, firm, corporation, or association which sells, assigns, or transfers any crypt or niche in a mausoleum or columbarium shall set aside a sum of not less than fifty dollars for each crypt and not less than twenty-five dollars for each niche or ten percent of the sale price of each crypt or niche whichever sum is the greater. In the event that sales of crypts, rooms, or niches shall be made upon a partial payment plan there shall be set apart and applied to the maintenance fund from each such payment such proportion thereof as the number of partial payments bears to the total amount of the sum required to be set aside for such fund.

Source: Laws 1957, c. 18, § 9, p. 148; Laws 1969, c. 55, § 4, p. 357; Laws 1993, LB 121, § 125.

12-615 Trustees of perpetual care trust fund; appointment; bond.

The trustee or trustees of the perpetual care trust fund shall consist of:

(1) At least three disinterested persons, who have been residents of the county in which the mausoleum or columbarium is located for a period of at least one year prior to their appointment; or

(2) A disinterested trust company organized to do business in and located in the State of Nebraska. The trustee or trustees, as the case may be, shall be selected by the officers of the cemetery association. If individual trustees are selected, they shall give a corporate surety bond, in the sum of not less than the total amount of the perpetual care trust fund, conditioned for the safekeeping of such funds.

Source: Laws 1957, c. 18, § 10, p. 148.

12-616 Trustees of perpetual care trust fund; authority to receive gifts; investment of funds.

The trustee or trustees shall have the authority to receive gifts or bequests of money and other personal property and devises of real estate and any interest therein, to be placed in the perpetual care fund. The principal of the perpetual care fund shall be forever held inviolate as a perpetual trust, by said trustee or trustees, and shall be maintained separate and distinct from any other funds. The principal of the perpetual care fund shall be invested and, from time to time, reinvested and kept invested in securities, authorized by the State of Nebraska, for the investment of trust funds, and the income earned therefrom shall be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium, and shall be applied in such manner as the person or persons owning or operating the mausoleum or columbarium may, from time to time, determine to be for the best interests of such mausoleum or columbarium.

Source: Laws 1957, c. 18, § 11, p. 149.

12-617 Violations; penalty.

Any person, firm, corporation, or association violating any of the provisions of sections 12-603 and 12-606 to 12-618 shall be guilty of a Class IV misdemeanor.

Source: Laws 1957, c. 18, § 12, p. 149; Laws 1977, LB 40, § 74.

12-618 Violations; cumulative offenses.

Each day any person, firm, corporation, or association violates any of the provisions of sections 12-603 and 12-606 to 12-618, shall be deemed to be a separate and distinct offense.

Source: Laws 1957, c. 18, § 13, p. 149.

ARTICLE 7

CEMETERY LOTS, ABANDONMENT AND REVERSION

Section
12-701. Abandonment; failure to maintain; presumption; reversion; notice; service.
12-702. Abandonment; presumption; rebuttal by notice; sale authorized; proceeds; disposition.

12-701 Abandonment; failure to maintain; presumption; reversion; notice; service.

(1) The ownership of or right in or to an unoccupied cemetery lot or part of a lot in any cemetery in the state shall, upon abandonment, revert to the city, village, township, or cemetery association having the ownership and charge of the cemetery containing such lot or part of a lot. The continued failure to maintain or care for a cemetery lot or part of a lot for a period of ten years shall create and establish a presumption that the same has been abandoned. Abandonment shall not be deemed complete unless, after such period of ten years, there shall be given by the reversionary owner to the owner of record or, if he or she be deceased or his or her whereabouts unknown, to the heirs of such deceased person, as far as they are known or can be ascertained with the exercise of reasonable diligence, or to one or more of the near relatives of such owner of record, whose whereabouts are unknown, notice declaring the lot or part of a lot to be abandoned. This notice shall be served as provided by subsection (2) of this section.

(2) The notice, referred to in subsection (1) of this section, may be served personally upon the owner or his or her heirs or near relatives or may be served by the mailing of the notice by either registered or certified mail to the owner or to his or her heirs or near relatives, as the case may be, to his, her, or their last-known addresses. In the event that the addresses of the owner and his or her heirs and near relatives are unknown or cannot be found with reasonable diligence, the notice of such abandonment shall be given by publishing the same one time 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 in which the cemetery is located.

Source: Laws 1935, c. 26, § 1, p. 120; C.S.Supp.,1941, § 13-701; R.S. 1943, § 12-701; Laws 1953, c. 18, § 1, p. 85; Laws 1955, c. 19, § 1, p. 94; Laws 1957, c. 242, § 5, p. 819; Laws 1963, c. 39, § 2, p. 211; Laws 1986, LB 960, § 6.

12-702 Abandonment; presumption; rebuttal by notice; sale authorized; proceeds; disposition.

If within one year from the time of serving or publishing the notice referred to in section 12-701, the record owner or his heirs or near relatives shall give the reversionary owner, referred to in subsection (1) of such section, notice in writing that in fact there has been no such abandonment and shall pay the cost of service or publication of the notice of abandonment, then a presumption of

abandonment shall no longer exist. In case abandonment has been complete as hereinbefore provided, the reversionary owner of the abandoned lot, part of lot, lots, or parts of lots may sell the same and convey title thereto. Any funds realized from the sale of such lot, part of lot, lots, or parts of lots shall constitute a fund to be used solely for the care and upkeep of the used portion of such lot, part of lot, lots, or parts of lots and for the general maintenance of such cemetery.

Source: Laws 1935, c. 26, § 2, p. 121; C.S.Supp.,1941, § 13-702; R.S. 1943, § 12-702; Laws 1953, c. 18, § 2, p. 86; Laws 1963, c. 39, § 3, p. 212.

ARTICLE 8

MAINTENANCE AND IMPROVEMENT OF CEMETERIES

Section

12-801 Trustees; change or improve conditions of lot; repair and remove property; powers; procedure.

The trustees of any cemetery, as hereinafter defined, may change or improve the condition of any burial lot in a cemetery, under the management or control of such trustees, if such burial lot is overgrown with weeds or is otherwise so unsightly as to seriously disfigure the burial ground. The trustees of any cemetery may also remove or repair any monument, curbing, marker or other property placed or located on any burial lot in a cemetery, except metal markers provided for war veterans as provided in section 80-107, which has become so unsightly, dilapidated or decayed as to disfigure the rest of the cemetery, if the owner or owners of record, or their next of kin, shall fail to do so within thirty days after notice is given as is set forth in section 12-802. Metal markers provided for veterans graves may be moved on the grave for the purpose of permanent placement.

Source: Laws 1945, c. 15, § 1, p. 115; R.S.1943, § 12-801; Laws 1969, c. 56, § 1, p. 358.

12-802 Notice; contents; how served.

The notice shall state the legal description of such burial lot, the property located on such lot which is claimed to be so unsightly, dilapidated, or decayed, and that if the property is not repaired or removed within thirty days after such

notice is given, the trustees will proceed to either repair or remove the same. The notice shall be given to, served upon, or sent by certified or registered mail to the owner of record. If the owner of record is deceased or his or her whereabouts are unknown, such notice shall be given to, served upon, or sent by certified or registered mail to any one of the next of kin of the owner of record of such lot. In the event that neither an owner of record nor any one of the next of kin of an owner of record of such lot can be found, the notice may be given by publishing the same one time in a legal newspaper published in and of general circulation in the county in which the cemetery is located or, if none is published in such county, in a legal newspaper of general circulation in the county in which the cemetery is located. Such notice shall be addressed to the record owner and to all persons having or claiming any interest in or to the burial lot, which shall be set forth in such notice by its legal description. The notice shall date from the date of the delivery or service of such notice, the date of mailing such notice by certified or registered mail, or the date of the publication in the newspaper.

Source: Laws 1945, c. 15, § 2, p. 116; Laws 1986, LB 960, § 7; Laws 1987, LB 93, § 2.

12-803 Terms, defined.

The terms trustees of any cemetery or the trustees, as used in sections 12-801 to 12-804, shall include trustees of a cemetery association, cemetery boards, or other persons, public or private corporations, municipalities, townships, boards or governing bodies having the management or control of a cemetery or cemeteries in this state. The term lot, as used in sections 12-801 to 12-804, shall include part or all of one or more lots owned of record by the same person or persons.

Source: Laws 1945, c. 15, § 3, p. 116.

12-804 Sections, how construed.

The provisions of sections 12-801 to 12-804 shall be deemed cumulative with and supplemental to any laws of the State of Nebraska relating to the establishment or operation of cemeteries and the powers of the trustees or other governing bodies thereof.

Source: Laws 1945, c. 15, § 4, p. 116.

12-805 Abandoned and neglected cemeteries; Indian burial grounds; care and maintenance.

The county board may expend money from the general fund of the county for the care and maintenance of each abandoned and neglected cemetery and Indian burial ground as follows: (1) Not to exceed five hundred dollars in any one year when the cemetery is totally abandoned; or (2) not to exceed four hundred dollars in any one year when the cemetery is partially abandoned. Such care and maintenance may include the repair or building of fences and annual spraying for the control of weeds and brush.

Source: Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 146; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(9), p. 226; R.S.

1943, § 23-113; Laws 1949, c. 35, § 1, p. 128; Laws 1973, LB 277, § 1; Laws 1974, LB 608, § 1; C.S.Supp.,1974, § 23-113; Laws 2001, LB 280, § 1.

12-806 Abandoned and neglected cemeteries; care; item in county budget.

The county board may include in the budget for the next fiscal year an item for care of abandoned and neglected cemeteries as provided in section 12-805.

Source: Laws 1949, c. 35, § 2, p. 128; R.S.1943, (1974), § 23-113.01.

12-806.01 Abandoned and neglected cemeteries; Indian burial grounds; sign or marker required.

Every county board shall, by January 1, 1975, conspicuously post at each abandoned or neglected cemetery or Indian burial ground within its jurisdiction a sign or marker designating such area to be abandoned or neglected.

Source: Laws 1974, LB 608, § 2; R.S.1943, (1974), § 23-113.02.

12-807 Abandoned and neglected pioneer cemeteries; preservation.

The county board shall expend money from the general fund of the county for the preservation and maintenance of an abandoned and neglected pioneer cemetery when petitioned to do so by thirty-five adult residents of the county.

Source: Laws 1975, LB 129, § 1.

12-808 Abandoned and neglected pioneer cemetery, defined.

For purposes of sections 12-807 to 12-810, an abandoned and neglected pioneer cemetery shall be defined according to the following criteria:

(1) Such cemetery was founded, or the land upon which such cemetery is situated was given, granted, donated, sold, or deeded to the founders of the cemetery prior to January 1, 1900;

(2) Such cemetery contains the grave or graves of a person or persons who were homesteaders, immigrants from a foreign nation, prairie farmers, pioneers, sodbusters, first generation Nebraskans, or Civil War veterans; and

(3) Such cemetery has been generally abandoned and neglected for a period of at least twenty years.

Source: Laws 1975, LB 129, § 2; Laws 1996, LB 932, § 1.

12-808.01 Abandoned and neglected pioneer cemeteries; access; when.

An owner of property upon which is located a pioneer cemetery affected by sections 12-807 to 12-810 shall not deny pedestrian access to such cemetery as prescribed by this section. Pedestrian access to a pioneer cemetery affected by sections 12-807 to 12-810 shall be granted on Memorial Day and from November 1 through March 1. When possible, visitors to such a pioneer cemetery shall notify the property owner of their presence prior to accessing the cemetery. The property owner may specify a pathway to the cemetery if such pathway is reasonable in direction and accessibility.

Source: Laws 1996, LB 932, § 2.

12-809 Abandoned and neglected pioneer cemeteries; maintenance.

Care given to such cemetery by a county under sections 12-807 to 12-810 may include the removal of shrubbery, trees, or brush, the erection of adequate fences, the planting of grass, flowers, trees, and shrubbery, repair and uprighting of tombstones and gravemarkers, and any other care normally accorded to cemeteries.

Source: Laws 1975, LB 129, § 3; Laws 1996, LB 932, § 3.

12-810 Abandoned and neglected pioneer cemeteries; mowing; historical and directional markers.

Any county affected by sections 12-807 to 12-810 shall provide for one mowing annually of such cemetery within a period of two weeks prior to Memorial Day. Within five years after maintenance and preservation of such cemetery is commenced by such county, a historical marker giving the date of the establishment of the cemetery and a short history of the cemetery shall be placed at the site of such cemetery. One directional marker showing the way to such cemetery may be placed on the nearest state highway to such cemetery.

Source: Laws 1975, LB 129, § 4; Laws 1996, LB 932, § 4.

12-811 Repealed. Laws 1996, LB 932, § 6.

ARTICLE 9

CEMETERY DISTRICTS

Section

12-901 Repealed. Laws 1961, c. 27, § 14.

12-902 Repealed. Laws 1961, c. 27, § 14.

12-903 Repealed. Laws 1961, c. 27, § 14.

12-904 Repealed. Laws 1961, c. 27, § 14.

12-905 Repealed. Laws 1961, c. 27, § 14.

12-906 Repealed. Laws 1961, c. 27, § 14.

12-907 Repealed. Laws 1961, c. 27, § 14.

12-908 Repealed. Laws 1961, c. 27, § 14.

12-909 Organization; territory.

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 cemetery district which shall be empowered to equip and maintain a cemetery or cemeteries when the organization thereof is completed.

Source: Laws 1961, c. 27, § 1, p. 138; Laws 1961, c. 28, § 1, p. 143.

12-910 Petition; filing; contents.

Whenever a majority of the resident taxpayers of any such district, territory, neighborhood, or community intends or desires to form, organize, and establish a cemetery district which will be empowered to equip and maintain a cemetery or cemeteries 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 such petitioners, the area in square miles, and the complete description of the boundaries of the real properties to be embraced in the proposed cemetery 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 1961, c. 27, § 2, p. 138.

12-911 County board; examine petition; hearing; notice.

Upon receipt of such petition, the county board shall examine it to determine whether it complies with the requirements of section 12-910. 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. If the proposed district lies in two or more counties, such 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 1961, c. 27, § 3, p. 139.

12-912 Completion of organization; meeting; notice.

After completion of the hearing required by section 12-911, the county board, if it determines that formation of the proposed district would promote public health, convenience, or welfare, 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 shall deem proper. The county board shall thereupon designate a time and place for all taxpayers to meet at a place within such district to complete the organization thereof. Notice of such meeting shall be published once each week for two successive weeks in a newspaper of general circulation in the district.

Source: Laws 1961, c. 27, § 4, p. 139.

12-913 Board of trustees; officers; election; terms; compensation.

At the public meeting held under section 12-912, permanent organization shall be effected by the election of a board of trustees consisting of three or five residents of the district if the district includes territory in five townships or less. If the district shall embrace or include territory in more than five townships, each township may be represented on the board of trustees by one trustee who shall be a resident of the township. All trustees shall be elected for two years and hold office until their successors have been elected, except at the first election at least two trustees shall be elected 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 1961, c. 27, § 5, p. 140; Laws 1963, c. 40, § 1, p. 213; Laws 1997, LB 71, § 1.

12-914 Budget; adoption; certification of tax; levy; collection; use.

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 with regard to the contemplated cemetery or cemeteries 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 maintenance of the cemetery or cemeteries 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 cemetery district so authorizing the same, and shall be paid to the treasurer of the cemetery 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 counter-signature of the secretary of the cemetery 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 embraced in the adopted budget statement which forms the basis of the assessment and levy. For purposes of section 77-3443, the

county board of each county in which the district is situated shall approve the budget.

Source: Laws 1961, c. 27, § 6, p. 140; Laws 1969, c. 145, § 15, p. 680; Laws 1979, LB 187, § 27; Laws 1992, LB 719A, § 26; Laws 1996, LB 1114, § 23.

12-915 Bylaws; adoption.

The board of trustees of the cemetery district may adopt such bylaws as may be deemed necessary for the government of said district.

Source: Laws 1961, c. 27, § 7, p. 141.

12-916 Warrants; amount authorized; rate of interest.

All warrants for the payment of any indebtedness of such a cemetery district, which are unpaid for want of funds, shall bear interest, but not to exceed six percent per annum, from the date of the registering of such unpaid warrants with the cemetery district treasurer. The amount of such warrants shall not exceed the revenue provided for the year in which the indebtedness was incurred.

Source: Laws 1961, c. 27, § 8, p. 141.

12-917 Area; addition; withdrawal; 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 12-909.

Source: Laws 1961, c. 27, § 9, p. 141.

12-918 Area withdrawn; outstanding obligations; assessment.

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 1961, c. 27, § 10, p. 141.

12-919 Area withdrawn; obligations incurred after withdrawal; not subject to assessment.

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 1961, c. 27, § 11, p. 141.

12-920 Powers; duties; liabilities.

When a district has been organized under the provisions of sections 12-909 to 12-921, it shall have all the powers and duties and be subject to all the liabilities

and restrictions incident to cemetery associations organized under Chapter 12, article 5, and amendments thereto, except as changed, enlarged or restricted by the provisions of sections 12-909 to 12-921.

Source: Laws 1961, c. 27, § 12, p. 142.

12-921 Organization under unconstitutional law; reorganization; procedure.

The board of trustees of any cemetery district organized under the provisions of any law which has been held unconstitutional may petition the county board of the county containing the greater portion of the land included in such district for approval of its organization. After notice and hearing as provided in section 12-911, the county board, if it determines that such district complies with the requirements of section 12-909 and that the approval of its organization would promote public health, convenience, or welfare, shall approve its organization and it shall thereupon become subject to all the provisions of sections 12-909 to 12-921. If necessary to insure compliance with the requirements of section 12-909, the county board, as a part of its order of approval, may order the addition to or withdrawal from such district of such land as it may deem necessary to promote public health, convenience, or welfare. When any such district shall be reorganized under the provisions of this section, the county treasurer shall transfer to the reorganized district all funds standing to the credit of the old district. The funds standing to the credit of any district not reorganized under the provisions of this section within one year after October 19, 1963, shall be transferred to the general fund of the county.

Source: Laws 1961, c. 27, § 13, p. 142; Laws 1963, c. 41, § 1, p. 214.

12-922 Dissolution; procedure.

Any cemetery district subject to the provisions of Chapter 12, article 9, 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 1967, c. 37, § 1, p. 166.

12-923 Property; acquisition; tax; excess funds.

The board of trustees of each cemetery district organized under sections 12-909 to 12-923 shall annually include in its proposed budget statement the amount of money deemed necessary in order for such district to acquire adequate cemetery land. After the adoption of the district's budget statement, the president and secretary shall certify the amount to be received from taxation for such purpose, according to the adopted budget statement, to the proper county clerk or county clerks and the proper county board or boards which may levy the required tax subject to section 77-3443. The tax so levied for the acquisition of cemetery land in the district shall not exceed the amount so certified in the adopted budget statement nor exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all taxable property in such district. The tax levied pursuant to this section shall be in addition to the tax levy authorized by section 12-914. Such tax shall be collected as other taxes are collected in the county by the county treasurer. The

proceeds of the tax so levied and collected shall constitute a special fund for the acquisition of cemetery land in the district, shall be placed to the credit of the cemetery district so authorizing such levy, and shall be paid to the treasurer of the cemetery district upon warrants drawn upon the fund by the board of trustees of the district. The county treasurer shall keep such fund separate and apart from other county funds. In case the amount of money produced by such tax levies exceeds the amount expended or the amount necessary to insure availability of cemetery land, such excess shall be placed into the county general fund. For purposes of section 77-3443, the county board of each county in which the district is situated shall approve the budget.

Source: Laws 1974, LB 715, § 1; Laws 1979, LB 187, § 28; Laws 1992, LB 719A, § 27; Laws 1996, LB 1114, § 24.

ARTICLE 10

MUNICIPAL CEMETERIES

Section
12-1001. Power to borrow money; issuance of bonds.
12-1002. Bonds; term; interest rate; notice of election.
12-1003. Bond election; petition; percentage of voters required.
12-1004. Extension of water supply to cemetery.

12-1001 Power to borrow money; issuance of bonds.

Any municipality maintaining and operating a cemetery either within or without its corporate limits shall have the power to borrow money and pledge the property and credit of the municipality upon its municipal bonds or otherwise for the purpose of enlarging or improving such cemetery in an amount not to exceed five percent of the taxable valuation of the property in such municipality. No such bonds shall be issued until they have been authorized by a majority vote of the electors of the municipality voting on the proposition of their issuance at a general municipal election or at a special municipal election called for the submission of such proposition.

Source: Laws 1957, c. 19, § 1(1), p. 150; Laws 1971, LB 534, § 8; Laws 1992, LB 719A, § 28.

12-1002 Bonds; term; interest rate; notice of election.

The bonds, mentioned in section 12-1001, shall be payable in not to exceed twenty years from date. They shall bear interest not exceeding the rate of six percent per annum payable annually. Notice of the time and place of said election shall be given by publication three consecutive weeks prior thereto in some legal newspaper printed in and of general circulation in such municipality or, if no newspaper be printed in such municipality, in a newspaper of general circulation therein, and if there be no newspaper of general circulation in such municipality then by posting written notice in three conspicuous public places in said municipality with such posting to be done at the beginning of the third week prior to such election.

Source: Laws 1957, c. 19, § 1(2), p. 151.

12-1003 Bond election; petition; percentage of voters required.

No election, provided for in sections 12-1001 and 12-1002, shall be held until a petition therefor, signed by at least ten percent of the legal voters of such

municipality, has been presented to the city council or board of trustees. The number of voters of the municipality 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 said municipality for the purpose of determining the sufficiency of such petition.

Source: Laws 1957, c. 19, § 1(3), p. 151.

12-1004 Extension of water supply to cemetery.

Any municipality, maintaining and operating a cemetery beyond its corporate limits, may extend its water supply or water distribution system to such cemetery.

Source: Laws 1957, c. 19, § 2, p. 151.

ARTICLE 11

BURIAL PRE-NEED SALES

Section

12-1101 Act, how cited.

Sections 12-1101 to 12-1121 shall be known and may be cited as the Burial Pre-Need Sale Act.

Source: Laws 1986, LB 643, § 1.

12-1102 Terms, defined.

For purposes of the Burial Pre-Need Sale Act, unless the context otherwise requires:

(1) Agent shall mean any person who acts for or on behalf of a pre-need seller in making pre-need sales;

(2) Burial or funeral merchandise or services shall mean all items of real or personal property or a combination of both or services, sold or offered for sale to the general public by any pre-need seller, which may be used in any manner

in connection with a funeral or the interment, entombment, inurnment, or other alternate disposition of human remains. Such term shall not include a lot or grave space or a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has been substantially completed;

(3) Columbarium shall mean an aboveground structure or building which is used or intended to be used for the inurnment of human remains in a niche. A columbarium may be combined with a mausoleum;

(4) Crypt or niche shall mean a chamber in a lawn crypt, columbarium, or mausoleum of sufficient size to inter or entomb cremated or noncremated human remains;

(5) Delivery shall mean the act of performing the service required by or the act of placing the item purchased in the physical possession of the pre-need purchaser, including, but not limited to, the installing or depositing of the item sold on or in real property owned by or designated by the person entitled to receive such item, except that (a) the pre-need burial of a vault shall constitute delivery only if the burial is with the consent of the pre-need purchaser and the pre-need seller has made other pre-need vault burials prior to January 1, 1986, and (b) delivery of a crypt or niche in a mausoleum, lawn crypt, or columbarium or a marker or monument may be accomplished by delivery of a document of title;

(6) Department shall mean the Department of Insurance;

(7) Director shall mean the Director of Insurance;

(8) Document of title shall mean a deed, bill of sale, warehouse receipt, or any other document which meets the following requirements:

(a) The effect of the document is to immediately vest the ownership of the item described in the person purchasing the item;

(b) The document states the exact location of such item; and

(c) The document gives assurances that the item described exists in substantially completed form and is subject to delivery upon request;

(9) Human remains shall mean the body of a deceased person;

(10) Lawn crypt shall mean an inground burial receptacle of single or multiple depth, installed in multiples of ten or more in a large mass excavation, usually constructed of concrete and installed on gravel or other drainage underlayment and which acts as an outer container for the interment of human remains;

(11) Letter of credit shall mean an irrevocable undertaking issued by any financial institution which qualifies as a trustee under the Burial Pre-Need Sale Act, given to a pre-need seller and naming the director as the beneficiary, in which the issuer agrees to honor drafts or other demands for payment by the beneficiary up to a specified amount;

(12) Lot or grave space shall mean a space in a cemetery intended to be used for the inground interment of human remains;

(13) Marker, monument, or lettering shall mean an object or method used to memorialize, locate, and identify human remains;

(14) Master trust agreement shall mean an agreement between a pre-need seller and a trustee, a copy of which has been filed with the department, under which proceeds from pre-need sales may be deposited by the pre-need seller;

(15) Mausoleum shall mean an aboveground structure or building which is used or intended to be used for the entombment of human remains in a crypt. A mausoleum may be combined with a columbarium;

(16) Pre-need purchaser shall mean a member of the general public purchasing burial or funeral merchandise or services or a marker, monument, or lettering from a pre-need seller for personal use;

(17) Pre-need sale shall mean any sale by any pre-need seller to a pre-need purchaser of:

(a) Any items of burial or funeral merchandise or services which are not purchased for the immediate use in a funeral or burial of human remains;

(b) Any unspecified items of burial or funeral merchandise or services which items will be specified either at death or at a later date; or

(c) A marker, monument, or lettering which will not be delivered within six months of the date of the sale;

(18) Pre-need seller shall mean any person, partnership, limited liability company, corporation, or association on whose behalf pre-need sales are made to the general public;

(19) Substantially completed shall mean that time when the mausoleum, columbarium, or lawn crypt being constructed is then ready for the interment, entombment, or inurnment of human remains;

(20) Surety bond shall mean an undertaking given by an incorporated surety company naming the director as the beneficiary and conditioned upon the faithful performance of a contract for the construction of a mausoleum, columbarium, or lawn crypt by a pre-need seller;

(21) Trust account shall mean either a separate trust account established pursuant to the Burial Pre-Need Sale Act for a specific pre-need purchaser by a pre-need seller or multiple accounts held under a master trust agreement when it is required by the act that all or some portion of the proceeds of such pre-need sale be placed in trust by the pre-need seller;

(22) Trustee shall mean a bank, trust company, building and loan association, or credit union within the state whose deposits or accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund;

(23) Trust principal shall mean all deposits, including amounts retained as required by section 12-1114, made to a trust account by a pre-need seller less all withdrawals occasioned by delivery or cancellation; and

(24) Vault shall mean an item of burial or funeral merchandise or services which is an inground burial receptacle installed individually, as opposed to lawn crypts, which is constructed of concrete, steel, or any other material, and which acts as an outer container for the interment of human remains.

Source: Laws 1986, LB 643, § 2; Laws 1992, LB 757, § 13; Laws 1993, LB 121, § 126; Laws 1999, LB 107, § 1; Laws 2003, LB 131, § 19.

12-1103 Pre-need sale; proceeds; trust requirements.

Except as otherwise provided in the Burial Pre-Need Sale Act, proceeds received by any pre-need seller as partial or complete payment on a pre-need sale shall be deposited with a trustee within sixty days after receipt. The

proceeds of the pre-need sale required to be deposited with a trustee shall be deposited either with a trustee under the terms of a master trust agreement or with a trustee in a separate trust account in the name of the pre-need purchaser. In either event, the money so deposited shall be held in trust by the trustee pursuant to the terms of the Burial Pre-Need Sale Act.

Source: Laws 1986, LB 643, § 3.

12-1104 Proceeds of sale; trust requirements; exclusions.

There shall be excluded from the trust requirements of section 12-1103 and the pre-need seller shall be entitled to retain free of trust the following:

(1) All proceeds from the sale of a lot or grave space or a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has been substantially completed;

(2) All interest that may be charged by the pre-need seller directly to the pre-need purchaser for extending to the pre-need purchaser the right to make payments on an installment basis on a pre-need sale;

(3) Proceeds from the sale of a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has not been substantially completed as follows: (a) All proceeds, if the pre-need seller has submitted to and received the written approval of the director of a letter of credit or surety bond securing the substantial completion of the mausoleum, columbarium, or lawn crypt; or (b) the first thirty-five percent of the retail sales price of such sale. In either event, the pre-need seller shall agree, in writing, as a part of the pre-need sale that in the event of the death of the person for whose benefit the pre-need sale of a crypt or niche is made prior to the completion of construction of the mausoleum, columbarium, or lawn crypt, that:

(i) Alternate burial will be provided until the completion of the construction; and

(ii) Within a reasonable time after the completion of construction, the body of the decedent will be moved in a dignified manner from the alternate burial place to the crypt or niche so purchased at the sole expense of the pre-need seller;

(4) The first fifteen percent of the retail sales price of all other pre-need sales, including the pre-need sale of markers, monuments, or lettering and the pre-need sale of burial or funeral merchandise or services; and

(5) All amounts required for perpetual care, endowed care, or continual care or the like of the item so purchased if such funds or earnings from the funds will be used for the care and maintenance of the item or items sold in the pre-need sale.

Source: Laws 1986, LB 643, § 4.

12-1105 Pre-need seller; records required.

Upon the making of a pre-need sale by a pre-need seller when some or all of the proceeds from that sale are required to be placed in trust or a letter of credit or surety bond has been approved in lieu thereof, the pre-need seller in addition to retaining a copy of any written agreement entered into shall prepare and maintain a separate record of each such pre-need sale and the record shall contain the following information:

(1) The name and address of the pre-need purchaser;

(2) The retail sales price of each item purchased in such pre-need sale, exclusive of any interest that may be charged the pre-need purchaser by the pre-need seller;

(3) The date and amount of each payment made by the pre-need purchaser to the pre-need seller, designating such payment as principal or interest and the disposition made by the pre-need seller of each such payment as to whether it was retained in whole or in part by the pre-need seller or deposited in trust and, if deposited in trust, the date of such deposit and the name of the trustee with whom the deposit was made; and

(4) The date of withdrawal and all amounts withdrawn by the pre-need seller pursuant to subsection (2) of section 12-1113 and a designation of the event which permitted such withdrawal.

The record shall be maintained for inspection purposes by the director for at least one year after the pre-need seller has received all proceeds to which the seller is entitled by reason of the pre-need sale.

Source: Laws 1986, LB 643, § 5.

12-1106 Pre-need purchaser; designate irrevocable funds.

At the written request of the pre-need purchaser, the first four thousand dollars, increased annually as provided in this section, paid by the pre-need purchaser which is placed in trust by the pre-need seller may be designated as irrevocable in accordance with the rules and regulations of the Department of Health and Human Services. The Department of Health and Human Services shall increase such amount annually on September 1 beginning with the year 2006 by the percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics at the close of the twelve-month period ending on August 31 of such year. Upon default or cancellation any trust funds designated as irrevocable shall be governed by section 12-1113.

Source: Laws 1986, LB 643, § 6; Laws 1996, LB 1044, § 52; Laws 2006, LB 85, § 1.

12-1107 Trustees; acceptance of funds; conditions; powers.

(1) Banks which do not have a separate trust department and building and loan associations and credit unions acting as trustees under the Burial Pre-Need Sale Act shall accept trust funds only to the extent that the full amount of all of such funds is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

(2) Banks with a separate trust department and trust companies acting as trustees under the Burial Pre-Need Sale Act when investing or reinvesting trust funds shall have the power to deal with such funds as a prudent trustee would deal with the funds and shall have all of the powers granted to a trustee by the Nebraska Uniform Trust Code, but the Uniform Principal and Income Act shall not be applicable and all income, whether from interest, dividends, capital gains, or any other source, shall be considered as income.

Source: Laws 1986, LB 643, § 7; Laws 1992, LB 757, § 14; Laws 1999, LB 107, § 2; Laws 2001, LB 56, § 35; Laws 2003, LB 130, § 112; Laws 2003, LB 131, § 20.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.
Uniform Principal and Income Act, see section 30-3116.

12-1108 Pre-need seller; license required; application; requirements; fee; renewal; records.

(1) No pre-need seller shall make or offer to make a pre-need sale without first obtaining a license from the director. An application for such a license or a renewal of an existing license shall be made in writing, signed by the proposed pre-need seller, duly verified on forms prepared and furnished by the director, and accompanied by an application fee of one hundred dollars. Each application shall contain the following information:

(a) The applicant's full name and his, her, or its home and business address, and if the applicant is a partnership, limited liability company, corporation, or association, the application shall list the names and addresses of all of the officers, directors, members, or trustees thereof;

(b) The names and addresses of all agents, including employees and independent contractors, authorized to make pre-need sales in the name of the applicant;

(c) If the applicant is an individual, the applicant's social security number;

(d) Whether such agents are presently licensed as agents pursuant to section 12-1115 and if not the date upon which application will be made;

(e) Whether the pre-need seller's license has previously been suspended, revoked, or voluntarily surrendered and the reason therefor; and

(f) Whether the applicant or any officers, directors, members, or association trustees have been convicted of fraud or a crime involving misappropriation or misuse of funds within the past ten years.

(2) Upon receipt of the application, the director shall issue a license to the pre-need seller unless the director determines that the applicant (a) is unable to demonstrate its financial ability to meet the requirements of the Burial Pre-Need Sale Act, (b) has made false statements or misrepresentations in the application, (c) is not duly authorized to transact business in the state, (d) has been convicted of fraud or a crime involving misappropriation or misuse of funds within the last ten years, or (e) has failed to comply with any of the terms or conditions of the Burial Pre-Need Sale Act and such is deemed by the director to substantially impede the applicant's ability to abide by such act. If the director determines that an unrestricted license will not be issued or that no license will be issued on the basis of the application, the director may:

(i) Request additional information from the applicant;

(ii) Issue a temporary license with restrictions and reporting requirements as the director deems necessary so as to monitor the actions of the applicant for a period not to exceed six months; or

(iii) Refuse to issue the license.

The director shall notify the applicant of the action taken, and the notification and any protest shall be made in the same manner as provided in subsection (2) of section 12-1116.

(3) A license shall expire five years from the date of the issuance and may be renewed for additional five-year periods upon filing with the director a new application for such license.

(4) The licensee shall maintain accurate accounts, books, and records of all transactions required including copies of all contracts involving pre-need sales and shall make a report as prescribed in section 12-1110.

(5)(a) The licensee shall make all books and records pertaining to trust funds available to the director for examination. The director, or a qualified person designated by the director, may during ordinary business hours examine the books, records, and accounts of the licensee with respect to the funds received by such licensee and may require the attendance at an examination under oath of all persons whose testimony he or she may deem necessary.

(b) The reasonable expenses for the examination of the books, records, and accounts of the licensee shall be fixed and determined by the director. The licensee shall be responsible for the payment of the determined expenses to the director within a reasonable time after the receipt of a statement for such expenses. The expenses shall be limited to a reasonable allocation for the salary of each examiner plus actual expenses.

Source: Laws 1986, LB 643, § 8; Laws 1993, LB 121, § 127; Laws 1997, LB 752, § 71; Laws 2005, LB 119, § 1.

12-1109 Director; adopt rules and regulations.

The director shall adopt and promulgate rules and regulations necessary to carry out and enforce the Burial Pre-Need Sale Act.

Source: Laws 1986, LB 643, § 9.

12-1110 Pre-need seller; report; requirements; fee.

Each pre-need seller shall file a report with the director on or before June 1 of each year in such form as the director may require. The report shall contain the name and address of each trustee with which the pre-need seller has trust funds on deposit and the amount on deposit with each such trustee as of December 31 of that year or such other reporting period as the director may establish. The report shall include a list of all amounts retained as required by section 12-1114. Any pre-need seller who has discontinued making pre-need sales but who continues to have trust funds on deposit with a trustee or trustees shall not be required to obtain a renewal of his, her, or its license but shall continue as long as trust funds are being held to make reports to the director. Each such report, when filed with the director, shall be accompanied by a fee of fifty dollars.

Source: Laws 1986, LB 643, § 10; Laws 2005, LB 119, § 2.

12-1111 Contracts; requirements; provisions.

(1) At the time that a pre-need sale is entered into, the pre-need seller shall furnish each pre-need purchaser with a duplicate original of any written contract which the pre-need purchaser is required to sign.

(2) The pre-need seller shall file with the director a copy of each form of contract that is utilized by the pre-need seller in making pre-need sales.

(3) Except in the case of a default or cancellation by the pre-need purchaser, a contract shall contain no provisions limiting the liability of the pre-need seller to less than furnishing the merchandise or services expressed in the contract, except that the contract may provide that a like or better quality item of merchandise shall be substituted for the original in the event merchandise

itemized is no longer available and through reasonable efforts cannot be obtained. In the case of default or cancellation of a pre-need sale, a contract shall contain no provisions allowing the pre-need seller to retain, as liquidated damages or otherwise, any amounts not permitted by section 12-1113. Any contractual provisions to the contrary shall be of no force or effect.

Source: Laws 1986, LB 643, § 11.

12-1112 Act; when applicable.

The terms and conditions of the Burial Pre-Need Sale Act shall govern only those pre-need sales made and contracts entered into by any pre-need seller or his, her, or its agents after January 1, 1987. The Burial Pre-Need Sale Act shall not be construed so as to impair or affect the obligation of any lawful contract in existence on or prior to January 1, 1987.

Source: Laws 1986, LB 643, § 12.

12-1113 Trust funds; distributions; conditions; accumulation.

(1) Except as provided in subsection (3) of this section, at least annually the trustee shall distribute all of the income of any trust account to the pre-need seller after deducting the amount computed under section 12-1114.

(2) All remaining funds held in trust, including cost-of-living amounts retained as required by section 12-1114, shall be governed by the following:

(a) When the funds held in trust are for the purchase of a crypt or niche in a mausoleum, columbarium, or lawn crypt which is to be constructed or is being constructed, the trustee shall distribute the funds held in trust for such purpose to the pre-need seller as follows:

(i) Twenty-five percent of the funds held in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of the construction, that twenty-five percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(ii) Thirty-three and one-third percent of the funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of construction, that fifty percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(iii) Fifty percent of the funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of construction, that seventy-five percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed; and

(iv) All funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of construction, that the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(b) When the funds are held in trust by reason of a pre-need sale which is not included in subdivision (2)(a) of this section, the trustee shall pay over to the pre-need seller the funds held in trust upon receiving written notification from the pre-need seller that delivery of the merchandise has been completed or services have been performed for which the funds were placed in trust;

(c) Upon cancellation of a pre-need sale, unless the pre-need purchaser has designated the trust as irrevocable pursuant to section 12-1106, the pre-need seller shall give written notification to the trustee and the trustee shall, within ninety days, pay over to the pre-need purchaser an amount equal to the amount required to be held in trust by the pre-need seller for that pre-need purchaser after deducting any reasonable charges made by the trustee caused by the cancellation and then any balance remaining in the pre-need purchaser's trust account shall immediately be paid over to the pre-need seller;

(d) Upon cancellation of a pre-need sale in which the funds were designated by the pre-need purchaser as irrevocable pursuant to section 12-1106, the trustee shall immediately pay over to the pre-need seller any amounts otherwise excludable from trust under section 12-1104 if such amounts have not previously been retained by the pre-need seller. Thereafter, the amount required to be held in trust shall be computed by the trustee and the amount so computed shall be held by the trustee separate from the trust in an individual account in the name of the pre-need purchaser and such account shall:

(i) Be held until the death of the person for whom the pre-need sale was entered into, at which time all funds in the individual account, less any reasonable charges made by the trustee which were caused by such cancellation, shall, within ninety days, be paid to the pre-need purchaser or his or her estate; or

(ii) Be held until the trustee receives written notification from the pre-need purchaser to transfer all of the funds held in the individual account, less any reasonable charges made by the trustee which were caused by such cancellation, to another irrevocable trust established by another licensed pre-need seller as a result of a pre-need sale made by the second pre-need seller to the canceling pre-need purchaser. Such transfer shall take place within ninety days after such written notification is received by the original pre-need seller.

The balance remaining in such pre-need purchaser's trust account after transfer of the computed amount to the individual account shall be paid over to the pre-need seller;

(e) Upon default, the pre-need seller shall be entitled to retain in trust the funds held in trust attributable to the defaulted pre-need sale until notice of cancellation by the pre-need purchaser is received by the pre-need seller or until the death of the person for whom the pre-need sale was entered into, whichever occurs first. In the event of default, the death of the person for whom the pre-need sale was entered into, absent prior notification of cancellation, shall be construed as a cancellation of that pre-need sale;

(f) Receipt of the written notification by the trustee and distribution of the funds after receipt of such written notification shall relieve the trustee of any liability for failure to properly administer the funds held in trust. Failure of the trustee to obtain such written notification may subject the trustee to liability for actual damages limited to the amount of the funds which the trustee erroneously distributed; and

(g) In the administration of the individual trust accounts or the trust accounts held under a master trust agreement, the trustee shall be permitted to pay all of the reasonable costs incurred in the administration of the trusts, including any state or federal income taxes payable by the trusts. The payment of all costs and expenses, including taxes, shall be paid from the trust income and shall be deducted prior to the distribution of such income as provided in subsection (1)

of this section. In the event that the income is not sufficient to pay all of such costs, expenses, and taxes, the pre-need seller shall be responsible for such payment out of its own separate funds.

(3) A pre-need seller may elect to allow the income from the funds held in any trust account to accumulate, in which event the accumulation of income shall be deemed to be in lieu of the cost-of-living amount retained as required by section 12-1114.

Source: Laws 1986, LB 643, § 13.

12-1114 Pre-need seller; trust funds; retain cost-of-living amount.

To offset increases in the cost of living as the same may affect the trust accounts, the pre-need seller shall compute each year the total amount of the trust principal of each trust account determined as of December 31 of the immediately preceding year, and then multiply such amount by the percentage increase in the National Consumer Price Index for such year. The amount so determined shall be the amount of the current year's income that is required to be retained in trust by the trustee before the balance of the income for the current year can be paid out to the pre-need seller as provided in subsection (1) of section 12-1113. If publication of the National Consumer Price Index is discontinued, the director shall select a comparable index for the purposes of determining such percentage increase in the cost of living and notify all licensed pre-need sellers of the index selected.

Source: Laws 1986, LB 643, § 14.

12-1115 Pre-need sales agent; license required; fee; failure to surrender license; penalty.

(1) No agent shall make any pre-need sales on behalf of a pre-need seller in this state without first obtaining a license from the director. The director shall not issue such a license without requiring the proposed agent to fill out an application form stating his or her name, address, and telephone number and the pre-need seller for whom he or she will be making pre-need sales. The pre-need seller for whom the agent will be making pre-need sales shall also sign the agent's application and agree to be responsible for supervising the agent in conjunction with any pre-need sales. The fee for an agent's license shall be twenty dollars which shall accompany the application.

(2) The agent's license, when issued, shall allow the agent to make pre-need sales only for the pre-need seller whose name appears on the license. If the agency relationship between the pre-need seller and the agent terminates for any reason, the pre-need seller shall immediately notify the department of such termination. Once such notification has been received, the acts of the agent shall no longer be imputed to the pre-need seller and the agent's license shall be considered as void. The agent, upon written request by the department, shall surrender to the department the license within a period of ten days after the receipt of such written notice. Failure on the part of the agent to surrender the license after written notification shall be a Class IV misdemeanor.

(3) It shall be the responsibility of the licensed agent to notify the director of any change of the agent's address.

Source: Laws 1986, LB 643, § 15; Laws 2005, LB 119, § 3.

12-1116 Licenses; disciplinary actions; grounds; notice; administrative fine.

(1) The director may deny, revoke, or suspend any license of any pre-need seller or agent or may levy an administrative fine in accordance with subsection (3) of this section if the director finds that:

(a) The licensee has failed to pay the license fee prescribed for such license;

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any of the provisions of the Burial Pre-Need Sale Act or any rule or regulation adopted and promulgated by the director pursuant to such act; or

(c) An act or condition exists which, if it had existed at the time of the original application of such licensee, would have resulted in the director refusing to issue such license.

(2) Written notification shall be provided to the licensee upon the director's making such determination, and the notice shall be mailed by the director to the last address on file for the licensee by certified or registered mail, return receipt requested. The notice shall state the specific action contemplated by the director and the specific grounds for such action. The notice shall allow the licensee receiving such notice twenty days from the date of actual receipt to:

(a) Voluntarily surrender his or her license; or

(b) File a written notice of protest of the proposed action of the director. If a written notice of protest is filed by the licensee, the Administrative Procedure Act shall govern the hearing process and procedure, including all appeals. Failure to file a notice of protest within the twenty-day period shall be equivalent to a voluntary surrender of the licensee's license, and the licensee shall surrender the license to the director.

(3) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating the Burial Pre-Need Sale Act may, after notice and hearing, be subject to an administrative fine of not more than one thousand dollars per violation. Such fine may be enforced in the same manner as civil judgments. Any person charged with a violation of the act may waive his or her right to a hearing and consent to such discipline as the director determines is appropriate. The Administrative Procedure Act shall govern all hearings held pursuant to the Burial Pre-Need Sale Act.

Source: Laws 1986, LB 643, § 16; Laws 1987, LB 93, § 3; Laws 2005, LB 119, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

12-1117 Licenses; surrender; effect; reinstatement.

(1) Any licensee may surrender any license issued by the director by delivering the license to the director with written notice of its surrender. Surrender shall not change the licensee's civil or criminal liability for acts committed prior or subsequent to the surrender of such license. Voluntary surrender shall not constitute an admission against interest or an admission of liability nor shall the same be used in any evidentiary proceeding as such an admission.

(2) The director may reinstate a license or issue a new license to a person whose license has expired, has been revoked, or was voluntarily surrendered if

no fact or condition exists which would cause a revocation or would have caused the director to originally refuse to issue such license.

Source: Laws 1986, LB 643, § 17.

12-1118 Violations; penalty.

Any person who violates any provision of the Burial Pre-Need Sale Act or who makes a report required under such act which is false or fraudulent shall be guilty of a Class II misdemeanor and his or her license shall be revoked.

Source: Laws 1986, LB 643, § 18.

12-1119 Violations; action to enjoin.

Whenever the director has reasonable cause to believe that any person, whether licensed or not, is violating any provision of the Burial Pre-Need Sale Act or any rule or regulation adopted and promulgated pursuant to such act, he or she may, in addition to all other actions allowed, bring an action in the district court of Lancaster County to enjoin such person from engaging in or continuing such violation or from doing any act in furtherance of such violation. In any such action, the district court may enter any order, judgment, or decree concerning temporary or permanent relief as it deems proper based upon the facts and circumstances presented to it by the director.

Source: Laws 1986, LB 643, § 19.

12-1120 Pre-need seller; failure to perform obligations; director; powers.

The director may collect the proceeds of any letter of credit, surety bond, or trust funds held pursuant to subdivision (2)(a) of section 12-1113 upon the failure of the pre-need seller to perform the obligations secured thereby. Thereafter, in the director's discretion, he or she may use such proceeds to secure completion of the mausoleum, columbarium, or lawn crypt or take any actions necessary to reimburse all pre-need purchasers of a crypt or niche therein to the extent of money paid or consideration given by the pre-need purchasers.

Source: Laws 1986, LB 643, § 20.

12-1121 Trust; validity.

No trust created or any interest in such trust shall be invalidated by any existing law or rule against perpetuities, accumulations, or suspension of the power of alienation, and such trust and any interest may continue for such time as may be necessary to accomplish the purposes for which it was created.

Source: Laws 1986, LB 643, § 21.

ARTICLE 12

UNMARKED HUMAN BURIAL SITES

Section
12-1201. Act, how cited.
12-1202. Legislative findings and declarations.
12-1203. Purposes of act.
12-1204. Terms, defined.
12-1205. Person discovering remains or goods; duties; violation; penalty.
12-1206. Discovery of remains or goods; law enforcement officer; notice.

Section

12-1201 Act, how cited.

Sections 12-1201 to 12-1212 shall be known and may be cited as the Unmarked Human Burial Sites and Skeletal Remains Protection Act.

Source: Laws 1989, LB 340, § 1.

12-1202 Legislative findings and declarations.

The Legislature hereby finds and declares that:

(1) Human burial sites which do not presently resemble well-tended and well-marked cemeteries are subject to a higher degree of vandalism and inadvertent destruction than well-tended and well-marked cemeteries;

(2) Although existing law prohibits removal, concealment, or abandonment of any dead human body and provides for the care and maintenance of abandoned and neglected Indian cemeteries and burial grounds and pioneer cemeteries, additional statutory guidelines and protections are in the public interest;

(3) Existing law on cemeteries reflects the value placed on preserving human burial sites but does not clearly provide equal and adequate protection or incentives to assure preservation of all human burial sites in this state;

(4) An unknown number of unmarked human burial sites containing the remains of pioneers, settlers, and Indians are scattered throughout the state;

(5) No adequate procedure regarding the treatment and disposition of human skeletal remains from unmarked graves exists to protect the interests of relatives or other interested persons; and

(6) There are scientific, educational, religious, and cultural interests in the remains of our ancestors and those interests, whenever possible, should be served.

Source: Laws 1989, LB 340, § 2.

12-1203 Purposes of act.

The purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act shall be to:

(1) Assure that all human burials are accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations by providing adequate protection for unmarked human burial sites and human skeletal remains located on all private and public lands within this state;

(2) Prohibit disturbance of unmarked human burial sites except as expressly permitted by the act;

(3) Establish procedures for the proper care and protection of unmarked human burial sites, human skeletal remains, and burial goods found in this state;

(4) Ensure that all unmarked human burial sites discovered in this state are to be left undisturbed to the maximum extent possible unless such sites are in reasonable danger of destruction, such sites need to be moved for a highway, road, or street construction project, or there is evidence of criminal wrongdoing and, when any unmarked human burial site must be disturbed for any of the reasons listed in this subdivision, ensure that the disposition of the contents of such site is carried out in accordance with the act; and

(5) Permit the scientific study and reinterment of human skeletal remains and burial goods.

Source: Laws 1989, LB 340, § 3.

12-1204 Terms, defined.

For purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act:

(1) Burial goods shall mean any item or items reasonably believed to have been intentionally placed with the human skeletal remains of an individual at the time of burial and which can be traced with a reasonable degree of certainty to the specific human skeletal remains with which it or they were buried;

(2) Human burial site shall mean the specific place where any human skeletal remains are buried and the immediately surrounding area;

(3) Human skeletal remains shall mean the body or any part of the body of a deceased human in any stage of decomposition;

(4) Indian tribe shall mean any federally recognized or state-recognized Indian tribe, band, or community;

(5) Professional archaeologist shall mean a person having a postgraduate degree in archaeology, anthropology, history, or a related field with a specialization in archaeology and with demonstrated ability to design and execute an archaeological study and to present the written results and interpretations of such a study in a thorough, scientific, and timely manner;

(6) Reasonably identified and reasonably identifiable shall mean identifiable, by a preponderance of the evidence, as to familial or tribal origin based on any available archaeological, historical, ethnological, or other direct or circumstantial evidence or expert opinion;

(7) Society shall mean the Nebraska State Historical Society; and

(8) Unmarked human burial shall mean any interment by whatever means of human skeletal remains for which there exists no grave marker, including burials located in abandoned and neglected cemeteries.

Source: Laws 1989, LB 340, § 4.

12-1205 Person discovering remains or goods; duties; violation; penalty.

(1) Any person who encounters or discovers human skeletal remains or burial goods associated with an unmarked human burial in or on the ground shall immediately cease any activity which may cause further disturbance of the unmarked human burial and shall within forty-eight hours report the presence and location of such remains or goods to a local law enforcement officer in the county in which the remains or goods are found. Any person who knowingly fails to make such a report shall be guilty of a Class III misdemeanor.

(2) If human skeletal remains or burial goods associated with an unmarked human burial in or on the ground are discovered by any employee, contractor, or agent of the Department of Roads in conjunction with highway construction, any construction in the area immediately adjacent to such remains or goods shall cease. The department or any of its employees, contractors, or agents shall within forty-eight hours of the discovery of the remains or goods report the presence and location of the remains or goods to a local law enforcement officer in the county in which the remains or goods are found. Any remains or goods may then be removed from the site following an examination by the appropriate agency in accordance with section 39-1363 and any applicable federal requirements. Following removal, the remains or goods shall be disposed of in accordance with the Unmarked Human Burial Sites and Skeletal Remains Protection Act. The construction project may continue once the remains or goods have been removed.

Source: Laws 1989, LB 340, § 5.

12-1206 Discovery of remains or goods; law enforcement officer; notice.

A law enforcement officer who receives notification pursuant to section 12-1205 shall promptly notify the landowner on whose property the human skeletal remains or burial goods were discovered, the county attorney, and the society.

Source: Laws 1989, LB 340, § 6.

12-1207 Discovery of remains or goods; county attorney; duties.

Upon notification pursuant to section 12-1206, the county attorney shall determine whether the human skeletal remains are associated with or suspected of association with any crime and, if a determination of prosecutable criminal activity is made, shall retain custody of the remains in accordance with routine procedures until such time as the remains may be reburied in accordance with the Unmarked Human Burial Sites and Skeletal Remains Protection Act.

Source: Laws 1989, LB 340, § 7.

12-1208 Discovery of remains or goods; society; duties.

(1) Upon notification pursuant to section 12-1206, the society shall promptly assist in examining the discovered material to attempt to determine its origin and identity.

(2) If the society finds that the discovered human skeletal remains or burial goods are of non-American-Indian origin with a known or unknown identity, it shall notify the county attorney of the finding. Upon receipt of the finding, the county attorney shall cause the remains and associated burial goods to be interred in consultation with the county coroner. Reburial shall be in accordance with the wishes and at the expense of any known relatives in the order listed by section 38-1425 or, if no relatives are known, in an appropriate cemetery at the expense of the county in which the remains were discovered after a one-year scientific study period if such study period is considered necessary or desirable by the society. In no case shall any human skeletal remains that are reasonably identifiable as to familial or tribal origin be displayed by any entity which receives funding or official recognition from the state or any of its political subdivisions. In situations in which human skeletal

remains or burial goods that are unidentifiable as to familial or tribal origin are clearly found to be of extremely important, irreplaceable, and intrinsic scientific value, the remains or goods may be curated by the society until the remains or goods may be reinterred as provided in this subsection without impairing their scientific value.

(3) If the society finds that the discovered human skeletal remains or burial goods are of American Indian origin, it shall promptly notify in writing the Commission on Indian Affairs and any known relatives in the order listed in section 38-1425 or, if no relatives are known, any Indian tribes reasonably identified as tribally linked to such remains or goods in order to ascertain and follow the wishes of the relative or Indian tribe, if any, as to reburial or other disposition. Reburial by any such relative or Indian tribe shall be by and at the expense of such relative or Indian tribe. In cases in which reasonably identifiable American Indian human skeletal remains or burial goods are unclaimed by the appropriate relative or Indian tribe, the society shall notify all other Indian tribes which can reasonably be determined to have lived in Nebraska in order to ascertain and follow the wishes of the tribe as to reburial or other disposition. Reburial by any such tribe shall be by and at the expense of the tribe. If such remains or goods are unclaimed by the appropriate tribe, the remains or goods shall be reburied, as determined by the commission, by one of the four federally recognized Indian tribes in Nebraska.

Source: Laws 1989, LB 340, § 8; Laws 2001, LB 97, § 1; Laws 2007, LB463, § 1113.

12-1209 Entity possessing or controlling remains or goods on August 25, 1989; duties.

Notwithstanding any other provision of Nebraska law, any institution, agency, organization, or other entity in this state which receives funding or official recognition from the state or any of its political subdivisions and which has in its possession or control on August 25, 1989, any disinterred human skeletal remains or burial goods of American Indian origin which are reasonably identifiable as to familial or tribal origin, regardless of their present location, shall return any such remains and goods to the relative or Indian tribe for reburial, upon request of such relative or Indian tribe, or otherwise cause such remains and goods to be reinterred pursuant to subsections (2) and (3) of section 12-1208 within one year of receiving such request, except that any such entity which has, prior to January 1, 1989, received a written request from any relative or Indian tribe for the return of such reasonably identifiable remains and goods shall return to such relative or Indian tribe for reburial all such remains and goods by September 10, 1990.

Source: Laws 1989, LB 340, § 9.

12-1210 Entity possessing or controlling remains or goods; request for return; duties.

Any institution, agency, organization, or other entity in this state which receives a request for the return of human skeletal remains or burial goods under the Unmarked Human Burial Sites and Skeletal Remains Protection Act shall, at least ninety days prior to the date for return established by statute or otherwise agreed upon pursuant to the act, provide the requesting relative or Indian tribe with an itemized inventory of any human skeletal remains and

burial goods that are subject to return to the requesting relative or Indian tribe. At the time the entity transfers possession of such remains or goods to the requesting relative or Indian tribe, the transferor and the transferee shall each sign a transfer document which identifies by inventory number and description each human skeletal remain or burial good being transferred.

Source: Laws 1989, LB 340, § 10.

12-1211 Dispute; resolution; procedure.

Whenever a dispute arises with regard to the disposition of human skeletal remains or burial goods pursuant to the Unmarked Human Burial Sites and Skeletal Remains Protection Act, the procedure set forth in this section shall be the exclusive remedy available to the aggrieved party under the act. No cause of action shall lie until the procedure set forth in this section is completed.

The aggrieved party shall submit to the adverse party documentation describing the nature of the grievance. The aggrieved party and the adverse party shall meet within sixty days of the mailing of the initial grievance and shall either concur or disagree after reviewing the appropriate documentation.

If after such meeting the parties disagree, they shall, within fifteen days following such meeting, designate a third party, agreed on by both original parties, to assist in the resolution of the dispute. If an agreement as to the designation of the third party is not reached within the fifteen-day period, the Public Counsel shall automatically be designated to serve in that capacity.

Following the designation of a third party, the aggrieved party may submit a petition, together with supporting documentation, to the third party describing the nature of the grievance. The aggrieved party shall serve a copy of the petition and all supporting documents on the adverse party at the time of filing. The adverse party shall have thirty days to respond to the petition by filing a response and supporting documentation with the third party, copies of which shall be served on the aggrieved party by the adverse party at the time of filing the response.

The third party shall review the petition, the response, all supporting documentation submitted by the parties, and other relevant information. Following such review and within ninety days after the filing of the petition, the two original parties and the third party shall, by majority vote, render a decision with regard to the matter in dispute.

The decision may be appealed by either party, and such appeal shall be in accordance with section 25-1937.

When the disposition of any human skeletal remains or burial goods is disputed and subject to arbitration under this section, the party in possession of the remains or goods shall retain possession until the arbitration process and appeals provided for in this section are completed.

Source: Laws 1989, LB 340, § 11.

12-1212 Civil action; statute of limitation; recovery; attorney's fees.

(1) Any person, Indian tribe, or Indian tribal member shall have a civil cause of action against any person alleged to have intentionally violated the Unmarked Human Burial Sites and Skeletal Remains Protection Act or section 28-1301. The action shall be brought within two years of discovery by the plaintiff of the alleged violation or within two years of August 25, 1989,

whichever is later. The action shall be filed either in the district court of the county in which the unmarked human burial, human skeletal remains, or burial goods are located or in which the defendant resides.

(2) If the plaintiff prevails in an action brought pursuant to this section:

(a) The court may award reasonable attorney's fees to the plaintiff and may grant injunctive or other appropriate relief, including forfeiture of any human skeletal remains or burial goods acquired as a result of or equipment used in the violation. The court shall order the disposition of any items forfeited, including the reinterment of any human skeletal remains or burial goods pursuant to the act; and

(b) The plaintiff may recover actual damages for each violation.

(3) If the defendant prevails in an action brought pursuant to this section, the court may award reasonable attorney's fees to the defendant.

Source: Laws 1989, LB 340, § 12.

ARTICLE 13

STATE VETERAN CEMETERY SYSTEM

Section

12-1301 Director of Veterans' Affairs; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; investment; Nebraska Veterans Cemetery Advisory Board; created; members; expenses.

(1) The Director of Veterans' Affairs may establish and operate a state veteran cemetery system consisting of a facility in Box Butte County, a facility in Sarpy County, and the Nebraska Veterans' Memorial Cemetery in Hall County. The director may seek and expend private, state, and federal funds for the establishment, construction, maintenance, administration, and operation of the cemetery system as provided in this section. Any gift, bequest, or devise of real property for the cemetery system shall be subject to the approval requirements of section 81-1108.33 notwithstanding the value of the real property. All funds received for the construction of the cemetery system shall be remitted to the State Treasurer for credit to the Veteran Cemetery Construction Fund. Any funds remaining in the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system shall upon such completion be transferred to the Nebraska Veteran Cemetery System Endowment Fund, and the Veteran Cemetery Construction Fund shall thereafter terminate.

(2)(a) A trust fund to be known as the Nebraska Veteran Cemetery System Endowment Fund is hereby created. The fund shall consist of:

(i) Gifts, bequests, grants, or contributions from private or public sources designated for the maintenance, administration, or operation of the state veteran cemetery system;

(ii) Any funds transferred from the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system; and

(iii) Following the termination of the Veteran Cemetery Construction Fund, any funds received by the state from any source for the state veteran cemetery system.

(b) No revenue from the General Fund shall be remitted to the Nebraska Veteran Cemetery System Endowment Fund. The Legislature shall not appropriate or transfer money from the Nebraska Veteran Cemetery System Endowment Fund for any purpose other than as provided in this section. Any money in the Nebraska Veteran Cemetery System Endowment 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 portion of the principal of the Nebraska Veteran Cemetery System Endowment Fund shall be expended for any purpose except investment pursuant to this subdivision. All investment earnings from the Nebraska Veteran Cemetery System Endowment Fund shall be credited on a quarterly basis to the Nebraska Veteran Cemetery System Operation Fund.

(3) There is hereby created the Nebraska Veteran Cemetery System Operation Fund. Money in the fund shall be used for the operation, administration, and maintenance of the state veteran cemetery system. 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.

(4) The director may make formal application to the federal government regarding federal financial assistance for the construction of any of the facilities comprising the state veteran cemetery system which is located in a county with a population of less than one hundred thousand persons when he or she determines that the requirements for such assistance have been met.

(5) The director may make formal application to the federal government regarding financial assistance for the construction of any facility comprising a portion of the state veteran cemetery system located in a county with a population of more than one hundred thousand persons when sufficient funds have been remitted to the Nebraska Veteran Cemetery System Endowment Fund such that (a) the projected annual earnings from such fund available for transfer to the Nebraska Veteran Cemetery System Operation Fund plus (b) the projected annual value of formal agreements that have been entered into between the state and any political subdivisions or private entities to subsidize or undertake the operation, administration, or maintenance of any of the facilities within the state veteran cemetery system, has a value that is sufficient to fund the operation, administration, and maintenance of any cemetery created pursuant to this subsection.

(6) The director may expend such funds as may be available for any of the purposes authorized in this section.

(7) The director, with the approval of the Governor, may enter into agreements for cemetery construction, administration, operation, or maintenance with qualified persons, political subdivisions, or business entities. The director shall provide lots in the cemetery system for the interment of deceased veterans as defined by the National Cemetery Administration of the United States Department of Veterans Affairs. The director shall provide lots for the interment of those veterans' spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. Section 12-501 does not apply to the state veteran cemetery system.

(8) The Veteran Cemetery Construction Fund is created. 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.

(9) The Nebraska Veterans Cemetery Advisory Board is created. The board shall consist of seven members. One member shall be the director who shall serve as the chairperson of the board. Three members of the board shall be veterans appointed by the Governor from a list of candidates forwarded by the county board of each county within which a state veteran cemetery system facility is located. Three members with experience in cemetery administration or operation, one from each congressional district, shall be appointed by the Governor. The members of the board shall receive no compensation but shall be reimbursed for their actual and necessary expenses in the discharge of their duties as provided in sections 81-1174 to 81-1177. The board shall meet from time to time as requested by the director to review the status of the state veteran cemetery system, to recommend actions to facilitate the development of the system, to assist in fundraising from public or private sources for the construction, operation, administration, and maintenance of the system, and to advise the director on the most appropriate actions for the state to undertake in the development of the system and the priorities for action.

(10) The director may adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include requirements for proof of residency, cost of burial if any, and standards for cemeteries, including decorations and headstones.

Source: Laws 1999, LB 84, § 1; Laws 2004, LB 1231, § 1; Laws 2005, LB 54, § 2; Laws 2005, LB 227, § 1; Laws 2006, LB 996, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 14

STATEWIDE CEMETERY REGISTRY

Section
12-1401. Statewide Cemetery Registry; established and maintained.

12-1401 Statewide Cemetery Registry; established and maintained.

(1) The Nebraska State Historical Society shall establish and maintain the Statewide Cemetery Registry. The registry shall be located in the office of the Nebraska State Historical Society and shall be made available to the public. The purpose of the registry is to provide a central data bank of accurate and current information regarding the location of cemeteries, burial grounds, mausoleums, and columbaria in the state.

(2)(a) Each city, village, township, county, church, fraternal and benevolent society, cemetery district, cemetery association, mausoleum association, and any other person owning, operating, or maintaining a cemetery, pioneer cemetery, abandoned and neglected cemetery, Indian burial ground, mausoleum, or columbarium shall register with the Statewide Cemetery Registry.

(b) Except as provided in subdivision (c) of this subsection, the registration shall include the following:

(i) The location or address of the cemetery, burial ground, mausoleum, or columbarium;

(ii) A plat of the cemetery, burial ground, mausoleum, or columbarium grounds, including any lots, graves, niches, or crypts, if available;

(iii) The name and address of the person or persons representing the entity owning, operating, or maintaining the cemetery, burial ground, mausoleum, or columbarium;

(iv) The inception date of the cemetery, burial ground, mausoleum, or columbarium, if available; and

(v) If the cemetery, burial ground, mausoleum, or columbarium is abandoned, the abandonment date, if available.

(c) The information required in subdivision (b) of this subsection regarding the operation and maintenance of a cemetery, burial ground, mausoleum, or columbarium prior to January 1, 2006, shall be required only if such information is reasonably available to the registering entity.

(d) The entity owning, operating, or maintaining the cemetery, burial ground, mausoleum, or columbarium may include information regarding the history of the operation of the cemetery, burial ground, mausoleum, or columbarium.

(3) The entity owning, operating, or maintaining a registered cemetery, burial ground, mausoleum, or columbarium shall update its entry in the registry every ten years following the initial registration by the entity.

Source: Laws 2005, LB 211, § 11.

CHAPTER 13
CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.
1. Children Born Out of Wedlock. Transferred or Repealed.
2. Community Development. 13-201 to 13-208.
3. Political Subdivisions; Particular Classes and Projects.
   (a) Zoning. 13-301, 13-302.
   (b) Ambulance Service. 13-303.
   (c) Recreational Facilities. 13-304 to 13-307.
   (d) Home-Delivered Meals. 13-308, 13-309.
   (e) Public Works or Improvements. 13-310 to 13-314.
   (f) Publicity Campaigns. 13-315, 13-316.
   (g) Juvenile Emergency Shelter Care. 13-317.
   (h) Public Safety Services. 13-318 to 13-326.
   (i) Extraterritorial Jurisdiction. 13-327, 13-328.
4. Political Subdivisions; Laws Applicable to All. 13-401 to 13-404.
5. Budgets.
   (a) Nebraska Budget Act. 13-501 to 13-515.
   (b) Power Districts and Agencies. 13-516.
   (c) School Districts and Educational Service Units. 13-517.
   (d) Budget Limitations. 13-518 to 13-522.
6. Finances. 13-601 to 13-610.
7. Nebraska Emergency Seat of Local Government Act. 13-701 to 13-706.
8. Interlocal Cooperation Act. 13-801 to 13-827.
9. Political Subdivisions Tort Claims Act. 13-901 to 13-927.
10. Interstate Conservation and Recreational Areas. 13-1001 to 13-1006.
11. Industrial Development.
   (a) Industrial Development Bonds. 13-1101 to 13-1110.
   (b) Industrial Areas. 13-1111 to 13-1121.
12. Nebraska Public Transportation Act. 13-1201 to 13-1214.
13. Public Building Commission. 13-1301 to 13-1312.
14. Boards of Public Docks. 13-1401 to 13-1417.
15. State-Tribal Cooperative Agreements. 13-1501 to 13-1509.
16. Self-Funding Benefits. 13-1601 to 13-1626.
17. Solid Waste Disposal. 13-1701 to 13-1714.
18. Liability for Damages. 13-1801, 13-1802.
19. Development Districts. 13-1901 to 13-1907.
20. Integrated Solid Waste Management. 13-2001 to 13-2043.
21. Enterprise Zones. 13-2101 to 13-2114.
22. Local Government Miscellaneous Expenditures. 13-2201 to 13-2204.
23. Local Government Innovation and Restructuring. Repealed.
24. Retirement Benefits of Transferred Employees. 13-2401.
25. Joint Public Agency Act. 13-2501 to 13-2550.
26. Convention Center Facility Financing Assistance Act. 13-2601 to 13-2612.
27. Local Civic, Cultural, and Convention Center Financing Act. 13-2701 to 13-2710.
28. Municipal Counties. 13-2801 to 13-2819.

ARTICLE 1
CHILDREN BORN OUT OF WEDLOCK

Section
13-101. Transferred to section 43-1401.
13-102. Transferred to section 43-1402.

Section
13-103. Transferred to section 43-1403.
13-104. Transferred to section 43-1404.
13-105. Transferred to section 43-1405.
13-106. Transferred to section 43-1406.
13-107. Transferred to section 43-1407.
13-108. Transferred to section 43-1408.
13-109. Transferred to section 43-1409.
13-110. Transferred to section 43-1410.
13-111. Transferred to section 43-1411.
13-112. Transferred to section 43-1412.
13-113. Repealed. Laws 1984, LB 845, § 35.
13-114. Repealed. Laws 1984, LB 845, § 35.
13-115. Transferred to section 43-1413.
13-116. Repealed. Laws 1984, LB 845, § 35.

13-101 Transferred to section 43-1401.

13-102 Transferred to section 43-1402.

13-103 Transferred to section 43-1403.

13-104 Transferred to section 43-1404.

13-105 Transferred to section 43-1405.

13-106 Transferred to section 43-1406.

13-107 Transferred to section 43-1407.

13-108 Transferred to section 43-1408.

13-109 Transferred to section 43-1409.

13-110 Transferred to section 43-1410.

13-111 Transferred to section 43-1411.

13-112 Transferred to section 43-1412.

13-113 Repealed. Laws 1984, LB 845, § 35.

13-114 Repealed. Laws 1984, LB 845, § 35.

13-115 Transferred to section 43-1413.

13-116 Repealed. Laws 1984, LB 845, § 35.

ARTICLE 2
COMMUNITY DEVELOPMENT

Cross References

Block grants, see section 81-1201.01.
Cities of the primary class, powers and duties, see sections 15-1301 to 15-1307.
Community development investments, see section 8-148.04.
Community Development Law, see section 18-2101.

Section
13-201. Act, how cited.
13-202. Legislative findings.
13-203. Terms, defined.

Section
13-204. Community betterment organization; program; tax credit status.
13-205. Program proposal; local government subdivision; department; review.
13-206. Director; adopt rules and regulations; tax credits.
13-207. Business firm or individual; receive tax credit; maximum amount; when.
13-208. Tax credits; limit.

13-201 Act, how cited.

Sections 13-201 to 13-208 shall be known and may be cited as the Community Development Assistance Act.

Source: Laws 1984, LB 372, § 1.

13-202 Legislative findings.

The Legislature hereby finds that areas of chronic economic distress in the State of Nebraska are a detriment to the economic well-being, health, and safety of the citizens of Nebraska. The Legislature further contends that current governmental solutions have not been able to completely resolve certain problems such as overcrowding, unemployment, and poor health and sanitary conditions in a community which lead to further deterioration. Such problems cannot be remedied by the government alone, but can be alleviated through a partnership between the government and private enterprise. It is therefor declared to be public policy in this state to encourage contributions by business firms and individuals that offer and provide community and neighborhood assistance and community services.

Source: Laws 1984, LB 372, § 2; Laws 2005, LB 334, § 1.

13-203 Terms, defined.

For purposes of the Community Development Assistance Act, unless the context otherwise requires:

(1) Business firm shall mean any business entity, including a corporation, a fiduciary, a sole proprietorship, a partnership, a limited liability company, a corporation having an election in effect under Chapter 1, subchapter S of the Internal Revenue Code, as defined in section 49-801.01, subject to the state income tax imposed by section 77-2715 or 77-2734.02, an insurance company paying premium or related retaliatory taxes in this state pursuant to section 44-150 or 77-908, or a financial institution paying the tax imposed pursuant to sections 77-3801 to 77-3807;

(2) Community services shall mean any type of the following in a community development area: (a) Employment training; (b) human services; (c) medical services; (d) physical facility and neighborhood development services; (e) recreational services or activities; (f) educational services; or (g) crime prevention activities, including, but not limited to, (i) the instruction of any individual in the community development area that enables him or her to acquire vocational skills, (ii) counseling and advice, (iii) emergency services, (iv) community, youth, day care, and senior citizen centers, (v) in-home services, (vi) home improvement services and programs, and (vii) any legal enterprise which aids in the prevention or reduction of crime;

(3) Department shall mean the Department of Economic Development;

(4) Director shall mean the Director of Economic Development;

(5) Community development area shall mean any village, city, county, unincorporated area of a county, or census tract which has been designated by the department as an area of chronic economic distress;

(6) Community assistance shall mean furnishing financial assistance, labor, material, or technical advice to aid in the physical improvement of any part or all of a community development area;

(7) Community betterment organization shall mean (a) any organization performing community services or offering community assistance in a community development area and to which contributions are tax deductible under the provisions of the Internal Revenue Service of the United States Department of the Treasury and (b) a county, city, or village performing community services or offering community assistance in a community development area; and

(8) Area of chronic economic distress shall mean an area of the state which meets any of the following conditions:

(a) An unemployment rate which exceeds the statewide average unemployment rate;

(b) A per capita income below the statewide average per capita income; or

(c) A population loss between the two most recent federal decennial censuses.

Source: Laws 1984, LB 372, § 3; Laws 1985, LB 344, § 1; Laws 1986, LB 1114, § 1; Laws 1987, LB 302, § 1; Laws 1990, LB 1241, § 1; Laws 1991, LB 284, § 1; Laws 1993, LB 121, § 128; Laws 1995, LB 574, § 15; Laws 2001, LB 300, § 2; Laws 2006, LB 1003, § 1.

13-204 Community betterment organization; program; tax credit status.

Any community betterment organization which provides community assistance or community services in a community development area may apply any time during the fiscal year to the department to have one or more programs certified for tax credit status as provided in sections 13-205 to 13-208. The proposal shall set forth the program to be conducted, the community development area, the estimated amount to be required for completion of the program or the annual estimated amount required for an ongoing program, the plans for implementing the program, and the amount of contributions committed or anticipated for such activities or services.

Source: Laws 1984, LB 372, § 4; Laws 1991, LB 284, § 2; Laws 2005, LB 334, § 2.

13-205 Program proposal; local government subdivision; department; review.

If the subdivision of local government has adopted a community development plan for an area which includes the area in which the community betterment organization is providing community assistance or community services, the organization shall submit a copy of the program proposal to the chief executive officer of such subdivision. If the program proposal is consistent with the adopted community development plan, the chief executive officer shall so certify to the department for the department's approval or disapproval. If the program proposal is not consistent with the adopted community development plan of the local subdivision, the chief executive officer shall so indicate and the proposal shall not be approved by the department. If the proposed activities are

consistent with the adopted community development plan, but for other reasons they are not viewed as appropriate by the local subdivision, the chief executive officer shall so indicate and the department shall review the program proposal and approve or disapprove it. The local subdivision shall review the proposal within forty-five days from the date of receipt for review. If the subdivision does not issue its finding concerning the proposal within forty-five days after receipt, the proposal shall be deemed approved. The department shall approve or disapprove a program proposal submitted pursuant to section 13-204 within forty-five days of receipt by the department.

Source: Laws 1984, LB 372, § 5; Laws 1991, LB 284, § 3.

13-206 Director; adopt rules and regulations; tax credits.

(1) The director shall adopt and promulgate rules and regulations for the approval or disapproval of the program proposals submitted pursuant to section 13-205 taking into account the economic need level and the geographic distribution of the population of the community development area. The director shall also adopt and promulgate rules and regulations concerning the amount of the tax credit for which a program shall be certified. The tax credits shall be available for contributions to a certified program which may qualify as a charitable contribution deduction on the federal income tax return filed by the business firm or individual making such contribution. The decision of the department to approve or disapprove all or any portion of a proposal shall be in writing. If the proposal is approved, the maximum tax credit allowance for the certified program shall be stated along with the approval. The maximum tax credit allowance approved by the department shall be final for the fiscal year in which the program is certified. A copy of all decisions shall be transmitted to the Tax Commissioner. A copy of all credits allowed to business firms under sections 44-150 and 77-908 shall be transmitted to the Director of Insurance.

(2) For all business firms and individuals eligible for the credit allowed by section 13-207, except for insurance companies paying premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908, the Tax Commissioner shall provide for the manner in which the credit allowed by section 13-207 shall be taken and the forms on which such credit shall be allowed. The Tax Commissioner shall adopt and promulgate rules and regulations for the method of providing tax credits. The Director of Insurance shall provide for the manner in which the credit allowed by section 13-207 to insurance companies paying premium and related retaliatory taxes in this state pursuant to sections 44-150 and 77-908 shall be taken and the forms on which such credit shall be allowed. The Director of Insurance shall adopt and promulgate rules and regulations for the method of providing the tax credit. The Tax Commissioner shall allow against any income tax due from the insurance companies paying premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908 a credit for the credit provided by section 13-207 and allowed by the Director of Insurance.

Source: Laws 1984, LB 372, § 6; Laws 1986, LB 1114, § 2; Laws 1987, LB 302, § 2; Laws 1990, LB 1241, § 2; Laws 2001, LB 300, § 3; Laws 2005, LB 334, § 3.

13-207 Business firm or individual; receive tax credit; maximum amount; when.

(1) Any business firm or individual which plans to or which has contributed to a certified program of a community betterment organization may apply to the department for authorization for a tax credit for the contribution to the certified program in an amount up to but not exceeding the maximum tax credit allowed by the department. The maximum tax credit allowed by the department for each approved business firm or individual shall be in an amount which does not exceed forty percent of the total amount contributed by the business firm or individual during its taxable year to any programs certified pursuant to section 13-205. The director shall send a copy of the approved application which includes the amount of the tax credit to be allowed and a certification by the department that the contribution has been paid as proposed by the business firm or individual to the Tax Commissioner who shall grant a tax credit against any tax due under sections 77-2715, 77-2734.02, and 77-3801 to 77-3807 and to the Director of Insurance who shall grant a tax credit against any premium and related retaliatory taxes due under sections 44-150 and 77-908.

(2) No tax credit shall be granted to any business firm or individual in this state pursuant to the Community Development Assistance Act for activities that are a part of its normal course of business. Any tax credit balance may be carried over and applied against the business firm's or individual's tax liability for the next five years immediately succeeding the tax year in which the credit was first allowed.

Source: Laws 1984, LB 372, § 7; Laws 1985, LB 344, § 2; Laws 1986, LB 1114, § 3; Laws 1987, LB 302, § 3; Laws 1990, LB 1241, § 3; Laws 2001, LB 300, § 4; Laws 2005, LB 334, § 4.

13-208 Tax credits; limit.

The total amount of tax credit granted for programs approved and certified under the Community Development Assistance Act by the department for any fiscal year shall not exceed three hundred fifty thousand dollars.

Source: Laws 1984, LB 372, § 8; Laws 2005, LB 334, § 5.

ARTICLE 3

POLITICAL SUBDIVISIONS; PARTICULAR CLASSES AND PROJECTS

(a) ZONING

Section
13-301. Counties containing city of first class; comprehensive development plan; encouraged to prepare; enforcement.
13-302. County and city of metropolitan or primary class; assistance to enforce zoning and subdivision regulations; assess cost.

(b) AMBULANCE SERVICE

13-303. Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.

(c) RECREATIONAL FACILITIES

13-304. Recreational facilities; authorization; tax levy.
13-305. Cities, villages, school districts, and counties; joint facilities; powers.
13-306. Joint facilities; employees; park board; appointment; bonds; election; issuance.
13-307. Joint facilities; bonds; authority of county board; eminent domain; powers.

Section

(d) HOME-DELIVERED MEALS

13-308. Municipal corporations; powers.
13-309. Municipal corporation, defined.

(e) PUBLIC WORKS OR IMPROVEMENTS

13-310. Formation of subdivision or district; special assessment; notice; copy to nonresident property owners.
13-311. Formation of district; mailing of notice; requirements.
13-312. Special assessment; mailing of notice; requirements.
13-313. Failure to mail copy of published notice; assessment invalidated.
13-314. Nonresident property owner, defined.

(f) PUBLICITY CAMPAIGNS

13-315. Appropriation or expenditure; purposes; method; limitation.
13-316. Expenditure; inclusion in budget.

(g) JUVENILE EMERGENCY SHELTER CARE

13-317. Juvenile emergency shelter care; contracts authorized.

(h) PUBLIC SAFETY SERVICES

13-318. Public safety services; joint financing and operation; public safety commission; members; powers and duties.
13-319. County; sales and use tax authorized; limitation; election.
13-320. Repealed. Laws 1997, LB 269, § 80.
13-321. Repealed. Laws 1997, LB 269, § 80.
13-322. Submission of question to voters; ballot language; procedure.
13-323. Submission of question to voters; notice.
13-324. Tax Commissioner; powers and duties; beginning and termination of taxation; procedure; notice; administrative fee; illegal assessment and collection; remedies.
13-325. County sales and use tax; distribution.
13-326. County sales and use tax; laws governing; source of sales.

(i) EXTRATERRITORIAL JURISDICTION

13-327. County; cede jurisdiction; when; procedure.
13-328. County; cede jurisdiction; limitation.

(a) ZONING

13-301 Counties containing city of first class; comprehensive development plan; encouraged to prepare; enforcement.

Since counties containing larger municipalities are typically experiencing population and economic growth which promotes increased urban and rural land-use conflicts, the county government of a county that contains some or all portions of a city of the first class is strongly encouraged to prepare a comprehensive development plan that meets the requirements of section 23-114.02, adopt zoning and subdivision regulations covering all portions of its regulatory jurisdiction, and begin an organized and staffed program to enforce such zoning and subdivision regulations.

Source: Laws 1975, LB 317, § 2; Laws 1978, LB 186, § 13; Laws 1979, LB 412, § 22; R.S.1943, (1981), § 84-152; Laws 1985, LB 421, § 3.

13-302 County and city of metropolitan or primary class; assistance to enforce zoning and subdivision regulations; assess cost.

Effective July 1, 1976, a county government, city of the metropolitan class, or city of the primary class that is enforcing zoning and subdivision regulations shall, upon request, provide either directly or through an intergovernmental program all the necessary services and staff to assist villages and cities of the second class that are located wholly or partially within the county with the enforcement of their individual zoning and subdivision regulations, and such assistance may, at the option of the county, city of the metropolitan class, or city of the primary class, also be rendered to cities of the first class upon request. The county or municipality may assess the full costs of such assistance to a municipality served. The county or municipality providing the service may require a one-year notice before beginning or terminating such services.

Source: Laws 1975, LB 317, § 3; Laws 1979, LB 412, § 23; R.S.1943, (1981), § 84-153; Laws 1985, LB 421, § 4.

(b) AMBULANCE SERVICE

13-303 Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.

The county boards of counties and the governing bodies of cities and villages may establish an emergency medical service, including the provision of scheduled and unscheduled ambulance service, as a governmental service either within or without the county or municipality, as the case may be. The county board or governing body may contract with any city, person, firm, or corporation licensed as an emergency medical service for emergency medical care by out-of-hospital emergency care providers. Each may enter into an agreement with the other under the Interlocal Cooperation Act or Joint Public Agency Act for the purpose of establishing an emergency medical service or may provide a separate service for itself. Public funds may be expended therefor, and a reasonable service fee may be charged to the user. Before any such service is established under the authority of this section, the county board or the governing bodies of cities and villages shall hold a public hearing after giving at least ten days' notice thereof, which notice shall include a brief summary of the general plan for establishing such service, including an estimate of the initial cost and the possible continuing cost of operating such service. If the board or governing body after such hearing determines that an emergency medical service for emergency medical care by out-of-hospital emergency care providers is needed, it may proceed as authorized in this section. The authority granted in this section shall be cumulative and supplementary to any existing powers heretofore granted. Any county board of counties and the governing bodies of cities and villages may pay their cost for such service out of available general funds or may levy a tax for the purpose of providing the service, which levy shall be in addition to all other taxes and shall be in addition to restrictions on the levy of taxes provided by statute, except that when a fire district provides the service the county shall pay the cost for the county service by levying a tax on that property not in a fire district providing the service. The levy shall be subject to section 77-3443.

Source: Laws 1967, c. 111, § 1, p. 359; Laws 1973, LB 239, § 1; Laws 1978, LB 560, § 2; R.S.1943, (1983), § 23-378; Laws 1996, LB 1114, § 25; Laws 1997, LB 138, § 31; Laws 1999, LB 87, § 51; Laws 2001, LB 808, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

(c) RECREATIONAL FACILITIES

13-304 Recreational facilities; authorization; tax levy.

Any city, village, school district, township, or county shall have the power to join with any other political or governmental subdivision, with any agency or public corporation, whether federal, state, or local, or with any number or combinations thereof by contract or otherwise in the joint ownership, operation, or performance of any property, facility, power, or function or in agreements containing the provisions that one or more thereof operate or perform for the other or others, this power as set forth in this section to be only for the express purpose of acquiring, holding, improving, and operating any park, playground, swimming pool, recreation center, or other recreational use or facility. Each such political or governmental subdivision shall also individually have power to acquire, hold, improve, and operate any park, playground, swimming pool, recreation center, or other recreational use or facility. For the exercise of the powers set forth in this section, each such political or governmental subdivision shall have the power to levy a tax, to be known as a park and recreation tax, upon all the taxable property in its jurisdiction. This levy may be accumulated as a sinking fund from fiscal year to fiscal year to provide funds for the purpose of acquisition, holding, improvement, and operation of any park, playground, swimming pool, recreation center, or other recreational use or facility.

Source: Laws 1963, c. 481, § 1, p. 1549; Laws 1969, c. 86, § 8, p. 434; R.S.1943, (1983), § 23-820; Laws 1992, LB 719A, § 29.

City may join with airport authority in acquisition of property for a park. Bowley v. City of Omaha, 181 Neb. 515, 149 N.W.2d 417 (1967).

13-305 Cities, villages, school districts, and counties; joint facilities; powers.

For the specific purposes set forth in section 13-304, any city, village, school district or county shall have the power to receive (1) any grant or devise of real estate, (2) any grant or gift or bequest of money or other personal property, and (3) any other donation in trust or otherwise.

Source: Laws 1963, c. 481, § 2, p. 1550; R.S.1943, (1983), § 23-821.

City may acquire real estate for park purposes by gift. Bowley v. City of Omaha, 181 Neb. 515, 149 N.W.2d 417 (1967).

13-306 Joint facilities; employees; park board; appointment; bonds; election; issuance.

To carry out the purposes set forth in section 13-304, the county board of any county is authorized to hire such employees as it deems necessary, and to appoint a park and recreation board of not less than three members to serve without compensation and to issue bonds for such purposes; *Provided*, that no such bonds shall be issued until the question of issuing the same shall have been submitted to the electors of the county at a general election therein, or at a special election called 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 county. Such bonds shall be payable in not less than five nor more than twenty years from the date of issuance thereof, and shall bear interest not exceeding the rate of six percent per annum, payable annually, with interest coupons attached to the bonds.

Whenever five percent of the registered voters voting in the county at the last general election and residing in such county shall file a petition in the office of the county clerk of such county requesting the county board of such county to submit the question of issuing bonds to the electors at the next general election or at a special election; or to submit to such electors the question of levying a park and recreation tax, as authorized by section 13-304, or both such questions, the county clerk shall determine and certify whether such petition has been signed by at least five percent of the registered voters voting in the county in the last general election, and who appear to reside in such county. He shall then present such petition to the county board at its next regular meeting. The county board shall thereupon cause such question of the issuance of bonds or levying such tax or both such questions, according to such petition, to be submitted to the electors of such county at the next general election, or special election called for such purpose if requested in such petition.

Source: Laws 1969, c. 86, § 9, p. 435; Laws 1971, LB 557, § 1; R.S.1943, (1983), § 23-822.

13-307 Joint facilities; bonds; authority of county board; eminent domain; powers.

If a majority of the electors voting thereon vote in favor of such question or questions submitted, such county board shall proceed accordingly.

To acquire property for the purposes set forth in section 13-304, each county shall have the power of eminent domain which shall be exercised by the county board of each county in the manner provided in sections 76-704 to 76-724.

Source: Laws 1971, LB 557, § 2; R.S.1943, (1983), § 23-823.

(d) HOME-DELIVERED MEALS

13-308 Municipal corporations; powers.

Any municipal corporation may contract with any person and provide funds for home-delivered meals for the elderly and retired senior volunteer programs.

Source: Laws 1975, LB 307, § 1; R.S.1943, (1983), § 18-1730.

13-309 Municipal corporation, defined.

For purposes of sections 13-308 and 13-309, municipal corporation shall mean any county, township, city, or village, whether organized and existing under direct provisions of the Constitution of Nebraska or statutes of this state, or by virtue of charters or other corporate articles or instruments executed under authority of the Constitution or statutes of this state.

Source: Laws 1975, LB 307, § 2; R.S.1943, (1983), § 18-1731.

(e) PUBLIC WORKS OR IMPROVEMENTS

13-310 Formation of subdivision or district; special assessment; notice; copy to nonresident property owners.

Before any political subdivision, except any city of the metropolitan class, or special taxing district for public works or public improvements shall be formed, and before any political subdivision or special taxing district, excepting any city of the metropolitan class and school districts, may impose any special assessment for public works or public improvements, a copy of any notice required to be published by law shall be mailed to the last-known address of all nonresident property owners as shown on the current tax rolls at the time such notice is first published.

Source: Laws 1973, LB 344, § 1; Laws 1974, LB 655, § 1; R.S.1943, (1983), § 18-1216.

13-311 Formation of district; mailing of notice; requirements.

The county clerk, city clerk, clerk of any political subdivision, except any city of the metropolitan class, or any other person upon whom the duty is imposed by law to publish notice required by law in regard to the formation of a special taxing district for public works or public improvements shall mail by certified mail with return receipt requested a copy of the published notice in regard to the formation of any special taxing district within the county, city, or other political subdivision, except any city of the metropolitan class, to the last-known address as shown on the current tax rolls of each nonresident property owner.

Source: Laws 1973, LB 344, § 2; Laws 1974, LB 655, § 2; R.S.1943, (1983), § 18-1217.

13-312 Special assessment; mailing of notice; requirements.

The county clerk, city clerk, clerk of any political subdivision, except any city of the metropolitan class, or any other person upon whom the duty is imposed by law to publish notice required by law in regard to any special assessment by a special taxing district shall mail by certified mail with return receipt requested a copy of such notice to be published to the last-known address as shown on the current tax rolls of each nonresident property owner.

Source: Laws 1973, LB 344, § 3; Laws 1974, LB 655, § 3; R.S.1943, (1983), § 18-1218.

13-313 Failure to mail copy of published notice; assessment invalidated.

The failure of any county clerk, city clerk, clerk of a political subdivision, except any city of the metropolitan class, or any other person upon whom the duty is imposed by law to mail a copy of a published notice as provided in sections 13-310 to 13-314 shall invalidate the assessment against the property involved while permitting all other assessments and procedures to be lawful.

Source: Laws 1973, LB 344, § 4; Laws 1974, LB 655, § 4; R.S.1943, (1983), § 18-1219.

13-314 Nonresident property owner, defined.

The term nonresident property owner as used in sections 13-310 to 13-314 shall mean any person or corporation whose residence and mailing address as

shown on the current tax rolls is outside the boundaries of the county and who is a record owner of property within the boundaries of the political subdivision, except any city of the metropolitan class, special assessment district, or taxing district involved.

Source: Laws 1973, LB 344, § 5; Laws 1974, LB 655, § 5; R.S.1943, (1983), § 18-1220.

(f) PUBLICITY CAMPAIGNS

13-315 Appropriation or expenditure; purposes; method; limitation.

The city commissioners or council of any city, the board of trustees of any village, and the county board of any county in the state shall have the power to appropriate or expend annually from the general funds or from revenue received from any proprietary functions of their respective political subdivision an amount not to exceed four-tenths of one percent of the taxable valuation of the city, village, or county for the purpose of encouraging immigration, new industries, and investment and to conduct and carry on a publicity campaign, including a publicity campaign conducted for the purpose of acquiring from any source a municipal electrical distribution system or exploiting and advertising the various agricultural, horticultural, manufacturing, commercial, and other resources, including utility services, of the city, village, or county. Such sum may be expended directly by the city, village, or county or may be paid to the chamber of commerce or other commercial organization or a similar county organization or multicounty organization or local development corporation to be expended for the purposes enumerated in this section under the direction of the board of directors of the organization. The total amount levied including the appropriation or expenditure made under this section shall not exceed the amount limited by law.

Source: Laws 1921, c. 187, § 1, p. 699; C.S.1922, § 4392; C.S.1929, § 18-1201; R.S.1943, § 18-1401; Laws 1969, c. 103, § 1, p. 478; Laws 1972, LB 1261, § 1; Laws 1979, LB 187, § 75; Laws 1980, LB 599, § 5; R.S.1943, (1983), § 18-1401; Laws 1991, LB 840, § 24; Laws 1992, LB 719A, § 30.

Provisions under this section for expenditure of tax money and income from proprietary functions for purchase by a municipality or a county of property for industrial development violate the Constitution, but the provisions of expenditures for other purposes by a municipality or county itself or through private organizations are constitutional. Chase v. County of Douglas, 195 Neb. 838, 241 N.W.2d 334 (1976).

13-316 Expenditure; inclusion in budget.

The amount to be expended for the ensuing year or biennial period shall be fixed at the time of making up the annual or biennial budget required by law, and the same shall be included in the budget.

Source: Laws 1921, c. 187, § 2, p. 700; C.S.1922, § 4393; C.S.1929, § 18-1202; R.S.1943, (1983), § 18-1402; Laws 2000, LB 1116, § 5.

(g) JUVENILE EMERGENCY SHELTER CARE

13-317 Juvenile emergency shelter care; contracts authorized.

Any municipal corporation may contract with any person and provide funds for juvenile emergency shelter care. For purposes of this section:

(1) Juvenile emergency shelter care shall mean temporary twenty-four-hour physical care and supervision in crisis situations and at times when an appropriate foster care resource is not available to persons eighteen years of age or younger; and

(2) Municipal corporation shall be as defined in section 13-309.

Source: Laws 1993, LB 526, § 1.

(h) PUBLIC SAFETY SERVICES

13-318 Public safety services; joint financing and operation; public safety commission; members; powers and duties.

(1) Any county and any municipalities and fire protection districts within the county may provide for the joint financing and operation of public safety services pursuant to an agreement under the Interlocal Cooperation Act or Joint Public Agency Act.

(2) Joint public safety services shall be operated by a public safety commission consisting of at least three members who represent the county and the participating municipalities and fire protection districts as provided in the agreement. Only elected officials are eligible to serve on the commission. In counties with more than one hundred thousand inhabitants, the county and participating municipalities and fire protection districts may appoint a separate fire protection and emergency services commission of at least three members to operate or coordinate fire protection or emergency services in the county and participating municipalities and fire protection districts. If the public safety services to be provided include fire protection, at least one representative of each fire protection district shall be a member of the commission. The commission may employ officers and other employees necessary to carry out its duties and responsibilities for public safety services or fire protection or emergency services and may enter into contracts, acquire and dispose of property, and receive funds appropriated to it by the county and any participating municipality or fire protection district, granted or appropriated to it by the state or federal government or an agency thereof, given to it by any individual, or collected from the sales and use tax authorized by section 13-319. If fire protection services or emergency services are to be provided, the commission shall appoint an individual trained in fire protection or emergency services with at least five years of experience in providing such services who shall coordinate fire protection and financing of the services in the county. The individual shall serve at the pleasure of the commission. The commission shall have other powers as are granted to the county and any of the participating municipalities or fire protection districts acting independently except as limited by the agreement.

Source: Laws 1996, LB 1177, § 5; Laws 1997, LB 269, § 7; Laws 1999, LB 87, § 52.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

13-319 County; sales and use tax authorized; limitation; election.

Any county by resolution of the governing body may impose a sales and use tax of one-half percent, one percent, or one and one-half percent upon the same

transactions sourced as provided in sections 77-2703.01 to 77-2703.04 within the county, but outside any incorporated municipality which has adopted a local sales tax pursuant to section 77-27,142, on which the state is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. Any sales and use tax imposed pursuant to this section must be used to finance public services provided by a public safety commission or to provide the county share of funds required under any other agreement executed under the Interlocal Cooperation Act or Joint Public Agency Act. A sales and use tax shall not be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved the tax pursuant to sections 13-322 and 13-323.

Source: Laws 1996, LB 1177, § 6; Laws 1999, LB 87, § 53; Laws 2003, LB 282, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Revenue Act of 1967, see section 77-2701.

13-320 Repealed. Laws 1997, LB 269, § 80.

13-321 Repealed. Laws 1997, LB 269, § 80.

13-322 Submission of question to voters; ballot language; procedure.

The powers granted by section 13-319 shall not be exercised unless and until the question has been submitted at a primary, general, or special election held within the area which would be subject to the tax and in which all registered voters are entitled to vote on such question. The officials of the incorporated municipality or county shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk. The question may include any terms and conditions set forth in the resolution proposing the tax, such as a termination date or the specific public safety service for which the revenue received from the tax will be allocated, and shall include the following language: Shall the county impose a sales and use tax upon the same transactions within the county, other than in municipalities which impose a local option sales tax, on which the State of Nebraska is authorized to impose a tax to finance public safety services? If a majority of the votes cast upon the question are in favor of the tax, the governing body may impose the tax. If a majority of those voting on the question are opposed to the tax, the governing body shall not impose the tax. Any election under this section shall be conducted in accordance with the procedures provided in the Election Act.

Source: Laws 1996, LB 1177, § 9; Laws 1997, LB 269, § 8.

Cross References

Election Act, see section 32-101.

13-323 Submission of question to voters; notice.

The election commissioner or county clerk shall give notice of the submission of the question of imposing a tax under section 13-319 not more than thirty days nor less than ten days before the election, by publication one time in one or more newspapers published in or of general circulation in the municipality

or county in which the question is to be submitted. This notice is in addition to any other notice required under the Election Act.

Source: Laws 1996, LB 1177, § 10; Laws 1997, LB 269, § 9.

Cross References

Election Act, see section 32-101.

13-324 Tax Commissioner; powers and duties; beginning and termination of taxation; procedure; notice; administrative fee; illegal assessment and collection; remedies.

(1) The Tax Commissioner shall administer all sales and use taxes adopted under section 13-319. The Tax Commissioner may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the Nebraska Revenue Act of 1967, as amended, for the making of returns and for the ascertainment, assessment, and collection of taxes. The county shall furnish a certified copy of the adopting or repealing resolution to the Tax Commissioner in accordance with such rules and regulations. The tax shall begin the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the adopted resolution. The Tax Commissioner shall provide at least sixty days' notice of the adoption of the tax or a change in the rate to retailers. Notice shall be provided to retailers within the county. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For resolutions containing a termination date, the termination date is the first day of a calendar quarter. The county shall furnish a certified statement to the Tax Commissioner no more than one hundred eighty days and at least one hundred twenty days before the termination date that the termination date stated in the resolution is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the resolution. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the county. Notice to retailers may be provided through the web site of the department or other electronic means.

(3) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee.

(4) The Tax Commissioner shall collect the sales and use tax concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the counties imposing the tax, after deducting the amount of refunds made and three percent of the remainder as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident thereto. The Tax Commissioner shall keep full and accurate records of all money received and distributed. All receipts from the three-percent administrative fee shall be deposited in the state General Fund.

(5) Upon any claim of illegal assessment and collection, the taxpayer has the same remedies provided for claims of illegal assessment and collection of the state tax. It is the intention of the Legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected apply to the recovery of sales and use taxes illegally assessed and collected under section 13-319.

(6) Boundary changes or the adoption of a sales and use tax by an incorporated municipality that affects any tax imposed by this section shall be governed as provided in subsections (3) through (10) of section 77-27,143.

Source: Laws 1996, LB 1177, § 11; Laws 2003, LB 282, § 3; Laws 2003, LB 381, § 1; Laws 2005, LB 274, § 221; Laws 2006, LB 887, § 1.

Cross References

Motor Vehicle Registration Act, see section 60-301.
Nebraska Revenue Act of 1967, see section 77-2701.

13-325 County sales and use tax; distribution.

The proceeds of the sales and use tax imposed by a county under section 13-319 shall be distributed to the county for deposit in its general fund.

Source: Laws 1996, LB 1177, § 12.

13-326 County sales and use tax; laws governing; source of sales.

(1) All relevant provisions of the Nebraska Revenue Act of 1967, as amended, not inconsistent with sections 13-319, 13-324, and 13-325, shall govern transactions, proceedings, and activities pursuant to any sales and use tax imposed by a county.

(2) For the purposes of the sales and use tax imposed by a county, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, are sourced as provided in sections 77-2703.01 to 77-2703.04.

Source: Laws 1996, LB 1177, § 13; Laws 1999, LB 34, § 1; Laws 2002, LB 947, § 2; Laws 2003, LB 282, § 4.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

(i) EXTRATERRITORIAL JURISDICTION

13-327 County; cede jurisdiction; when; procedure.

(1) The governing body of any city of the first class or city of the second class may, by majority vote of its members, request that the county board formally cede and transfer to the city extraterritorial jurisdiction over land outside the area extending two miles from the corporate boundaries of a city of the first class and one mile from the corporate boundaries of a city of the second class. In making its request, the city shall describe the territory over which jurisdiction is being sought by metes and bounds or by reference to an official map.

(2) Unless prohibited pursuant to section 13-328, the county board may, by majority vote of its members, grant the request with regard to some or all of the requested territory if:

(a) The county has formally adopted a comprehensive development plan and zoning resolution pursuant to section 23-114 not less than two years immediately preceding the date of the city's request;

(b) The city, on the date of the request, is exercising extraterritorial jurisdiction over territory within the boundaries of the county;

(c) The requested territory is within the projected growth pattern of the city and would be within the city's extraterritorial jurisdiction by reason of annexation within a reasonable period of years;

(d) Not more than a total of twenty-five percent of the territory of the county located outside the corporate boundaries of any city within the county shall be ceded to the jurisdiction of one city within ten years after the date upon which the initial request for the cession of territory to the city was approved by the governing body of the city; and

(e) No portion of the territory ceded to the city's jurisdiction by the county lies within an area extending one-half mile from the extraterritorial jurisdiction of any other city of the first or second class or village on the date the request is approved by the governing body of the city.

(3) If the county board approves the cession and transfer of extraterritorial jurisdiction to a city pursuant to this section, such transfer shall take effect on the effective date of the ordinance as provided for in subsection (1) of section 16-902 in the case of a city of the first class or as provided for in subsection (1) of section 17-1002 in the case of a city of the second class. Upon the effective date of such transfer, the transferred jurisdiction shall be treated for all purposes as if such land were located within two miles of the corporate boundaries of a city of the first class or within one mile of the corporate boundaries of a city of the second class.

Source: Laws 2002, LB 729, § 1.

13-328 County; cede jurisdiction; limitation.

A county which encompasses a city of the metropolitan class or city of the primary class shall not cede or transfer extraterritorial jurisdiction over land to a city of the first class or city of the second class if, on the date the county receives a request pursuant to subsection (1) of section 13-327, such land lies within the area extending three miles from the extraterritorial jurisdiction boundaries of such city of the metropolitan class or city of the primary class.

Source: Laws 2002, LB 729, § 2.

ARTICLE 4

POLITICAL SUBDIVISIONS; LAWS APPLICABLE TO ALL

Section
13-401. Members and employees; personal liability insurance; authorized.
13-402. Political subdivisions, state agency; authorized to file petition in United States Bankruptcy Court.
13-403. Real property; purchase, lease-purchase, or acquisition; appraisal required.
13-404. Civil offices; vacancy; how filled.

13-401 Members and employees; personal liability insurance; authorized.

The governing board of any political subdivision in the State of Nebraska, may provide its members and employees of the political subdivision, either collectively or individually, with personal liability insurance coverage insuring against any liability and claim arising by reason of any act or omission in any manner relating to the performance, attempted performance, or failure of

performance of official duties as such member or employee, and may authorize the payment of the premium, cost, and expense of such insurance from the general fund of such political subdivision.

Source: Laws 1973, LB 339, § 1; R.S.1943, (1983), § 23-175.01.

13-402 Political subdivisions, state agency; authorized to file petition in United States Bankruptcy Court.

Any county, city, village, school district, agency of the state government, drainage district, sanitary and improvement district, or other political subdivision of the State of Nebraska is hereby permitted, authorized, and given the power to file a petition in the United States Bankruptcy Court under 11 U.S.C. chapter 9 and any acts amendatory thereto and supplementary thereof and to incur and pay the expenses incident to the consummation of a plan of adjustment of debts as contemplated by such petition.

Source: Laws 1981, LB 327, § 2; R.S.1943, (1986), § 77-2419; Laws 1989, LB 14, § 1.

13-403 Real property; purchase, lease-purchase, or acquisition; appraisal required.

Notwithstanding any other provision of law, no political subdivision shall purchase, lease-purchase, or acquire for consideration real property having an estimated value of one hundred thousand dollars or more unless an appraisal of such property has been performed by a certified real property appraiser.

Source: Laws 1994, LB 681, § 1; Laws 2006, LB 778, § 3.

13-404 Civil offices; vacancy; how filled.

Every civil office in a political subdivision filled by appointment shall be vacant upon the happening of any one of the events listed in section 32-560 except as provided in section 32-561. The resignation of the incumbent of such a civil office may be made as provided in section 32-562. Vacancies in such a civil office shall be filled as provided in section 32-567 and shall be subject to section 32-563.

Source: Laws 1994, LB 76, § 468.

ARTICLE 5

BUDGETS

(a) NEBRASKA BUDGET ACT

Section
13-501. Act, how cited.
13-502. Purpose of act; applicability.
13-503. Terms, defined.
13-504. Proposed budget statement; contents; corrections; cash reserve; limitation.
13-504.01. Repealed. Laws 2002, LB 568, § 15.
13-505. Proposed budget statement; estimated expenditures; unencumbered balances; estimated income.
13-506. Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor.
13-507. Levy increase; indicate on budget statement.
13-508. Adopted budget statement; final adjusted valuation; levy.
13-509. County assessor; certify taxable value; when.
13-509.01. Cash balance; expenditure authorized; limitation.

(a) NEBRASKA BUDGET ACT

13-501 Act, how cited.

Sections 13-501 to 13-513 shall be known and may be cited as the Nebraska Budget Act.

Source: Laws 1969, c. 145, § 50, p. 701; R.S.1943, (1983), § 23-933; Laws 1992, LB 1063, § 2; Laws 1992, Second Spec. Sess., LB 1, § 2; Laws 1993, LB 310, § 1; Laws 1993, LB 734, § 15; Laws 1994, LB 1257, § 2; Laws 1996, LB 900, § 1017; Laws 1997, LB 250, § 1; Laws 1997, LB 397, § 1; Laws 1999, LB 86, § 2; Laws 2000, LB 968, § 2; Laws 2004, LB 939, § 1.

Cross References

For applicability to school districts and educational service units, see section 13-517.

13-502 Purpose of act; applicability.

(1) The purpose of the Nebraska Budget Act is to require governing bodies of this state to which the act applies to follow prescribed budget practices and procedures and make available to the public pertinent information pertaining to the financial requirements and expectations of such governing bodies so that intelligent and informed support, opposition, criticism, suggestions, or observations can be made by those affected.

(2) The act shall not apply to governing bodies which have a budget of less than five thousand dollars per year.

(3) The act shall not apply to proprietary functions of municipalities for which a separate budget has been approved by the city council or village board as provided in the Municipal Proprietary Function Act.

(4) The Nebraska Budget Act shall not apply to any governing body for any fiscal year in which the governing body will not have a property tax request or receive state aid as defined in section 13-518.

(5) The act shall not apply to any public power district or public power and irrigation district organized pursuant to Chapter 70, article 6, to any rural power district organized pursuant to Chapter 70, article 8, or to any agency created pursuant to sections 18-2426 to 18-2434.

Source: Laws 1969, c. 145, § 1, p. 669; Laws 1971, LB 157, § 1; R.S.1943, (1983), § 23-921; Laws 1991, LB 15, § 5; Laws 1993, LB 734, § 16; Laws 2000, LB 968, § 3; Laws 2000, LB 1279, § 1.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

A budget of an airport authority adopted without full compliance with the requirements of the Nebraska Budget Act is void and may be set aside. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-503 Terms, defined.

For purposes of the Nebraska Budget Act, unless the context otherwise requires:

(1) Governing body shall mean the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, learning community, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, offstreet parking district, transit authority, metropolitan utilities district, Educational Service Unit Coordinating Council, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;

(2) Levying board shall mean any governing body which has the power or duty to levy a tax;

(3) Fiscal year shall mean the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax shall mean any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;

(5) Auditor shall mean the Auditor of Public Accounts;

(6) Cash reserve shall mean funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;

(7) Public funds shall mean all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;

(8) Adopted budget statement shall mean a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;

(9) Special reserve fund shall mean any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, (f) statutorily authorized sinking funds, or (g) the distribution of property tax receipts by a learning community to member school districts shall be considered special reserve funds;

(10) Biennial period shall mean the two fiscal years comprising a biennium commencing in odd-numbered years used by a city in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget shall mean a budget by a city of the primary or metropolitan class that adopts a charter provision providing for a biennial period to determine and carry on the city's financial and taxing affairs.

Source: Laws 1969, c. 145, § 2, p. 669; Laws 1972, LB 537, § 1; Laws 1977, LB 510, § 6; R.S.1943, (1987), § 23-922; Laws 1988, LB 802, § 2; Laws 1992, LB 1063, § 3; Laws 1992, Second Spec. Sess., LB 1, § 3; Laws 1993, LB 734, § 17; Laws 1994, LB 1257, § 3; Laws 1996, LB 299, § 10; Laws 1997, LB 250, § 2; Laws 1999, LB 437, § 25; Laws 2000, LB 968, § 4; Laws 2000, LB 1116, § 6; Laws 2001, LB 142, § 25; Laws 2003, LB 607, § 1; Laws 2006, LB 1024, § 1; Laws 2007, LB603, § 1.

Cross References

Joint Airport Authorities Act, see section 3-716.
Local Option Municipal Economic Development Act, see section 18-2701.
Nebraska County and City Lottery Act, see section 9-601.
Political Subdivisions Self-Funding Benefits Act, see section 13-1601.

13-504 Proposed budget statement; contents; corrections; cash reserve; limitation.

(1) Each governing body shall annually prepare a proposed budget statement on forms prescribed and furnished by the auditor. The proposed budget statement shall be made available to the public by the political subdivision prior to publication of the notice of the hearing on the proposed budget statement pursuant to section 13-506. A proposed budget statement shall contain the following information, except as provided by state law:

(a) For the immediately preceding fiscal year, the revenue from all sources, including motor vehicle taxes, other than revenue received from personal and real property taxation, allocated to the funds and separately stated as to each

such source: The unencumbered cash balance at the beginning and end of the year; the amount received by taxation of personal and real property; and the amount of actual expenditures;

(b) For the current fiscal year, actual and estimated revenue from all sources, including motor vehicle taxes, allocated to the funds and separately stated as to each such source: The actual unencumbered cash balance available at the beginning of the year; the amount received from personal and real property taxation; and the amount of actual and estimated expenditures, whichever is applicable. Such statement shall contain the cash reserve for each fiscal year and shall note whether or not such reserve is encumbered. Such cash reserve projections shall be based upon the actual experience of prior years. The cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(c) For the immediately ensuing fiscal year, an estimate of revenue from all sources, including motor vehicle taxes, other than revenue to be received from taxation of personal and real property, separately stated as to each such source: The actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the year; the amounts proposed to be expended during the year; and the amount of cash reserve, based on actual experience of prior years, which cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(d) A statement setting out separately the amount sought to be raised from the levy of a tax on the taxable value of real property (i) for the purpose of paying the principal or interest on bonds issued by the governing body and (ii) for all other purposes;

(e) A uniform summary of the proposed budget statement, including each proprietary function fund included in a separate proprietary budget statement prepared pursuant to the Municipal Proprietary Function Act, and a grand total of all funds maintained by the governing body; and

(f) For municipalities, a list of the proprietary functions which are not included in the budget statement. Such proprietary functions shall have a separate budget statement which is approved by the city council or village board as provided in the Municipal Proprietary Function Act.

(2) The actual or estimated unencumbered cash balance required to be included in the budget statement by this section shall include deposits and investments of the political subdivision as well as any funds held by the county treasurer for the political subdivision and shall be accurately stated on the proposed budget statement.

(3) The political subdivision shall correct any material errors in the budget statement detected by the auditor or by other sources.

Source: Laws 1969, c. 145, § 3, p. 670; Laws 1971, LB 129, § 1; Laws 1984, LB 932, § 3; Laws 1986, LB 889, § 2; Laws 1987, LB 183, § 3; R.S.Supp.,1987, § 23-923; Laws 1989, LB 33, § 6; Laws 1993, LB 310, § 3; Laws 1993, LB 734, § 18; Laws 1994, LB 1310, § 1; Laws 1995, LB 490, § 22; Laws 1996, LB 1362, § 1; Laws 1997, LB 271, § 9; Laws 1999, LB 86, § 3; Laws 2000, LB 968, § 5; Laws 2002, LB 568, § 1.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

A budget of an airport authority adopted without full compliance with the requirements of the Nebraska Budget Act is void and may be set aside. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-504.01 Repealed. Laws 2002, LB 568, § 15.

13-505 Proposed budget statement; estimated expenditures; unencumbered balances; estimated income.

The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated and actual unencumbered balances at the beginning of the year and less the estimated income from all sources, including motor vehicle taxes, other than taxation of personal and real property shall equal the amount to be received from taxes, and such amount shall be shown on the proposed budget statement pursuant to section 13-504. The amount to be raised from taxation of personal and real property, as determined above, plus the estimated revenue from other sources, including motor vehicle taxes, and the unencumbered balances shall equal the estimated expenditures, plus the necessary required cash reserve, for the ensuing year.

Source: Laws 1969, c. 145, § 4, p. 671; R.S.1943, (1983), § 23-924; Laws 1993, LB 310, § 4; Laws 1997, LB 271, § 10; Laws 2002, LB 568, § 2.

13-506 Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor.

(1) Each governing body shall each year conduct a public hearing on its proposed budget statement. Notice of place and time of such hearing, together with a summary of the proposed budget statement, shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. When the total operating budget, not including reserves, does not exceed ten thousand dollars per year, the proposed budget summary may be posted at the governing body's principal headquarters. After such hearing, the proposed budget statement shall be adopted, or amended and adopted as amended, and a written record shall be kept of such hearing. The amount to be received from personal and real property taxation shall be certified to the levying board after the proposed budget statement is adopted or is amended and adopted as amended. If the levying board represents more than one county, a member or a representative of the governing board shall, upon the written request of any represented county, appear and present its budget at the hearing of the requesting county. The certification of the amount to be received from personal and real property taxation shall specify separately (a) the amount to be applied to the payment of principal or interest on bonds issued by the governing body and (b) the amount to be received for all other purposes. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within twenty days after its adoption in the manner provided in this section, but without provision for hearing, setting forth the items changed and the reasons for such changes.

(2) Upon approval by the governing body, the budget shall be filed with the auditor. The auditor may review the budget for errors in mathematics, improper accounting, and noncompliance with the provisions of the Nebraska Budget Act or sections 13-518 to 13-522. If the auditor detects such errors, he or she shall immediately notify the governing body of such errors. The governing body

shall correct any such error as provided in section 13-511. Warrants for the payment of expenditures provided in the budget adopted under this section shall be valid notwithstanding any errors or noncompliance for which the auditor has notified the governing body.

Source: Laws 1969, c. 145, § 5, p. 672; Laws 1971, LB 129, § 2; Laws 1973, LB 95, § 1; R.S.1943, (1983), § 23-925; Laws 1993, LB 310, § 5; Laws 1996, LB 1362, § 2; Laws 1997, LB 271, § 11; Laws 1999, LB 86, § 4; Laws 2002, LB 568, § 3.

A budget of an airport authority adopted without full compliance with the requirements of the Nebraska Budget Act is void and may be set aside. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-507 Levy increase; indicate on budget statement.

When a levy increase has been authorized by vote of the electors, the adopted budget statement shall indicate the amount of the levy increase.

Source: Laws 1969, c. 145, § 6, p. 672; R.S.1943, (1983), § 23-926.

13-508 Adopted budget statement; final adjusted valuation; levy.

(1) After publication and hearing thereon and within the time prescribed by law, each governing body, except as provided in subsection (3) of this section, shall file with and certify to the levying board or boards on or before September 20 of each year and file with the auditor a copy of the adopted budget statement which complies with sections 13-518 to 13-522 or 79-1023 to 79-1030, together with the amount of the tax required to fund the adopted budget, setting out separately (a) the amount to be levied for the payment of principal or interest on bonds issued by the governing body and (b) the amount to be levied for all other purposes. Proof of publication shall be attached to the statements. School districts that are members of a learning community shall also file a copy of such adopted budget statement with the learning community coordinating council on or before September 1, 2007, and on or before September 1 of each year thereafter. The governing body, in certifying the amount required, may make allowance for delinquent taxes not exceeding five percent of the amount required plus the actual percentage of delinquent taxes for the preceding tax year and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year which is still pending. Except for such allowances, a governing body shall not certify an amount of tax more than one percent greater or lesser than the amount determined under section 13-505.

(2) Each governing body shall use the final adjusted values as provided by the county assessor pursuant to section 13-509 for the current year in setting or certifying the levy. Each governing body may designate one of its members to perform any duty or responsibility required of such body by this section.

(3)(a) A Class I school district shall do the filing and certification required by subsection (1) of this section on or before August 1 of each year.

(b) A school district which is a member of a learning community shall do such filing and certification on or before September 1 of each year.

Source: Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983),

§ 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310, § 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4; Laws 2006, LB 1024, § 2.

A budget of an airport authority adopted without full compliance with the requirements of the Nebraska Budget Act is void and may be set aside. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-509 County assessor; certify taxable value; when.

On or before August 20 of each year, the county assessor shall (1) certify to each governing body or board empowered to levy or certify a tax levy the current taxable value of the taxable real and personal property subject to the applicable levy and (2) certify to the State Department of Education the current taxable value of the taxable real and personal property subject to the applicable levy for all school districts. Current taxable value for real property shall mean the value established by the county assessor and equalized by the county board of equalization and the Tax Equalization and Review Commission. Current taxable value for tangible personal property shall mean the net book value reported by the taxpayer and certified by the county assessor.

Source: Laws 1977, LB 391, § 3; Laws 1979, LB 187, § 256; Laws 1984, LB 835, § 1; R.S.Supp.,1986, § 23-927.01; Laws 1991, LB 829, § 1; Laws 1992, LB 1063, § 5; Laws 1992, Second Spec. Sess., LB 1, § 5; Laws 1993, LB 734, § 20; Laws 1994, LB 902, § 12; Laws 1995, LB 452, § 3; Laws 1997, LB 271, § 12; Laws 1997, LB 397, § 2; Laws 1998, LB 306, § 3; Laws 1999, LB 194, § 1; Laws 1999, LB 813, § 1; Laws 2005, LB 261, § 1.

13-509.01 Cash balance; expenditure authorized; limitation.

On and after the first day of its fiscal year in 1993 and of each succeeding year and until the adoption of the budget by a governing body in September, the governing body may expend any balance of cash on hand for the current expenses of the political subdivision governed by the governing body. Except as provided in section 13-509.02, such expenditures shall not exceed an amount equivalent to the total amount expended under the last budget in the equivalent period of the prior budget year. Such expenditures shall be charged against the appropriations for each individual fund or purpose as provided in the budget when adopted.

Source: Laws 1993, LB 734, § 21; Laws 1994, LB 1257, § 4.

13-509.02 Cash balance; expenditure limitation; exceeded; when; section, how construed.

The restriction on expenditures in section 13-509.01 may be exceeded upon the express finding of the governing body of the political subdivision that expenditures beyond the amount authorized are necessary to enable the political subdivision to meet its statutory duties and responsibilities. The finding and approval of the expenditures in excess of the statutory authorization shall be adopted by the governing body of the political subdivision in open public session of the governing body. Expenditures authorized by this section shall be

charged against appropriations for each individual fund or purpose as provided in the budget when adopted, and nothing in this section shall be construed to authorize expenditures by the political subdivision in excess of that authorized by any other statutory provision.

Source: Laws 1994, LB 1257, § 1.

13-510 Emergency; transfer of funds; violation; penalty.

Whenever during the current fiscal year or biennial period it becomes apparent to a governing body that due to unforeseen emergencies there is temporarily insufficient money in a particular fund to meet the requirements of the adopted budget of expenditures for that fund, the governing body may by a majority vote, unless otherwise provided by state law, transfer money from other funds to such fund. No expenditure during any fiscal year or biennial period shall be made in excess of the amounts indicated in the adopted budget statement, except as authorized in section 13-511, or by state law. Any officer or officers of any governing body who obligates funds contrary to the provisions of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1969, c. 145, § 8, p. 673; Laws 1977, LB 40, § 95; R.S.1943, (1983), § 23-928; Laws 2000, LB 1116, § 7.

A determination of ''emergency'' under the Nebraska Budget Act is a question for a county board and will not be disturbed on appeal unless there has been an abuse of discretion. Meyer v. Colin, 204 Neb. 96, 281 N.W.2d 737 (1979).

13-511 Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction.

(1) Unless otherwise provided by law, whenever during the current fiscal year or biennial period it becomes apparent to a governing body that (a) there are circumstances which could not reasonably have been anticipated at the time the budget for the current year or biennial period was adopted, (b) the budget adopted violated sections 13-518 to 13-522, such that the revenue of the current fiscal year or biennial period for any fund thereof will be insufficient, additional expenses will be necessarily incurred, or there is a need to reduce the budget requirements to comply with sections 13-518 to 13-522, or (c) the governing body has been notified by the auditor of a mathematical or accounting error or noncompliance with the Nebraska Budget Act, such governing body may propose to revise the previously adopted budget statement and shall conduct a public hearing on such proposal.

(2) Notice of the time and place of the hearing shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. Such published notice shall set forth (a) the time and place of the hearing, (b) the amount in dollars of additional or reduced money required and for what purpose, (c) a statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year or biennial period to meet the need for additional money in that manner, (d) a copy of the summary of the originally adopted budget previously published, and (e) a copy of the summary of the proposed revised budget.

(3) At such hearing any taxpayer may appear or file a written statement protesting any application for additional money. A written record shall be kept of all such hearings.

(4) Upon conclusion of the public hearing on the proposed revised budget and approval of the proposed revised budget by the governing body, the governing body shall file with the county clerk of the county or counties in which such governing body is located, with the learning community coordinating council for school districts that are members of learning communities, and with the auditor, a copy of the revised budget, as adopted. The governing body may then issue warrants in payment for expenditures authorized by the adopted revised budget. Such warrants shall be referred to as registered warrants and shall be repaid during the next fiscal year or biennial period from funds derived from taxes levied therefor.

(5) Within thirty days after the adoption of the budget under section 13-506, a governing body may, or within thirty days after notification of an error by the auditor, a governing body shall, correct an adopted budget which contains a clerical, mathematical, or accounting error which does not affect the total amount budgeted by more than one percent or increase the amount required from property taxes. No public hearing shall be required for such a correction. After correction, the governing body shall file a copy of the corrected budget with the county clerk of the county or counties in which such governing body is located and with the auditor. The governing body may then issue warrants in payment for expenditures authorized by the budget.

Source: Laws 1969, c. 145, § 9, p. 673; R.S.1943, (1983), § 23-929; Laws 1993, LB 734, § 22; Laws 1996, LB 299, § 12; Laws 1999, LB 86, § 6; Laws 2000, LB 1116, § 8; Laws 2001, LB 797, § 2; Laws 2002, LB 568, § 5; Laws 2006, LB 1024, § 3.

13-512 Budget statement; taxpayer; contest; basis; procedure.

A taxpayer upon whom a tax will be imposed as a result of the action of a governing body in adopting a budget statement may contest the validity of the budget statement adopted by the governing body by filing an action in the district court of the county in which the governing body is situated. Such action shall be based either upon a violation of or a failure to comply with the provisions and requirements of the Nebraska Budget Act by the governing body. In response to such action, the governing body shall be required to show cause why the budget statement should not be ordered set aside, modified, or changed. The action shall be tried to the court without a jury and shall be given priority by the district court over other pending civil litigation, and by the appellate court on appeal, to the extent possible and feasible to expedite a decision. Such action shall be filed within thirty days after the adopted budget statement is required to be filed by the governing body with the levying board. If the district court finds that the governing body has violated or failed to comply with the requirements of the act, the court shall, in whole or in part, set aside, modify, or change the adopted budget statement or tax levy as the justice of the case may require. The district court's decision may be appealed to the Court of Appeals.

The remedy provided in this section shall not be exclusive but shall be in addition to any other remedy provided by law.

Source: Laws 1969, c. 145, § 10, p. 674; Laws 1979, LB 187, § 125; R.S.1943, (1983), § 23-930; Laws 1991, LB 732, § 18; Laws 1992, LB 360, § 2.

In an action hereunder, the trial court is without authority to award the plaintiff an attorney's fee. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

13-513 Auditor; request information.

The auditor shall, on or before December 1 each year, request information from each governing body in a form prescribed by the auditor regarding agreements to which the governing body is a party under the Interlocal Cooperation Act and the Joint Public Agency Act. Each governing body shall provide such information to the auditor on or before December 31.

Source: Laws 2004, LB 939, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

13-514 Repealed. Laws 1992, LB 1063, § 214; Laws 1992, Second Spec. Sess., LB 1, § 182.

13-515 Repealed. Laws 2000, LB 968, § 91.

(b) POWER DISTRICTS AND AGENCIES

13-516 Public power district; public power and irrigation district; rural power district; power project agency; proposed budget; contents; notice; meeting; changes.

A public power district or public power and irrigation district organized pursuant to Chapter 70, article 6, a rural power district organized pursuant to Chapter 70, article 8, or any agency created pursuant to sections 18-2426 to 18-2434 shall prepare in writing each year a proposed budget which shall include at a minimum: Revenue from all sources separately stated as to each source and expenditures from the prior two years; estimates of the current year's revenue from all sources separately stated as to each source and expenditures; and a summary which outlines the fiscal policy of the district or agency for the period covered by the budget. Such proposed budget shall be available for inspection by the general public at each district's or agency's principal headquarters at least seven days prior to the meeting of the board of directors at which such budget is to be adopted. The budget shall be in a form approved by the Nebraska Power Review Board.

Notice of the place and time of such meeting of the board of directors shall be published at least seven days prior to the date set for such meeting in a newspaper of general circulation within the district or agency. The notice shall include a statement that the proposed budget is available for public inspection and the location where it is available. Any changes to the proposed budget made between the date the proposed budget is made available for public inspection and the date of the board meeting shall be added to the proposed budget at the principal headquarters of the district or agency prior to the board meeting. At such meeting the public shall have an opportunity to testify before the proposed budget is adopted, and a written record shall be kept of such meeting. If the adopted budget reflects a change from that shown in the proposed budget a summary of such changes shall be available for inspection at the principal headquarters of such district or agency.

Source: Laws 1993, LB 310, § 12.

(c) SCHOOL DISTRICTS AND EDUCATIONAL SERVICE UNITS

13-517 School districts and educational service units; Nebraska Budget Act applicable.

The annual budget of all school districts and educational service units shall be subject to the Nebraska Budget Act.

Source: Laws 1967, c. 509, § 1, p. 1711; Laws 1971, LB 292, § 19; R.S.1943, (1981), § 79-548; Laws 1987, LB 127, § 2; Laws 1992, LB 1063, § 196; Laws 1992, Second Spec. Sess., LB 1, § 167; R.S.Supp.,1992, § 79-547.03; Laws 1993, LB 348, § 42.

Cross References

Nebraska Budget Act, see section 13-501.

(d) BUDGET LIMITATIONS

13-518 Terms, defined.

For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, (i) for fiscal years prior to fiscal year 2003-04 and after fiscal year 2004-05 until fiscal year 2007-08, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, (ii) for fiscal year 2003-04 and fiscal year 2004-05, the percentage increase in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, and (iii) for fiscal year 2007-08 and each fiscal year thereafter, community college areas may exceed the base limitation to equal base revenue need calculated pursuant to section 85-2223;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee,

permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-3,202 and 77-3523;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190, 77-27,136, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 39-2501 to 39-2520, 47-119.01, 60-3,184 to 60-3,190, 77-27,136, and 77-3618, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, state aid to community colleges paid under the Community College Foundation and Equalization Aid Act;

(e) For natural resources districts, state aid to natural resources districts paid pursuant to section 77-27,136;

(f) For educational service units, state aid appropriated under section 79-1241; and

(g) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

Source: Laws 1996, LB 299, § 1; Laws 1997, LB 269, § 11; Laws 1998, LB 989, § 1; Laws 1998, LB 1104, § 4; Laws 1999, LB 36, § 2; Laws 1999, LB 86, § 7; Laws 1999, LB 881, § 6; Laws 2001, LB 335, § 1; Laws 2002, LB 259, § 6; Laws 2002, LB 876, § 3; Laws 2003, LB 540, § 1; Laws 2003, LB 563, § 16; Laws 2004, LB 1005, § 1; Laws 2005, LB 274, § 222; Laws 2007, LB342, § 30.

Cross References

Community College Foundation and Equalization Aid Act, see section 85-2201.

13-519 Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.

(1)(a) Subject to subdivision (1)(b) of this section, for all fiscal years beginning on or after July 1, 1998, no governmental unit shall adopt a budget containing a total of budgeted restricted funds more than the last prior year's total of budgeted restricted funds plus allowable growth plus the basic allowable growth percentage of the base limitation established under section 77-3446. For the second fiscal year in which a county will receive a full year of receipts from the tax imposed in sections 77-27,223 to 77-27,227, the prior year's total of restricted funds shall be the prior year's total of restricted funds plus the total receipts from the tax imposed in sections 77-27,223 to 77-27,227 in the prior year. If a governmental unit transfers the financial responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with

providing the service shall be subtracted from the last prior year's total of budgeted restricted funds for the previous provider and may be added to the last prior year's total of restricted funds for the new provider. For governmental units that have consolidated, the calculations made under this section for consolidating units shall be made based on the combined total of restricted funds, population, or full-time equivalent students of each governmental unit.

(b) For all fiscal years beginning on or after July 1, 2005, the last prior year's total of budgeted restricted funds shall be increased for a community college area by adding to such area's fiscal year base-year revenue the amount of revenue to be collected under subdivision (2)(c) of section 85-1517 that is in excess of the amount budgeted under this subdivision in the prior fiscal year.

(2) A governmental unit may exceed the limit provided in subdivisions (1)(a) and (b) of this section for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.

(3) A governmental unit may exceed the applicable allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting on the issue at a special election called for such purpose upon the recommendation of the governing body or upon the receipt by the county clerk or election commissioner of a petition requesting an election signed by at least five percent of the legal voters of the governmental unit. The recommendation of the governing body or the petition of the legal voters shall include the amount and percentage by which the governing body would increase its budgeted restricted funds for the ensuing year over and above the current year's budgeted restricted funds. The county clerk or election commissioner shall call for a special election on the issue within fifteen days after the receipt of such governing body recommendation or legal voter petition. The election shall be held pursuant to the Election Act, and all costs shall be paid by the governing body. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

(4) In lieu of the election procedures in subsection (3) of this section, any governmental unit may exceed the allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting at a meeting of the residents of the governmental unit, called after notice is published in a newspaper of general circulation in the governmental unit at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the governmental unit shall constitute a quorum for purposes of taking action to exceed the allowable growth percentage. If a majority of the registered voters present at the meeting vote in favor of exceeding the allowable growth percentage, a copy of the record of that action shall be forwarded to the Auditor of Public Accounts along with the budget documents. The issue to exceed the allowable growth percentage may be approved at the same meeting as a vote to exceed the limits or final levy allocation provided in section 77-3444.

Source: Laws 1996, LB 299, § 2; Laws 1998, LB 989, § 2; Laws 2001, LB 329, § 9; Laws 2002, LB 259, § 7; Laws 2003, LB 9, § 1; Laws 2005, LB 38, § 1.

Cross References

Election Act, see section 32-101.

13-520 Limitations; not applicable to certain restricted funds.

The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonded indebtedness, used by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport, or used to pay other financial instruments that are approved and agreed to before July 1, 1999, in the same manner as bonds by a governing body created under section 35-501, (4) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (5) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (6) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit, or (7) the dollar amount by which restricted funds budgeted by a natural resources district to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04.

Source: Laws 1996, LB 299, § 3; Laws 1998, LB 989, § 3; Laws 1999, LB 86, § 8; Laws 1999, LB 87, § 54; Laws 1999, LB 141, § 1; Laws 2004, LB 962, § 4.

Cross References

Emergency Management Act, see section 81-829.36.
Nebraska Ground Water Management and Protection Act, see section 46-701.

13-521 Governmental unit; unused restricted funds; authority to carry forward.

A governmental unit may choose not to increase its total of restricted funds by the full amount allowed by law in a particular year. In such cases, the governmental unit may carry forward to future budget years the amount of unused restricted funds authority. The governmental unit shall calculate its unused restricted funds authority and submit an accounting of such amount with the budget documents for that year. Such unused restricted funds authority may then be used in later years for increases in the total of restricted funds allowed by law. Any unused budget authority existing on April 8, 1998, by reason of any prior law may be used for increases in restricted funds authority.

Source: Laws 1996, LB 299, § 4; Laws 1998, LB 989, § 4.

13-522 Noncompliance with budget limitations; Auditor of Public Accounts; State Treasurer; duties.

The Auditor of Public Accounts shall prepare budget documents to be submitted by governmental units which calculate the restricted funds authority for each governmental unit. Each governmental unit shall submit its calculated restricted funds authority with its budget documents at the time the budgets are

due to the Auditor of Public Accounts. If the Auditor of Public Accounts determines from the budget documents that a governmental unit is not complying with the budget limits provided in sections 13-518 to 13-522, he or she shall notify the governing body of his or her determination and notify the State Treasurer of the noncompliance. The State Treasurer shall then suspend distribution of state aid allocated to the governmental unit until such sections are complied with. The funds shall be held for six months until the governmental unit complies, and if the governmental unit complies within the six-month period, it shall receive the suspended funds, but after six months, if the governmental unit fails to comply, the suspended funds shall be forfeited and shall be redistributed to other recipients of the state aid or, in the case of homestead exemption reimbursement, returned to the General Fund.

Source: Laws 1996, LB 299, § 5.

ARTICLE 6
FINANCES

Section

13-601 Local governments; receive funds from United States Government; expenditures authorized.

It shall be lawful for any unit of local government of the State of Nebraska to receive funds from the United States Government pursuant to Title I of the federal State and Local Fiscal Assistance Act of 1972, Public Law 92-512, 92nd Congress, Second Session, 31 U.S.C. 1221 and following, or any successor act thereto. Such local government may use local assistance and other available resources for any purpose for which other revenue may be lawfully expended including the following:

(1) Ordinary and necessary maintenance and operating expenses for (a) public safety, including law enforcement, fire protection, and building code enforcement, (b) environmental protection, including sewage disposal, sanitation, and pollution abatement, (c) public transportation, including transit systems and streets and roads, (d) health, (e) recreation, (f) libraries, (g) social services as defined in section 68-1202, and (h) financial administration; and

(2) Ordinary and necessary capital expenditures authorized by law.

Source: Laws 1974, LB 824, § 1; Laws 1978, LB 519, § 2; R.S.1943, (1983), § 23-2701.

13-602 Revenue sharing; interpretation.

It is the intent of the Legislature that in construing section 13-601 the courts will be guided by the interpretations given by the Office of Revenue Sharing, U.S. Department of Treasury and by the federal courts to section 103 of the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1222, as from time to time amended.

Source: Laws 1974, LB 824, § 2; R.S.1943, (1983), § 23-2702.

13-603 Revenue sharing; supplemental to existing laws; joint operations authorized.

The provisions of sections 13-601 to 13-603 are supplementary to existing laws relating to any unit of local government and confer upon such units of local government powers not previously granted by state law to permit those governmental subdivisions to use such funds and other available resources for the purposes of sections 13-601 to 13-603, and any unit of local government shall have the power to join with any other governmental subdivision, or with any agency or nonprofit corporation, whether federal, state, or local, or with any number or combinations thereof, by contract or otherwise, in joint ownership, operation of any function, or exercise of any power pursuant to the provisions of sections 13-601 to 13-603, or in agreements containing the provision that one or more operate or perform for the other or others.

Source: Laws 1974, LB 824, § 3; R.S.1943, (1983), § 23-2703.

13-604 Municipalities and counties; federal and other funds; expenditures authorized.

It shall be lawful for any municipality and for any county to spend its own revenue and other available resources, including funds received under Title I of the federal State and Local Fiscal Assistance Act of 1972 (Public Law 92-512, 23 U.S.C. chapter 24), or any successor act thereto, for any purpose for which other revenue may be lawfully expended including the following:

(1) Ordinary and necessary maintenance and operating expenses for (a) public safety, including law enforcement, fire protection, and building code enforcement; (b) environmental protection, including sewage disposal, sanitation and pollution abatement; (c) public transportation, including transit systems for streets and roads; (d) health; (e) recreation; (f) libraries; (g) social services as defined in section 68-1202; and (h) financial administration; and

(2) Ordinary and necessary capital expenditures authorized by law.

Source: Laws 1975, LB 345, § 1; Laws 1978, LB 519, § 1; R.S.1943, (1983), § 18-1735.

13-605 State, municipalities, and counties; housing and community development programs; funding and administration authorized; restriction.

The Legislature hereby finds and declares that the problems relating to the critical social, economic, and environmental problems of the nation's cities, towns, and smaller urban communities which are found and declared to exist by the Congress of the United States in the Housing and Community Development Act of 1974 as amended through the Housing and Community Development Amendments of 1981 exist within this state and that it is in the public interest for the state, cities of all classes, villages, or counties to be authorized to apply for, receive, or expend federal funds for the eligible activities under

such act or to administer such programs. The Legislature hereby declares such activities to be a public purpose within this state. Money received from the federal government for such activities shall be placed in a distinct and separate fund and shall not be commingled with other money of the state, city, village, or county.

Source: Laws 1983, LB 71, § 1; R.S.1943, (1983), § 18-1735.01.

13-606 Financial statements; filing requirements.

Every governing body of any political subdivision that is required by law to submit to an audit of its accounts shall provide and file with its secretary or clerk, in the year of its organization and each year thereafter, not later than August 1 of each year, financial statements showing its actual and budgeted figures for the most recently completed fiscal year.

Source: Laws 1984, LB 932, § 2; R.S.Supp.,1986, § 23-934.

13-607 Sexual assaults; forensic medical examination; payment; forensic DNA testing; requirements.

(1) The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid for by the law enforcement agency of a political subdivision if such law enforcement agency is the primary investigating law enforcement agency investigating the reported sexual assault.

(2) Except as provided under section 81-2010, all forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

Source: Laws 1996, LB 1213, § 1; Laws 2001, LB 432, § 6.

13-608 Sexual assaults; primary investigating law enforcement agency; how determined.

If two or more law enforcement agencies are involved in the investigation of a sexual assault and fail to agree which agency is the primary investigating law enforcement agency, the primary investigating law enforcement agency shall be the police department or the town marshal if the offense occurred within a city or village with a law enforcement agency, the office of the sheriff if the offense occurred within a county but outside of any city or village with a law enforcement agency, or the Nebraska State Patrol if the offense occurred on state property.

Source: Laws 1996, LB 1213, § 3.

13-609 Electronic payments; acceptance; conditions.

(1) Any county treasurer, county official, or political subdivision official may accept credit cards, charge cards, or debit cards, whether presented in person or electronically, or electronic funds transfers as a method of cash payment of any tax, levy, excise, duty, custom, toll, interest, penalty, fine, license, fee, or assessment of whatever kind or nature, whether general or special, as provided by section 77-1702.

(2) The total amount of such taxes, levies, excises, duties, customs, tolls, interest, penalties, fines, licenses, fees, or assessments of whatever kind or nature, whether general or special, paid for by credit card, charge card, debit card, or electronic funds transfer shall be collected by the county treasurer, county official, or political subdivision official.

(3) Any political subdivision operating a facility in a proprietary capacity may choose to accept credit cards, charge cards, or debit cards, whether presented in person or electronically, or electronic funds transfers as a means of cash payment and may adjust the price for services to reflect the handling and payment costs.

(4) The county treasurer, county official, or political subdivision official shall obtain, for each transaction, authorization for use of any credit card, charge card, or debit card used pursuant to this section from the financial institution, vending service company, credit card or charge card company, or third-party merchant bank providing such service.

(5) The types of credit cards, charge cards, or debit cards accepted and the payment services provided shall be determined by the State Treasurer and the Director of Administrative Services with the advice of a committee convened by the State Treasurer and the director. The committee shall consist of the State Treasurer, the Tax Commissioner, the director, and representatives from counties, cities, and other political subdivisions as may be appropriate. The committee shall develop recommendations for the contracting of such services. The State Treasurer and the director shall contract with one or more credit card, charge card, or debit card companies or third-party merchant banks for services on behalf of the state and those counties, cities, and political subdivisions that choose to participate in the state contract for such services. The State Treasurer and the director shall consider, for purposes of this section, any negotiated discount, processing, or transaction fee imposed by a credit card, charge card, or debit card company or third-party merchant bank as an administrative expense. Counties, cities, and other political subdivisions that choose not to participate in the state contract may choose types of credit cards, charge cards, and debit cards and may negotiate and contract independently or collectively as a governmental entity with one or more financial institutions, vending service companies, credit card, charge card, or debit card companies, or third-party merchant banks for the provision of such services. All county officials within each county choosing to accept credit cards, charge cards, and debit cards shall contract for services through the same financial institutions, vending service companies, credit card, charge card, or debit card companies, or third-party merchant banks for the provision of such services. County officials who accept credit cards, charge cards, and debit cards shall notify the county board of such decision and the discount or administrative fees charged for such service.

(6) A county treasurer, county official, or political subdivision official authorizing acceptance of credit card or charge card payments shall be authorized but not required to impose a surcharge or convenience fee upon the person making a payment by credit card or charge card so as to wholly or partially offset the amount of any discount or administrative fees charged to the political subdivision, but the surcharge or convenience fee shall not exceed the surcharge or convenience fee imposed by the credit card or charge card companies or third-party merchant banks which have contracted under subsection (5) of this section. The surcharge or convenience fee shall be applied only when

allowed by the operating rules and regulations of the credit card or charge card involved or when authorized in writing by the credit card or charge card company involved. When a person elects to make a payment to a political subdivision by credit card or charge card and such a surcharge or convenience fee is imposed, the payment of such surcharge or convenience fee shall be deemed voluntary by such person and shall be in no case refundable. If a payment is made electronically by credit card, charge card, debit card, or electronic funds transfer as part of a system for providing or retrieving information electronically, the county treasurer, county official, or political subdivision official shall be authorized but not required to impose an additional surcharge or convenience fee upon the person making a payment.

(7) For purposes of this section, electronic funds transfer means the movement of funds by nonpaper means, usually through a payment system, including, but not limited to, an automated clearinghouse or the Federal Reserve's Fedwire system.

Source: Laws 1997, LB 70, § 2; Laws 2002, LB 994, § 1.

13-610 Purchasing card program; authorized; requirements; governing body; duties.

(1) A political subdivision, through its governing body, may create its own purchasing card program. The governing body shall determine the type of purchasing card or cards utilized in the purchasing card program and shall approve or disapprove those persons who will be assigned a purchasing card. Under the direction of its governing body, any political subdivision may contract with one or more financial institutions, card-issuing banks, credit card companies, charge card companies, debit card companies, or third-party merchant banks capable of operating the purchasing card program on behalf of the political subdivision. Expenses associated with the political subdivision's purchasing card program shall be considered, for purposes of this section, as an administrative or operational expense.

(2) Any political subdivision may utilize its purchasing card program for the purchase of goods and services for and on behalf of the political subdivision.

(3) Vendors accepting a political subdivision's purchasing card shall obtain authorization for all transactions. Authorization shall be from the financial institution, card-issuing bank, credit card company, charge card company, debit card company, or third-party merchant bank contracted to provide such service to the political subdivision. Each transaction shall be authorized in accordance with the instructions provided by the political subdivision.

(4) An itemized receipt for purposes of tracking expenditures shall accompany all purchasing card purchases. In the event that a receipt does not accompany such a purchase, purchasing card privileges shall be temporarily or permanently suspended in accordance with rules and regulations adopted and promulgated by the political subdivision.

(5) Upon the termination or suspension of employment of an individual using a purchasing card, such individual's purchasing card account shall be immediately closed and he or she shall return the purchasing card to the political subdivision.

(6) No officer or employee of a political subdivision shall use a political subdivision purchasing card for any unauthorized use as determined by the governing body.

Source: Laws 1999, LB 113, § 2.

ARTICLE 7

NEBRASKA EMERGENCY SEAT OF LOCAL GOVERNMENT ACT

Cross References

Constitutional provision:
Governmental continuity in emergencies, see Article III, section 29, Constitution of Nebraska.

Section
13-701. Act, how cited.
13-702. Terms, defined.
13-703. Temporary location of seat of government; location.
13-704. Temporary location of seat of government; validity of acts done.
13-705. Temporary location of seat of government; conditions; rules and regulations; preliminary plans and preparations; construction permitted.
13-706. Sections, how construed.

13-701 Act, how cited.

Sections 13-701 to 13-706 shall be known and may be cited as the Nebraska Emergency Seat of Local Government Act.

Source: Laws 1959, c. 92, § 1, p. 402; Laws 1972, LB 1048, § 3; R.S.1943, (1983), § 23-2101.

13-702 Terms, defined.

As used in sections 13-701 to 13-706, and unless otherwise clearly required by the context, the following terms have the respective meanings and connotations shown:

(1) An attack means any action or series of actions by an enemy of the United States, causing, or which may cause, substantial injury or damage to civilian persons or property in the United States in any manner, whether by sabotage, or by the use of bombs, missiles, or shellfire, or by atomic, radiological, chemical, bacteriological, or biological means, or by other weapons or processes;

(2) The term political subdivisions includes counties, townships, cities, villages, districts, authorities, and other public corporations and entities, whether organized and existing under direct provisions of the Constitution of Nebraska or statutes of this state, or by virtue of charters or other corporate articles or instruments executed under authority of such Constitution or laws; and

(3) The term seat of local government, when applied to a political subdivision, usually means the place fixed by law, charter, etc., as the situs of its separate government; as, for example, the county seat of a county. But in any instance where the law, charter, etc., does not fix a specific place therefor, then the term seat of local government means the place at which the separate government of the subdivision usually is maintained in accordance with tradition or custom.

Source: Laws 1959, c. 92, § 2, p. 402; R.S.1943, (1983), § 23-2102.

13-703 Temporary location of seat of government; location.

Whenever, due to an emergency resulting from the effects of any enemy attack upon the United States, or the immediate threat thereof, it becomes imprudent, inexpedient, or impossible to conduct the affairs of the government of any political subdivision at the permanent seat of local government, the governing body thereof shall meet at such place, within or without the territorial limits of the subdivision, as the presiding officer or any two members may fix, and then shall proceed to establish and designate, by ordinance, resolution, resolve, or other appropriate manner, a temporary location or locations for an emergency local seat of government. Such location or locations shall be a site or sites which, in the judgment of the governing body, is or are proper and appropriate, under the conditions and circumstances then prevailing, and may be within or without the territorial limits of the political subdivision, or within or without this state. Thereafter, such governing body shall take such action and shall issue such orders and directives as may be necessary for the prompt and orderly transition of the affairs of the local government to such temporary location or locations. Such temporary location or locations shall be and remain the emergency local seat of government until another temporary location or locations shall be designated in the same manner, or until the Governor, by proclamation, or the Legislature, by resolution approved by the Governor, shall declare the emergency to be ended, at which time the seat of local government shall be returned to its permanent location, or shall be removed to a new permanent seat of local government established in accordance with the Constitution of Nebraska and general laws of this state.

Source: Laws 1959, c. 92, § 3, p. 402; R.S.1943, (1983), § 23-2103.

13-704 Temporary location of seat of government; validity of acts done.

During such time as such temporary location or locations shall remain the emergency seat of local government of any such political subdivision, all official acts done or performed thereat by or on the part of any officer, office, council, board, court, department, or division, or any other agency or authority of such political subdivision, shall be as valid, effective and binding as if regularly done or performed at the permanent seat of local government.

Source: Laws 1959, c. 92, § 4, p. 403; R.S.1943, (1983), § 23-2104.

13-705 Temporary location of seat of government; conditions; rules and regulations; preliminary plans and preparations; construction permitted.

(1) The official designation of the location or locations of an emergency seat of local government, and the removal thereto of the government of the political subdivision concerned, shall be subject to such rules and regulations as may be promulgated by the then Governor; and shall in no instance precede: (a) The inception of an attack; or (b) the inception of a strategic or tactical warning period duly proclaimed by the President of the United States, the Governor of Nebraska, or both such officials and based on the imminence of an attack.

(2) Prior to any such attack or warning period, any political subdivision is hereby authorized and empowered to make such preliminary plans and preparations as may be deemed necessary and advisable to facilitate the subsequent accomplishment, during such emergency, of the actions provided in sections 13-701 to 13-706. Such plans and preparations, which likewise shall be subject to such rules and regulations as may be promulgated by the then Governor, may include any or all of the following steps, but shall not necessarily be

limited thereto: (a) Selection, by the governing body as mentioned in section 13-703, of a tentative location or locations for an emergency local seat of government, in the event that as provided in subsection (1) of this section, it subsequently becomes necessary and advisable to designate such tentative location or locations as the official location or locations of the emergency local seat of government; (b) negotiation with local authorities, property owners, and other proper persons, for the possible use and occupancy of specific buildings, areas, or buildings and areas, at or near such tentative location or locations, for the purposes mentioned in sections 13-701 to 13-706 during a subsequent emergency; and (c) storing and stockpiling, at or near the tentative location or locations, of essential supplies and equipment, or vital records or duplicates thereof which would be necessary to permit the continuity of the governmental operation of the political subdivision concerned in an emergency.

(3) Prior to an attack or warning period, as set out in subsection (1) of this section, neither any political subdivision, nor any official or agency of or on behalf thereof, shall, except only for the storage and safeguarding of vital records or duplicates thereof, purchase, contract for the purchase of, or obligate funds of the state or of such political subdivision for the purchase of any real estate or appurtenance thereto, for subsequent use as an emergency local seat of government; *Provided*, that no political subdivision, nor any official or agency of or on behalf thereof, shall be prevented from constructing an emergency local seat of government on any property owned by such political subdivision or owned jointly with some other political subdivision, and such local seat of government may be constructed as a part of a joint city and county jail authorized under sections 47-302 to 47-308.

Source: Laws 1959, c. 92, § 5, p. 403; Laws 1963, c. 122, § 1, p. 469; R.S.1943, (1983), § 23-2105.

13-706 Sections, how construed.

The provisions of sections 13-701 to 13-706, in the event they shall be employed, shall control and take precedence over any provision of any other law, charter, ordinance, or regulation to the contrary or in conflict therewith; *Provided*, that nothing herein shall be construed as contravening, suspending, or otherwise affecting any provision of the Constitution of Nebraska or laws of this state, or of any local charter or other corporate articles or instrument of the political subdivision concerned, relating to the permanent relocation of any local seat of government.

Source: Laws 1959, c. 92, § 6, p. 405; Laws 1972, LB 1048, § 4; R.S.1943, (1983), § 23-2106.

ARTICLE 8

INTERLOCAL COOPERATION ACT

Section

13-801 Act, how cited.

Sections 13-801 to 13-827 shall be known and may be cited as the Interlocal Cooperation Act.

Source: Laws 1963, c. 333, § 2, p. 1071; R.S.1943, (1983), § 23-2202; Laws 1991, LB 731, § 1; Laws 2007, LB636, § 1.

13-802 Purpose of act.

It is the purpose of the Interlocal Cooperation Act to permit local governmental units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Source: Laws 1963, c. 333, § 1, p. 1071; R.S.1943, (1983), § 23-2201; Laws 1991, LB 731, § 2; Laws 1996, LB 1177, § 14.

The city of Omaha was not authorized by the Interlocal Cooperation Act to divert part of Elmwood Park to the university for a parking lot. Gallagher v. City of Omaha, 189 Neb. 598, 204 N.W.2d 157 (1973).

Interest in holding job with governmental agency not first amendment interest, but first amendment protections come into play when governmental employer makes decision to deprive public employee of benefit of government employment on a basis that infringes his interest in freedom of speech or association. Rose v. Eastern Neb. Human Serv. Agency, 510 F.Supp. 1343 (D. Neb. 1981).

13-803 Terms, defined.

For purposes of the Interlocal Cooperation Act:

(1) Joint entity shall mean an entity created by agreement pursuant to section 13-804;

(2) Public agency shall mean any county, city, village, school district, or agency of the state government or of the United States, any drainage district,

sanitary and improvement district, or other municipal corporation or political subdivision of this state, and any political subdivision of another state;

(3) Public safety services shall mean public services for the protection of persons or property. Public safety services shall include law enforcement, fire protection, and emergency response services; and

(4) State shall mean a state of the United States and the District of Columbia.

Source: Laws 1963, c. 333, § 3, p. 1071; Laws 1971, LB 874, § 1; Laws 1975, LB 104, § 9; R.S.1943, (1983), § 23-2203; Laws 1991, LB 731, § 3; Laws 1996, LB 1177, § 15.

13-804 Public agencies; powers; agreements.

(1) Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by the Interlocal Cooperation Act upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the Interlocal Cooperation Act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The general organization, composition, and nature of any separate legal or administrative entity created by the agreement together with the powers delegated to the entity;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(f) The manner of levying, collecting, and accounting for any tax authorized under sections 13-318 to 13-326 or 13-2813 to 13-2816; and

(g) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items enumerated in subsection (3) of this section, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, the public agencies party to the agreement shall be represented; and

(b) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(5) No agreement made pursuant to the Interlocal Cooperation Act shall relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance by a joint board or other legal or administrative entity created by an agreement made pursuant to the act, which performance may be offered in satisfaction of the obligation or responsibility.

(6) In the event that an agreement made pursuant to this section creates a joint entity, such joint entity shall be subject to control by its members in accordance with the terms of the agreement; shall constitute a separate public body corporate and politic of this state, exercising public powers and acting on behalf of the public agencies which are parties to such agreement; and shall have power (a) to sue and be sued, (b) to have a seal and alter the same at pleasure or to dispense with its necessity, (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and (d) from time to time, to make, amend, and repeal bylaws, rules, and regulations, not inconsistent with the Interlocal Cooperation Act and the agreement providing for its creation, to carry out and effectuate its powers and purposes.

(7) No entity created by local public agencies pursuant to the Interlocal Cooperation Act shall be considered a state agency, and no employee of such an entity shall be considered a state employee.

(8) Any governing body as defined in section 13-503 which is a party to an agreement made pursuant to the Interlocal Cooperation Act shall provide information to the Auditor of Public Accounts regarding such agreements as required in section 13-513.

Source: Laws 1963, c. 333, § 4, p. 1072; R.S.1943, (1983), § 23-2204; Laws 1991, LB 81, § 1; Laws 1991, LB 731, § 4; Laws 1996, LB 1177, § 16; Laws 1997, LB 269, § 12; Laws 2001, LB 142, § 26; Laws 2004, LB 939, § 3.

13-805 Public agencies; submission of agreements for approval; when.

In the event that an agreement made pursuant to the Interlocal Cooperation Act deals in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by the officer or agency as to all matters within the officer's or agency's jurisdiction.

Source: Laws 1963, c. 333, § 5, p. 1073; Laws 1975, LB 104, § 10; R.S.1943, (1983), § 23-2205; Laws 1991, LB 731, § 5.

13-806 Public agencies; appropriation of funds; supply personnel.

Any public agency entering into an agreement pursuant to the Interlocal Cooperation Act may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board, joint entity, or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

Source: Laws 1963, c. 333, § 6, p. 1073; R.S.1943, (1983), § 23-2206; Laws 1991, LB 731, § 6.

13-807 Public agencies; contracts authorized; contents.

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which at least one of the public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully as provided in the Interlocal Cooperation Act the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

Source: Laws 1963, c. 333, § 7, p. 1074; R.S.1943, (1983), § 23-2207; Laws 1991, LB 731, § 7; Laws 1997, LB 269, § 13.

13-808 Joint entity; issuance of bonds; powers; purposes.

(1) Any joint entity may issue such types of bonds as its governing body 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, from one or more revenue-producing contracts, including securities acquired from any person, bonds issued by any qualified public agency under the Public Facilities Construction and Finance Act, or leases made by the joint entity with any person, including any of those public agencies which are parties to the agreement creating the joint entity, 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 joint entity from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

(2) Any bonds issued by such joint entity shall be issued on behalf of those public agencies which are parties to the agreement creating such joint entity and shall be authorized to be issued for the specific purpose or purposes for which the joint entity has been created. Such specific purposes may include, but shall not be limited to, joint projects authorized by the Public Facilities Construction and Finance Act; solid waste collection, management, and disposal; waste recycling; sanitary sewage treatment and disposal; public safety communications; correctional facilities; water treatment plants and distribution systems; drainage systems; flood control projects; fire protection services; ground water quality management and control; river-flow enhancement; education and postsecondary education; hospital and other health care services; bridges, roads, and streets; and law enforcement.

(3) As an alternative to issuing bonds for financing public safety communication projects, any joint entity may enter into a financing agreement with the Nebraska Investment Finance Authority for such purpose.

(4) Any joint entity formed for purposes of providing or assisting with the provision of public safety communications may enter into an agreement with any other joint entity relating to (a) the operation, maintenance, or management of the property or facilities of such joint entity or (b) the operation, maintenance, or management of the property or facilities of such other joint entity.

Source: Laws 1991, LB 731, § 8; Laws 2002, LB 1211, § 1; Laws 2005, LB 217, § 9; Laws 2007, LB701, § 13.

Cross References

Public Facilities Construction and Finance Act, see section 72-2301.

13-809 Joint entity; issuance of bonds; amounts; use.

Any joint entity may from time to time issue its bonds in such principal amounts as its governing body shall deem necessary to provide sufficient funds to carry out any of the joint entity's purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the governing body may determine, and the payment of all other costs or expenses of the joint entity incident to and necessary or convenient to carry out its purposes and powers.

Source: Laws 1991, LB 731, § 9.

13-810 Issuance of bonds; immunity; limitations.

(1) Neither the members of a joint entity's governing body 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 political subdivision or of this state and neither this state nor any political subdivision shall be liable thereon. Bonds shall be payable only out of any funds or properties of the issuing joint entity. Such limitations shall be plainly stated upon the face of the bonds.

Source: Laws 1991, LB 731, § 10.

13-811 Issuance of bonds; authorization; terms; signature.

Bonds shall be authorized by resolution of the issuing joint entity's governing body 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 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 1991, LB 731, § 11.

13-812 Bonds and coupons; negotiability; sale; price.

(1) Except as the issuing joint entity's governing body 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 joint entity's governing body may provide and at such price or prices as such governing body shall determine.

Source: Laws 1991, LB 731, § 12.

13-813 Bonds and coupons; validity of signatures.

If any of the officers whose signatures appear on any bonds or coupons 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 1991, LB 731, § 13.

13-814 Issuance of bonds; joint entity; powers.

Any joint entity may in connection with the issuance of its bonds:

(1) Covenant as to the use of any or all of its property, real or personal;

(2) Redeem the bonds, covenant for their redemption, and provide the terms and conditions thereof;

(3) 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 joint entity, 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 project or projects or any revenue-producing contract or contracts made by the joint entity with any person 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 joint entity may have any rights or interest;

(7) 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) 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 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) Covenant as to the custody, safekeeping, and insurance of any of its properties or investments 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 joint entity 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 joint entity 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 powers in the Interlocal Cooperation Act 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 1991, LB 731, § 14.

13-815 Joint entity; refunding bonds; authorized.

Any joint entity 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 joint entity'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 joint entity'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 joint entity, (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 joint entity. A determination by the governing body that any refinancing is advantageous or necessary to the joint entity, 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 1991, LB 731, § 15.

13-816 Refunding bonds; exchange.

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 joint entity'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 1991, LB 731, § 16.

13-817 Refunding bonds; proceeds; use.

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, 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 1991, LB 731, § 17; Laws 2001, LB 362, § 7.

13-818 Refunding bonds; terms.

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 joint entity in respect of the same shall be governed by the provisions of the Interlocal Cooperation Act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

Source: Laws 1991, LB 731, § 18.

13-819 Bond issuance; other consent not required.

Bonds may be issued under the Interlocal Cooperation Act 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 the Interlocal Cooperation Act, 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 1991, LB 731, § 19.

13-820 Joint entity; publication of resolution or other proceeding.

The governing body of the joint entity may provide for the publication of any resolution or other proceeding adopted by it pursuant to the Interlocal Cooperation Act in a newspaper of general circulation published in the political subdivision or county where the principal office or place of business of the joint agency is located or, if no newspaper is so published, in a newspaper qualified to carry legal notices having general circulation in the political subdivision or county.

Source: Laws 1991, LB 731, § 20.

13-821 Joint entity; notice of intention to issue bonds; contents.

In the case of a resolution or other proceeding providing for the issuance of bonds pursuant to the Interlocal Cooperation Act, the governing body of the joint entity 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 the act, titled as such, containing:

(1) The name of the joint entity;

(2) The purpose of the issue, including a brief description of the project and the name of the political subdivisions 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 joint entity, identified in the notice, during regular business hours of the joint entity as described in the notice and for a period of at least thirty days after the publication of the notice.

Source: Laws 1991, LB 731, § 21.

13-822 Resolution, proceeding, or bonds; right to contest.

For a period of thirty days after such publication, any interested person 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, or any contract of purchase, sale, or lease relating to the issuance of such bonds. 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 1991, LB 731, § 22.

13-823 Bonds; designated as securities; investment authorized.

Bonds issued pursuant to the Interlocal Cooperation Act 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 1991, LB 731, § 23.

13-824 Joint entity; bonds and property; exempt from taxation; when.

(1) All bonds of a joint entity 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 a joint entity to the extent it is used for a public purpose, including any pro rata share of any property owned by a joint entity 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 a joint entity shall be exempt from all taxes of the state or any 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 1991, LB 731, § 24; Laws 2001, LB 173, § 11.

13-824.01 Contracts relating to electric generating facility and related facilities; estimated cost; bid procedure; advertising; purchases authorized without advertising or sealed bidding.

(1) A joint entity shall cause estimates of the costs to be made by some competent engineer or engineers before the joint entity enters into any contract for the construction, management, operation, ownership, maintenance, or purchase of an electric generating facility and related facilities.

(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 13-824.02 and 13-824.03 relating to sealed bids shall not apply to contracts entered into by a joint entity in the exercise of its rights and powers relating to equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance 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 governing body of the joint entity; and

(iii) The joint entity 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.

(b) Any contract for which the governing body has approved an engineer's certificate described in subdivision (a) 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 joint entity 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 governing body 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 13-824.02 and 13-824.03 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 facilities described in subsection (1) 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 governing body of the joint entity 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 13-824.02 and 13-824.03, a joint entity 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 governing body of the joint entity. 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 joint entity by the engineer or engineers certifying the purchase for the governing body's approval. After such certification, but not necessarily before the governing body'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 joint entity is located and published in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of such purchase.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 13-824.02 and 13-824.03, a joint entity 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 governing body. A written statement containing such certification shall be submitted to the joint entity by the engineer for the governing body's approval.

Source: Laws 2007, LB636, § 2.

13-824.02 Advertisement for sealed bids; requirements.

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 joint entity. 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 joint entity 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 governing body of the joint entity 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 joint entity, giving the location thereof, the time within which bids shall be filed, and the date, hour, and place the same shall be opened.

Source: Laws 2007, LB636, § 3.

13-824.03 Governing body; award of contract; considerations.

The governing body of the joint entity 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 governing body, all bids tendered may be rejected, and readvertisement for bids made, in the manner, form, and time as provided in section 13-824.02. In determining whether a bidder is responsible, the governing body may consider the bidder's financial responsibility, skill, experience, record of integrity, ability to furnish repairs and maintenance services, and ability to meet delivery or performance deadlines and whether the bid is in conformance with specifications. Consideration may also be given by the governing body of the joint entity 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, 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 joint entity be expended thereunder unless advertisement and letting has been had as provided in sections 13-824.01 to 13-824.03.

Source: Laws 2007, LB636, § 4.

13-825 Act, how construed.

The provisions of the Interlocal Cooperation Act shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized by the act and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon political subdivisions, agencies, and others by law. Insofar as the provisions of the Interlocal Cooperation Act are inconsistent with the provisions of any general or special law, administrative order, or regulation, the provisions of the Interlocal Cooperation Act shall be controlling.

Source: Laws 1991, LB 731, § 25.

13-826 Pledge of state.

The State of Nebraska does hereby pledge to and agree with the holders of any bonds and with those persons who may enter into contracts with any joint entity or political subdivision under the Interlocal Cooperation Act 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 the Interlocal Cooperation Act shall preclude such alteration, impairment, or limitation if and when adequate provisions are made by law for the protection of the holders of the bonds or persons entering into contracts with any joint entity or political subdivision. Each joint entity and political subdivision may include this pledge and undertaking for the state in such bonds or contracts.

Source: Laws 1991, LB 731, § 26.

13-827 Act, liberal construction.

The Interlocal Cooperation Act is necessary for the welfare of the state and its inhabitants and shall be construed liberally to effect its purposes.

Source: Laws 1991, LB 731, § 27.

ARTICLE 9

POLITICAL SUBDIVISIONS TORT CLAIMS ACT

Section

13-901 Act, how cited.

Sections 13-901 to 13-927 shall be known and may be cited as the Political Subdivisions Tort Claims Act.

Source: Laws 1969, c. 138, § 20, p. 634; Laws 1984, LB 590, § 1; Laws 1985, Second Spec. Sess., LB 14, § 1; Laws 1987, LB 258, § 5; R.S.Supp.,1987, § 23-2420; Laws 2007, LB564, § 1.

13-902 Legislative declarations.

The Legislature hereby declares that no political subdivision of the State of Nebraska shall be liable for the torts of its officers, agents, or employees, and that no suit shall be maintained against such political subdivision or its officers, agents, or employees on any tort claim except to the extent, and only to the extent, provided by the Political Subdivisions Tort Claims Act. The Legislature further declares that it is its intent and purpose through this enactment to provide uniform procedures for the bringing of tort claims against all political subdivisions, whether engaging in governmental or proprietary functions, and

that the procedures provided by the act shall be used to the exclusion of all others.

Source: Laws 1969, c. 138, § 1, p. 627; R.S.1943, (1983), § 23-2401; Laws 1992, LB 262, § 7.

1. Suits subject to act
2. Constitutionality
3. Appeals under act
4. Miscellaneous

1. Suits subject to act

The Political Subdivisions Tort Claims Act removes, in part, the traditional immunity of subdivisions for the negligent acts of their employees. Talbot v. Douglas County, 249 Neb. 620, 544 N.W.2d 839 (1996).

A sanitary and improvement district is a ''political subdivision'' to which the terms of the Political Subdivisions Tort Claims Act apply. West Omaha Inv. v. S.I.D. No. 48, 227 Neb. 785, 420 N.W.2d 291 (1988).

A drainage district is a political subdivision within the meaning of the Political Subdivisions Tort Claims Act. Parriott v. Drainage District No. 6, 226 Neb. 123, 410 N.W.2d 97 (1987).

An irrigation district properly organized under the statutes is a political subdivision. Peterson v. Gering Irr. Dist., 219 Neb. 281, 363 N.W.2d 145 (1985).

This act specifically excludes from its provisions any claim arising in respect to the detention of goods or merchandise by any law enforcement officer. Nash v. City of North Platte, 198 Neb. 623, 255 N.W.2d 52 (1977).

This section removes, partially, the traditional immunity of subdivisions for the negligent acts of their employees and officers. Koepf v. County of York, 198 Neb. 67, 251 N.W.2d 866 (1977).

Person intoxicated when confined in cell with another who attacked and injured him recovered damages from city under this act. Daniels v. Andersen, 195 Neb. 95, 237 N.W.2d 397 (1975).

The common law rule of governmental immunity has not been completely abrogated in Nebraska, and an action for damages for misrepresentation and deceit is not permitted. Hall v. Abel Inv. Co., 192 Neb. 256, 219 N.W.2d 760 (1974).

Claim for indemnification and contribution from political subdivision of state does not have to be filed pursuant to the Nebraska Political Subdivisions Tort Claims Act, and its one-year statute of limitations does not apply. Waldinger Co. v. P & Z Co., Inc., 414 F.Supp. 59 (D. Neb. 1976).

2. Constitutionality

Political Subdivisions Tort Claims Act including one-year notice of claim requirement and two-year limitation for bringing action held constitutional. Campbell v. City of Lincoln, 195 Neb. 703, 240 N.W.2d 339 (1976).

3. Appeals under act

A district court's factual findings in a case brought under the Political Subdivisions Tort Claims Act will not be set aside unless such findings are clearly incorrect. Zeller v. County of Howard, 227 Neb. 667, 419 N.W.2d 654 (1988); Hughes v. Enterprise Irrigation Dist., 226 Neb. 230, 410 N.W.2d 494 (1987); Lynn v. Metropolitan Utilities Dist., 225 Neb. 121, 403 N.W.2d 335 (1987).

In reviewing a bench trial under the Political Subdivisions Tort Claims Act, sections 23-2401 et seq., the Supreme Court must consider the evidence in the light most favorable to the successful party, resolving any conflicts in the evidence in favor of that party and giving to that party the benefit of all reasonable inferences that can be deduced from the evidence. The findings of fact of the trial court in a proceeding under this act will not be set aside unless such findings are clearly incorrect. Phillips v. City of Omaha, 227 Neb. 233, 417 N.W.2d 12 (1987).

A municipality, sued under the Political Subdivisions Tort Claims Act, may avail itself of the immunity protections established in the Recreational Liability Act as an owner of land. Bailey v. City of North Platte, 218 Neb. 810, 359 N.W.2d 766 (1984).

Findings of fact made by the district court in a case brought under the Political Subdivisions Tort Claims Act, section 23-2401 et seq., will not be disturbed on appeal unless clearly wrong. Watson v. City of Omaha, 209 Neb. 835, 312 N.W.2d 256 (1981); Craig v. Gage County, 190 Neb. 320, 208 N.W.2d 82 (1973).

In a proceeding brought under the Political Subdivisions Tort Claims Act, the findings of fact by the trial court will not be overturned unless clearly wrong. Lee v. City of Omaha, 209 Neb. 345, 307 N.W.2d 800 (1981); Naber v. City of Humboldt, 197 Neb. 433, 249 N.W.2d 726 (1977).

4. Miscellaneous

The trial court was not clearly wrong in inferring from a political subdivision's admission that an action was brought ''pursuant to'' the Political Subdivisions Tort Claims Act that the plaintiff completely complied with the act, in view of the fact that the political subdivision never challenged compliance through summary judgment, motion for a new trial, or otherwise. Schmid v. Malcolm Sch. Dist., 233 Neb. 580, 447 N.W.2d 20 (1989).

A petition to state a claim against a political subdivision must allege compliance with the terms of the Political Subdivisions Tort Claims Act. West Omaha Inv. v. S.I.D. No. 48, 227 Neb. 785, 420 N.W.2d 291 (1988).

The Political Subdivisions Tort Claims Act does not foreclose suits against individual employees of a political subdivision for their own personal negligence. Dieter v. Hand, 214 Neb. 257, 333 N.W.2d 772 (1983).

Court held evidence of custom and usage in the electrical industry is pertinent on the question of negligence and is a question of fact in determining whether due care has been exercised. Steel Containers, Inc. v. Omaha P. P. Dist., 198 Neb. 81, 251 N.W.2d 669 (1977).

13-903 Terms, defined.

For purposes of the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610, unless the context otherwise requires:

(1) Political subdivision shall include villages, cities of all classes, counties, school districts, public power districts, and all other units of local government,

including entities created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. Political subdivision shall not be construed to include any contractor with a political subdivision;

(2) Governing body shall mean the village board of a village, the city council of a city, the board of commissioners or board of supervisors of a county, the board of directors of a public power district, the governing board or other governing body of an entity created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act, and any duly elected or appointed body holding the power and authority to determine the appropriations and expenditures of any other unit of local government;

(3) Employee of a political subdivision shall mean any one or more officers or employees of the political subdivision or any agency of the subdivision and shall include members of the governing body, duly appointed members of boards or commissions when they are acting in their official capacity, volunteer firefighters, and volunteer rescue squad personnel. Employee shall not be construed to include any contractor with a political subdivision; and

(4) Tort claim shall mean any claim against a political subdivision for money only on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the political subdivision, while acting within the scope of his or her office or employment, under circumstances in which the political subdivision, if a private person, would be liable to the claimant for such damage, loss, injury, or death but shall not include any claim accruing before January 1, 1970.

Source: Laws 1969, c. 138, § 2, p. 628; Laws 1987, LB 258, § 4; R.S.Supp.,1987, § 23-2402; Laws 1991, LB 81, § 2; Laws 1996, LB 900, § 1019; Laws 1999, LB 87, § 55.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

Volunteer firefighters employed by a nonprofit corporation are employees of a political subdivision under subsection (3) of this section. Hatcher v. Bellevue Vol. Fire Dept., 262 Neb. 23, 628 N.W.2d 685 (2001).

The definition of ''governing body'' under the Political Subdivisions Tort Claims Act does not include an insurance carrier for the political subdivision. Davis v. Town of Clatonia, 231 Neb. 814, 438 N.W.2d 479 (1989).

A contract action does not involve a tort claim, as defined in this section, and thus is not subject to the provisions of the Political Subdivisions Tort Claims Act. Employers Reins. Corp. v. Santee Pub. Sch. Dist. No. C-5, 231 Neb. 744, 438 N.W.2d 124 (1989).

The Political Subdivisions Tort Claims Act eliminates the need for the doctrine by which a claimant is required to prove that the negligent act was committed by the municipal employee in furtherance of a private duty owed to the claimant. Maple v. City of Omaha, 222 Neb. 293, 384 N.W.2d 254 (1986).

The liability of a political subdivision under the Political Subdivisions Tort Claims Act is not absolute, but rather such liability as would exist in a private person without such immunity. Koepf v. County of York, 198 Neb. 67, 251 N.W.2d 866 (1977).

13-904 Governing body; powers.

Authority is hereby conferred upon the governing body of any political subdivision to consider, ascertain, adjust, compromise, settle, determine, and allow any tort claim as defined in the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610.

Source: Laws 1969, c. 138, § 3, p. 628; R.S.1943, (1983), § 23-2403; Laws 1996, LB 900, § 1020.

13-905 Tort claims; filing; requirements.

All tort claims under the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall be filed with the clerk,

secretary, or other official whose duty it is to maintain the official records of the political subdivision, or the governing body of a political subdivision may provide that such claims may be filed with the duly constituted law department of such subdivision. It shall be the duty of the official with whom the claim is filed to present the claim to the governing body. All such claims shall be in writing and shall set forth the time and place of the occurrence giving rise to the claim and such other facts pertinent to the claim as are known to the claimant.

Source: Laws 1969, c. 138, § 4, p. 628; R.S.1943, (1983), § 23-2404; Laws 1996, LB 900, § 1021.

1. Constitutionality
2. Notice requirements
3. Affirmative defense

1. Constitutionality

This section is relevant and related to a legitimate governmental interest, and therefore does not violate the uniformity clause of the Nebraska Constitution or the equal protection clause of the U.S. Constitution. Willis v. City of Lincoln, 232 Neb. 533, 441 N.W.2d 846 (1989).

2. Notice requirements

A written claim must make a demand upon a political subdivision for the satisfaction of an obligation rather than merely alerting the political subdivision to the possibility of a claim. Jessen v. Malhotra, 266 Neb. 393, 665 N.W.2d 586 (2003).

For substantial compliance with the written notice requirements of this section, within 1 year from the act or omission on which the claim is based, the written notice of the claim must be filed with an individual or office designated in the Political Subdivisions Tort Claims Act as the authorized recipient for notice of claim against a political subdivision. A notice of claim filed only with one unauthorized to receive a claim pursuant to this section does not substantially comply with the notice requirements of the act. Estate of McElwee v. Omaha Transit Auth., 266 Neb. 317, 664 N.W.2d 461 (2003).

With regard to a claim's content, substantial compliance with the statutory provisions supplies the requisite and sufficient notice to a political subdivision, so long as the written notice is filed with an individual or office designated in the Political Subdivisions Tort Claims Act as the authorized recipient of claims. Woodard v. City of Lincoln, 256 Neb. 61, 588 N.W.2d 831 (1999).

Notice requirements for a claim filed pursuant to the Political Subdivisions Tort Claims Act are to be liberally construed so that one with a meritorious claim may not be denied relief as the result of some technical noncompliance. Mere knowledge of an act or omission, by a nondesignated party, is not sufficient to satisfy this section's notice requirements. If a political subdivision, by an appropriately specific allegation in a demurrer or answer, raises the issue of a plaintiff's failure to comply with the notice requirement of this section, the plaintiff then has the burden to show compliance. Schoemaker v. Metropolitan Utilities Dist., 245 Neb. 967, 515 N.W.2d 675 (1994).

Compliance with the filing or presentment of claim provision in this section is a condition precedent to commencement of a negligence action against a political subdivision. Schmidt v. Omaha Pub. Power Dist., 245 Neb. 776, 515 N.W.2d 756 (1994).

Filing or presentment of a claim under the Political Subdivisions Tort Claims Act is neither a condition precedent to a political subdivision's tort liability nor a substantive element for a claimant's recovery in a negligence action against a political subdivision, but is a condition precedent to commencement of a negligence action against a political subdivision. Millman v. County of Butler, 235 Neb. 915, 458 N.W.2d 207 (1990).

For substantial compliance with the notice requirement of this section, within one year from the act or omission on which the claim is based, the written notice of claim must be filed with an individual designated in the Political Subdivisions Tort Claims Act as the authorized recipient for notice of claim. Willis v. City of Lincoln, 232 Neb. 533, 441 N.W.2d 846 (1989).

The filing of a notice of claim under the Political Subdivisions Tort Claims Act is a condition precedent to the institution of a suit to which the act applies. When the act does apply, failure to allege compliance with its provisions is a fatal defect, rendering the petition defective and subject to a demurrer. Employers Reins. Corp. v. Santee Pub. Sch. Dist. No. C-5, 231 Neb. 744, 438 N.W.2d 124 (1989).

Substantial compliance with the statutory provisions pertaining to a claim's content supplies the requisite and sufficient notice to a political subdivision in accordance with this section, when the lack of compliance has caused no prejudice to the political subdivision. Franklin v. City of Omaha, 230 Neb. 598, 432 N.W.2d 808 (1988); West Omaha Inv. v. S.I.D. No. 48, 227 Neb. 785, 420 N.W.2d 291 (1988); Chicago Lumber Co. v. School Dist. No. 71, 227 Neb. 355, 417 N.W.2d 757 (1988).

The filing of a notice of claim under the Political Subdivisions Tort Claims Act is a condition precedent to the institution of suit for an alleged tort against a political subdivision. All that is necessary to be included in a claim under this act is a recitation of the time and place of the occurrence giving rise to the claim and such other facts pertinent to the claim as are known to the claimant; it is not necessary that the claim contain the amount of damages or loss. West Omaha Inv. v. S.I.D. No. 48, 227 Neb. 785, 420 N.W.2d 291 (1988).

The notice required by this section does not have to state the indicated information, circumstances, or facts with the fullness or precision required in a pleading. Chicago Lumber Co. v. School Dist. No. 71, 227 Neb. 355, 417 N.W.2d 757 (1988).

A notice of a possible future claim does not satisfy the requirements of the statute. Peterson v. Gering Irr. Dist., 219 Neb. 281, 363 N.W.2d 145 (1985).

Notification to the insurance carrier of a political subdivision alone is insufficient to constitute substantial compliance with the notice provision of the Political Subdivisions Tort Claims Act. Written notice must be sent to a person or entity designated in the act. The filing of a notice of claim under the Political Subdivisions Tort Claims Act is a condition precedent to the institution of a suit to which the act applies. The partial payment of an insurance claim by a political subdivision's insurer standing alone is insufficient to create a question of fact precluding summary judgment as to whether the political subdivision is equitably estopped to assert the 1-year filing requirement. Keene v. Teten, 8 Neb. App. 819, 602 N.W.2d 29 (1999).

3. Affirmative defense

The filing or presentment of a claim under the Political Subdivisions Tort Claims Act is a condition precedent to commencement of a negligence action against a political subdivision. Noncompliance with the notice requirements is an available defense to a political subdivision, provided it is raised as an

affirmative defense. Polinski v. Omaha Pub. Power Dist., 251 Neb. 14, 554 N.W.2d 636 (1996).

A general denial in a political subdivision's answer does not raise the issue of noncompliance, which must be raised as an affirmative defense specifically expressing the plaintiff's noncompliance with this section. Schoemaker v. Metropolitan Utilities Dist., 245 Neb. 967, 515 N.W.2d 675 (1994).

A general denial in a political subdivision's answer does not raise the issue of noncompliance, which must be raised as an affirmative defense specifically expressing plaintiff's noncompliance with the notice requirement of this section. Miles v. Box Butte County, 241 Neb. 588, 489 N.W.2d 829 (1992).

A political subdivision must raise an affirmative defense by specifically expressing the plaintiff's noncompliance with the notice requirement. Once the noncompliance issue is properly raised, the plaintiff has the burden to show compliance with the notice requirement. Millman v. County of Butler, 235 Neb. 915, 458 N.W.2d 207 (1990).

Noncompliance with the notice requirement of this section must be raised as an affirmative defense and specifically alleged. A plaintiff has a limited right to commence an action under the Political Subdivisions Tort Claims Act in the form of a precedent filed claim prescribed by this section. Knight v. Hays, 4 Neb. App. 388, 544 N.W.2d 106 (1996).

13-906 Civil suit; when permitted.

No suit shall be permitted under the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 unless the governing body of the political subdivision has made final disposition of the claim, except that if the governing body does not make final disposition of a claim within six months after it is filed, the claimant may, by notice in writing, withdraw the claim from consideration of the governing body and begin suit under such act and sections.

Source: Laws 1969, c. 138, § 5, p. 629; R.S.1943, (1983), § 23-2405; Laws 1996, LB 900, § 1022.

Because compliance with the statutory time limit can be determined with precision, the doctrine of substantial compliance has no application to this section. Big Crow v. City of Rushville, 266 Neb. 750, 669 N.W.2d 63 (2003).

Noncompliance with this section must be pled as an affirmative defense. Big Crow v. City of Rushville, 266 Neb. 750, 669 N.W.2d 63 (2003).

Absent any consideration of the statute of limitations, filing of a petition is substantial compliance with the terms of this section as to the withdrawal of a claim from consideration. Malzahn v. Transit Authority, 244 Neb. 425, 507 N.W.2d 289 (1993).

Substantial compliance with this section is sufficient when a lack of precise compliance has caused no prejudice to the political subdivision. Big Crow v. City of Rushville, 11 Neb. App. 498, 654 N.W.2d 383 (2002).

13-907 Jurisdiction; venue; procedure; appeal.

Jurisdiction, venue, procedure, and rights of appeal in all suits brought under the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall be determined in the same manner as if the suits involved private individuals, except that such suits shall be heard and determined by the appropriate court without a jury.

Source: Laws 1969, c. 138, § 6, p. 629; R.S.1943, (1983), § 23-2406; Laws 1996, LB 900, § 1023.

Whether an employee of a political subdivision is acting within his scope of employment is not a question for the jury. Bohl v. Buffalo Cty., 251 Neb. 492, 557 N.W.2d 668 (1997).

An action under the Political Subdivisions Tort Claims Act is tried to the court without a jury. Findings of fact by the trial court will not be overturned unless clearly wrong. Hume v. Otoe County, 212 Neb. 616, 324 N.W.2d 810 (1982); Buttner v. Omaha P. P. Dist., 193 Neb. 515, 227 N.W.2d 862 (1975).

In a proceeding brought under the Political Subdivisions Tort Claims Act, the findings of fact by the trial court will not be overturned unless clearly wrong. Lee v. City of Omaha, 209 Neb. 345, 307 N.W.2d 800 (1981); Lindgren v. City of Gering, 206 Neb. 360, 292 N.W.2d 921 (1980); Daniels v. Andersen, 195 Neb. 95, 237 N.W.2d 397 (1975); Craig v. Gage County, 190 Neb. 320, 208 N.W.2d 82 (1973).

13-908 Political subdivision; liability; no writ of execution; offer of settlement; effect.

Except as otherwise provided in the Political Subdivisions Tort Claims Act, in all suits brought under the act the political subdivision shall be liable in the same manner and to the same extent as a private individual under like circumstances, except that no writ of execution shall issue against a political subdivision. Disposition of or offer to settle any claim made under the act shall

not be competent evidence of liability of the political subdivision or any employee or the amount of damages.

Source: Laws 1969, c. 138, § 7, p. 629; R.S.1943, (1983), § 23-2407; Laws 1991, LB 15, § 6.

13-909 Final judgment; effect.

Final judgment in any suit under the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the political subdivision whose act or omission gave rise to the claim, but this section shall not apply if the court rules that the claim is not permitted under such act and sections.

Source: Laws 1969, c. 138, § 8, p. 629; R.S.1943, (1983), § 23-2408; Laws 1996, LB 900, § 1024.

Dismissal of claim against employee was correct after final judgment in suit under this act. Craig v. Gage County, 190 Neb. 320, 208 N.W.2d 82 (1973).

13-910 Act and sections; exemptions.

The Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

(1) Any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute, ordinance, or officially adopted resolution, rule, or regulation, whether or not such statute, ordinance, resolution, rule, or regulation is valid;

(2) Any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of the political subdivision or an employee of the political subdivision, whether or not the discretion is abused;

(3) Any claim based upon the failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by or leased to such political subdivision to determine whether the property complies with or violates any statute, ordinance, rule, or regulation or contains a hazard to public health or safety unless the political subdivision had reasonable notice of such hazard or the failure to inspect or inadequate or negligent inspection constitutes a reckless disregard for public health or safety;

(4) Any claim based upon the issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, or order. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim based upon the negligent execution by an employee of the political subdivision in the issuance of a certificate of title under the Motor Vehicle Certificate of Title Act and the State Boat Act;

(5) Any claim arising with respect to the assessment or collection of any tax or fee or the detention of any goods or merchandise by any law enforcement officer;

(6) Any claim caused by the imposition or establishment of a quarantine by the state or a political subdivision, whether such quarantine relates to persons or property;

(7) Any claim arising out of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(8) Any claim by an employee of the political subdivision which is covered by the Nebraska Workers' Compensation Act;

(9) Any claim arising out of the malfunction, destruction, or unauthorized removal of any traffic or road sign, signal, or warning device unless it is not corrected by the political subdivision responsible within a reasonable time after actual or constructive notice of such malfunction, destruction, or removal. Nothing in this subdivision shall give rise to liability arising from an act or omission of any political subdivision in placing or removing any traffic or road signs, signals, or warning devices when such placement or removal is the result of a discretionary act of the political subdivision;

(10) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 60-624, bridge, public thoroughfare, or other public place due to weather conditions. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim arising out of the operation of a motor vehicle by an employee of the political subdivision while acting within the course and scope of his or her employment by the political subdivision;

(11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in such section or bridge, either in original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the political subdivision or some other body or employee exercising discretionary authority to give such approval;

(12) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in such section, bridge, or other public thoroughfare. Insufficiency or want of repair shall be construed to refer to the general or overall condition and shall not refer to a spot or localized defect. A political subdivision shall be deemed to waive its immunity for a claim due to a spot or localized defect only if the political subdivision has had actual or constructive notice of the defect within a reasonable time to allow repair prior to the incident giving rise to the claim; or

(13)(a) Any claim relating to recreational activities for which no fee is charged (i) resulting from the inherent risk of the recreational activity, (ii) arising out of a spot or localized defect of the premises unless the spot or localized defect is not corrected by the political subdivision leasing, owning, or in control of the premises within a reasonable time after actual or constructive notice of the spot or localized defect, or (iii) arising out of the design of a skatepark or bicycle motocross park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction. For purposes of this subdivision, a political subdivision shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence.

(b) For purposes of this subdivision:

(i) Recreational activities include, but are not limited to, whether as a participant or spectator: Hunting, fishing, swimming, boating, camping, picnicking, hiking, walking, running, horseback riding, use of trails, nature study, waterskiing, winter sports, use of playground equipment, biking, roller blading, skateboarding, golfing, athletic contests; visiting, viewing, or enjoying entertainment events, festivals, or historical, archaeological, scenic, or scientific sites; and similar leisure activities;

(ii) Inherent risk of recreational activities means those risks that are characteristic of, intrinsic to, or an integral part of the activity;

(iii) Gross negligence means the absence of even slight care in the performance of a duty involving an unreasonable risk of harm; and

(iv) Fee means a fee to participate in or be a spectator at a recreational activity. A fee shall include payment by the claimant to any person or organization other than the political subdivision only to the extent the political subdivision retains control over the premises or the activity. A fee shall not include payment of a fee or charge for parking or vehicle entry.

(c) This subdivision, and not subdivision (3) of this section, shall apply to any claim arising from the inspection or failure to make an inspection or negligent inspection of premises owned or leased by the political subdivision and used for recreational activities.

Source: Laws 1969, c. 138, § 9, p. 629; Laws 1986, LB 811, § 10; R.S.Supp.,1986, § 23-2409; Laws 1992, LB 262, § 8; Laws 1993, LB 370, § 2; Laws 1996, LB 900, § 1025; Laws 1999, LB 228, § 1; Laws 2004, LB 560, § 1; Laws 2005, LB 276, § 98; Laws 2007, LB564, § 2.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Nebraska Workers' Compensation Act, see section 48-1,110.
State Boat Act, see section 37-1201.

1. Discretionary function
2. Due care
3. Governmental immunity
4. Miscellaneous

1. Discretionary function

Once a city elects to install a pedestrian crosswalk signal, it is required to conform to the Manual on Uniform Traffic Control Devices in determining the pedestrian clearance interval, and the discretionary immunity exception of this section does not apply. Tadros v. City of Omaha, 269 Neb. 528, 694 N.W.2d 180 (2005).

The placement of traffic control devices is a discretionary function of a political subdivision under subsection (2) of this section. McCormick v. City of Norfolk, 263 Neb. 693, 641 N.W.2d 638 (2002).

The discretionary function exemption provided for in subsection (2) of this section extends only to basic policy decisions made in governmental activity, and not to ministerial activities implementing such policy decisions. Norman v. Ogallala Pub. Sch. Dist., 259 Neb. 184, 609 N.W.2d 338 (2000).

The discretionary function exception is expressed in nearly identical language in the State Tort Claims Act and the Political Subdivisions Tort Claims Act; thus, cases construing the state exception apply as well to the exception granted to political subdivisions. The discretionary function exceptions to the general waiver of tort immunity are matters of defense which must be pled and proved by a political subdivision. Lawry v. County of Sarpy, 254 Neb. 193, 575 N.W.2d 605 (1998).

Pursuant to subsection (2) of this section, the discretionary function exemption applies only to basic policy decisions and not to the exercise of discretionary acts at an operational level. A county attorney's actions in collecting unpaid child support are operational in nature rather than a basic policy decision. Talbot v. Douglas County, 249 Neb. 620, 544 N.W.2d 839 (1996).

Under the provisions of subsection (2) of this section, the performance or nonperformance of a discretionary function cannot be the basis of liability. Whether the undisputed facts demonstrate that liability is precluded by the discretionary function exemption is a question of law. As the discretionary function exemption is expressed in nearly identical language in section 81-8,219(1)(a) of the State Tort Claims Act and subsection (2) of this section of the Political Subdivisions Tort Claims Act, cases construing the state exemption apply as well to the exemption given political subdivisions. The county health department's reporting and investigating a reported case of bacterial meningitis fall within the discretionary function precluding liability under the Political Subdivisions Tort Claims Act. Jasa v. Douglas County, 244 Neb. 944, 510 N.W.2d 281 (1994).

Pursuant to subsection (2) of this section, whether undisputed facts demonstrate that liability is precluded by the discretionary function exemption of the Political Subdivisions Tort Claims Act

is a question of law. Lemke v. Metropolitan Utilities Dist., 243 Neb. 633, 502 N.W.2d 80 (1993).

The discretionary function or duty exemption in the Political Subdivisions Tort Claims Act extends only to the basic policy decisions made in governmental activity, and not to ministerial activities implementing such policy decisions. In other words, the political subdivision is liable for the negligence of its employees at the operational level, where there is no room for policy judgment. Hamilton v. City of Omaha, 243 Neb. 253, 498 N.W.2d 555 (1993).

Where a county legislative body delegates duties to a county official, and gives that official discretion in performing those duties within broad overall guidelines, actions of that county official in issuing permits are discretionary functions within the meaning of subsection (2) of this section. Allen v. County of Lancaster, 218 Neb. 163, 352 N.W.2d 883 (1984).

Decisions on selection of a foster home for a dependent child are not policy decisions or discretionary functions contemplated as exceptions within this section of the Political Subdivisions Tort Claims Act. Koepf v. County of York, 198 Neb. 67, 251 N.W.2d 866 (1977).

The decision by a government employee as to the manner of operation of a snowblower is the type of discretion exercised at an everyday operational level such that the discretionary function exemption does not apply. Conditions caused by the operation of a snowblower were the underlying cause of the accident, separate and independent from the wind and snow in the area at the time of the accident, and the operation of the snowblower was a proximate cause of the accident and injuries. Thus, the State was not immune from suit under subsection (10) of this section. Stinson v. City of Lincoln, 9 Neb. App. 642, 617 N.W.2d 456 (2000).

The performance or nonperformance of a discretionary function cannot be the basis of liability under the Political Subdivisions Tort Claims Act. The discretionary function exemption under the Political Subdivisions Tort Claims Act extends only to basic policy decisions and not to the exercise of discretionary acts at an operational level. A simple decision whether to dispatch an officer to the scene of a crime or to investigate a crime, without more, does not involve a basic policy decision by a high-level executive which would render the decisionmaker immune from suit. Whether the undisputed facts demonstrate that liability is precluded by the discretionary function exemption of the Political Subdivisions Tort Claims Act is a question of law. Stinson v. City of Lincoln, 9 Neb. App. 642, 617 N.W.2d 456 (2000).

2. Due care

A police officer's failure to ''safely'' keep a seized vehicle can give rise to liability under the Political Subdivisions Tort Claims Act. Section 29-818 requires a police officer to exercise reasonable care and diligence for the safekeeping of property within his custody. Nash v. City of North Platte, 205 Neb. 480, 288 N.W.2d 51 (1980).

3. Governmental immunity

The exceptions set forth in this section are affirmative sovereign immunity defenses to claims brought pursuant to the Political Subdivisions Tort Claims Act. If a political subdivision proves that a plaintiff's claim comes within an exception pursuant to this section, then the claim fails based on sovereign immunity, and the political subdivision is not liable. Harris v. Omaha Housing Auth., 269 Neb. 981, 698 N.W.2d 58 (2005).

The common law rule of governmental immunity has not been completely abrogated in Nebraska, and an action for damages for misrepresentation and deceit is not permitted. Hall v. Abel Inv. Co., 192 Neb. 256, 219 N.W.2d 760 (1974).

The common law rule of governmental immunity has not been completely abrogated in this state and actions at law for false arrest, false imprisonment, and libel and slander remain subject thereto. Webber v. Andersen, 187 Neb. 9, 187 N.W.2d 290 (1971).

4. Miscellaneous

Acts undertaken to assist in the assessment and collection of taxes are immune from liability under subsection (5) of this section. Butler Cty. Sch. Dist. No. 502 v. Meysenburg, 268 Neb. 347, 683 N.W.2d 367 (2004).

The question whether a city is immune from liability depends upon whether the city had reasonable notice of any hazard or whether its failure to inspect or its negligent inspection constituted a reckless disregard for public health or safety. Mondelli v. Kendel Homes Corp., 262 Neb. 263, 631 N.W.2d 846 (2001).

Pursuant to subsection (10) of this section, the snow and ice exemption is not applicable to a plaintiff injured after slipping on snow when the petition alleged negligence in a college's failure to maintain safe ingress and egress to, from, and across property and a failure to monitor and remove hazardously parked vehicles. McDonald v. DeCamp Legal Servs., P.C., 260 Neb. 729, 619 N.W.2d 583 (2000).

Subsection (10) of this section does not exempt a claim arising out of events occurring under darkness because mere darkness is not a temporary condition due to weather. Drake v. Drake, 260 Neb. 530, 618 N.W.2d 650 (2000).

The Political Subdivisions Tort Claims Act eliminates the need for the doctrine by which a claimant is required to prove that the negligent act was committed by the municipal employee in furtherance of a private duty owed to the claimant. Maple v. City of Omaha, 222 Neb. 293, 384 N.W.2d 254 (1986).

When a governmental entity has actual or constructive notice of a dangerous condition or hazard caused by or under the control of the governmental entity and the dangerous condition or hazard is not readily apparent to persons who are likely to be injured by the dangerous condition or hazard, the governmental entity has a nondiscretionary duty to warn of the danger or take other protective measures that may prevent injury as the result of the dangerous condition or hazard. Stinson v. City of Lincoln, 9 Neb. App. 642, 617 N.W.2d 456 (2000).

13-911 Vehicular pursuit by law enforcement officer; liability to third parties; reimbursement.

(1) In case of death, injury, or property damage to any innocent third party proximately caused by the action of a law enforcement officer employed by a political subdivision during vehicular pursuit, damages shall be paid to such third party by the political subdivision employing the officer.

(2) Upon payment by a political subdivision of those damages sustained by an innocent third party, whether upon voluntary settlement or in satisfaction of a judgment, the political subdivision shall be entitled to reimbursement of the amount of damages paid by the political subdivision from each and all of the following sources:

(a) The driver of the fleeing vehicle;

(b) Any organization, including a sole proprietorship, partnership, limited liability company, or corporation, liable for the conduct of the driver of the fleeing vehicle;

(c) Every insurer or self-insurance surety of either the driver of the fleeing vehicle or any organization, including a sole proprietorship, partnership, limited liability company, or corporation, liable for the conduct of the driver of the fleeing vehicle, except that no such insurer or self-insurance surety shall be required to pay in excess of the liability limit of its applicable policies or bonds;

(d) Any uninsured or underinsured motorist insurer or self-insurance surety legally liable to the innocent third party, except that the sum recoverable from such insurer or self-insurance surety shall not exceed the highest limit of liability determined in accord with the Uninsured and Underinsured Motorist Insurance Coverage Act;

(e) The state employing law enforcement officers whose actions contributed to the proximate cause of death, injury, or property damage sustained by the innocent third party, except that the liability of the state shall not exceed the damages sustained by the innocent third party apportioned equally among all political subdivisions employing law enforcement officers whose actions contributed to the proximate cause of the death, injury, or property damage sustained by the innocent third party and the state; and

(f) Any political subdivision employing law enforcement officers whose actions contributed to the proximate cause of death, injury, or property damage sustained by the innocent third party, except that the liability of the political subdivision shall not exceed the lesser of (i) its maximum statutory liability pursuant to the Political Subdivisions Tort Claims Act or (ii) damages sustained by the innocent third party apportioned equally among all political subdivisions and the state employing law enforcement officers whose actions contributed to the proximate cause of the death, injury, or property damage sustained by the innocent third party.

(3) This section shall not relieve any public or private source required statutorily or contractually to pay benefits for disability or loss of earned income or medical expenses of the duty to pay such benefits when due. No such source of payment shall have any right of subrogation or contribution against the political subdivision.

(4) This section shall be considered part of the Political Subdivisions Tort Claims Act and all provisions of the act apply.

(5) For purposes of this section, vehicular pursuit means an active attempt by a law enforcement officer operating a motor vehicle to apprehend one or more occupants of another motor vehicle, when the driver of the fleeing vehicle is or should be aware of such attempt and is resisting apprehension by maintaining or increasing his or her speed, ignoring the officer, or attempting to elude the officer while driving at speeds in excess of those reasonable and proper under the conditions.

Source: Laws 1981, LB 273, § 31; R.S.Supp.,1982, § 25-21,183; Laws 1984, LB 590, § 2; R.S.Supp.,1986, § 23-2410.01; Laws 1996, LB 952, § 1.

Cross References

Motor vehicle pursuit, law enforcement policy, see section 29-211.
Uninsured and Underinsured Motorist Insurance Coverage Act, see section 44-6401.

This section does not apply where there is no active attempt to apprehend the vehicle. Lalley v. City of Omaha, 266 Neb. 893, 670 N.W.2d 327 (2003).

An ''innocent third party'' is one who has not promoted, provoked, or persuaded the driver to engage in flight from law enforcement personnel and one who is not sought to be apprehended in the fleeing vehicle. Henery v. City of Omaha, 263 Neb. 700, 641 N.W.2d 644 (2002).

This section has created strict liability on the part of a political subdivision when (1) a claimant suffers death, injury, or property damage; (2) such death, injury, or property damage is proximately caused by the actions of a pursuing law enforcement officer employed by the political subdivision; and (3) the claimant is an innocent third party. Stewart v. City of Omaha, 242 Neb. 240, 494 N.W.2d 130 (1993).

In order for a city to be liable for injuries under this section, the first requirement is that the act of the police in pursuing a fleeing motorist must be such that without it the injury would not have occurred, commonly known as the ''but for'' rule, and the second requirement is that the injury must be the natural and probable result of that act and without an efficient intervening cause. Mid Century Ins. Co. v. City of Omaha, 242 Neb. 126, 494 N.W.2d 320 (1992).

13-912 Defective bridge or highway; damages; liability; limitation.

If any person suffers personal injury or loss of life, or damage to his or her property by means of insufficiency or want of repair of a highway or bridge or other public thoroughfare, which a political subdivision is liable to keep in repair, the person sustaining the loss or damage, or his or her personal representative, may recover in an action against the political subdivision, and if damages accrue in consequence of the insufficiency or want of repair of a road or bridge or other public thoroughfare, erected and maintained by two or more political subdivisions, the action can be brought against all of the political subdivisions liable for the repairs of the same; and damages and costs shall be paid by the political subdivisions in proportion as they are liable for the repairs. The procedure for filing such claims and bringing suit shall be the same for claims under this section as for other claims under the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610. No political subdivision shall be liable for damages occasioned by defects in state highways and bridges thereon which the Department of Roads is required to maintain, but the political subdivision shall not be relieved of liability until the state has actually undertaken construction or maintenance of such highways. It is the intent of the Legislature that minimum maintenance highways and roads shall not be deemed to be insufficient or in want of repair when they meet the minimum standards for such highways and roads pursuant to section 39-2109.

Source: Laws 1889, c. 7, § 4, p. 78; R.S.1913, § 2995; C.S.1922, § 2746; Laws 1929, c. 171, § 1, p. 585; C.S.1929, § 39-832; R.S.1943, § 39-834; Laws 1959, c. 167, § 2, p. 609; R.R.S.1943, § 39-834; Laws 1969, c. 138, § 10, p. 630; Laws 1983, LB 10, § 1; R.S. 1943, (1983), § 23-2410; Laws 1996, LB 900, § 1026.

1. Time of bringing action
2. Duty
3. Liability
4. Miscellaneous

1. Time of bringing action

Limitation of time within which to bring action applies to all persons without regard to any kind of disability. Gorgen v. County of Nemaha, 174 Neb. 588, 118 N.W.2d 758 (1962).

Action for death from county road contractor's negligence is not barred by thirty-day limitation under this section. Pratt v. Western Bridge & Constr. Co., 116 Neb. 553, 218 N.W. 397 (1928).

Limitation of time for bringing action is thirty days from date of injury. Swaney v. Gage County, 64 Neb. 627, 90 N.W. 542 (1902).

2. Duty

A county is not an insurer, but it must use reasonable and ordinary care in the construction and maintenance of highways and bridges such that a traveler using them with ordinary and reasonable caution will be reasonably safe. Hume v. Otoe County, 212 Neb. 616, 324 N.W.2d 810 (1982).

Duty of county is fulfilled if a width sufficient for travel is kept in a proper condition. Farmers Coop. Co. v. County of Dodge, 181 Neb. 432, 148 N.W.2d 922 (1967).

In order to recover against county for defect in highway on county line, it is necessary to show that the road was both constructed and maintained by county. Stitzel v. Hitchcock County, 139 Neb. 700, 298 N.W. 555 (1941).

County is not insurer, but must use reasonable, ordinary care to keep highway safe for traveler using ordinary care. Frickel v. Lancaster County, 115 Neb. 506, 213 N.W. 826 (1927); Johnson County v. Carmen, 71 Neb. 682, 99 N.W. 502 (1904).

3. Liability

Even assuming the city had a general duty to use ordinary care in treating its streets for icy conditions, dismissal of the

plaintiff's petition was affirmed where the evidence of the city's negligence was insufficient. Hendrickson v. City of Kearney, 210 Neb. 8, 312 N.W.2d 677 (1981).

County held liable for damages caused by insufficiency or want of repair of a bridge when a twenty-four ton truck collapsed a county bridge. Hansmann v. County of Gosper, 207 Neb. 659, 300 N.W.2d 807 (1981).

Defendant village is not liable for injuries suffered by plaintiff when she tripped and fell on a slight irregularity in the sidewalk, where there was no evidence that the village had received any complaint or notice of the condition of the sidewalk, and where the defect was clearly visible to the plaintiff. Doht v. Village of Walthill, 207 Neb. 377, 299 N.W.2d 177 (1980).

The liability of all political subdivisions based on the alleged insufficiency or want of repair of any public thoroughfare is to be determined by the provisions of sections 23-2410 and 23-2411, R.R.S.1943, and judicial interpretations governing the liability of counties under the statute in effect prior to the enactment of the Political Subdivisions Tort Claims Act. Christensen v. City of Tekamah, 201 Neb. 344, 268 N.W.2d 93 (1978).

County was not liable for damages allegedly due to defective stop sign. McKinney v. County of Cass, 180 Neb. 685, 144 N.W.2d 416 (1966).

The liability of a county for defective highways and bridges is statutory. Stevens v. County of Dawson, 172 Neb. 585, 111 N.W.2d 220 (1961).

County is not required to warn of dangers which arise from unusual and extraordinary occurrences. Clouse v. County of Dawson, 161 Neb. 544, 74 N.W.2d 67 (1955).

To impose liability on county, its negligence must be a proximate cause of injury. Shields v. County of Buffalo, 161 Neb. 34, 71 N.W.2d 701 (1955).

This section applies to liability of county to individuals, and not to action by county for injury to bridge. Central Neb. P. P. & I. Dist. v. Boettcher, 154 Neb. 815, 49 N.W.2d 690 (1951).

County is not liable on account of latent defects in bridge. Wittwer v. County of Richardson, 153 Neb. 200, 43 N.W.2d 505 (1950).

''Insufficiency'' of highway is defined. Dickenson v. County of Cheyenne, 146 Neb. 36, 18 N.W.2d 559 (1945).

County is not liable for damages to a person injured by reason of want of repair of a highway where whole duty of maintaining and repairing such highway rested on Department of Roads and Irrigation and not on county. Porter v. Lancaster County, 130 Neb. 705, 266 N.W. 584 (1936).

Counties under township organization are liable for defects in highway which county either by statute or contract is under a duty to maintain and keep in repair. Franek v. Butler County, 127 Neb. 852, 257 N.W. 235 (1934), reversing on rehearing, 126 Neb. 797, 254 N.W. 489 (1934).

County is liable although repair of highway delegated to another. Frickel v. Lancaster County, 115 Neb. 506, 213 N.W. 826 (1927); Sharp v. Chicago, B. & Q. R. R. Co., 110 Neb 34, 193 N.W. 150 (1923).

Prior to 1929 amendment, county was liable although injuries occurred on state highway. Saltzgaber v. Morrill County, 111 Neb. 392, 196 N.W. 627 (1923).

County is liable although not actually notified of defective condition of bridge, and notwithstanding mode of travel had changed since original construction. Higgins v. Garfield County, 107 Neb. 482, 186 N.W. 347 (1922).

Where road is on line between two counties, each is jointly and severally liable. Ewh v. Otoe County, 98 Neb. 469, 153 N.W. 509 (1915).

Contributory negligence of driver will not prevent recovery when injured person had no control over him. Loso v. Lancaster County, 77 Neb. 466, 109 N.W. 752 (1906).

Liability of county for damages resulting from defective culvert is discussed. Nielsen v. Cedar County, 70 Neb. 637, 97 N.W. 826 (1903).

County is liable for damages resulting from defective culvert. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

Where there is no contributory negligence, county is liable. Hollingsworth v. Saunders County, 36 Neb. 141, 54 N.W. 79 (1893).

4. Miscellaneous

Negligence cannot be predicated on curve in highway or location of bridge. Olson v. County of Wayne, 157 Neb. 213, 59 N.W.2d 400 (1953).

Action for death for county's negligence under this section must be brought by administrator. Swift v. Sarpy County, 102 Neb. 378, 167 N.W. 458 (1918).

Requirements of bridge should be to provide for proper accommodation of public at large. O'Chander v. Dakota County, 90 Neb. 3, 132 N.W. 722 (1911); Kovarik v. Saline County, 86 Neb. 440, 125 N.W. 1082 (1910); Seyfer v. Otoe County, 66 Neb. 566, 92 N.W. 756 (1902).

In action for damages, petition must be specific as to the unsafe condition of bridge. Johnson County v. Carmen, 71 Neb. 682, 99 N.W. 502 (1904).

Act of which this section is part is constitutional. Bryant v. Dakota County, 53 Neb. 755, 74 N.W. 313 (1898).

13-913 Defective bridge or highway; legislative intent.

In enacting section 13-912, it is the intent of the Legislature that the liability of all political subdivisions based on the alleged insufficiency or want of repair of any highway or bridge or other public thoroughfare shall be the same liability that previously has been imposed upon counties pursuant to section 13-912. The Legislature further declares that judicial interpretations of section 13-912 governing the liability of counties on January 1, 1970, also shall be controlling on the liability of all political subdivisions for the alleged insufficiency or want of repair of any highway or bridge or other public thoroughfare. Notwithstanding other provisions of the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610, sections 13-912 to 13-914 shall be the only sections governing determination of liability of political subdivisions for the alleged insufficiency or want of repair of highways, or bridges or other public thoroughfares. As used in sections 13-912 and 13-913, public thoroughfares shall include all streets, alleys, and roads designed,

intended, and primarily used for the movement of vehicular traffic and dedicated to public use.

Source: Laws 1969, c. 138, § 11, p. 631; Laws 1983, LB 10, § 2; R.S.1943, (1983), § 23-2411; Laws 1996, LB 900, § 1027.

County held liable for damages caused by insufficient bridge railing. Millman v. County of Butler, 244 Neb. 125, 504 N.W.2d 820 (1993).

Even assuming the city had a general duty to use ordinary care in treating its streets for icy conditions, dismissal of the plaintiff's petition was affirmed where the evidence of the city's negligence was insufficient. Hendrickson v. City of Kearney, 210 Neb. 8, 312 N.W.2d 677 (1981).

The duty to use reasonable and ordinary care in the construction, maintenance, and repair of highways and bridges so that they will be reasonably safe for the traveler using them while in the exercise of reasonable and ordinary prudence has now been imposed under both the State Tort Claims Act and the Political Subdivisions Tort Claims Act. Hendrickson v. City of Kearney, 210 Neb. 8, 312 N.W.2d 677 (1981).

The liability of all political subdivisions based on the alleged insufficiency or want of repair of any public thoroughfare is to be determined by the provisions of sections 23-2410 and 23-2411, R.R.S.1943, and judicial interpretations governing the liability of counties under the statute in effect prior to the enactment of the Political Subdivisions Tort Claims Act. Christensen v. City of Tekamah, 201 Neb. 344, 268 N.W.2d 93 (1978).

13-914 Defective bridge or highway; compliance with standards; effect.

For purposes of sections 13-912 and 13-913, no minimum maintenance road or highway shall be deemed to be in want of repair or insufficient if it complies with the standards and level of minimum maintenance developed pursuant to section 39-2113.

Source: Laws 1983, LB 10, § 7; R.S.1943, (1983), § 23-2411.01.

13-915 Suit for alleged defect in construction or maintenance; defense.

In any suit brought pursuant to the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 and based upon an alleged defect in the construction or maintenance of a sidewalk, public building, or other public facility, an affirmative showing that the claimant had actual knowledge of the alleged defect at the time of the occurrence of the injury, and that an alternate safe route was available and known to the claimant, shall constitute a defense to the suit.

Source: Laws 1969, c. 138, § 12, p. 631; R.S.1943, (1983), § 23-2412; Laws 1996, LB 900, § 1028.

This section provides an affirmative defense to defendant and must be both pled and proved by defendant. Hill v. City of Lincoln, 249 Neb. 88, 541 N.W.2d 655 (1996).

Defendant village is not liable for injuries suffered by plaintiff when she tripped and fell on a slight irregularity in the sidewalk, where there was no evidence that the village had received any complaint or notice of the condition of the sidewalk, and where the defect was clearly visible to the plaintiff. Doht v. Village of Walthill, 207 Neb. 377, 299 N.W.2d 177 (1980).

13-916 Liability insurance; effect.

The governing body of any political subdivision, including any school district, educational service unit, or community college, may purchase a policy of liability insurance insuring against all or any part of the liability which might be incurred under the Political Subdivisions Tort Claims Act and also may purchase insurance covering those claims specifically excepted from the coverage of the act by section 13-910. Any independent or autonomous board or commission in the political subdivision having authority to disburse funds for a particular purpose of the subdivision without approval of the governing body also may procure liability insurance within the field of its operation. The procurement of insurance shall constitute a waiver of the defense of governmental immunity as to those exceptions listed in section 13-910 to the extent and only to the extent stated in such policy. The existence or lack of insurance shall not be material in the trial of any suit except to the extent necessary to

establish any such waiver. Whenever a claim or suit against a political subdivision is covered by liability insurance or by group self-insurance provided by a risk management pool, the provisions of the insurance policy on defense and settlement or the provisions of the agreement forming the risk management pool and related documents providing for defense and settlement of claims covered under such group self-insurance shall be applicable notwithstanding any inconsistent provisions of the act.

Source: Laws 1969, c. 138, § 13, p. 631; Laws 1972, LB 1177, § 1; Laws 1987, LB 398, § 40; R.S.Supp.,1987, § 23-2413; Laws 1991, LB 15, § 7.

Cross References

Risk management pool, defined, see section 44-4303.

Exception provided in this section does not, and was not intended to, bar actions based upon negligent destruction, injury, or loss of goods in possession of a political subdivision. Nash v. City of North Platte, 198 Neb. 623, 255 N.W.2d 52 (1977).

13-917 Award; acceptance; effect.

Any award made pursuant to the authority granted by section 13-904 and accepted by the claimant and any final judgment in any suit brought pursuant to the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall be final and conclusive on all officers of the political subdivision, except when procured by means of fraud. The acceptance by the claimant of such award shall be final and conclusive on the claimant and shall constitute a complete release by the claimant of any claim against the political subdivision and against the employee whose act or omission gave rise to the claim, by reason of the same subject matter.

Source: Laws 1969, c. 138, § 14, p. 632; R.S.1943, (1983), § 23-2414; Laws 1996, LB 900, § 1029.

13-918 Awards; judgments; payment.

Any awards or judgments pursuant to the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall be paid in the same manner as other claims against the political subdivision. If insufficient funds are available to pay such awards or judgments the governing body shall include sufficient funds in the budget for the next fiscal year or biennial period. If constitutional or statutory provisions prevent any political subdivision from budgeting sufficient funds to pay any judgment in its entirety, the governing body shall pay that portion that can be paid under the constitution and laws and then shall make application to the State Treasurer for the loan of sufficient funds to pay the judgment in full. When application is made for such a loan, the State Treasurer shall make such investigation as he or she deems necessary to determine the validity of the judgment and the inability of the political subdivision to make full payment on the judgment, and the period of time during which the political subdivision will be able to repay the loan. After determining that such loan will be proper, the State Treasurer shall make the loan from funds available for investment in the state treasury, which loan shall carry an interest rate of one-half of one percent per annum. The State Treasurer shall determine the schedule for repayment, and the governing body of the political subdivision shall annually budget and levy a sufficient amount to meet this schedule until the loan, with interest, has been repaid in full.

Source: Laws 1969, c. 138, § 15, p. 632; R.S.1943, (1983), § 23-2415; Laws 1996, LB 900, § 1030; Laws 2000, LB 1116, § 9.

13-919 Claims; limitation of action.

(1) Every claim against a political subdivision permitted under the Political Subdivisions Tort Claims Act shall be forever barred unless within one year after such claim accrued the claim is made in writing to the governing body. Except as otherwise provided in this section, all suits permitted by the act shall be forever barred unless begun within two years after such claim accrued. The time to begin a suit shall be extended for a period of six months from the date of mailing of notice to the claimant by the governing body as to the final disposition of the claim or from the date of withdrawal of the claim from the governing body under section 13-906 if the time to begin suit would otherwise expire before the end of such period.

(2) If a claim is made or filed under any other law of this state and a determination is made by a political subdivision or court that the act provides the exclusive remedy for the claim, the time to make a claim and to begin suit under the act shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by the political subdivision if the time to make the claim and to begin suit under the act would otherwise expire before the end of such period. The time to begin suit may be further extended as provided in subsection (1) of this section.

(3) If a claim is made or a suit is begun under the act and a determination is made by the political subdivision or by the court that the claim or suit is not permitted under the act for any other reason than lapse of time, the time to make a claim or to begin a suit under any other applicable law of this state shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by the political subdivision if the time to make the claim or begin the suit under such other law would otherwise expire before the end of such period.

(4) If a claim is brought under the Nebraska Hospital-Medical Liability Act, the filing of a request for review under section 44-2840 shall extend the time to begin suit under the Political Subdivisions Tort Claims Act an additional ninety days following the issuance of the opinion by the medical review panel if the time to begin suit under the Political Subdivisions Tort Claims Act would otherwise expire before the end of such ninety-day period.

(5) This section and section 25-213 shall be the only statutes of limitations applicable to tort claims as defined in the act.

Source: Laws 1969, c. 138, § 16, p. 633; Laws 1974, LB 949, § 1; Laws 1984, LB 692, § 1; R.S.Supp.,1986, § 23-2416; Laws 1991, LB 15, § 8.

Cross References

Nebraska Hospital-Medical Liability Act, see section 44-2855.

1. Statute of limitations
2. Cause of action
3. Notice
4. Miscellaneous

1. Statute of limitations

Pursuant to subsection (1) of this section, the filing of a workers' compensation claim does not toll the limitation period set forth in this subsection. For purposes of subsection (1) of this section, a cause of action accrues, thereby starting the period of limitations, when a potential plaintiff discovers, or in the exercise of reasonable diligence should discover, the political subdi-

vision's negligence. Polinski v. Omaha Pub. Power Dist., 251 Neb. 14, 554 N.W.2d 636 (1996).

Under subsection (1) of this section, the filing or presentment provision bars a plaintiff's action and precludes a remedy only if the claim is not filed or presented within the statutorily specified time. Millman v. County of Butler, 235 Neb. 915, 458 N.W.2d 207 (1990).

Subject to the exception described in section 25-213, the statute of limitations on filing a claim or suit for a political subdivision's tortious conduct is exclusively prescribed by this section. Chicago Lumber Co. v. School Dist. No. 71, 227 Neb. 355, 417 N.W.2d 757 (1988).

2. Cause of action

For the purposes of subsection (1) of this section, a cause of action accrues, and the period of limitations begins to run, when a potential plaintiff discovers, or in the exercise of reasonable diligence should discover, the political subdivision's negligent act or omission. Hutmacher v. City of Mead, 230 Neb. 78, 430 N.W.2d 276 (1988).

A cause of action accrues and the statute of limitations begins to run when the aggrieved party has the right to institute and maintain suit, even though such plaintiff may be ignorant of the existence of the cause of action. Ward v. City of Alliance, 227 Neb. 306, 417 N.W.2d 327 (1988).

3. Notice

The primary purpose of notice provisions in connection with actions against political subdivisions is to afford municipal authorities prompt notice of the accident and injury in order that an investigation may be made while the occurrence is still fresh and the municipal authorities are in a position to intelligently consider the claim and to allow it if deemed just or, in the alternative, to adequately protect and defend the public interest. Keller v. Tavarone, 265 Neb. 236, 655 N.W.2d 899 (2003).

The notice of claim requirements of the Nebraska Political Subdivisions Tort Claims Act is a condition precedent to the institution of suit against a political subdivision. The failure to allege in the petition that the condition precedent had been met is a fatal defect. Utsumi v. City of Grand Island, 221 Neb. 783, 381 N.W.2d 102 (1986).

4. Miscellaneous

The evident purpose of the 6-month extension of the filing deadline set forth in subsection (2) of this section is to provide claimants who filed timely claims, but filed those claims with the wrong tribunal or pursuant to the wrong statute, enough time to present their claims to the proper political subdivision. This requires, however, that those claimants still act promptly in order to satisfy the public purpose reflected in the notice requirements. A claim ''made or filed under any other law of this state,'' within the meaning of subsection (2) of this section, must still be filed within the 1-year time limit imposed by the appropriate notice provision of either subsection (1) of this section or subsection (1) of section 13-920. Keller v. Tavarone, 265 Neb. 236, 655 N.W.2d 899 (2003).

The operation of the Nebraska Hospital-Medical Liability Act, section 44-2840, does not excuse a plaintiff from compliance with the requirement under the Political Subdivisions Tort Claims Act that the claim be presented to the political subdivision prior to filing suit. Keller v. Tavarone, 262 Neb. 2, 628 N.W.2d 222 (2001).

In order for the extended period of limitations section of the Political Subdivisions Tort Claims Act to apply, one of two positive acts must occur: the governmental subdivision must act on the claim, or the claimant must withdraw the claim. Absent the occurrence of either one of those affirmative steps, the statute of limitations runs at the end of two years from and after the time the claim accrued, and the action is barred. Ragland v. Norris P.P. Dist., 208 Neb. 492, 304 N.W.2d 55 (1981).

Political Subdivisions Tort Claims Act including one-year notice of claim requirements and two-year limitation for bringing action held constitutional. Campbell v. City of Lincoln, 195 Neb. 703, 240 N.W.2d 339 (1976).

A negligence lawsuit brought against an employee of a political subdivision is not a ''tort claim'' against a ''political subdivision'' and is not controlled by the 2-year provision of subsection (1) of this section as applied via subsection (5). Gatewood v. Powell, 1 Neb. App. 749, 511 N.W.2d 159 (1993).

Claim for indemnification and contribution from political subdivision of state does not have to be filed pursuant to the Nebraska Political Subdivisions Tort Claims Act, and its one-year statute of limitations does not apply. Waldinger Co. v. P & Z Co., Inc., 414 F.Supp. 59 (D. Neb. 1976).

13-920 Suit against employee; act occurring after May 13, 1987; limitation of action.

(1) No suit shall be commenced against any employee of a political subdivision for money on account of damage to or loss of property or personal injury to or the death of any person caused by any negligent or wrongful act or omission of the employee while acting in the scope of his or her office or employment occurring after May 13, 1987, unless a claim has been submitted in writing to the governing body of the political subdivision within one year after such claim accrued in accordance with section 13-905.

(2) No suit shall be permitted on a claim filed pursuant to this section unless the governing body of the political subdivision has made final disposition of the claim, except that if the governing body does not make final disposition of the claim within six months after the claim is filed, the claimant may, by notice in writing, withdraw the claim from consideration of the governing body and begin suit.

(3) Except as provided in section 13-919, any suit commenced on any claim filed pursuant to this section shall be forever barred unless begun within two years after the claim accrued. The time to begin suit under this section shall be extended for a period of six months (a) from the date of mailing of notice to the claimant by the governing body as to the final disposition of the claim or (b)

from the date of withdrawal of the claim from the governing body under this section, if the time to begin suit would otherwise expire before the end of such period.

Source: Laws 1987, LB 258, § 1; R.S.Supp.,1987, § 23-2416.01.

The evident purpose of the 6-month extension of the filing deadline set forth in subsection (2) of section 13-919 is to provide claimants who filed timely claims, but filed those claims with the wrong tribunal or pursuant to the wrong statute, enough time to present their claims to the proper political subdivision. This requires, however, that those claimants still act promptly in order to satisfy the public purpose reflected in the notice requirements. A claim ''made or filed under any other law of this state,'' within the meaning of subsection (2) of section 13-919, must still be filed within the 1-year time limit imposed by the appropriate notice provision of either subsection (1) of section 13-919 or subsection (1) of this section. Keller v. Tavarone, 265 Neb. 236, 655 N.W.2d 899 (2003).

The primary purpose of notice provisions in connection with actions against political subdivisions is to afford municipal authorities prompt notice of the accident and injury in order that an investigation may be made while the occurrence is still fresh and the municipal authorities are in a position to intelligently consider the claim and to allow it if deemed just or, in the alternative, to adequately protect and defend the public interest. Keller v. Tavarone, 265 Neb. 236, 655 N.W.2d 899 (2003).

The filing of a notice of claim under the Political Subdivisions Tort Claims Act is a condition precedent to the institution of a suit to which the act applies. The partial payment of an insurance claim by a political subdivision's insurer standing alone is insufficient to create a question of fact precluding summary judgment as to whether the political subdivision is equitably estopped to assert the 1-year filing requirement. Keene v. Teten, 8 Neb. App. 819, 602 N.W.2d 29 (1999).

Written notice of the withdrawal of a claim from the consideration of the governing body is not mandatory, but is permissive or discretionary. Notice of withdrawal of a claim is not a requirement for commencing suit and applies only if the plaintiff wishes to extend the time period for filing suit under section 13-919(1). Keating v. Wiese, 1 Neb. App. 865, 510 N.W.2d 433 (1993).

13-921 Suit against employee; act or omission occurring prior to May 13, 1987; limitation of action.

After January 1, 1988, all suits against any employee of a political subdivision for money on account of damage to or loss of property or personal injury to or the death of any person caused by any negligent or wrongful act or omission of the employee while acting within the scope of his or her office or employment and occurring prior to May 13, 1987, shall be forever barred unless the party seeking recovery had, within one year after such claim accrued, submitted a claim in writing to the governing body of the political subdivision in accordance with section 13-905.

Source: Laws 1987, LB 258, § 2; R.S.Supp.,1987, § 23-2416.02.

A negligence cause of action arising from acts of an employee of a political subdivision which occurred prior to May 13, 1987, is controlled by this section, for which no explicit statute of limitations is provided. Gatewood v. Powell, 1 Neb. App. 749, 511 N.W.2d 159 (1993).

13-922 Suit against employee; recovery; limitation.

The total amount recoverable against any employee for claims filed pursuant to section 13-920 or 13-921 arising out of an occurrence after May 13, 1987, shall be limited to: (1) One million dollars for any person for any number of claims arising out of a single occurrence; and (2) five million dollars for all claims arising out of a single occurrence.

Source: Laws 1987, LB 258, § 3; R.S.Supp.,1987, § 23-2416.03.

13-923 Remedies; exclusive.

From and after January 1, 1970, the authority of any political subdivision to sue or be sued in its own name shall not be construed to authorize suits against such political subdivision on tort claims except as authorized in the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610. The remedies provided by such act and sections in such cases shall be exclusive.

Source: Laws 1969, c. 138, § 17, p. 634; Laws 1978, LB 819, § 1; R.S.1943, (1983), § 23-2417; Laws 1996, LB 900, § 1031.

13-924 Act; applicability.

Nothing contained in the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall be deemed to repeal or restrict any provision of law authorizing any political subdivision to consider, ascertain, adjust, compromise, settle, determine, allow, or pay any claim other than a tort claim as defined in such act and sections.

Source: Laws 1969, c. 138, § 18, p. 634; R.S.1943, (1983), § 23-2418; Laws 1996, LB 900, § 1032.

13-925 Employee; action against; when.

Nothing in the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall be construed to prevent a political subdivision from bringing an action for recovery from an employee of the political subdivision when the political subdivision has made payment of an award or settlement growing out of the employee's act or omission under such act and sections.

Source: Laws 1969, c. 138, § 19, p. 634; R.S.1943, (1983), § 23-2419; Laws 1996, LB 900, § 1033.

13-926 Recovery under act; limitation; additional sources for recovery.

The total amount recoverable under the Political Subdivisions Tort Claims Act for claims arising out of an occurrence after November 16, 1985, shall be limited to:

(1) One million dollars for any person for any number of claims arising out of a single occurrence; and

(2) Five million dollars for all claims arising out of a single occurrence.

If the damages sustained by an innocent third party pursuant to section 13-911 are not fully recoverable from one or more political subdivisions due to the limitations in this section, additional sources for recovery shall be as follows: First, any offsetting payments specified in subsection (3) of section 13-911 shall be reduced to the extent necessary to fully compensate the innocent third party; and second, if such reduction is insufficient to fully compensate the innocent third party, the right of reimbursement granted to the political subdivision in subsection (2) of section 13-911 shall be reduced to the extent necessary to fully compensate the innocent third party.

Source: Laws 1985, Second Spec. Sess., LB 14, § 2; R.S.Supp.,1986, § 23-2419.01; Laws 1996, LB 952, § 2.

The fact that an insurer provided liability insurance coverage for that portion of a county's potential liability for a single occurrence which exceeded its legal liability to a single claimant cannot be viewed as creating any rights on the part of injured persons to recover more from the insurer than its insured was legally obligated to pay. Molina v. American Alternative Ins. Corp., 270 Neb. 218, 699 N.W.2d 415 (2005).

When a county's ''legal obligation'' to an injured party has been paid by the county and its underlying insurer, the county's ''legal obligation to pay'' has been fully satisfied under subsection (1) of this section, and an insurer providing the county with a commercial umbrella policy could have no contractual liability to an injured party for that portion of his or her proven damages which exceeded the statutory cap. Molina v. American Alternative Ins. Corp., 270 Neb. 218, 699 N.W.2d 415 (2005).

13-927 Skatepark and bicycle motocross park; sign required; warning notice.

(1) A political subdivision shall post and maintain a sign at each skatepark and bicycle motocross park sponsored by the political subdivision containing the following warning notice: Under Nebraska law, a political subdivision is not

liable for an injury to or the death of a participant in recreational activities resulting from the inherent risks of the recreational activities pursuant to section 13-910.

(2) The absence of a sign shall not give rise to liability on the part of the political subdivision.

Source: Laws 2007, LB564, § 3.

ARTICLE 10

INTERSTATE CONSERVATION AND RECREATIONAL AREAS

Section
13-1001. Plans authorized; when; contents.
13-1002. Cooperation with other states.
13-1003. Improvement districts.
13-1004. Management of districts.
13-1005. Acquisition of property.
13-1006. Reversion of property.

13-1001 Plans authorized; when; contents.

Whenever in the opinion of any of the governing bodies of any city, town, village or county, acting severally or jointly, it is found desirable in order to properly use, improve and develop a conservation or recreational area which is situated partly within the corporate limits or within the jurisdiction or supervision of any city, town, village or county, and when to properly develop and improve and use said area it is deemed advisable and necessary to correlate said project with the use, development and improvement of an adjacent or contiguous area in an adjoining state or states, the proper governing body or bodies having jurisdiction thereof may have a plan prepared, showing the area or areas under consideration, and the use, development and improvement contemplated, and the relation thereof to the area or areas outside of Nebraska, adjoining or contiguous thereto.

Source: Laws 1935, c. 39, § 1, p. 155; C.S.Supp.,1941, § 18-1701; R.S. 1943, (1983), § 18-901.

13-1002 Cooperation with other states.

After the preparation of the plan as designated in section 13-1001, the governing body or bodies having jurisdiction thereof are hereby given power and authority to confer and cooperate with the proper authorities of the other state or states involved and to modify or adjust said plan if necessary in order to correlate the use, development and improvement of the entire area involved.

Source: Laws 1935, c. 39, § 2, p. 155; C.S.Supp.,1941, § 18-1702; R.S. 1943, (1983), § 18-902.

13-1003 Improvement districts.

The proper governing body or governing bodies, having jurisdiction thereof, after making all arrangements above provided, may adopt a final plan, the area included in which shall constitute an interstate conservation or recreational improvement district.

Source: Laws 1935, c. 39, § 3, p. 155; C.S.Supp.,1941, § 18-1703; R.S. 1943, (1983), § 18-903.

13-1004 Management of districts.

After the interstate conservation improvement or recreational district plan is adopted by the proper authorities having jurisdiction thereof, the proper governing body or bodies may agree with the proper authorities of the other state or states involved as to the organization for management or supervision, development, maintenance, and use of the said area or areas and may exercise the same powers and perform the same duties in connection with the district or districts that are established as is now authorized for such conservation or recreational area located entirely within the state.

Source: Laws 1935, c. 39, § 4, p. 155; C.S.Supp.,1941, § 18-1704; R.S. 1943, (1983), § 18-904.

13-1005 Acquisition of property.

Such interstate control body as is or may be created by virtue of section 13-1004 shall have the right to acquire or receive, solely as trustees for the use and benefit of such conservation or recreational improvement district, real and personal property by deed, gift, purchase or otherwise to be used exclusively for the purposes defined in section 13-1001.

Source: Laws 1935, c. 39, § 5, p. 156; C.S.Supp.,1941, § 18-1705; R.S. 1943, (1983), § 18-905.

13-1006 Reversion of property.

In the event that such district or districts as are created under section 13-1003 in relation to one or more states, shall for any reason cease to exist, then all real and personal property acquired by deed, gift, purchase or otherwise shall, in its proportionate share as such territory in one state may bear to the other state, revert to the state or the district or districts having jurisdiction thereof.

Source: Laws 1935, c. 39, § 6, p. 156; C.S.Supp.,1941, § 18-1706; R.S. 1943, (1983), § 18-906.

ARTICLE 11

INDUSTRIAL DEVELOPMENT

(a) INDUSTRIAL DEVELOPMENT BONDS

(b) INDUSTRIAL AREAS

Section

(a) INDUSTRIAL DEVELOPMENT BONDS

13-1101 Terms, defined.

As used in sections 13-1101 to 13-1110, unless the context otherwise requires:

(1) Municipality shall mean any incorporated city or village in the state, including cities operating under home rule charters;

(2) Project shall mean (a) any land, building, or equipment or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for manufacturing or industrial enterprises or (b) any land, building, or improvements located in a blighted area located within a municipality of the metropolitan, primary, first, or second class, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for any enterprise, including, but not limited to, profit or nonprofit commercial, business, governmental, or multifamily housing enterprises;

(3) Governing body shall mean the board or body in which the general legislative powers of the municipality or county are vested;

(4) Mortgage shall mean a mortgage or a mortgage and deed of trust, or other security device; and

(5) Blighted area shall mean an area within a city or village (a) which 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 municipality 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 municipality in which the area is designated; or (v) that 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.

Source: Laws 1961, c. 54, § 1, p. 200; Laws 1983, LB 451, § 1; Laws 1984, LB 1084, § 1; R.S.Supp.,1986, § 18-1614.

The authority of a municipality or county to use public funds to own, acquire, develop, lease, and sell real and personal property for industrial development is measured by the provisions of Article XIII, section 2, of the Nebraska Constitution, and the enabling statutes lawfully enacted by the Legislature. Chase v. County of Douglas, 195 Neb. 838, 241 N.W.2d 334 (1976).

Constitution was amended to authorize Industrial Development Act. Engelmeyer v. Murphy, 180 Neb. 295, 142 N.W.2d 342 (1966).

Industrial Development Act of 1961 was in major part sustained as constitutional. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

13-1102 Governing body; powers.

In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers:

(1) To acquire, whether by construction, purchase, devise, gift, or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within, or partially without the municipality or county;

(2) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of sections 13-1101 to 13-1110;

(3) To finance the acquisition, construction, rehabilitation, or purchase of projects in blighted areas. The power to finance such projects in blighted areas shall mean and include the power to enter into any type of agreement, including a loan agreement, when the other party to the agreement agrees (a) to use the proceeds of money provided under the agreement to pay the costs of such acquisition, construction, rehabilitation, or purchase and any costs incident to the issuance of the related bonds and the funding of any reserve funds, (b) to be bound by the terms of the Age Discrimination in Employment Act, the Nebraska Fair Employment Practice Act, and sections 48-1219 to 48-1227, regardless of the number of employees, and (c) to make payments to the municipality or county sufficient to enable it to pay on a timely basis all principal, redemption premiums, and interest on the related revenue bonds issued to provide such financing, and any amounts necessary to repay such municipality or county for any and all costs incurred by it that are incidental to such financing. Title to any such project in a blighted area need not be in the name of the municipality or county, but may be in the name of a private party;

(4) To issue revenue bonds for the purpose of defraying the cost of acquiring, improving, or financing any project or projects, including the cost of any real estate previously purchased and used for such project or projects, or the cost of any option in connection with acquiring such property, and to secure the payment of such bonds as provided in sections 13-1101 to 13-1110, which revenue bonds may be issued in two 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 and are not in conflict with the provisions of sections 13-1101 to 13-1110; and

(5) To sell and convey any real or personal property acquired as provided by subdivision (1) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county, except that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance. No municipality or county shall have the power to (a) operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, (b) lease any project acquired under powers conferred by this section for use principally for commercial feeding of livestock, (c) issue bonds under this section principally for the purpose of financing the construction or acquisition of commercial feeding facilities for livestock, or (d) acquire any project or any part thereof by condemnation.

Source: Laws 1961, c. 54, § 2, p. 201; Laws 1967, c. 86, § 1, p. 271; Laws 1972, LB 1261, § 2; Laws 1983, LB 451, § 2; R.S.1943, (1983), § 18-1615; Laws 2007, LB265, § 1.

Cross References

Age Discrimination in Employment Act, see section 48-1001.
Nebraska Fair Employment Practice Act, see section 48-1125.

Power to sell property was within scope of title to act. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

13-1103 Bonds; restrictions; issuance; sale.

(1) All bonds issued by a municipality or county under the authority of sections 13-1101 to 13-1110 shall be limited obligations of the municipality or county. Bonds and interest coupons, issued under the authority of sections 13-1101 to 13-1110, shall not constitute nor give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds.

(2) Such bonds may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in registered or bearer form either as to principal or interest or both, (e) be payable in such installments and at such time or times not exceeding thirty years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent with sections 13-1101 to 13-1110, as shall be deemed for the best interest of the municipality or county and provided for in the proceedings of the governing body under which the bonds shall be authorized to be issued.

(3) The authorization, terms, issuance, execution, or delivery of such bonds shall not be subject to sections 10-101 to 10-126.

(4) 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 municipality or county 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 of the sale of the bonds or from the revenue of the projects.

(5) Such bonds and all interest coupons applicable thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source.

Source: Laws 1961, c. 54, § 3, p. 202; R.S.1943, (1983), § 18-1616; Laws 2001, LB 420, § 15.

13-1104 Bonds; security; agreements; default; payment; foreclosure.

(1) The principal of and interest on any bonds issued under the authority of sections 13-1101 to 13-1110 (a) shall be secured by a pledge of the revenue out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the project, and (c) may be secured by a pledge of the lease of such project or by any related financing agreement, or (d) may be secured by such other security device as may be deemed most advantageous by the issuing authority.

(2) The proceedings, under which the bonds are authorized to be issued under the provisions of sections 13-1101 to 13-1110, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any project covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease or financing of such project, (c) the maintenance and insurance of such project, (d) the creation and maintenance of special funds from the revenue of such project, and (e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of sections 13-1101 to 13-1110; *Provided*, that in making any such agreements or provisions a municipality or county shall not have the power to obligate itself except with respect to the project and the application of the revenue therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of sections 13-1101 to 13-1110 and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenue from the project in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage, made under the provisions of sections 13-1101 to 13-1110, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

Source: Laws 1961, c. 54, § 4, p. 203; Laws 1983, LB 451, § 3; R.S.1943, (1983), § 18-1617.

13-1105 Leasing or financing of project; governing body; powers and duties; hearing.

(1) Prior to the leasing or financing of any project, the governing body must determine and find the following: The amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project; the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes; and, with respect to leases, unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

(2) The determinations and findings of the governing body, required to be made by subsection (1) of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of the bonds authorized by sections 13-1101 to 13-1110, the municipality or county shall (a) lease the project to a lessee or lessees under an agreement conditioned upon completion of the project and providing for payment to the municipality or county of such rentals as, upon the basis of such determinations and findings, will be sufficient (i) to pay the principal of and interest on the bonds issued to finance the project, (ii) to pay the taxes on the project, (iii) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (iv) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured or (b) enter into a financing agreement pursuant to subdivision (3) of section 13-1102. Subject to the limitations of sections 13-1101 to 13-1110, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities and counties, such lease may contain an option for the lessees to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

(3) At a public hearing or at the adjournment of such hearing, the governing body of the city in which the proposed project is located shall determine whether the location of the proposed project is within a blighted area and whether the proposed project is within the development plan or plans for the area. Notice of the time and place of the hearing shall be published at least two times not less than seven days prior to the hearing in a legal newspaper having a general circulation within the boundaries of the city. Upon a favorable resolution by the governing body of the city where the proposed project is located, the governing body of the city or county may proceed to issue bonds.

Source: Laws 1961, c. 54, § 5, p. 204; Laws 1983, LB 451, § 4; R.S.1943, (1983), § 18-1618.

13-1106 Refunding bonds; issuance; amount; rights of holders.

Any bonds issued under the provisions of sections 13-1101 to 13-1110 and at any time outstanding may at any time and from time to time be refunded by a municipality or county by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient

to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commission necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; *Provided*, that the holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. Any refunding bonds issued under the authority of sections 13-1101 to 13-1110 shall be subject to the provisions contained in section 13-1103 and may be secured in accordance with the provisions of section 13-1104.

Source: Laws 1961, c. 54, § 6, p. 205; Laws 1963, c. 77, § 3, p. 283; R.S.1943, (1983), § 18-1619.

13-1107 Bonds; proceeds from sale; disposition.

The proceeds from the sale of any bonds issued under authority of sections 13-1101 to 13-1110 shall be applied only for the purpose for which the bonds were issued; *Provided*, that any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; *and provided further*, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any project shall be deemed to include the following: The actual cost of acquiring or improving real estate for any project; the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvement; and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding six months after completion of construction.

Source: Laws 1961, c. 54, § 7, p. 206; R.S.1943, (1983), § 18-1620.

13-1108 Projects; taxation; distress warrant; limitation.

Notwithstanding that title to a project may be in a municipality or county, such projects shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances, if such projects are leased to or held by private interests; *Provided*, that where personal property owned by a municipality or county is taxed under this section and such personal property taxes are delinquent, levy by distress warrant for collection of such delinquent taxes may only be made on personal property against which such taxes were levied.

Source: Laws 1961, c. 54, § 8, p. 207; R.S.1943, (1983), § 18-1621.

Portion of this section was unconstitutional as granting greater exemption than was authorized by constitutional amendment permitting tax. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

13-1109 Powers; cumulative.

Neither sections 13-1101 to 13-1110 nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state, but shall be construed as cumulative.

Source: Laws 1961, c. 54, § 9, p. 207; R.S.1943, (1983), § 18-1622.

13-1110 Department of Economic Development; furnish advice and information.

The Department of Economic Development shall furnish advice and information in connection with a project when requested to do so by a county or municipality.

Source: Laws 1961, c. 54, § 10, p. 207; Laws 1969, c. 104, § 1, p. 479; R.S.1943, (1983), § 18-1623.

(b) INDUSTRIAL AREAS

13-1111 Terms, defined; application for designation; exceptions.

As used in sections 13-1111 to 13-1120, unless the context otherwise requires: (1) Industrial area shall mean a tract of land used or reserved for the location of industry, except that such land may be used for agricultural purposes until the use is converted for the location of industry as set forth in sections 13-1111 to 13-1120; and (2) industry shall mean (a) any enterprise whose primary function is to manufacture, process, assemble, or blend any agricultural, manufactured, mineral, or chemical products; (b) any enterprise that has as its primary function that of storing, warehousing, or distributing, and specifically excluding those operations whose primary function is to directly sell to the general public; or (c) any enterprise whose primary function is research in connection with any of the foregoing, or primarily exists for the purpose of developing new products or new processes, or improving existing products or known processes. The owner or owners of any contiguous tract of real estate containing twenty acres or more, no part of which is within the boundaries of any incorporated city or village, except cities of the metropolitan or primary class, may file or cause to be filed with the county clerk of the county in which the greater portion of such real estate is situated if situated in more than one county, an application requesting the county board of such county to designate such contiguous tract as an industrial area.

Source: Laws 1957, c. 51, § 1, p. 240; Laws 1963, c. 86, § 2, p. 295; Laws 1965, c. 84, § 1, p. 324; Laws 1979, LB 217, § 1; R.S.1943, (1983), § 19-2501.

Property involved was designated an industrial area. Lund v. Orr, 181 Neb. 361, 148 N.W.2d 309 (1967).

Right of county board to create industrial areas was superior to right of city to zone under Suburban Development Act. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

13-1112 Municipal bodies; notification of filing; approval; failure to reply; effect.

Upon filing the petition under the provisions of section 13-1111, the county clerk, or if the real estate is situated in more than one county, the county clerk of the county having the greater portion of such real estate, shall notify such municipal legislative bodies in whose area of zoning jurisdiction an industrial

tract is located in whole or in part as shall have developed a comprehensive development plan and shall be exercising zoning jurisdiction in the area concerned. Such notification shall request approval or disapproval by the municipal legislative body of the designation of such tract within thirty days after receipt of such notification, which approval may be conditioned upon terms agreed to between the city and county. The designation of any tract as an industrial area shall be in compliance with the zoning ordinances, subdivision regulations, and appropriate ordinances and regulations of such city or village. If formal reply to the notification of the county board's intention to designate such tract as an industrial area is not received within thirty days, the county board shall construe such inaction as approval of such designation.

Source: Laws 1967, c. 99, § 1, p. 299; Laws 1979, LB 217, § 2; R.S.1943, (1983), § 19-2501.01.

13-1113 Hearing; notice.

Upon filing the petition, the county clerk, or, if the real estate is situated in more than one county, the county clerk of the county having the greater portion of such real estate, shall designate and endorse thereon a day for the hearing and determination of the petition by the county board of such county which date shall not be less than thirty days nor more than ninety days subsequent to the filing of said petition. The county clerk shall publish a notice once each week three successive weeks in some newspaper published and of general circulation in the county or counties in which the real estate is located and, if no newspaper is published in the county or counties, such notice shall be published in some newspaper having a general circulation therein. The notice shall state the time and place of hearing and the land affected thereby.

Source: Laws 1957, c. 51, § 2, p. 240; Laws 1965, c. 84, § 2, p. 324; R.S.1943, (1983), § 19-2502.

13-1114 Designation; procedure.

At the time fixed in the notice or on any adjourned day thereafter, any person interested may appear and be heard at a public hearing before the county board of the county in which the petition is filed. After such hearing, if the county board shall find from the evidence produced that (1) such tract is suitable for use as an industrial area, (2) it will be generally beneficial to the community, and (3) the owners of all the land embraced therein have consented to such designation, such board shall designate such tract as an industrial area and cause a certified copy of such order to be filed and recorded in the offices of the county assessor and the register of deeds of the county or counties in which the real estate is situated. If such tract is located in whole or in part within an unincorporated area over which any city or village exercises zoning control, the designation of such tract as an industrial area must first be approved by the municipal legislative body.

Source: Laws 1957, c. 51, § 3, p. 241; Laws 1965, c. 84, § 3, p. 324; Laws 1967, c. 99, § 2, p. 300; Laws 1979, LB 217, § 3; R.S.1943, (1983), § 19-2503.

County board has jurisdiction to designate an industrial area. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

13-1115 Designation; use; inclusion within municipality; when.

Upon designation of such tract as an industrial area by the county board of the county in which the petition is filed, such designated area shall thereupon be used or reserved for the location of industry. Such land may be used for agricultural purposes until the use is converted for the location of industry as set forth in sections 13-1111 to 13-1120. If such tract has a taxable valuation of more than two hundred eighty-six thousand dollars, it shall not be subject to inclusion within the boundaries of any incorporated city of the first or second class or village, except that such tract regardless of taxable valuation may be annexed if (1) it is located in a county with a population in excess of one hundred thousand persons and the city or village did not approve the original designation of such tract as an industrial area pursuant to section 13-1112, (2) the annexation is stipulated in the terms and conditions agreed upon between the county and the city or village in any agreement entered into pursuant to section 13-1112, or (3) the owners of a majority in value of the property in such tract as shown upon the last preceding county assessment roll consent to such inclusion in writing or petition the city council or village board to annex such area.

Source: Laws 1957, c. 51, § 4, p. 241; Laws 1963, c. 86, § 3, p. 295; Laws 1965, c. 84, § 4, p. 325; Laws 1967, c. 99, § 3, p. 300; Laws 1979, LB 217, § 4; Laws 1979, LB 187, § 84; Laws 1980, LB 599, § 8; R.S.1943, (1983), § 19-2504; Laws 1991, LB 76, § 1; Laws 1992, LB 719A, § 31.

Industrial area was not subject to inclusion within boundaries of city. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

13-1116 Jurisdiction of county board.

During the period any area is designated as an industrial area as provided by sections 13-1111 to 13-1120, the county board in which the greater area of real estate is located shall have exclusive jurisdiction for zoning and otherwise regulating the use of the industrial area in such a way as to confer upon the owners and users thereof the benefits of a designated tract to be held and reserved for industrial purposes only; *Provided*, such authority shall not be granted to the county board if the zoning of such designated area is within the jurisdiction of any city or village.

Source: Laws 1957, c. 51, § 5, p. 241; Laws 1965, c. 84, § 5, p. 325; Laws 1979, LB 217, § 5; R.S.1943, (1983), § 19-2505.

County board has authority to designate industrial areas for zoning. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

13-1117 Utility services; fire and police protection.

During the time any tract is designated as an industrial area, as provided by sections 13-1111 to 13-1120, the owners of such designated area shall provide at their expense for water, electricity, sewer, and fire and police protection.

Source: Laws 1957, c. 51, § 7, p. 242; Laws 1979, LB 217, § 7; R.S.1943, (1983), § 19-2507.

During time a tract is designated as an industrial area, owners of property provide at their own expense for water, electricity, sewer, and fire protection. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

13-1118 Change of boundaries; inclusion of tracts.

The boundaries of the designated industrial area may be changed to include other tracts of real estate containing not less than ten acres when contiguous to the area designated as an industrial area by filing a petition, publishing a notice thereof, and having a hearing on the petition in the same manner as when an original petition to designate a contiguous tract as an industrial area is filed. The county board of the county in which the petition was filed shall designate such additional tract in the industrial area to which the tract is to be attached if the board shall find that the conditions of the provisions of section 13-1114 are complied with. After such designation by such county board, such tract that is designated as part of the industrial area shall be governed by the provisions of sections 13-1111 to 13-1120 as though it was part of the original designated tract as an industrial area.

Source: Laws 1957, c. 51, § 6, p. 241; Laws 1965, c. 84, § 6, p. 325; Laws 1979, LB 217, § 6; R.S.1943, (1983), § 19-2506.

13-1119 Change of boundaries; exclusion of tracts.

The boundaries of a designated industrial area may be changed to exclude one or more tracts, or parts of tracts, of real estate within the area upon the request of the owner or owners of the tracts, or parts of tracts, proposed to be excluded, and by the owners filing a petition, publishing a notice thereof, and having a hearing on the petition in the same manner as when an original petition to designate a contiguous tract as an industrial area is filed. The county clerk of the county in which the tract proposed to be excluded is situated shall cause a copy of the published notice to be mailed by certified mail, within five days after the first publication of the notice, to each of the owners of record and other persons, if any, in possession of the real estate not proposed to be excluded from the industrial area, whose addresses are known to the county clerk. After the hearing, if the county board shall find that the best interests of the community and the industrial area will be served by the exclusion of the tracts, the county board shall enter an order excluding the tracts, or parts of tracts, requested to be excluded. When a certified copy of such order is filed with the register of deeds and county assessor of the county or counties in which the real estate excluded is located, such tracts, or parts of tracts, shall no longer be an industrial area

Source: Laws 1975, LB 151, § 1; R.S.1943, (1983), § 19-2509.

13-1120 Termination of designation.

When the owner or owners of all of the contiguous tracts of real estate designated as an industrial area as provided by sections 13-1111 to 13-1118, shall file with the county board of the county in which such real estate is located, or the greater portion of such real estate, a petition requesting that the designation of the whole of the real estate as an industrial area be terminated, the county board shall enter an order determining that such real estate shall no longer be an industrial area. When a certified copy of such order is filed with the register of deeds and county assessor of the county or counties in which the real estate is located, such real estate shall no longer be an industrial area.

Source: Laws 1975, LB 151, § 2; R.S.1943, (1983), § 19-2510.

13-1121 Designation; review by county board; notice; hearing; removal of designation.

Beginning in 1980 and every even-numbered year thereafter during the month of March, the appropriate county board may, of its own volition or shall, at the request of the municipal governing body having zoning jurisdiction over the designated industrial tract, review any or all industrial areas in its jurisdiction. When the review is at the request of the municipal governing body having zoning jurisdiction over the designated industrial tract, the county board shall notify such municipal governing body of the date, time, and location of the review. If the county board determines during the review that there is a problem with the industrial area designation of any tract, or a portion of such tract, the county board shall give notice of a hearing by registered or certified mail to the owners of the tract, or a portion of such tract, if such owners are known, within ninety days prior to the hearing, and if the owners are not known or cannot be located, then by publishing a notice three successive weeks in some newspaper published and of general circulation in the county or counties in which the real estate is located, and if no newspaper is published in the county, such notice shall be published in some newspaper having a general circulation in such county. If after the hearing the county board finds that the industrial area or a portion thereof is no longer suitable for industrial purposes, or is being used for nonindustrial enterprises, or has had no improvements or industrial buildings thereon within seven years from the date of original industrial designation, or is not in compliance with the zoning ordinances of any city or village exercising zoning control of it, or is not platted in accordance with such zoning ordinances or is no longer in compliance with the definition of industry as set forth in section 13-1111, such county board shall remove the designation of industrial area from such tract or portion of such tract. Any tract or portion of such tract used or reserved for industry prior to August 24, 1979, shall not be removed from the industrial area designation against the wishes of its owners as long as the use of such tract or portion continues to be in compliance with the definition of industry as set forth in section 13-1111. A certified copy of such order shall be filed with the register of deeds and the county assessor of the county or counties in which the real estate is located.

Source: Laws 1979, LB 217, § 8; R.S.1943, (1983), § 19-2511.

ARTICLE 12

NEBRASKA PUBLIC TRANSPORTATION ACT

Section

Section
13-1211.01. City bus system receiving state funds; reduced fares for low-income persons.
13-1212. Department of Roads; rules and regulations; duties; public-purpose organization; denied financial assistance; petition; hearing.
13-1213. Intercity bus system assistance program; established; financial assistance available; selection; contracts authorized.
13-1214. Intercity bus system assistance program; department; certify funding.

13-1201 Act, how cited.

Sections 13-1201 to 13-1214 shall be known and may be cited as the Nebraska Public Transportation Act.

Source: Laws 1975, LB 443, § 5; R.S.1943, (1983), § 19-3901; Laws 1993, LB 158, § 1; Laws 1993, LB 575, § 1.

13-1202 Legislative findings.

The Legislature finds that: (1) Transportation is a critical need of the elderly, handicapped, and others without access to the private automobile; (2) public transportation is a viable alternative to help meet the transportation needs in urban and rural areas; (3) transportation which promotes fuel conservation and reduces traffic congestion should be encouraged; (4) public transportation in the rural and small urban areas of the state is lacking; (5) public transportation in many instances is no longer a profitable undertaking for private enterprise acting alone; (6) public subsidy of public transportation, whether privately or publicly operated, is often necessary to provide needed transportation services; (7) the variety of federal, state, and local activities in providing public transportation services require maximum coordination for maximum benefit from public resources; (8) providers of public transportation may require technical assistance in addressing their public transportation needs; and (9) it is in the public interest of the people of the state to develop programs which provide for the concerns enumerated in this section and which insure the health, safety, and welfare of Nebraska citizens in both urban and rural areas.

Source: Laws 1975, LB 443, § 6; Laws 1981, LB 144, § 1; R.S.1943, (1983), § 19-3902.

13-1203 Terms, defined.

For purposes of the Nebraska Public Transportation Act, unless the context otherwise requires:

(1) Public transportation shall mean the transport of passengers on a regular and continuing basis by motor carrier for hire, whether over regular or irregular routes, over any public road in this state, including city bus systems, intercity bus systems, special public transportation systems to include portal-to-portal escorted service for the elderly or handicapped, taxi, subscription, dial-a-ride, or other demand-responsive systems, and those motor carriers for hire which may carry elderly or handicapped individuals for a set fare, a donation, or at no cost to such individuals. Public transportation shall not include motor carriers for hire when engaged in the transportation of school children and teachers to and from school and school-related activities and shall not include private car pools;

(2) Department shall mean the Department of Roads;

(3) Director shall mean the Director-State Engineer;

(4) Elderly shall mean any person sixty-two years of age or older who is drawing social security and every person sixty-five years of age and older;

(5) Handicapped shall mean any individual who is unable without special facilities or special planning or design to utilize public transportation facilities and services;

(6) Municipality shall mean any village or incorporated city, except cities of the metropolitan class operating under home rule charter;

(7) Qualified public-purpose organization shall mean an incorporated private not-for-profit group or agency which:

(a) Has operated or proposes to operate only motor vehicles having a seating capacity of twenty or less for the transportation of passengers in the state;

(b) Has been approved as capable of providing public transportation services by the appropriate city or county governing body; and

(c) Operates or proposes to operate a public transportation service in an area which the department has identified as not being adequately served by existing public or private transportation services pursuant to section 13-1205; and

(8) Intercity bus system shall mean a system of regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more communities or areas not in close proximity which support public transportation service. At least one terminus of the intercity bus system shall be in an area that makes meaningful connections with intercity service to more distant points.

Source: Laws 1975, LB 443, § 7; Laws 1977, LB 374, § 1; Laws 1981, LB 144, § 2; R.S.1943, (1983), § 19-3903; Laws 1993, LB 158, § 2.

13-1204 Department of Roads; coordinating and technical assistance agency; contracts authorized.

The department shall be the principal state agency responsible for coordinating public transportation activities in the state and, when requested, shall provide technical assistance to improve Nebraska's public transportation system. The department may contract pursuant to the Nebraska Public Transportation Act to assist state agencies, political subdivisions, and public and qualified public-purpose organizations to provide public transportation services as specified in the act.

Source: Laws 1975, LB 443, § 8; Laws 1981, LB 144, § 3; R.S.1943, (1983), § 19-3904; Laws 1993, LB 158, § 3.

13-1205 Department of Roads; powers, duties, and responsibilities; enumerated.

The department shall have the following powers, duties, and responsibilities:

(1) To collect and maintain data on the level of public transportation services and needs in the state and identify areas not being adequately served by existing public or private transportation services;

(2) To assess the regional and statewide effect of changes, improvement, and route abandonments in the state's public transportation system;

(3) To develop a six-year statewide transit plan and programs for public transportation in coordination with local plans and programs developed by municipalities, counties, and transit authorities;

(4) To provide planning and technical assistance to agencies of the state, political subdivisions, or groups seeking to improve public transportation;

(5) To advise, consult, and cooperate with agencies of the state, the federal government, and other states, interstate agencies, political subdivisions, and groups concerned with public transportation;

(6) To cooperate with the Public Service Commission by providing periodic assessments to the commission when determining the effect of proposed regulatory decisions on public transportation;

(7) To administer federal and state programs providing financial assistance to public transportation, except those federal and state programs in which a municipality, county, transit authority, or other state agency is designated as the administrator;

(8) To prepare and submit a biennial report to the Governor, the State Energy Office, and the Clerk of the Legislature detailing its activities under the Nebraska Public Transportation Act. The report shall make recommendations to strengthen, expand, and improve public transportation in the state; and

(9) To exercise all other powers necessary and proper for the discharge of its duties, including the adoption and promulgation of reasonable rules and regulations to carry out the act.

Each member of the Legislature shall receive a copy of the report required by subdivision (8) of this section by making a request for such report to the director.

Source: Laws 1975, LB 443, § 9; Laws 1979, LB 322, § 4; Laws 1981, LB 545, § 4; Laws 1981, LB 144, § 4; R.S.1943, (1983), § 19-3905; Laws 1993, LB 158, § 4.

13-1206 Department of Roads; receive gifts, grants, loans, contributions, and other funds; conditions.

The department may receive, contract for, or apply for and receive gifts, grants, loans, contributions, and other funds from the federal or state government or from any public or private sources for the purpose of carrying out the Nebraska Public Transportation Act. Any contract between the department and the federal government entered into pursuant to this section may include all reasonable and appropriate conditions imposed by federal law or regulation which are not inconsistent with the purposes of the act.

Source: Laws 1975, LB 443, § 10; R.S.1943, (1983), § 19-3906; Laws 1993, LB 158, § 5.

13-1207 Department of Health and Human Services; review rules and regulations and the awarding of funds.

Prior to the promulgation of rules and regulations pursuant to section 13-1212, and prior to the awarding of federal or state funds under any program administered by the department or any other state agency which affects the transportation of the elderly, such rules and regulations and the awarding of such funds shall be reviewed by the Department of Health and Human Services.

Source: Laws 1975, LB 443, § 11; Laws 1984, LB 635, § 1; R.S.Supp.,1986, § 19-3907; Laws 1996, LB 1044, § 53; Laws 2007, LB296, § 23.

13-1208 Municipality, county, or qualified public-purpose organization; powers; municipality or county; contract with school district; conditions.

(1) Any municipality, county, or qualified public-purpose organization may lease, purchase, construct, own, maintain, operate, or contract for the operation of public transportation, including special transportation for the elderly or handicapped, and apply for and accept advances, loans, grants, contributions, and any other form of assistance from the federal government, the state, or any public or private sources for the purpose of providing a public transportation system.

Any special transportation system for the elderly or handicapped shall include transportation of necessary personal escorts of such elderly or handicapped riders.

(2) Any municipality or county in providing public transportation for the elderly under subsection (1) of this section may contract with the school board or board of education of a public school district for the use of a school bus at times other than during the normal school day or on days when school is not in session if all costs incurred by such municipality or county are paid for with money generated from passenger fees or federal or state funds. The contract shall provide that such municipality or county shall be liable for costs of maintenance, operation, insurance, and other reasonable expenses incurred in the use of such bus. No district shall be liable for any damages to any person riding in a school bus under a contract entered into pursuant to this subsection unless such damage is proximately caused by the gross negligence of the district. No district shall be required to modify or alter any school bus because of a contract entered into pursuant to this subsection. Any municipality or county when using a school bus upon a highway under a contract entered into pursuant to this subsection shall cover or conceal all school bus markings on such bus as required by section 60-6,175.

(3) Any municipality or county may contract with the school board or board of education of any public school district for the use of school buses for emergency evacuation of members of the public by qualified law enforcement personnel during emergency or crisis situations that pose a threat to the health, safety, or well-being of the individuals to be evacuated. The contract shall provide that such municipality or county shall be liable for the costs of maintenance, operation, insurance, and other reasonable expenses incurred in the use of such buses. No district shall be liable for any damages to any person riding in a school bus under a contract entered into pursuant to this subsection unless such damage is proximately caused by the gross negligence of the district. No district shall be required to modify or alter any school bus because of a contract entered into pursuant to this subsection.

Source: Laws 1975, LB 443, § 12; Laws 1981, LB 85, § 1; Laws 1981, LB 144, § 5; R.S.1943, (1983), § 19-3908; Laws 1990, LB 1086, § 1; Laws 1993, LB 370, § 3.

13-1209 Assistance program; established; state financial assistance; limitation.

(1) A public transportation assistance program is hereby established to provide state assistance for the operation of public transportation systems.

(2) Any municipality, county, transit authority, or qualified public-purpose organization shall be eligible to receive financial assistance for the eligible

operating costs of a public transportation system, whether the applicant directly operates such system or contracts for its operation. A qualified public-purpose organization shall not be eligible for financial assistance under the Nebraska Public Transportation Act if such organization is currently receiving state funds for a program which includes transportation services and such funding and services would be duplicated by the act. Eligible operating costs shall include those expenses incurred in the operation of a public transportation system which exceed the amount of operating revenue and which are not otherwise eligible for reimbursement from any available federal programs other than those administered by the United States Department of the Treasury.

(3) The state grant to an applicant shall not exceed fifty percent of the eligible operating costs of the public transportation system as provided for in subsection (2) of this section. The amount of state funds shall be matched by an equal amount of local funds in support of operating costs.

Source: Laws 1975, LB 443, § 13; Laws 1981, LB 144, § 6; R.S.1943, (1983), § 19-3909; Laws 1993, LB 158, § 6.

13-1210 Assistance program; Department of Roads; certify funding.

The Department of Roads shall annually certify the amount of operating costs eligible for funding under the public transportation assistance program established under section 13-1209.

Source: Laws 1980, LB 722, § 12; Laws 1986, LB 599, § 3; R.S.Supp.,1986, § 19-3909.01; Laws 2004, LB 1144, § 1.

13-1211 City bus system receiving state funds; reduced fares for elderly or handicapped persons.

The fares charged elderly or handicapped persons shall not exceed one-half of the rates generally applicable to other persons at peak hours for each one-way trip for any city bus system operating over regularly scheduled routes and receiving state funds pursuant to the Nebraska Public Transportation Act. The recipient of state funds under the act may designate certain peak hours during which this section shall not apply.

Source: Laws 1975, LB 443, § 14; Laws 1982, LB 942, § 2; R.S.1943, (1983), § 19-3910; Laws 1993, LB 158, § 7.

13-1211.01 City bus system receiving state funds; reduced fares for low-income persons.

Recipients of state funds under the Nebraska Public Transportation Act for any city bus system operating over regularly scheduled routes in cities of the primary and metropolitan classes may provide or designate that fares charged low-income persons may be discounted up to one-half of the rates generally applicable to other persons at peak hours for each one-way trip. Such recipient of state funds under the act may designate certain peak hours during which this section shall not apply. For purposes of this section, low-income persons shall mean persons whose income is at or below one hundred fifty percent of the current amount determined and published periodically by the federal government as the national poverty income level without regard to other resources.

Source: Laws 1993, LB 575, § 2.

13-1212 Department of Roads; rules and regulations; duties; public-purpose organization; denied financial assistance; petition; hearing.

(1) The Department of Roads shall administer sections 13-1209 to 13-1212, and issue such rules and regulations pursuant to the Administrative Procedure Act as are necessary, including but not limited to defining eligible operating costs, establishing contractual and other requirements including standardized accounting and reporting requirements, which shall include the applicant's proposed service area, the type of service proposed, all routes and schedules, and any further information needed for recipients to insure the maximum feasible coordination and use of state funds, establishing application procedures, and developing a policy for apportioning funds made available for this program should they be insufficient to cover all eligible projects. Priority on the allocation of all funds shall be given to those proposed projects best suited to serve the needs of the elderly and handicapped and to proposed projects with federal funding participation.

(2) Any public-purpose organization proposing to provide public transportation denied financial assistance as a result of a determination by the Department of Roads that an area is adequately served by existing transportation services may submit a petition to the department requesting the department to reclassify the proposed service area as not being adequately served by existing public transportation services. The petition submitted to the department by the public-purpose organization shall bear the signatures of at least fifty registered voters residing in the proposed service area. Upon receipt of the petition the department shall hold a public hearing in the proposed service area and after such hearing shall determine whether the proposed service area is already adequately served. In carrying out its duties under this section the department shall comply with the provisions of the Administrative Procedure Act. The department shall not be required to conduct a reevaluation hearing for an area more frequently than once a year.

Source: Laws 1975, LB 443, § 15; Laws 1981, LB 144, § 7; R.S.1943, (1983), § 19-3911.

Cross References

Administrative Procedure Act, see section 84-920.

13-1213 Intercity bus system assistance program; established; financial assistance available; selection; contracts authorized.

(1) An intercity bus system assistance program is hereby established to provide state assistance for the operation of intercity bus systems.

(2) Any municipality, county, transit authority, or qualified public-purpose organization shall be eligible to receive (a) financial assistance for the eligible operating costs of such system, whether the applicant directly operates the system or contracts for its operation, and (b) financial assistance to match federal funds available for the purchase of vehicles and equipment for the start of an intercity bus system or the replacement of vehicles used in the operation of an intercity bus system. The vehicles shall be titled to such municipality, county, transit authority, or qualified public-purpose organization.

(3) The department may contract for an intercity bus system with either a publicly owned provider or a provider owned by a qualified public-purpose organization.

(4) Any intercity bus system to be funded under this section shall be selected based on criteria established by the department.

Source: Laws 1993, LB 158, § 8; Laws 1996, LB 383, § 1.

13-1214 Intercity bus system assistance program; department; certify funding.

The department shall certify biennially the amount of intercity bus system assistance eligible for funding under section 13-1213.

Source: Laws 1993, LB 158, § 9; Laws 2004, LB 1144, § 2.

ARTICLE 13
PUBLIC BUILDING COMMISSION

Section
13-1301. Declaration of purpose.
13-1302. Terms, defined.
13-1303. Commission; created; membership; expenses; quorum; corporate existence.
13-1304. Commission; powers and duties.
13-1305. Funds; county treasurer; disposition.
13-1306. Bonds; notes; issuance; refunding; interest; payment.
13-1307. Bonds; notes; legal investment.
13-1308. Bonds; notes; exempt from taxation.
13-1309. Commission; property; exempt from taxation.
13-1310. Commission; obligations; state, county, or city; not liable.
13-1311. City; county; powers.
13-1312. Sections, how construed.

13-1301 Declaration of purpose.

The trend of population growth in the state in recent decades has been to the larger cities and the areas adjacent thereto to the degree that some of such cities contain over one-half the population of the respective counties in which such cities are located. Such growth has given rise to the need for buildings, structures, and facilities to be used jointly by such cities and the respective counties in which they are located, thereby effecting economies of operation and adding to the effectiveness of such cities and counties, aiding in the use by the inhabitants of such cities and counties, and alleviating the inconvenience of separate buildings, structures, and facilities caused by such growth to such inhabitants. The purpose of sections 13-1301 to 13-1312 is to provide a means whereby buildings, structures, and facilities can be acquired, constructed, remodeled, or renovated and financed for use jointly by such cities and the respective counties in which they are located.

Source: Laws 1971, LB 1003, § 1; R.S.1943, (1983), § 23-2601; Laws 1990, LB 1098, § 1.

This and succeeding sections do not violate the Nebraska Constitution. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

13-1302 Terms, defined.

For purposes of sections 13-1301 to 13-1312, unless the context otherwise requires:

(1) Bonds shall mean bonds issued by the commission pursuant to such sections;

(2) City shall mean a city of the metropolitan class as defined in section 14-101 or a city of the primary class as defined in section 15-101, the population of which according to the most recent federal census was more than one-half in number of the total population, according to such census, of the county in which such city is located;

(3) Commission shall mean a public building commission created by and activated pursuant to sections 13-1301 to 13-1312;

(4) County shall mean a county in which a city of the metropolitan class or primary class is located;

(5) Governing body shall mean the council in the case of the city and the board of county commissioners in the case of the county;

(6) Other governmental units shall mean a city, other than a city as defined in subdivision (2) of this section, village, district, authority, public agency, board, commission, or other public corporation, political subdivision, or public instrumentality located in whole or in part in the county; and

(7) Project shall mean any building, structure, or facility for public purposes to be used jointly by the city and the county, including the site thereof, all fixtures, machinery, equipment, furnishings, and apparatus of or pertaining thereto, and all other real or personal property necessary or incidental thereto.

Source: Laws 1971, LB 1003, § 2; R.S.1943, (1983), § 23-2602; Laws 1990, LB 1098, § 2.

13-1303 Commission; created; membership; expenses; quorum; corporate existence.

There is hereby created and established in each county a commission to be known and designated as (name of city) (name of county) public building commission, except that sections 13-1301 to 13-1312 shall not become operative in any county unless and until the governing body of the county by resolution shall activate the commission for such county. A copy of such resolution certified by the county clerk shall be filed with and recorded by the Secretary of State and also filed with the city clerk. Each such commission shall be a body politic and corporate and an instrumentality of the state.

Each commission shall be governed by a board of commissioners of five members, two of whom shall be appointed by the governing body of the county from among the members of such governing body, two of whom shall be appointed by the mayor of the city with the approval of the governing body of the city from among the members of such governing body, and the fifth of whom shall be appointed by the other four members. The fifth member shall be a resident of the county in which the commission is established. In the event the four members appointed by the county and the city cannot appoint the fifth member by a majority, the Governor, upon request of such four members, the city, or the county, shall appoint the fifth member. The term of office of each member of the board, except for the initial members, shall be four years or until a successor is appointed and takes office. Any vacancy on the board shall be filled (1) by the governing body of the county if the person whose membership was vacated was appointed by the governing body of the county, (2) by the mayor of the city with the approval of the governing body of the city if the person whose membership was vacated was appointed by the mayor, and (3) by the remaining four members if the person whose membership was vacated was

appointed by the members of the board. The members of the board shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by sections 13-1301 to 13-1312 with reimbursement for mileage to be made at the rate provided in section 81-1176. A majority of the total number of members of the board shall constitute a quorum, and all action taken by the board shall be taken by a majority of such total number. The board may delegate to one or more of the members or to its officers, agents, and employees such powers and duties as it deems proper. Any member of the board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for the removal of a member of the board may be brought in the district court of the county upon resolution of the governing body of the city or the county.

The terms of office of the two persons initially appointed to the board by the governing body of the county shall be for one and four years, and such governing body shall designate which person shall serve for one year and which person shall serve for four years. The terms of office of the two persons initially appointed to the board by the mayor with the approval of the governing body of the city shall be for two and three years, and such governing body shall designate which person shall serve for two years and which person shall serve for three years. The term of office of the person initially appointed by the other members of the board shall be for four years. Terms of office on the board shall expire on the same day of the year, and the governing body of the county in making the first appointments to the board shall designate such expiration date.

The commission and its corporate existence shall continue until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged and the governing bodies of the city and county jointly determine that the commission is no longer needed. Upon the commission's ceasing to exist all rights or properties of the commission shall pass to and be vested in the city and county.

Source: Laws 1971, LB 1003, § 3; Laws 1981, LB 204, § 32; R.S.1943, (1983), § 23-2603; Laws 1990, LB 1043, § 1; Laws 1996, LB 1011, § 4; Laws 2007, LB233, § 1.

13-1304 Commission; powers and duties.

Any commission established under sections 13-1301 to 13-1312 shall have power to:

(1) Sue and be sued;

(2) Have a seal and alter the same at pleasure;

(3) Acquire, hold, and dispose of personal property for its corporate purposes;

(4) Acquire in the name of the city and county, by gift, grant, bequest, purchase, or condemnation, real property or rights and easements thereon necessary or convenient for its corporate purposes and use the same so long as its corporate existence continues;

(5) Make bylaws for the management and regulation of its affairs and make rules and regulations for the use of its projects;

(6) With the consent of the city or the county, as the case may be, use the services of agents, employees, and facilities of the city or county, for which the commission may reimburse the city or the county their proper proportion of the

compensation or cost thereof, and use the services of the city attorney as legal advisor to the commission;

(7) Appoint officers, agents, and employees and fix their compensation, except that the county treasurer shall be the ex officio treasurer of the commission;

(8) Design, acquire, construct, maintain, operate, improve, remodel, remove, and reconstruct, so long as its corporate existence continues, such projects for the use both by the city and county as are approved by the city and the county and all facilities necessary or convenient in connection with any such projects;

(9) Enter into agreements with the city or county, or both, as to the operation, maintenance, repair, and use of its projects;

(10) With the approval of both the city and the county, enter into agreements with the United States of America, the State of Nebraska, any body, board, agency, corporation, or other governmental entity of either of them, or other governmental units for use by them of any projects to the extent that such use is not required by the city or the county;

(11) Make all other contracts, leases, and instruments necessary or convenient to the carrying out of the corporate purposes or powers of the commission;

(12) Annually levy, assess, and certify to the governing body of the county the amount of tax to be levied for the purposes of the commission subject to section 77-3443, not to exceed one and seven-tenths cents on each one hundred dollars upon the taxable valuation of all the taxable property in the county. The governing body of the county shall collect the tax so certified at the same time and in the same manner as other county 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 commission is deposited;

(13) Accept grants, loans, or contributions from the United States of America, the State of Nebraska, any agency or instrumentality of either of them, the city, the county, any other governmental unit, or any private person, firm, or corporation and expend the proceeds thereof for any corporate purposes;

(14) Incur debt, issue bonds and notes and provide for the rights of the holders thereof, and pledge and apply to the payment of such bonds and notes the taxes and other receipts, income, revenue, profits, and money of the commission;

(15) Enter on any lands, waters, and premises for the purpose of making surveys, findings, and examinations; and

(16) Do all things necessary or convenient to carry out the powers specially conferred on the commission by sections 13-1301 to 13-1312.

Source: Laws 1971, LB 1003, § 4; Laws 1979, LB 187, § 126; R.S.1943, (1983), § 23-2604; Laws 1992, LB 719A, § 32; Laws 1996, LB 1114, § 26.

Statutory condemnation power in public building commissions exists whether exercised or not. City of Omaha v. Matthews, 197 Neb. 323, 248 N.W.2d 761 (1977).

The provision in this section for expenditure for corporate purposes does not contravene Article XIII, section 2, Nebraska Constitution, as authorizing donations to works of internal improvement. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

13-1305 Funds; county treasurer; disposition.

All taxes or other receipts, income, revenue, profits, and money of a commission from whatever source derived shall be paid to the treasurer of the county in which such commission is established as ex officio treasurer of the commission, who shall not commingle such money with any other money under his or her control. Such money shall be deposited in a separate bank, capital stock financial institution, or qualifying mutual financial institution account or accounts and shall be withdrawn only by check, draft, or order signed by the treasurer on requisition of the chairperson of the board of the commission or of such other person or persons as the commission may authorize to make such requisition, approved by the board. The chief auditing officer of the county and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of such commission, including its receipts, disbursements, contracts, leases, sinking funds, and investments and any other matters relating to its financial standing. Notwithstanding the provisions of this section, the board may contract with the holders of any of its bonds as to the collection, custody, securing, investment, and payment of any money of the commission or money held in trust or otherwise for the payment of bonds or in any way to secure bonds. The board may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of the commission pursuant to the Public Funds Deposit Security Act. 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 1971, LB 1003, § 5; R.S.1943, (1983), § 23-2605; Laws 1989, LB 33, § 7; Laws 1999, LB 396, § 18; Laws 2001, LB 362, § 8.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

13-1306 Bonds; notes; issuance; refunding; interest; payment.

With the prior approval of both the city and the county for which the commission was created, the commission shall have the power and is hereby authorized from time to time to issue its bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such commission is established. The commission shall have power from time to time and when refunding is deemed expedient to issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded and interest to their redemption date upon the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustment as may be agreed or may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded. All bonds shall be general obligations of the commission issuing the same and shall be payable out of the tax and other receipts, revenue, income receipts, profits, or other money of the commission.

A commission shall have power from time to time to issue bond anticipation notes referred to as notes in this section 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. Such notes shall be general obligations of the commission. Payment of such notes shall be made from any money or revenue which the commission may have available for such purpose or from the proceeds of the sale of bonds of the commission or such notes may be exchanged for a like amount of such bonds.

All such bonds and notes shall be authorized by a resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such exchange privileges, be executed in such manner, be payable in such medium of payment at such place or places within or without the State of Nebraska and be subject to such terms of redemption and at such redemption premiums, as such resolution or resolutions may provide and the provisions of section 10-126, shall not be applicable to such bonds or notes. The bonds and notes may be sold at public or private sale for such price or prices as the commission shall determine. No proceedings for the issuance of bonds or notes of a commission shall be required other than those required by the provisions of sections 13-1301 to 13-1312 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 and notes issued by commissions pursuant to sections 13-1301 to 13-1312.

The full faith and credit of the commission shall be pledged to the payment and security of the bonds and notes issued by it, whether or not such pledge shall be set forth in the bonds or notes. So long as any of its bonds or notes are outstanding, the commission shall have the power and be obligated to levy taxes within the limitation as provided in section 13-1304 to the extent required, together with any other money available to the commission therefor to pay the principal of and interest and premium, if any, on such bonds and notes as the same become due and payable.

All bonds and notes issued pursuant to the provisions of sections 13-1301 to 13-1312 shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code subject only to any provisions contained in such bonds and notes for the registration of the principal thereof.

A commission shall have power to purchase bonds or notes of the commission out of any money available therefor. Any bonds so purchased shall be canceled by the commission.

Source: Laws 1971, LB 1003, § 6; R.S.1943, (1983), § 23-2606.

13-1307 Bonds; notes; legal investment.

The bonds and notes of a commission are hereby made securities in which all public officers, boards, agencies and bodies of the state, its counties, political subdivisions, public corporations, and municipalities and the officers, boards, agencies or bodies of any of them, all insurance companies and associations

and other persons carrying on an insurance business, all banks, trust companies, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or who may hereafter be authorized to invest in notes, bonds or other obligations of this state, may properly and legally invest funds, including capital in their control or belonging to them. Notwithstanding any other provision of law the bonds are also hereby made securities which may be deposited with and shall be received by all public officers, boards, agencies, and bodies of this state, its counties, political subdivisions, public corporations and municipalities and the officers, boards, agencies or bodies of any of them for any purpose for which the deposit of notes, bonds or obligations of the state is now or may be hereafter authorized.

Source: Laws 1971, LB 1003, § 7; R.S.1943, (1983), § 23-2607.

13-1308 Bonds; notes; exempt from taxation.

The bonds and notes of a commission, the interest thereon and the income therefrom, shall at all times be exempt from taxation by this state, or any political subdivision of this state.

Source: Laws 1971, LB 1003, § 8; R.S.1943, (1983), § 23-2608.

13-1309 Commission; property; exempt from taxation.

The commission, its income, revenue and other receipts and all properties or rights and interest therein shall be exempt from all taxation in this state.

Source: Laws 1971, LB 1003, § 9; R.S.1943, (1983), § 23-2609.

13-1310 Commission; obligations; state, county, or city; not liable.

The bonds, notes, obligations or liabilities of a commission shall not be a debt of the State of Nebraska or of the city or county for which the commission is established and neither the state, city, nor the county shall be liable thereon or therefor, nor shall such bonds, notes, obligations or liabilities be payable out of any money other than the money of the commission issuing or incurring the same.

Source: Laws 1971, LB 1003, § 10; R.S.1943, (1983), § 23-2610.

13-1311 City; county; powers.

With respect to the commission created for the city and county and its projects, the city and the county may each:

(1) Operate and maintain any project of the commission;

(2) Appropriate funds for any cost incurred by the commission in acquiring, constructing, reconstructing, improving, extending, equipping, remodeling, renovating, furnishing, operating, or maintaining any project;

(3) Convey or transfer to the commission any property of the city or the county for use in connection with a project, including real and personal property owned or leased by the city or the county and used or useful in connection therewith. In case of real property so conveyed, the title thereto shall remain in the city or the county as the case may be but the commission shall have the use and occupancy thereof so long as its corporate existence

continues. In the case of personal property so conveyed, the title shall pass to the commission;

(4) Acquire, by purchase or condemnation, real property in the name of the city or the county as the case may be for the projects of the commission, for the widening of existing roads, streets, parkways, avenues, or highways, for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes and partly for other city or county purposes, in the manner provided by law for acquisition. The city or the county may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction of any project of the commission;

(5) Enter into an agreement with the commission for the use by the city and the county of the project. The agreement shall set forth the respective obligations of the parties thereto as to the operation, maintenance, repair, and replacement of the project; the amount of space in any joint facility to be utilized by the city and county; the method or formula of determining the respective duties and obligations of the city and the county for cost of operation, maintenance, repair, and replacement of the project; and the method or formula for determining the payments to be made by the city to the commission as being applicable to the principal of and interest and premium on the bonds of the commission issued to finance the project. The city shall have the power to levy a tax on all the taxable property in the city sufficient to make the payments to the commission applicable to the principal of and interest and premium on the bonds of the commission issued for the project, which tax shall be in addition to all other taxes now or hereafter authorized by statute or charter. If the city is subject to a limitation by statute or charter on the amount of taxes which may be imposed by the city for its operating expenses, the maximum which may be levied in excess of such limitation pursuant to the authorization of this subdivision shall not exceed one and seven-tenths cents on each one hundred dollars of taxable valuation of all taxable property; and

(6) Enter into agreements with each other and with the commission necessary, desirable, or useful in carrying out the purposes of sections 13-1301 to 13-1312 upon such terms and conditions as determined by the governing body.

If at any time space not for the use and services of any project acquired or constructed or to be acquired or constructed by the commission is in excess of the needs of the city or the county for which the commission was created, the commission with the approval of the city or the county may enter into agreements with the United States of America, the state, or any other governmental unit providing for the use by the United States of America, the State of Nebraska, or such other governmental unit of the project, and such other governmental units shall possess the same powers with respect to the commission and its projects as are possessed by the city and county under the provisions of this section. Any agreement entered into by the state shall be subject to all the terms, provisions, and conditions of sections 72-1401 to 72-1412 with the same effect as though the commission were named as a municipality under such sections.

Source: Laws 1971, LB 1003, § 11; Laws 1979, LB 187, § 127; R.S.1943, (1983), § 23-2611; Laws 1992, LB 719A, § 33.

In view of the history recited in this opinion and the provisions of the act itself, it cannot be said the act is beyond a reasonable doubt unconstitutional. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

The provision in this section for transfer of any property to the commission does not violate Article XIII, section 2, Constitution of Nebraska. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

13-1312 Sections, how construed.

Sections 13-1301 to 13-1312 are supplemental to existing statutes and shall not be construed as repealing or amending existing statutes but shall be construed harmoniously and implemented compatibly with them.

Source: Laws 1971, LB 1003, § 12; R.S.1943, (1983), § 23-2612.

ARTICLE 14

BOARDS OF PUBLIC DOCKS

Section

13-1401 Authorization to establish; members; powers.

The county board or the governing body of any incorporated city or village in the State of Nebraska may, and is hereby authorized and empowered, when in its judgment it is deemed expedient, to establish a board of public docks to be known as Dock Board of ..... (here insert name of county or municipality establishing such board) which shall be a body corporate and politic, and possess all the usual powers of a corporation for public purposes, and in its name may sue and be sued, purchase, hold, and sell personal property and real estate. Such board shall consist of seven members to be known as commissioners of public docks.

Source: Laws 1937, c. 37, § 1, p. 166; C.S.Supp.,1941, § 18-2001; R.S. 1943, § 18-701; Laws 1951, c. 20, § 1, p. 102; Laws 1967, c. 84, § 1, p. 260; R.S.1943, (1983), § 18-701.

Dock board of city of Omaha is a governmental subdivision of the State of Nebraska. Property under its control, under facts in this case, is not taxable. Sioux City & New Orleans Barge Lines, Inc. v. Board of Equalization, 186 Neb. 690, 185 N.W.2d 866 (1971).

13-1402 City or village not more than ten miles from Missouri River; board; authorized; powers; duties.

The governing body of any incorporated city or village in the State of Nebraska, the nearest boundary of which city or village is not more than ten

miles from the Nebraska bank of the Missouri River, may, and is hereby authorized and empowered, when in its judgment it is deemed expedient, to establish a board of public docks to be known as Dock Board of ..... (here insert name of municipality establishing such board), which shall be a body corporate and politic and possess all the usual powers of a corporation for public purposes, and in its name may sue and be sued, purchase, hold, and sell personal property and real estate, and shall have all powers, authority and duties now granted under the laws of Nebraska for the establishment of such boards of public docks by incorporated cities or villages in the State of Nebraska whose boundaries abut upon the Nebraska bank of the Missouri River.

Source: Laws 1967, c. 81, § 1, p. 257; R.S.1943, (1983), § 18-701.01.

13-1403 Members; terms; organization; records; removal; vacancies, how filled.

When it has been determined by the county board or the governing body of any such municipality that it is expedient to establish such board of public docks the county board or the governing body of such municipality shall appoint as members of the dock board, seven such commissioners who shall have been residents of the county or municipality, as the case may be, in which they are appointed for a period of not less than five years and shall be prominently identified with the commercial and business interests of the county or municipality, as the case may be, and who shall not at the time of their appointment or during their term of office be interested in or be employed by any common carrier; and such board shall act without compensation. Of the commissioners initially appointed, three shall serve for a term of one year, three for a term of two years, and one for a term of three years. As the term of office of each commissioner expires, his successor shall be appointed by the county board or the governing body, and the term of office of such commissioner shall be three years. The commissioners shall qualify by taking oath for the faithful performance of their duties. Within ten days after their appointment the commissioners shall meet and organize such board by the election from among their number of a president, a vice president, and a treasurer of the board, and shall elect a secretary who need not be a member of the board. Any two of the offices except president and vice president may be held by one commissioner. The board shall from time to time adopt rules and regulations, consistent with the provisions of sections 13-1401 to 13-1417, for the government of the board and its proceedings, which shall be adopted by resolution and shall be recorded in a book kept by the board and known as the book of rules and regulations. The rules and regulations shall be in force after one publication in some legal newspaper published in or circulating in the municipality. The board shall maintain an office and keep a record of all its proceedings and acts, and books of accounts shall at all times be open to public inspection. If any commissioner shall at any time during his incumbency cease to have the qualifications required by this section for his appointment or shall willfully violate any of his duties under the law, such commissioner shall be removed by the county board or the governing body after written charges have been preferred against him and a due hearing of such charges shall have been had by the county board or the governing body upon reasonable notice to such commissioner. Vacancies

occurring in the board through resignation or otherwise shall be filled by the county board or the governing body for the unexpired term.

Source: Laws 1937, c. 37, § 2, p. 167; C.S.Supp.,1941, § 18-2002; R.S. 1943, § 18-702; Laws 1951, c. 20, § 2, p. 103; Laws 1967, c. 84, § 2, p. 260; R.S.1943, (1983), § 18-702.

13-1404 Harbor, waterfront, dock, and terminal facilities; construction; improvement; plan.

The dock board shall have power and it shall be its duty for and in behalf of any such municipality to prepare or cause to be prepared a comprehensive general plan for the construction and improvement of its harbor, water front, dock, and terminal facilities as it may deem necessary, to promote commerce and for the convenient and economical accommodation and handling of water-craft of all kinds and of freight and passengers, and the free interchange, receipt, and delivery of traffic between water and land transportation agencies. Such plan shall be filed in the office of the board and be open to public inspection, and may from time to time be changed, altered or amended by the board, as the requirements of shipping and commerce and the advance of knowledge and information on the subject may suggest. The board shall procure or construct such harbor, water front, dock, and terminal facilities in accord with such plan.

Source: Laws 1937, c. 37, § 3, p. 168; C.S.Supp.,1941, § 18-2003; R.S. 1943, (1983), § 18-703.

13-1405 Property; purchase; condemnation; procedure.

The dock board shall have power to purchase or acquire by any lawful means, such personal property and lands or rights or interests therein, including easements and leaseholds, as may be necessary for use in the provision and in the construction of any publicly owned harbor and terminal facilities and appurtenances as provided for in such plan as may be adopted by the board. If the board shall deem it proper and expedient that the county or municipality shall acquire possession or ownership of such property and lands or rights or interests therein, including easements and leaseholds, and no price can be agreed upon by the board and the owner or owners thereof, the board may cause legal proceedings to be taken to acquire same for the county or municipality by the exercise of the right of eminent domain hereby conferred. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The title of all lands, property, and rights acquired by the board shall vest in the county or the municipality.

Source: Laws 1937, c. 37, § 3, p. 169; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-704; Laws 1951, c. 101, § 64, p. 476; Laws 1967, c. 84, § 3, p. 262; R.S.1943, (1983), § 18-704.

13-1406 Property; control; powers.

The county or municipality may turn over any property owned by it to the dock board to be controlled by it; and the board shall have exclusive charge and control of all such property turned over to it and all harbor and water terminal structures, facilities, and appurtenances connected therewith, and which the county or municipality or board may acquire under the provisions hereof or otherwise. The board shall have the exclusive charge and control of the

building, rebuilding, alteration, repairing, operation and leasing of said property, and every part thereof, and of the cleaning, grading, paving, sewering, dredging and deepening necessary in and about the same.

Source: Laws 1937, c. 37, § 3, p. 169; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-705; Laws 1967, c. 84, § 4, p. 262; R.S.1943, (1983), § 18-705.

Dock board of city of Omaha is a governmental subdivision of the State of Nebraska. Property under its control, under facts in this case, is not taxable. Sioux City & New Orleans Barge Lines, Inc. v. Board of Equalization, 186 Neb. 690, 185 N.W.2d 866 (1971).

13-1407 Streets; alleys; public grounds; jurisdiction.

The dock board is hereby vested with jurisdiction and authority over that part of any street and alley and public grounds of the county or municipality which may abut upon or intersect its navigable waters, lying between the harbor line and the first intersecting street measuring backward from high watermark, to the extent only that may be necessary or requisite in carrying out the powers vested in it by sections 13-1401 to 13-1417. It is hereby declared that such jurisdiction and authority shall include the right to build retaining or quay walls, docks, levees, wharves, piers, warehouses or other constructions, including belt railways and railway switches, across and upon such streets and alleys and public grounds and all other property owned or acquired by it or by the county or municipality for such purposes, and to grade, fill, and pave the same to conform to the general level of the wharf, or for suitable approaches thereto; *Provided*, that such improvements shall be paid out of funds in the hands of the board and not by assessment against abutting property.

Source: Laws 1937, c. 37, § 3, p. 169; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-706; Laws 1967, c. 84, § 5, p. 263; R.S.1943, (1983), § 18-706.

13-1408 Harbor; waterfront; jurisdiction.

The dock board is also vested with exclusive regulation and control of the harbor and the waterfront within or abutting upon the territorial limits of such county or municipality, consistent with the laws of the United States governing navigation, and may make reasonable rules and regulations governing the traffic and use thereof, and to promote the sanitary condition of said harbor and waterfront and to prevent the pollution of the waters within said harbor and governing the use and improvement of riparian land, and structures thereon, within and abutting upon the territorial limits of such county or municipality.

Source: Laws 1937, c. 37, § 3, p. 169; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-707; Laws 1967, c. 84, § 6, p. 263; R.S.1943, (1983), § 18-707.

13-1409 Structures, erections, and artificial constructions; building, repair, and operation; rules and regulations.

The dock board shall have power to make general rules and regulations for the carrying out of the plans prepared and adopted by it for the building, rebuilding, repairing, alteration, maintaining, and operation of all structures, erections or artificial constructions upon or adjacent to the waterfront of the county or municipality, whether the same shall be done by the board or by

others; and except as provided by the general rules of the board, no new structures or repairs upon or along said waterfront shall be undertaken, except upon application to the board and under permit by it and in accordance with the general plans of the board and in pursuance of specifications submitted to the board and approved by it upon such application. Said general rules and regulations shall be adopted by resolution and shall be recorded in the board's book of rules and regulations. Certified copies of said general rules and regulations, whenever adopted by the board, shall, forthwith upon their passage, be transmitted to the county clerk or the clerk of the municipality who shall cause the same to be transcribed at length in a book kept for that purpose. Upon filing any such certified copy of any such rules and regulations, the said clerk shall forthwith cause the same to be once published in some legal newspaper of general circulation published in the county or municipality, as the case may be, or if none is there published, then in the next nearest legal newspaper published in this state; and the said rules and regulations shall be in force and effect from and after the date of said publication.

Source: Laws 1937, c. 37, § 3, p. 170; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-708; Laws 1967, c. 84, § 7, p. 264; R.S.1943, (1983), § 18-708.

13-1410 Harbors, ports, and facilities; improvement; promotion of commerce.

The dock board shall have authority, either alone or jointly with any similar body, to petition any interstate commerce commission, railway commission, or any like body or any federal, municipal, state or local authority, administrative, executive, judicial or legislative, having jurisdiction in the premises, for any relief, rates, charges, regulations or action which in the opinion of said body may be designed to improve or better the handling of commerce in and through the said harbor or port, or improve terminal or transportation facilities therein. It may intervene before any such body in any proceeding affecting the commerce of said harbor or port and in any such matters, the board shall be considered, along with other interested persons, one of the official representatives of the district in which said harbor or port is situated. The board shall have the authority to promote maritime and commercial interests of the harbor or port by the proper advertisement of its advantages and by the solicitation of business, through agencies established within or without said harbor or port within the United States or in foreign countries; and it shall endeavor to bring to the attention of the people of Nebraska, and of other states which may be properly served by the harbor or port, the economical advantages to be derived from the use of the harbor or port and its facilities.

Source: Laws 1937, c. 37, § 3, p. 171; C.S.Supp.,1941, § 18-2003; R.S. 1943, (1983), § 18-709.

13-1411 Tolls, fees, and other charges; conditions; procedure for adoption.

The dock board shall have the power to fix and regulate and from time to time to alter the tolls, fees, and other charges for all facilities under its management and control and for the use thereof, which charges shall be collectible by the board and shall be reasonable and with the view of defraying the capital expenditures, interest charges, maintenance and operating expenses, and indebtedness of the board in constructing and operating the improvements

and works herein authorized. The charges shall be adopted by resolution and shall be recorded in the board's book of rules and regulations. A schedule of such charges shall be enacted by the board, and a certified copy thereof shall be transmitted to the county clerk or clerk of the municipality, as the case may be, in like manner as other rules and regulations of the board, and the clerk shall forthwith cause the same to be published in the same manner as other rules and regulations of the board, and such charges shall be in force and effect from and after the date of publication.

Source: Laws 1937, c. 37, § 3, p. 171; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-710; Laws 1967, c. 84, § 8, p. 264; R.S.1943, (1983), § 18-710.

13-1412 Rules and regulations; violation; penalty.

Obedience to the rules and regulations of the dock board may be enforced in the name of the county or municipality, as the case may be, by a fine not exceeding one hundred dollars or by imprisonment not exceeding thirty days; *Provided*, the county board shall first adopt the same by regulation or governing body of such municipality shall first adopt the same in ordinance form, as ordinances of the municipality.

Source: Laws 1937, c. 37, § 3, p. 171; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-711; Laws 1967, c. 84, § 9, p. 265; R.S.1943, (1983), § 18-711.

13-1413 Officers and employees; employment.

The dock board shall have power to employ such harbor masters, managers, assistants, attorneys, engineers, employees, clerks, workmen, and laborers as may be necessary in the efficient and economical performance of the work authorized by sections 13-1401 to 13-1417. All officers, places, and employment in the permanent service of the board shall be provided for by resolution duly passed by the board and recorded in the board's book of rules and regulations, and a certified copy thereof shall be transmitted to the county clerk or clerk of the municipality, as the case may be, as provided for other rules and regulations of the board.

Source: Laws 1937, c. 37, § 3, p. 171; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-712; Laws 1967, c. 84, § 10, p. 265; R.S.1943, (1983), § 18-712.

13-1414 Docks; terminal facilities; construction; plans; bids; contracts.

In the construction of docks, levees, wharves, and their appurtenances, or in contracting for the construction of any work or structures authorized by sections 13-1401 to 13-1417, the dock board shall proceed only after full and complete plans, approved by the board, and specifications for said work, have been prepared and submitted and filed with the board by its engineer for public inspection, and after public notice asking for bids for the construction of such work, based upon such plans and specifications, has been published in some legal newspaper of general circulation published within the county or municipality, as the case may be, or if none is so published, then in the nearest legal newspaper published in this state. Such publications shall be made at least thirty days before the time fixed for the opening of said bids and contracting for such work. A contract may then be made with the lowest responsible bidder

therefor, unless the board deems the bids excessive or unsuitable, in which event it may proceed to readvertise for bids, or the board may do the work directly, purchasing such materials and contracting for such labor as may be necessary without further notice or proposal for bids; except that it shall make no purchase of materials in amounts exceeding five hundred dollars except by public letting upon ten days' notice, published as aforesaid, specifying the materials proposed to be purchased; *Provided*, that said public letting shall not be required in case no satisfactory bids are received, or in case of an emergency where the delay of advertising and public letting might cause serious loss or injury to the work. The board shall, in all cases, have the right to reject any and all bids, and may either readvertise therefor, contract with others at a figure not exceeding that of the lowest bidder without further advertising, or do the work directly as hereinbefore provided.

Source: Laws 1937, c. 37, § 3, p. 172; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-713; Laws 1967, c. 84, § 11, p. 265; R.S.1943, (1983), § 18-713.

13-1415 Annual report; expenses; appropriation.

The dock board shall annually make to the county board or the governing body of the municipality, as the case may be, a full and complete report of its activities, including a statement of the commerce passing through the port and a report of the receipts and disbursements made by or on account of said board. The board may, at such times as it may deem necessary, file with the county board or governing body, as the case may be, an estimate of the amounts necessary to be appropriated by the county board or the governing body to defray the expense of the board. The county board or the governing body of such municipality is hereby authorized and empowered, in its discretion, to appropriate from its general fund and to place at the disposal of the board an amount sufficient to defray such expense.

Source: Laws 1937, c. 37, § 3, p. 172; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-714; Laws 1967, c. 84, § 12, p. 266; R.S.1943, (1983), § 18-714.

13-1416 Revenue bonds; issuance; payment; dock fund.

Whenever the dock board shall deem it necessary or advisable to issue bonds for the purpose of constructing any of the works or improvements herein authorized, or purchasing property for said purpose or maintaining or operating the same, the board shall petition the county board or the governing body of such municipality, as the case may be, to issue such bonds stating the purpose for which the bonds are requested. Thereupon the county board or the governing body may, in its discretion, issue revenue bonds of such county or municipality, the principal and interest of which shall be payable solely out of revenue to be derived from tolls and other charges and receipts from the use and operation of the docks and other property. The county or city shall incur no indebtedness of any kind or nature upon the issuance of such bonds, and they shall so recite, and to support the use and operation of the docks and other property the county or city shall not pledge its credit nor its taxing power nor any part thereof. The proceeds of the bonds when issued shall be paid to the

treasurer of such county or municipality, as the case may be, and credited to the dock fund.

Source: Laws 1937, c. 37, § 3, p. 173; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-715; Laws 1967, c. 84, § 13, p. 267; R.S.1943, (1983), § 18-715.

13-1417 Funds; deposit; disbursement; books and records.

All funds collected by the dock board, or appropriated by the county or municipality for dock purposes from the proceeds of bonds or otherwise, shall be deposited with the treasurer of the county or municipality, as the case may be, and disbursed by him only upon warrants or orders duly executed as provided by law for the execution of warrants or orders of such county or municipality and which shall state distinctly the purpose for which the same are drawn; and a permanent record shall be kept by the board of all warrants or orders so drawn, showing the date, amount, consideration, and to whom payable. When paid, the same shall be canceled and kept on file by the treasurer of the county or municipality, as the case may be. The books of the board shall from time to time be audited upon the order of the county board or governing body of the municipality, as the case may be, in such manner as it may direct, and all such books and records of the board shall at all times be open to public inspection.

Source: Laws 1937, c. 37, § 3, p. 173; C.S.Supp.,1941, § 18-2003; R.S. 1943, § 18-716; Laws 1967, c. 84, § 14, p. 267; R.S.1943, (1983), § 18-716.

ARTICLE 15

STATE-TRIBAL COOPERATIVE AGREEMENTS

Section

13-1501 Act, how cited.

Sections 13-1501 to 13-1509 shall be known and may be cited as the State-Tribal Cooperative Agreements Act.

Source: Laws 1989, LB 508, § 1.

13-1502 Terms, defined.

For purposes of the State-Tribal Cooperative Agreements Act:

(1) Agreement shall mean an agreement authorized under section 13-1503;

(2) Public agency shall mean any political subdivision, including any municipality, county, school district, or agency or department of the state; and

(3) Tribal government shall mean the officially recognized government of any Indian tribe, nation, or other organized group or community located in the

state exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians or any Indian tribe located in the state and recognized as an Indian tribe by the state.

Source: Laws 1989, LB 508, § 2.

13-1503 Public agencies; powers; agreements.

Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments entering into the contract is authorized by law to perform. The agreement shall be authorized and approved by the governing body of each party to the agreement. The agreement shall fully set forth the powers, rights, obligations, and responsibilities of the parties to the agreement.

Source: Laws 1989, LB 508, § 3.

13-1504 Agreement; contents.

An agreement shall specify:

(1) Its duration;

(2) The precise organization, composition, and nature of any separate legal entity created;

(3) Its purpose;

(4) The manner of financing the agreement and establishing and maintaining a budget;

(5) The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination, if any;

(6) Provisions for administering the agreement, which may include, but not be limited to, the creation of a joint board responsible for such administration;

(7) The manner of acquiring, holding, and disposing of real and personal property used in the agreement;

(8) When an agreement involves law enforcement:

(a) The minimum training standards and qualifications of law enforcement personnel;

(b) The respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) The minimum insurance required of both the public agency and the tribal government; and

(d) The exact chain of command to be followed by law enforcement officers acting under the agreement; and

(9) Any other necessary and proper matters.

Source: Laws 1989, LB 508, § 4.

13-1505 Agreement; filing.

Within ten days after being signed by the parties, a copy of the agreement shall be filed with:

(1) The area office of the Bureau of Indian Affairs of the United States Department of the Interior having trust responsibility for each tribe the governing body of which is a party to the agreement or its successor agency;

(2) The county clerk of each county where one of the parties to the agreement is located, except that a copy shall not be required to be filed in Lancaster County if an agency or department of the state is a party to the agreement unless another party is located in such county;

(3) The Secretary of State; and

(4) Any affected tribal government.

Source: Laws 1989, LB 508, § 5.

13-1506 Agreement; revocation.

An agreement shall be subject to revocation by any party to the agreement upon six months' notice to the other unless a different period of time is provided for the agreement. No agreement may provide for a notice period for revocation in excess of five years.

Source: Laws 1989, LB 508, § 6.

13-1507 Public agency; appropriate funds; provide personnel.

Any public agency entering into an agreement may appropriate funds for, and may sell, lease, or otherwise give or supply material to, any entity created for the purpose of performance of the agreement and may provide such personnel or services as are within its legal power to furnish.

Source: Laws 1989, LB 508, § 7.

13-1508 Agreements; prohibited provisions.

Nothing in the State-Tribal Cooperative Agreements Act shall be construed to authorize an agreement that:

(1) Is not permitted by federal law. The parties to an agreement should deal with substantive matters and enforcement matters that can be mutually agreed upon, but no agreement shall affect the underlying jurisdictional authority of any party unless expressly authorized by Congress;

(2) Authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; or

(3) Authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws.

Source: Laws 1989, LB 508, § 8.

13-1509 Existing agreements; validity.

The State-Tribal Cooperative Agreements Act shall not affect the validity of any agreement entered into between a tribal government and a public agency prior to August 25, 1989.

Source: Laws 1989, LB 508, § 9.

ARTICLE 16
SELF-FUNDING BENEFITS

Section

13-1601 Act, how cited.

Sections 13-1601 to 13-1626 shall be known and may be cited as the Political Subdivisions Self-Funding Benefits Act.

Source: Laws 1991, LB 167, § 1.

13-1602 Purpose of act.

The purpose of the Political Subdivisions Self-Funding Benefits Act is to permit political subdivisions to provide employee benefits to employees and their dependents through self-funding by establishing, participating in, and administering employee benefit plans. It is also the purpose of the act to require political subdivisions using self-funding for employee benefit plans to meet certain requirements to protect the benefits of covered employees and covered dependents.

Source: Laws 1991, LB 167, § 2.

13-1603 Definitions, where found.

For purposes of the Political Subdivisions Self-Funding Benefits Act, the definitions found in sections 13-1604 to 13-1613 shall be used.

Source: Laws 1991, LB 167, § 3.

13-1604 Accruals, defined.

Accruals shall mean funds to cover all expected claims, reserves, and expenses to operate the self-funded portion of the employee benefit plan for a plan year.

Source: Laws 1991, LB 167, § 4.

13-1605 Covered dependent, defined.

Covered dependent shall mean a dependent who is enrolled in an employee benefit plan.

Source: Laws 1991, LB 167, § 5.

13-1606 Covered employee, defined.

Covered employee shall mean an employee who is enrolled in an employee benefit plan.

Source: Laws 1991, LB 167, § 6.

13-1607 Employee benefit plan, defined.

Employee benefit plan shall mean a plan provided pursuant to section 13-1614 for covered employees and covered dependents.

Source: Laws 1991, LB 167, § 7.

13-1608 Excess insurance, defined.

Excess insurance shall mean (1) aggregate insurance, (2) specific insurance, or (3) insurance in excess of a deductible, of which the plan sponsor assumes some or all of the risk for the deductible, purchased from an insurer.

Source: Laws 1991, LB 167, § 8.

13-1609 Independent actuary, defined.

Independent actuary shall mean a member in good standing of the Society of Actuaries or the American Academy of Actuaries who is not an employee of the plan sponsor. Selection of an independent actuary by a plan sponsor shall comply with the conflict of interest provisions of the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1991, LB 167, § 9.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

13-1610 Insurer, defined.

Insurer shall mean an insurer as defined in section 44-103 which holds a certificate of authority to transact the business of insurance in this state.

Source: Laws 1991, LB 167, § 10.

13-1611 Plan sponsor, defined.

Plan sponsor shall mean any political subdivision providing an employee benefit plan.

Source: Laws 1991, LB 167, § 11.

13-1612 Political subdivision, defined.

Political subdivision shall include villages, cities, counties, school districts, public power districts, community colleges, natural resources districts, and all other units of local government.

Source: Laws 1991, LB 167, § 12.

13-1613 Self-funding or self-funded, defined.

Self-funding or self-funded shall mean assumption of primary liability or responsibility for certain risks or benefits rather than transferring the liability or responsibility to some other entity and may include the deductible portion when a plan sponsor assumes some or all of the risk for the deductible of an insured plan.

Source: Laws 1991, LB 167, § 13.

13-1614 Political subdivision; employee benefit plans; requirements.

Any political subdivision may establish, participate in, and administer employee benefit plans for its employees or its employees and their dependents which will provide hospitalization, medical, surgical, dental, disability, and sickness and accident coverage or any one or more of such coverages. Such coverages shall be provided through self-funding in combination with excess insurance or through self-funding without excess insurance pursuant to subsection (4) of section 13-1622. Such coverages may include employee and dependent deductibles and copayments.

Source: Laws 1991, LB 167, § 14; Laws 1999, LB 506, § 1.

13-1615 Plan sponsor; use of self-funding; exemption from other laws.

(1) A plan sponsor shall not be considered an insurer under the laws of this state. The use of any self-funding by a plan sponsor shall not constitute transacting the business of insurance and shall not be subject to regulation by the Department of Insurance.

(2) A plan sponsor shall not be a member of the Nebraska Property and Liability Insurance Guaranty Association or the Nebraska Life and Health Insurance Guaranty Association. The Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act shall not be applicable to the self-funded portion of an employee benefit plan.

Source: Laws 1991, LB 167, § 15.

Cross References

Nebraska Life and Health Insurance Guaranty Association Act, see section 44-2720.
Nebraska Property and Liability Insurance Guaranty Association Act, see section 44-2418.

13-1616 Act; applicability.

The Political Subdivisions Self-Funding Benefits Act shall not apply to coverage for workers' compensation.

Source: Laws 1991, LB 167, § 16.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

13-1617 Governing body; self-funded portion of employee benefit plan; requirements; confidentiality; violations; penalty.

(1) The governing body of the plan sponsor shall approve the use of any self-funding for its employee benefit plan.

(2) The self-funded portion of an employee benefit plan shall comply with the Political Subdivisions Self-Funding Benefits Act. The self-funded portion of the employee benefit plan shall be solely for the benefit of the employees and dependents of the plan sponsor and shall not be pooled with the self-funded portion of an employee benefit plan of another plan sponsor.

(3) Each plan sponsor shall be liable for payment of valid claims under its employee benefit plan.

(4) The governing body of the plan sponsor shall annually review the self-funded portion of the employee benefit plan for compliance with section 13-1619.

(5) The plan sponsor shall keep confidential employee benefit plan information held by it which personally identifies employees and their dependents and the nature of any claims submitted by employees and their dependents. Any agent of the plan sponsor shall not use or disclose any such information to any person except to the extent necessary to administer claims or as otherwise authorized by law. No information regarding claims submitted by employees and their dependents and held by the plan sponsor shall be used directly or indirectly to alter the terms and conditions of employment of the employees. Any plan sponsor, member of its governing body, officer, employee, or agent who knowingly or willfully violates this subsection shall be guilty of a Class III misdemeanor.

Source: Laws 1991, LB 167, § 17.

13-1618 Plan sponsor; summary; contents.

A plan sponsor shall provide each covered employee with a copy of a summary of the self-funded portion of the employee benefit plan. The summary shall contain a written description of the major provisions of the self-funded portion of the plan, including (1) a table of contents, (2) a description of benefits, (3) the funding arrangement, and (4) the claims and appeals procedures required by section 13-1623.

Source: Laws 1991, LB 167, § 18.

13-1619 Plan sponsor; accruals, reserves, and disbursements; requirements.

(1) A plan sponsor shall establish accruals at a satisfactory level to provide funds to cover one hundred percent of expected claims, reserves as required in subsection (2) of this section, and expenses to operate the self-funded portion of the employee benefit plan. Accruals shall be reevaluated for adequacy at least annually. Accruals shall be funded through contributions by the plan sponsor or through a combination of contributions by the plan sponsor and employee. Accruals which become available during a month when claims are less than projected for that month shall be maintained and available for a month when claims exceed those projected for that month.

(2) A plan sponsor shall establish reserves for claims which have been incurred by covered employees and covered dependents under the self-funded portion of the employee benefit plan but which have not yet been presented for

payment. The appropriate amount of the reserves shall be on an actuarially sound basis as determined by (a) an independent actuary or (b) an insurer.

(3) A plan sponsor shall establish a restricted and segregated fund exclusively for the deposit of monthly accruals and other assets pertaining to the self-funded portion of the employee benefit plan. As long as the self-funded portion of an employee benefit plan is in effect, all contributions shall be deposited as collected in the restricted and segregated fund.

(4) Disbursements from the restricted and segregated fund established pursuant to subsection (3) of this section may be made only for the following specified employee benefit plan expenses: (a) Payment of claims; (b) cost of insurance coverage; (c) payment of service fees applicable to employee benefit plan design, payment of claims, materials explaining benefits, actuarial assistance, legal assistance, and accounting assistance; (d) costs of employee wellness programs; and (e) other expenses directly related to the operation of the employee benefit plan. If the plan sponsor is a city of the metropolitan class and if such plan sponsor has a surplus in its restricted and segregated fund at the end of any fiscal year, such surplus may be treated and used as surplus funds in accordance with and pursuant to the city's home rule charter.

(5) If an employee benefit plan is discontinued, the plan sponsor shall maintain the restricted and segregated fund established pursuant to subsection (3) of this section for a period of one year from the date of discontinuation for payment of any claims which have not been filed. At the end of the one-year period, the funds shall no longer be restricted and segregated and may be returned to operational funds of the plan sponsor.

Source: Laws 1991, LB 167, § 19; Laws 1995, LB 86, § 1.

13-1620 Governing body; annual report.

The governing body of a plan sponsor shall approve an annual report showing the beginning and ending balance of the fund established pursuant to section 13-1619, deposits of monthly accruals and other assets of the fund, and a separate accounting to reflect required reserves.

Source: Laws 1991, LB 167, § 20.

13-1621 Plan sponsor; contributions; when.

If the fund established pursuant to section 13-1619 is not adequate to fully cover all disbursements under the self-funded portion of the employee benefit plan, the plan sponsor shall contribute funds from other sources so that the employee benefit plan continues to comply with the Political Subdivisions Self-Funding Benefits Act.

Source: Laws 1991, LB 167, § 21.

13-1622 Plan sponsor; obtain excess insurance; when.

(1) Except as provided in subsection (4) of this section, the plan sponsor shall obtain excess insurance which will limit the plan sponsor's total claims liability for each plan year to not more than one hundred twenty-five percent of the expected claims liability as projected by an independent actuary or insurer.

(2) If the expected claims liability of the self-funded portion of the employee benefit plan is exceeded, the plan sponsor shall fund such additional liability by (a) allocating necessary funds from the operating fund of the general fund, (b)

setting up an additional reserve in the operating fund of the general fund, or (c) setting up the monthly accruals at a level to fund claims in excess of the expected claims liability.

(3) An insurer shall pay claims for which it is obligated under excess insurance within three months of the time the claims are paid by the plan sponsor.

(4) A city of the metropolitan class may provide an employee benefit plan without excess insurance if the city obtains a determination from an independent actuary or insurer that excess insurance is not necessary to preserve the safety and soundness of the employee benefit plan.

Source: Laws 1991, LB 167, § 22.

13-1623 Self-funded portion of employee benefit plan; claim procedure; requirements.

The self-funded portion of an employee benefit plan shall provide for the following:

(1) A written claim for benefits shall be furnished to the plan sponsor (a) in case of a claim for benefits which provide any periodic payment contingent upon continuing loss, within ninety days after the termination of the period for which the plan sponsor is liable and (b) in case of a claim for any other loss, within ninety days after the date of such loss. Failure to furnish such written claim within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time and if proof is furnished as soon as reasonably possible and in no event later than one year from the time proof is otherwise required except in the absence of legal capacity;

(2) Indemnities payable for any loss, other than loss for which periodic payment is provided, shall be paid immediately upon receipt of a written claim for benefits. All accrued indemnities for loss which provide periodic payment shall be paid at least monthly, and any balance remaining unpaid upon the termination of liability shall be paid immediately upon receipt of a written claim for benefits;

(3) If a claim remains unsettled, the plan sponsor shall send to the covered employee, covered dependent, or authorized representative a letter every ninety days. The letter shall set forth specific reasons additional time is needed for investigation; and

(4) If a claim is denied or partly denied, a written notice of the denial from the plan sponsor, together with specific reason for the denial, shall be sent to the covered employee, covered dependent, or authorized representative. A denial may be appealed directly to the plan sponsor within sixty days after receiving the notice. The plan sponsor shall inform a covered employee, covered dependent, or authorized representative of its decision within sixty days after receipt of written appeal unless an unusual circumstance requires an extension of time to investigate or consider the appeal. If an extension is needed, the plan sponsor shall inform the covered employee, covered dependent, or authorized representative of the reason and the additional time needed which shall not exceed an additional sixty days. If the claim is denied or partly denied by the plan sponsor, a claim denial may be further appealed pursuant to section 13-1625.

Source: Laws 1991, LB 167, § 23.

13-1624 Employee benefit plans; continuation of coverage; compliance with other laws; school district covered employees; rights.

(1) Employee benefit plans established pursuant to the Political Subdivisions Self-Funding Benefits Act shall comply with sections 44-1640 to 44-1645 relating to continuation of coverage if subject to such sections.

(2) If any covered employee of a plan sponsor which is a school district terminates employment with such plan sponsor and obtains employment with another plan sponsor which is a school district prior to October 1, 1994, such employee or such employee and any dependents shall not be subject to any preexisting condition period or other waiting period of the employee benefit plan of the plan sponsor with which such employment is obtained if both such plan sponsors have obtained excess insurance from the same insurer.

Source: Laws 1991, LB 167, § 24.

13-1625 Civil action to require compliance; attorney's fees; when.

(1) A covered employee or covered dependent may bring a civil action against a plan sponsor to require compliance with the Political Subdivisions Self-Funding Benefits Act and the self-funded portion of an employee benefit plan. When the covered employee or covered dependent brings an action against a plan sponsor, the court, upon rendering judgment against the plan sponsor, shall allow the plaintiff a reasonable sum as an attorney's fee in addition to the amount of his or her recovery, to be taxed as part of the costs. If such action is appealed, the appellate court shall allow a reasonable sum as an attorney's fee for the appeal if the plaintiff is successful.

(2) If the plaintiff fails to obtain judgment for more than may have been offered by such plan sponsor in accordance with section 25-901, the plaintiff shall not recover the attorney's fees provided in this section.

Source: Laws 1991, LB 167, § 25.

13-1626 Compliance with act; when required.

Any political subdivision using self-funding to provide hospitalization, medical, surgical, and sickness and accident coverage or any one or more of such coverages for its employees or its employees and their dependents immediately prior to June 8, 1991, shall comply with the Political Subdivisions Self-Funding Benefits Act no later than December 31, 1991.

Source: Laws 1991, LB 167, § 26.

ARTICLE 17

SOLID WASTE DISPOSAL

Section
13-1701. Terms, defined.
13-1702. Request for siting approval.
13-1703. Criteria.
13-1704. Notice to property owners; publication; failure to notify; effect.
13-1705. Request for siting approval; filing requirements; comments.
13-1706. Public hearing; procedure.
13-1707. Final action; when required; amended application.
13-1708. Construction commencement date.
13-1709. Procedures; exclusive.
13-1710. Fee.

Section
13-1711. Reapplication; restriction.
13-1712. Disapproval; hearing before district court.
13-1713. Approval; contest; hearing before district court.
13-1714. Approval; contest; filing fee.

13-1701 Terms, defined.

For purposes of sections 13-1701 to 13-1714 and 76-2,119:

(1) Applicant shall mean any person as defined in section 81-1502 who is required to obtain a permit from the department for a solid waste disposal area or a solid waste processing facility but shall not include any person applying for renewal of such a permit or any person as defined in such section who proposes to dispose of waste which he or she generates on property which he or she owns as of January 1, 1991;

(2) Department shall mean the Department of Environmental Quality;

(3) Solid waste disposal area shall mean an area used for the disposal of solid waste from more than one residential premises or from one or more recreational, commercial, industrial, manufacturing, or governmental operations; and

(4) Solid waste processing facility shall mean an incinerator or a compost plant receiving material, other than yard waste, in quantities greater than one thousand cubic yards annually.

Source: Laws 1991, LB 813, § 1; Laws 1992, LB 1257, § 59.

13-1702 Request for siting approval.

Prior to submitting an application to the department for a solid waste disposal area or solid waste processing facility, the applicant shall submit a request for siting approval to the city council, village board of trustees, or county board of commissioners or supervisors which governs the city, village, or county in which the proposed site is to be located. The city council, village board, or county board shall approve or disapprove the site for each solid waste disposal area or solid waste processing facility.

Source: Laws 1991, LB 813, § 2.

13-1703 Criteria.

An applicant for siting approval shall submit information to the city council, village board of trustees, or county board of commissioners or supervisors to demonstrate compliance with the requirements of this section regarding a solid waste disposal area or solid waste processing facility. Siting approval shall be granted only if the proposed area or facility meets all of the following criteria:

(1) The solid waste disposal area or solid waste processing facility is necessary to accommodate the solid waste management needs of the area which the solid waste disposal area or solid waste processing facility is intended to serve;

(2) The solid waste disposal area or solid waste processing facility is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected. The applicant shall provide an evaluation of the potential for adverse health effects that could result from exposure to pollution, in any form, due to the proper or improper construction, operation, or closure of the proposed solid waste disposal area or solid waste processing facility;

(3) The solid waste disposal area or solid waste processing facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The city council, village board, or county board shall consider the advice of the appropriate planning commission regarding the application;

(4) The plan of operations for the solid waste disposal area or solid waste processing facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

(5) The traffic patterns to or from the solid waste disposal area or solid waste processing facility are designed to minimize the impact on existing traffic flows; and

(6) Information regarding the previous operating experience of a private agency applicant and its subsidiaries or parent corporation in the area of solid waste management or related activities are made available to the city council, village board, or county board. If a corporation, a parent company or subsidiary thereof, or any officer or board member of the corporation or the parent company or subsidiary applying for approval has been convicted of a felony within ten years of the date the application is filed, site approval shall not be granted.

Source: Laws 1991, LB 813, § 3; Laws 1992, LB 1257, § 60.

13-1704 Notice to property owners; publication; failure to notify; effect.

No later than fourteen days prior to a request for siting approval, the applicant shall cause written notice of the request for siting approval to be served either in person or by registered or certified mail on the owners of all property within the proposed site area not solely owned by the applicant and on the owners of all property within one thousand feet in each direction of the lot line of the proposed site if the proposed site is inside or within three miles of the corporate limits of a city or village or on the owners of all property within two miles in each direction of the lot line of the proposed site for all other proposed sites. The owners shall be identified based upon the tax records of the county in which the proposed site is located.

Written notice shall be published in a newspaper of general circulation in the county in which the proposed site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the solid waste disposal area or solid waste processing facility, the probable life of the proposed solid waste disposal area or solid waste processing facility, the date when the request for siting approval will be submitted, and a description of the right of persons to comment on the request.

Failure to notify all landowners and failure to include all information in the publicized notice as required by this section shall not be considered noncompliance if a good faith effort at notice was made by the applicant which results in actual notice to substantially all parties required to be notified.

Source: Laws 1991, LB 813, § 4; Laws 1992, LB 1257, § 61.

13-1705 Request for siting approval; filing requirements; comments.

An applicant shall file a copy of its request for siting approval with the city council, village board of trustees, or county board of commissioners or supervisors of the city, village, or county in which the proposed site is located. The

request shall include the substance of the applicant's proposal and all documents, if any, submitted as of that date to the department pertaining to the proposed solid waste disposal area or solid waste processing facility. All documents or other materials pertaining to the proposed area or facility on file with the city council, village board, or county board shall be made available for public inspection at the office of the city council, village board, or county board and may be copied upon payment of a fee in an amount equal to the actual cost of reproduction.

Any person may file written comment with the city council, village board, or county board concerning the appropriateness of the proposed site for its intended purpose. Such comment shall be postmarked not later than thirty days after the date of the last public hearing held pursuant to section 13-1706 and shall be included in the record of the public hearing.

Source: Laws 1991, LB 813, § 5.

13-1706 Public hearing; procedure.

At least one public hearing shall be held by the city council, village board of trustees, or county board of commissioners or supervisors no sooner than ninety days but no later than one hundred twenty days after receipt of the request for siting approval. A hearing shall be preceded by published notice in a newspaper of general circulation in the county, city, or village in which the proposed site is located. The public hearing shall develop a record sufficient to form the basis of an appeal of the decision.

Source: Laws 1991, LB 813, § 6.

13-1707 Final action; when required; amended application.

Final action shall be taken by the city council, village board, or county board within one hundred eighty days after the filing of the request for site approval.

At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for questioning by the city council, village board, or county board and members of the public, the applicant may file not more than one amended application upon payment of additional fees pursuant to section 13-1710. The time limitations prescribed in sections 13-1706 and 13-1708 for final action on an amended application shall be extended for an additional ninety days.

Source: Laws 1991, LB 813, § 7.

13-1708 Construction commencement date.

Construction of a solid waste disposal area or solid waste processing facility which is granted siting approval pursuant to sections 13-1701 to 13-1714 and 76-2,119 shall commence within two calendar years from the date approval was granted, or the approval shall be nullified. If the siting decision is appealed, the two-year period shall begin on the date upon which the appeal process is concluded.

Source: Laws 1991, LB 813, § 8.

13-1709 Procedures; exclusive.

The siting approval procedures, criteria, and appeal procedures provided for in sections 13-1701 to 13-1714 shall be the exclusive siting procedures and

appeal procedures. Local zoning ordinances, other local land-use requirements, and other ordinances or resolutions shall be considered in such siting decisions.

Source: Laws 1991, LB 813, § 9; Laws 1992, LB 1257, § 62.

Because this section provides that the siting approval procedures, criteria, and appeal procedures provided for in sections 13-1701 to 13-1714 shall be the exclusive siting procedures and appeal procedures, the Administrative Procedure Act is inapplicable. The standard of review is to search only for errors appearing in the record. The district court determines whether the decision conforms to law, is supported by competent and relevant evidence, and is not arbitrary, capricious, or unreasonable. Tri-County Landfill v. Board of Cty. Comrs., 247 Neb. 350, 526 N.W.2d 668 (1995).

13-1710 Fee.

A city council, village board of trustees, or county board of commissioners or supervisors shall charge an applicant for siting approval a fee in an amount equal to the reasonable and necessary costs incurred by the city, village, or county in the siting approval process.

Source: Laws 1991, LB 813, § 10.

13-1711 Reapplication; restriction.

An applicant shall not file a request for siting approval which is substantially the same as a request which was denied within the immediately preceding two years.

Source: Laws 1991, LB 813, § 11.

13-1712 Disapproval; hearing before district court.

If the city council, village board of trustees, or county board of commissioners or supervisors does not approve a request for siting approval pursuant to sections 13-1701 to 13-1714 and 76-2,119, the applicant, within sixty days after notice of the decision, may petition for a hearing before the district court of the county in which the proposed site is located to contest the decision. The city council, village board, or county board shall appear as respondent in the hearing. At the hearing, the burden of proof shall be on the petitioner. In making its orders and determinations under this section, the district court shall consider the written decision and reasons for the decision of the city council, village board, or county board and the transcribed record of the hearing held pursuant to section 13-1706. The district court shall transmit a copy of its decision to the office of the city council, village board, or county board where it shall be available for public inspection and may be copied upon payment of a fee in an amount equal to the actual cost of reproduction. Final action by the district court shall be taken within one hundred twenty days.

Source: Laws 1991, LB 813, § 12.

13-1713 Approval; contest; hearing before district court.

If the city council, village board of trustees, or county board of commissioners or supervisors grants approval pursuant to sections 13-1701 to 13-1714 and 76-2,119, a third party other than the applicant who participated in the public hearing may petition the district court of the county in which the proposed site is located within sixty days after the filing of the written decision by the city council, village board, or county board for a hearing to contest the approval. Unless the district court determines that the petition is duplicitous or frivolous, the district court shall hear the petition in accordance with the procedures

prescribed in section 13-1712. The burden of proof shall be on the petitioner, and the city council, village board, or county board and the applicant shall be named as correspondents.

The district court shall transmit a copy of its decision to the office of the city council, village board, or county board where it shall be available for public inspection and may be copied upon payment of a fee in an amount equal to the actual cost of reproduction.

Source: Laws 1991, LB 813, § 13.

13-1714 Approval; contest; filing fee.

Any person who files a petition with the district court to contest a decision of the city council, village board of trustees, or county board of commissioners or supervisors shall pay the required filing fee.

Source: Laws 1991, LB 813, § 14.

ARTICLE 18

LIABILITY FOR DAMAGES

Section
13-1801. Officers and employees; action against; defense; payment of judgment; liability insurance.
13-1802. Law enforcement activity; insurance required.

13-1801 Officers and employees; action against; defense; payment of judgment; liability insurance.

If any legal action shall be brought against any municipal police officer, constable, county sheriff, deputy sheriff, firefighter, out-of-hospital emergency care provider, or other elected or appointed official of any political subdivision, who is an employee as defined in section 48-115, whether such person is a volunteer or partly paid or fully paid, based upon the negligent error or omission of such person while in the performance of his or her lawful duties, the political subdivision which employs, appoints, or otherwise designates such person an employee as defined in section 48-115 shall defend him or her against such action, and if final judgment is rendered against such person, such political subdivision shall pay such judgment in his or her behalf and shall have no right to restitution from such person.

A political subdivision shall have the right to purchase insurance to indemnify itself in advance against the possibility of such loss under this section, and the insurance company shall have no right of subrogation against the person. This section shall not be construed to permit a political subdivision to pay for a judgment obtained against a person as a result of illegal acts committed by such person.

Source: Laws 1972, LB 1278, § 1; Laws 1973, LB 487, § 1; R.R.S.1943, § 28-844, (1975); R.S.1943, (1989), § 28-1417; Laws 1992, LB 28, § 1; Laws 1997, LB 138, § 32.

The clear language of this section limits its scope to the defense of civil actions for damages based upon negligent error or omission on the part of certain public officials and has no application to the defense of criminal charges. Guenzel-Handlos v. County of Lancaster, 265 Neb. 125, 655 N.W.2d 384 (2003).

13-1802 Law enforcement activity; insurance required.

Each political subdivision shall self-insure or contract for insurance against liability for personal injuries or property damage that may be incurred by it or

by its personnel as a result of law enforcement activity within or without its primary jurisdiction.

Source: Laws 1994, LB 254, § 2.

ARTICLE 19
DEVELOPMENT DISTRICTS

Section
13-1901. Nebraska planning and development regions; created.
13-1902. Development districts; formation; local government, defined.
13-1903. Development district; policy board.
13-1904. Development district; duties.
13-1905. Development districts; certification for funding.
13-1906. Distribution of financial assistance.
13-1907. Rules and regulations; annual reports; evaluation; Governor; powers.

13-1901 Nebraska planning and development regions; created.

There are hereby created nine Nebraska planning and development regions as follows:

(1) Region 1 includes the counties of Sioux, Dawes, Sheridan, Box Butte, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and Deuel;

(2) Region 2 includes the counties of Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, and Sherman;

(3) Region 3 includes the counties of Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas;

(4) Region 4 includes the counties of Howard, Merrick, Buffalo, Hall, Hamilton, Phelps, Kearney, Adams, Clay, Harlan, Franklin, Webster, and Nuckolls;

(5) Region 5 includes the counties of Knox, Cedar, Dixon, Antelope, Pierce, Wayne, Thurston, Boone, Madison, Stanton, Cuming, Burt, Platte, Colfax, Dodge, and Nance;

(6) Region 6 includes the counties of Polk, Butler, Saunders, York, Seward, Cass, Fillmore, Saline, Otoe, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;

(7) Region 7 includes the county of Lancaster;

(8) Region 8 includes the counties of Washington, Douglas, and Sarpy; and

(9) Region 9 includes the county of Dakota.

Source: Laws 1992, LB 573, § 1.

13-1902 Development districts; formation; local government, defined.

(1) Within a Nebraska planning and development region, a development district may be formed as a voluntary association by agreement pursuant to the Interlocal Cooperation Act in one of the following ways if the combined membership of the association includes at least fifty-one percent of the local governments in the region:

(a) By local governments within the region; or

(b) By two or more regional councils, each of which is a voluntary association of local governments in the region formed by agreement pursuant to the act between the governing bodies of such governments, the membership of

which association does not include at least fifty-one percent of the local governments located in the region.

(2) For purposes of this section and sections 13-1903 to 13-1906, local government shall mean a county, city, or village.

Source: Laws 1992, LB 573, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.

13-1903 Development district; policy board.

Each development district formed pursuant to section 13-1902 shall be governed by a policy board, as described in the development district's interlocal cooperation agreement or bylaws, which shall be the board, body, or persons in which the powers of the local governments forming the development district are vested under the agreement for the purpose of governing the development district.

Source: Laws 1992, LB 573, § 3.

13-1904 Development district; duties.

A development district shall, as directed by its policy board, serve as a regional resource center and provide planning, community and economic development, and technical assistance to local governments which are members of the district and may provide assistance to industrial development organizations, tourism promotion organizations, community development groups, and similar organizations upon request.

Source: Laws 1992, LB 573, § 4.

13-1905 Development districts; certification for funding.

If state funding is available for distribution pursuant to section 13-1906, the Governor shall designate a state administrative agency to certify development districts for funding eligibility. Certification shall be based on the following requirements:

(1) The development district shall be formed as provided in section 13-1902;

(2) The development district shall have a staff which shall at a minimum include a full-time director to provide assistance to the local governments which are members of the development district; and

(3) The agreement creating the development district shall insure that all of the local governments within the Nebraska planning and development region may at any time join in the development district.

Source: Laws 1992, LB 573, § 5.

13-1906 Distribution of financial assistance.

(1) The state administrative agency shall distribute financial assistance from the state, if available, to the various development districts as they are certified in the manner prescribed in subsection (2) of this section.

(2)(a) Fifty percent of the total sum allocated shall be divided equally among the certified development districts. In certified districts formed by regional councils, funds may be prorated among the cooperating regional councils based

upon a formula approved by the governing boards of each of the cooperating regional councils and accepted by the state administrative agency.

(b) Twenty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the population of all certified development districts in the state. For purposes of this subdivision, population shall mean the number of residents as shown by the latest federal decennial census, except that the population of a county shall mean the number of residents in the unincorporated areas of the county.

(c) Thirty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the local governments located within all certified development districts.

(3) Distributions to newly certified development districts shall not reduce financial assistance to previously funded development districts. State financial assistance shall not exceed the total local dollars received by the development district as verified by the state administrative agency. For purposes of this subsection, local dollars received shall mean the total local dues received by a development district from any local government as a condition of membership in a development district.

Source: Laws 1992, LB 573, § 6.

13-1907 Rules and regulations; annual reports; evaluation; Governor; powers.

(1) The state administrative agency shall adopt and promulgate rules and regulations to carry out sections 13-1901 to 13-1907 which shall include standardized reporting and application procedures. Each development district shall submit annual performance and financial reports to the state administrative agency which shall address the activities performed and services delivered.

(2) The Governor shall, from time to time, evaluate the effectiveness and activities of the development districts receiving assistance. If the Governor finds a development district to be ineffective, he or she may take action, including the withholding of assistance authorized under section 13-1906.

Source: Laws 1992, LB 573, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 20

INTEGRATED SOLID WASTE MANAGEMENT

Section
13-2001. Act, how cited.
13-2002. Legislative findings and declarations.
13-2003. Definitions, where found.
13-2004. Agency, defined.
13-2005. Council, defined.
13-2006. County, defined.
13-2007. County solid waste jurisdiction area, defined.
13-2008. Department, defined.
13-2009. Director, defined.
13-2010. Facility, defined.
13-2011. Integrated solid waste management, defined.
13-2012. Municipal solid waste jurisdiction area, defined.

INTEGRATED SOLID WASTE MANAGEMENT

13-2001 Act, how cited.

Sections 13-2001 to 13-2043 shall be known and may be cited as the Integrated Solid Waste Management Act.

Source: Laws 1992, LB 1257, § 1; Laws 1994, LB 1207, § 1; Laws 2003, LB 143, § 1.

13-2002 Legislative findings and declarations.

The Legislature hereby finds and declares that:

(1) The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the ground water supply. In addition, the nature of the waste and the disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition;

(2) Wastes filling Nebraska's landfills may at best represent a potential resource, but without proper management wastes are hazards to the environment and to the public health and welfare;

(3) The growing concern with ground water protection and the desire to avoid financial risks inherent in ground water contamination has caused many smaller landfills to close in favor of using higher-volume facilities. Larger operations allow for better ground water protection at a relatively lower and more manageable cost;

(4) The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to landfills and increase the supply of reusable materials for the use of the public;

(5) Local governments are currently authorized to provide solid waste management services. As a group, counties and municipalities are best positioned to develop efficient solid waste management programs;

(6) An assignment of responsibility for integrated solid waste management should not prohibit governmental entities from procuring services from other units of governments or from private persons. It is the intent of the Legislature that natural resources districts, interlocal cooperative entities, tribal governments, and other statutory and voluntary regional organizations be encouraged to cooperatively provide financing or services to governmental entities responsible for solid waste management; and

(7) A variety of benefits results from a policy of integrated solid waste management, including the following environmental, economic, governmental, and public benefits:

(a) Not producing waste in the first instance is the most certain means for avoiding the widely recognized health and environmental damage associated with waste. Although waste reduction will never eliminate all wastes, to the extent that waste reduction is achieved it results in the most certain form of direct risk reduction;

(b) The government is better able to administer programs which offer a variety of benefits to industry and which reduce the overall cost of government involvement than to administer programs which offer few benefits to industry and require increasingly extensive, complex, and costly governmental actions; and

(c) Public confidence in environmental policies of the government is important for the effectiveness of these policies. Waste reduction and recycling pose no adverse environmental and public health effects and do not therefor lead to increased public concern. Waste reduction and recycling also increase the public confidence that government and industry are doing all that is possible to protect the environment and the public health and welfare.

Source: Laws 1992, LB 1257, § 2.

13-2003 Definitions, where found.

For purposes of the Integrated Solid Waste Management Act, the definitions found in sections 13-2004 to 13-2016.01 shall be used.

Source: Laws 1992, LB 1257, § 3; Laws 1994, LB 1207, § 4; Laws 2003, LB 143, § 2.

13-2004 Agency, defined.

Agency shall mean any combination of two or more municipalities or counties acting together under the Interlocal Cooperation Act or the Joint Public Agency Act, a natural resources district acting alone or together with one or more counties and municipalities under either of such acts, any joint entity as defined in section 13-803, or any joint public agency as defined in section 13-2503.

Source: Laws 1992, LB 1257, § 4; Laws 1999, LB 87, § 56.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

13-2005 Council, defined.

Council shall mean the Environmental Quality Council.

Source: Laws 1992, LB 1257, § 5.

13-2006 County, defined.

County shall mean any county in the State of Nebraska.

Source: Laws 1992, LB 1257, § 6.

13-2007 County solid waste jurisdiction area, defined.

County solid waste jurisdiction area shall mean all areas of a county not located within the corporate limits of a municipality except a facility which does not serve unincorporated areas of the county.

Source: Laws 1992, LB 1257, § 7.

13-2008 Department, defined.

Department shall mean the Department of Environmental Quality.

Source: Laws 1992, LB 1257, § 8.

13-2009 Director, defined.

Director shall mean the Director of Environmental Quality.

Source: Laws 1992, LB 1257, § 9.

13-2010 Facility, defined.

Facility shall mean any site owned and operated or utilized by any person for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste and shall include a solid waste landfill.

Source: Laws 1992, LB 1257, § 10.

13-2011 Integrated solid waste management, defined.

Integrated solid waste management shall mean solid waste management which is focused on planned development of programs and facilities that reduce waste toxicity and volume, recycle marketable materials, and provide for safe disposal of residuals.

Source: Laws 1992, LB 1257, § 11.

13-2012 Municipal solid waste jurisdiction area, defined.

Municipal solid waste jurisdiction area shall mean all the incorporated areas of a city or of a village.

Source: Laws 1992, LB 1257, § 12.

13-2013 Municipality, defined.

Municipality shall mean any city or village incorporated under the laws of this state.

Source: Laws 1992, LB 1257, § 13.

13-2013.01 Passenger tire equivalent of waste tires, defined.

Passenger tire equivalent of waste tires means twenty pounds of waste tire or processed waste tire.

Source: Laws 2003, LB 143, § 3.

13-2013.02 Scrap tire or waste tire, defined.

Scrap tire or waste tire means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

Source: Laws 2003, LB 143, § 4.

13-2014 Solid waste, defined.

Solid waste shall have the definition found in section 81-1502.

Source: Laws 1992, LB 1257, § 14.

13-2015 Solid waste management plan, defined.

Solid waste management plan shall mean a plan adopted by a county or municipality, including a joint plan adopted by an agency, for integrated solid waste management.

Source: Laws 1992, LB 1257, § 15.

13-2016 System, defined.

System shall mean any equipment, vehicles, facilities, personnel, or contractors utilized for the purpose of collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste.

Source: Laws 1992, LB 1257, § 16.

13-2016.01 Yard waste, defined.

Yard waste shall mean grass and leaves.

Source: Laws 1994, LB 1207, § 5.

13-2017 Policy of the state.

It is the policy of this state:

(1) To encourage the development of integrated solid waste management programs, including waste volume reduction and recycling programs and education, at the local governmental level through incentives, technical assistance, grants, and other practical measures;

(2) To support and encourage the development of new uses and markets for recycled goods, placing emphasis on the development in Nebraska of businesses relating to waste reduction and recycling;

(3) To provide education concerning the components of integrated solid waste management, at the elementary level through the high school level and through community organizations, to enhance the success of local programs requiring public involvement; and

(4) To support and encourage manufacturing methods which are environmentally sustainable, technologically safe, and ecologically sound and which enhance waste reduction by creating products which have longer usage life and which are adaptable to secondary uses, require less input material, and decrease resource consumption.

Source: Laws 1992, LB 1257, § 17.

13-2018 Solid waste management hierarchy; established; cooperative program; established.

(1) An effective and efficient program of integrated solid waste management protects the environment and the public and provides the most practical and beneficial use of the solid waste material. While recognizing the continuing necessity for the existence of landfills, alternative methods of managing solid waste and a reduction in the reliance upon land disposal of solid waste are encouraged. In the promotion of these goals, the following solid waste management hierarchy, in descending order of preference, is established as the integrated solid waste management policy of the state:

(a) Volume reduction at the source;

(b) Recycling, reuse, and vegetative waste composting;

(c) Land disposal;

(d) Incineration with energy resource recovery; and

(e) Incineration for volume reduction.

(2) In the implementation of the integrated solid waste management policy, the state shall establish and maintain a cooperative state and local program of project planning and technical assistance to encourage integrated solid waste management.

Source: Laws 1992, LB 1257, § 18.

13-2019 Tribal governments; assume responsibility for integrated solid waste management; department; duties.

Because of the rights of both tribal sovereignty and Nebraska citizenship of individuals under the jurisdiction of federally recognized tribal governments, such tribal governments are recognized as localities which can assume responsibility for integrated solid waste management. The department shall present the state's comprehensive solid waste management plan completed pursuant to section 81-15,166 to the federally recognized tribal governments in Nebraska and encourage such tribes to adopt the state's laws, rules, regulations, and standards for integrated solid waste management.

Source: Laws 1992, LB 1257, § 19.

13-2020 County, municipality, or agency; provide or contract for disposal of solid waste; joint ownership of facility; governing body; powers and duties; rates and charges.

(1) Effective October 1, 1993, each county and municipality shall provide or contract for facilities and systems as necessary for the safe and sanitary disposal of solid waste generated within its solid waste jurisdiction area. Such disposal shall comply with rules and regulations adopted and promulgated by the council for integrated solid waste management programs.

(2) A county, municipality, or agency may jointly own, operate, or own and operate with any person any facility or system and may enter into cooperative agreements as necessary and appropriate for the ownership, operation, or ownership and operation of any facility or system.

(3) A county, municipality, or agency may, either alone or in combination with any other county, municipality, or agency, contract with any person to provide any service, facility, or system required by the Integrated Solid Waste Management Act.

(4) The governing body of a county, municipality, or agency may make all necessary rules and regulations governing the use, operation, and control of a facility or system. Such governing body may establish just and equitable rates or charges to be paid to it for the use of such facility or system by each person whose premises are served by the facility or system, including charges for late payments, except that no city of the metropolitan class shall impose any rate or charge upon individual residences unless a majority of those voting in a regular or special election vote affirmatively to approve or authorize establishment of such a rate or charge. For purposes of the charges authorized by this section, the premises are served if solid waste collection service is available to the premises or if a community solid waste drop-off location is provided, unless the person who would otherwise be subject to such rates or charges proves to the

governing body of the county, municipality, or agency that his or her solid waste was lawfully collected and hauled to a permitted facility. Such proof shall be provided by a receipt from a permitted facility, a statement from a licensed hauler, or other documentation acceptable to the governing body of the county, municipality, or agency. If the service charge so established is not paid when due, such sum may be recovered by the county, municipality, or agency in a civil action or, following notice by regular United States mail to the last-known address of the property owner of record and an opportunity for a hearing, may be certified by the governing body of the county, municipality, or agency to the county treasurer and assessed against the premises served and collected or returned in the same manner as other taxes are certified, assessed, collected, and returned.

(5) If the county, municipality, or agency enters into a contract with a person to provide a facility or system, such contract may authorize the person to charge the owners of premises served such a service rate therefor as the governing body determines to be just and reasonable or the county, municipality, or agency may 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 premises served a reasonable charge therefor to be collected as provided in this section and paid into a fund to be used to defray such contract charges.

Source: Laws 1992, LB 1257, § 20; Laws 1997, LB 495, § 1.

Subsection (4) of this section permits a municipal waste disposal agency to require periodic submissions of proof that a generator not using its system is disposing of waste at an alternate permitted facility on a regular basis, with the frequency of such submissions to be determined under a standard of reasonableness. Jacobson v. Solid Waste Agency of Northwest Neb., 264 Neb. 961, 653 N.W.2d 482 (2002).

Subsection (4) of this section provides a means by which a resident or business may avoid paying a service fee to a municipality having regulatory jurisdiction under the Solid Waste Management Act, but it does not alter the power to regulate conferred by the act. Jacobson v. Solid Waste Agency of Northwest Neb., 264 Neb. 961, 653 N.W.2d 482 (2002).

A municipality can only impose a garbage fee on those persons that actually use the garbage services provided. Village of Winside v. Jackson, 250 Neb. 851, 553 N.W.2d 476 (1996).

13-2021 County, municipality, or agency; facility or system; powers and duties; referendum and limited referendum provisions; applicability.

A county, municipality, or agency may purchase, plan, develop, construct, equip, maintain, and improve facilities and systems and may lease or acquire land in fee by gift, grant, purchase, or condemnation as necessary for the construction and operation of a facility or system. A county, municipality, or agency may also make and enter into contracts with any person for the planning, development, construction, maintenance, or operation of such facility or system or any part thereof. Measures adopted or enacted by municipalities with respect to any facility or system shall constitute measures subject to limited referendum under subsection (2) of section 18-2528, and a municipality shall be authorized to exempt all subsequent measures relating to the same project from referendum and limited referendum as provided under subsection (4) of such section.

Source: Laws 1992, LB 1257, § 21.

13-2022 County, municipality, or agency; closure of facility, postclosure care, and investigative and corrective action; powers and duties; tax; special trust funds.

A county, municipality, or agency shall close a facility, provide postclosure care, and undertake investigative and corrective action in accordance with rules and regulations adopted by the council. The costs associated with or

reasonably anticipated for such closure, postclosure care, and investigative and corrective action may be included within the rates and charges authorized by section 13-2020 and within the amounts payable under service agreements adopted pursuant to section 13-2024.

Every county, municipality, and agency may approve, execute, and deliver contractual agreements to assume financial responsibility for the payment of costs of closure, postclosure care, or investigative or corrective action with respect to any facility. Such agreements may provide for a binding general obligation of such county, municipality, or agency obligating payments in future years.

For the payment or performance of the terms of any such agreement, any county or municipality may agree to levy or cause to be levied an annual tax upon the taxable property within such county or municipality in an amount sufficient for such purposes. Any such tax shall for all purposes of Nebraska law, including limitations upon budget, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such county or municipality.

Every county, municipality, and agency may also approve, execute, and deliver one or more trust agreements, with any bank having trust powers or a trust company, providing for the creation of one or more special trust funds to provide for the payment of costs of closure, postclosure care, or investigative or corrective action.

No county, municipality, or agency shall be required to provide proof of financial responsibility to obtain or renew a permit for a facility which is not used for disposal of solid waste.

Source: Laws 1992, LB 1257, § 22; Laws 1994, LB 1207, § 6.

13-2023 County, municipality, or agency; regulations authorized; limitations; noncompliance fee.

A county, municipality, or agency may, by ordinance or resolution, adopt regulations governing collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste within its solid waste jurisdiction area as necessary to protect the public health and welfare and the environment. Regulations authorized by this section shall be equal to or more stringent than the provisions of the Integrated Solid Waste Management Act and rules and regulations adopted and promulgated by the council as authorized by the act. Any person who violates any such regulation shall be subject to a noncompliance fee not to exceed five hundred dollars.

Source: Laws 1992, LB 1257, § 23.

13-2024 County or municipality; service agreement with agency; authorized provisions; special tax authorized.

Notwithstanding any other provision of Nebraska law, any county or municipality may enter into a service agreement with an agency which owns and operates or proposes to own and operate any solid waste management facility or system for obtaining solid waste management services from such agency. Any such service agreement may provide for the following:

(1) The payment of fixed or variable periodic amounts for service or the right to obtain service;

(2) That such service agreement may extend for a term of years as determined by the governing body of the county or municipality and be binding upon such county or municipality over such term of years;

(3) That variable or fixed amounts payable under such contracts may be determined based upon one or more of the following factors:

(a) Operating and maintenance expenses of the agency, including contract renewal and replacement for plant and equipment;

(b) Amounts payable by the agency with respect to debt service on its bonds or other obligations, including margins of coverage if deemed appropriate; and

(c) Amounts necessary for the agency to build or maintain operating reserves, capital reserves, and debt service reserves;

(4) That any such service agreement may require payment to be made in the agreed fixed or variable amounts irrespective of whether such facility or system is completed or operational and notwithstanding any suspension, interruption, interference, reduction, or curtailment of the services of such facility or system; and

(5) Such other provisions as the agency and county or municipality deem appropriate in connection with providing and obtaining solid waste management services.

In order to provide for the payments due under any such service agreement, any county or municipality may pledge the revenue received from any and all rates and charges received or to be received from provision of solid waste management services or from contracts with any other persons or entities, private or public, and may further provide, if determined appropriate by the governing body, that any deficiency in such revenue may be made up from a special tax levied for such purpose upon all taxable property within such county or municipality, which special tax shall for all purposes of Nebraska law, including limitations upon budget, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such county or municipality.

Source: Laws 1992, LB 1257, § 24.

13-2025 County, municipality, or agency; service agreement; fees and charges; amount.

Any county, municipality, or agency entering into any service agreement under section 13-2024 shall 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 system as will be sufficient to:

(1) Pay (a) the cost of operating and maintaining the system and renewals or replacements thereto, including all amounts due and payable under such service agreement, and (b) the interest on and principal of any outstanding bonds or other indebtedness of the county, municipality, or agency relative to the service agreement, whether at maturity or upon sinking-fund redemption, which are payable from the revenue of its system; and

(2) Provide, as may be required by any resolution, ordinance, trust indenture, security instrument, or other agreement of the agency, for any reasonable

reserves for such operating and maintenance expenses and for any margins or coverages over and above debt service.

Source: Laws 1992, LB 1257, § 25.

13-2025.01 Joint entity or joint public agency; reporting of budget; filing required.

Any joint entity or joint public agency created to fulfill the purposes of the Integrated Solid Waste Management Act pursuant to the Interlocal Cooperation Act or Joint Public Agency Act shall comply with the Municipal Proprietary Function Act for purposes of reporting its budgets. Proprietary budget statements for the joint entity or joint public agency shall be placed on file with the office of the municipal clerk of each member which is a municipality as required by the Municipal Proprietary Function Act and with the county clerk of each member which is a county.

Source: Laws 1994, LB 1207, § 2; Laws 1999, LB 87, § 57.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Proprietary Function Act, see section 18-2801.

13-2026 Municipalities, counties, and agencies; regulate solid waste management; when.

In furtherance of the policy of the state as set forth in the Integrated Solid Waste Management Act, municipalities, counties, and agencies may by ordinance or resolution adopt rules and regulations or may adopt bylaws or enter into written agreements between and among themselves or other persons which regulate and govern solid waste management within their solid waste jurisdiction areas, including the establishment of conditions to assure that a specified amount and type of solid waste will be delivered to a specific facility.

Source: Laws 1984, LB 911, § 2; R.S.1943, (1987), § 81-1572; Laws 1992, LB 1257, § 26.

13-2027 Municipalities, counties, and agencies; regulation of competition and antitrust; exemption.

In exercising the powers granted in the Integrated Solid Waste Management Act, municipalities, counties, and agencies shall be exempt from all rules and regulations of state regulatory competition. It is intended that municipalities, counties, or agencies carrying out the activities described in the act receive full exemption and immunity from state and federal antitrust laws in light of the public purpose and regulatory provisions provided by the act. The exemption granted pursuant to this section shall not be construed to diminish any other exemption for similar activities authorized through grants of authority to other public bodies even though such exemption may not be stated in terms of antitrust.

Source: Laws 1984, LB 911, § 3; R.S.1943, (1987), § 81-1573; Laws 1992, LB 1257, § 27.

13-2028 Exemption; limitation.

The exemption granted under section 13-2027 shall not constitute a waiver of or exemption from the bidding provisions of sections 16-321 and 17-568.01 or any other similar provision.

Source: Laws 1984, LB 911, § 4; R.S.1943, (1987), § 81-1574; Laws 1992, LB 1257, § 28.

13-2029 Counties and municipalities; statement of intent; filings; failure to file; effect.

On or before October 1, 1992, each county and municipality shall file a statement of intent with the department describing the way in which it intends to fulfill its responsibility for integrated solid waste management. If a municipality or county intends to enter into a cooperative relationship with another entity to fulfill such responsibility, documentation of the reciprocal intent of those entities shall be included with the statement. If no statement of intent is filed by a municipality or county, the responsibility for integrated solid waste management shall remain with the nonfiling county or municipality.

Source: Laws 1992, LB 1257, § 29.

13-2030 Counties and municipalities; certification of facility and system capacity; filing required; department; approval; restrict access to facilities and systems; when.

On or before October 1, 1993, a certification shall be filed with the department on behalf of each county and municipality with respect to (1) facility and system capacity for solid waste management for the solid waste generated within each solid waste jurisdiction area and (2) facility and system capacity for solid waste generated outside of each solid waste jurisdiction area and disposed of in facilities within each solid waste jurisdiction area. If a county or municipality is unable to certify capacity for waste generated outside its solid waste jurisdiction area, it may restrict access to its facilities and systems for such solid waste. Such certification shall be approved by the department if it is found to be in compliance with the Integrated Solid Waste Management Act and the rules and regulations adopted under the act.

Source: Laws 1992, LB 1257, § 30.

13-2031 Integrated solid waste management plan; filing; approval.

On or before October 1, 1994, an integrated solid waste management plan shall be filed with the department on behalf of each county and municipality. Such plan shall be approved by the department if it is found to be in compliance with the Integrated Solid Waste Management Act and the rules and regulations adopted under the act.

Source: Laws 1992, LB 1257, § 31.

13-2032 Integrated solid waste management plan; minimum requirements; waste reduction and recycling program; priorities; updated plan.

(1) Each integrated solid waste management plan filed pursuant to section 13-2031 shall at a minimum:

(a) Certify facility and system capacity for solid waste management for the solid waste generated within each solid waste jurisdiction area for the twenty years following October 1, 1994;

(b) Certify facility and system capacity for solid waste generated outside of each solid waste jurisdiction area and disposed of in facilities within each solid waste jurisdiction area for the twenty years following October 1, 1994. If a county or municipality is unable to certify capacity for waste generated outside its solid waste jurisdiction area, it may restrict access to its facilities and systems for such solid waste;

(c) Incorporate and reflect the waste management hierarchy of the state integrated solid waste management policy;

(d) State the extent to which solid waste generated within the area covered by the plan is or can be recycled;

(e) State the economic and technical feasibility of using other existing disposal facilities in lieu of initiating new disposal facilities or of continuing the use of disposal facilities in use at the time the plan is filed;

(f) State the expected environmental impact of alternative solid waste disposal methods, including the use of landfills;

(g) State a specific plan and schedule for implementing technically and economically feasible solid waste disposal methods that will result in minimal environmental impact; and

(h) State such additional information, data, and studies as may be required pursuant to rules and regulations adopted by the council.

(2) The integrated solid waste management plan shall provide for a local waste reduction and recycling program. If technically and economically feasible, the volume of materials disposed of in landfills as of July 1, 1994, shall be reduced by twenty-five percent as of July 1, 1996, by forty percent as of July 1, 1999, and by fifty percent as of July 1, 2002. Any county, municipality, or agency which had in effect a recycling or waste reduction program prior to July 1, 1994, shall be credited with the waste-stream reduction achieved prior to July 1, 1994, with respect to the July 1, 1996, goal. The following wastes shall be given first priority when developing reduction and recycling programs and related timetables in relation to an integrated solid waste management plan:

(a) Yard wastes;

(b) Unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act;

(c) Discarded tires;

(d) Waste oil;

(e) Lead-acid batteries; and

(f) Discarded household appliances.

In addition, such plan shall provide a methodology for implementing a program of separation of wastes, including, but not limited to, glass, plastic, paper, and metal.

(3) The solid waste management plan shall be updated for compliance with federal and state laws and regulations as required by the department and may be updated, subject to approval by the department, at any time to reflect local needs and conditions.

Source: Laws 1992, LB 1257, § 32.

Cross References

Environmental Protection Act, see section 81-1532.

13-2033 Dumping or depositing solid waste; permit; council; powers and duties; exemptions; storage of passenger tire equivalents of waste tires; access to property.

(1) Except as provided in subsections (2) and (3) of this section, no person shall dump or deposit any solid waste at any place other than a landfill approved by the director unless the department has granted a permit which allows the dumping or depositing of solid waste at any other facility. The council may adopt and promulgate rules and regulations regarding the permitting of this activity, which rules and regulations shall protect the public interest but may be based upon criteria less stringent than those regulating a landfill. The council may adopt and promulgate rules and regulations defining beneficial reuse and establishing construction standards and other criteria exempting from permit requirements under this section the following: (a) The use of dirt, stone, brick, or some inorganic compound for landfill, landscaping excavation, or grading purposes; (b) the placement of tires, posts, or ferrous objects, not contaminated with other wastes, for agricultural uses, such as bumpers on agricultural equipment, for ballast to maintain covers or structures on the agricultural site, for blowout stabilization, for fish habitat, or for tire mats for bank stabilization; or (c) such other waste placement or depositing activities that are found not to pose a threat to the public health or welfare. In developing construction standards, the council shall consider standards and practices established by the American Society for Testing and Materials.

(2) No person shall be found to be in violation of this section if (a) the solid waste generated by an individual is disposed of on such individual's property, (b) such property is outside the corporate limits of a municipality, and (c) the department determines that the county has not provided integrated solid waste management facilities for its residents.

(3) No person shall be found to be in violation of this section for storing five hundred or fewer passenger tire equivalents of waste tires. Storage of passenger tire equivalents of waste tires for more than one year without reuse, recycling, or shipment out of state is presumed to constitute disposal of solid waste under subsection (1) of this section. Speculative accumulation of more than five hundred passenger tire equivalents of waste tires shall be deemed disposal of solid waste and is prohibited. Tires are not accumulated speculatively if, in a calendar year beginning on January 1, the amount of tire material that is reused or recycled by weight equals at least seventy-five percent of such material at the beginning of the year. The burden of proof that passenger tire equivalents of waste tires have not been speculatively accumulated rests with the person accumulating the passenger tire equivalents of waste tires to demonstrate through written documentation that the passenger tire equivalents of waste tires have not been accumulated speculatively. Any person, business, or other entity engaged in the business of picking up, hauling, and transporting scrap tires for storage, processing, or recycling shall obtain a permit from the department before engaging in such activity. The council may adopt rules and regulations regarding such permits and may exempt from permit requirements those entities having involvement with scrap tires which is incidental to their primary business activity. Persons holding a permit on August 31, 2003, may continue to operate under such permits until new rules and regulations are

established under this section. As a condition for obtaining a permit under this section, the department shall require the permittee to provide the department with an annual report indicating the number of scrap tires hauled, the location of the delivery of such scrap tires, and any additional information the council believes necessary to accomplish the purposes of the Integrated Solid Waste Management Act.

(4) If necessary in the course of an investigation or inspection or during remedial or corrective action and if the owner of the subject property or the owner's agent has specifically denied access to the department for such purposes, the director may order the owner or owner's agent to grant access to such property for the performance of reasonable steps to determine the source and extent of contamination, for remediation, or for other corrective action, including drilling and removal of wastes. Access shall be by the department or by a person conducting the investigation, inspection, or remedial action at the direction of the department. The property shall be restored as nearly as possible to its original condition at the conclusion of the investigation, inspection, or remedial action.

Source: Laws 1992, LB 1257, § 33; Laws 2003, LB 142, § 1; Laws 2003, LB 143, § 5.

13-2034 Rules and regulations.

The council shall adopt and promulgate rules and regulations which shall include the following:

(1) A permit program for facilities providing for permits to be issued to owners and operators;

(2) Requirements for the collection, source separation, storage, transportation, transfer, processing, recycling, resource recovery, treatment, and disposal of solid wastes as well as developmental and operational plans for facilities. Regulations concerning operations may include waste characterization, composition, and source identification, site improvements, air and methane gas monitoring, ground water and surface water monitoring, daily cover, insect and rodent control, salvage operations, waste tire disposal, safety and restricted access, inspection of loads and any other necessary inspection or verification requirements, reporting of monitoring analysis, record-keeping requirements and other reporting requirements, handling and disposal of wastes with special characteristics, and any other operational criteria, location criteria, or design criteria necessary to minimize environmental and health risks and to provide protection of the air, land, and waters of the state; and

(3) Requirements for closure, postclosure care and monitoring, and investigative and corrective action with respect to landfills. Such rules and regulations shall require financial assurance for such activities after April 9, 1996. Such rules and regulations shall impose any necessary requirements upon owners or operators in order to assure proper closure, care, monitoring, and investigative and corrective action with respect to landfills to minimize the need for future maintenance and eliminate, to the extent necessary to protect humans, animals, and the environment, releases or the threat of releases of contaminants or leachate.

Source: Laws 1992, LB 1257, § 34; Laws 1994, LB 1207, § 7; Laws 1995, LB 668, § 1.

13-2035 Applicant for facility permit; exemption from siting approval requirements; when; application; contents.

Any applicant who applies to the department for a permit for a facility pursuant to the Integrated Solid Waste Management Act shall be exempt from the siting approval requirements of sections 13-1701 to 13-1714 if a county, municipality, or agency is to be the owner of the facility and the facility is to be located in a county the unincorporated areas of which are among the areas to be served by such facility or the facility is to be located in the county of a municipality to be served by such facility if such facility will not serve unincorporated areas of a county.

The application of such county, municipality, or agency shall show that the applicant:

(1) Has considered the siting, operational, and traffic criteria established by section 13-1703;

(2) Has given notice of the proposed siting pursuant to the procedures established by section 13-1704;

(3) Has conducted a public hearing regarding the proposed siting preceded by published notice in a newspaper of general circulation in the county or municipality in which the proposed facility is to be located; and

(4) Has submitted a record of such hearing with its application to the department.

Source: Laws 1992, LB 1257, § 35.

13-2036 Applications for permits; contents; department; powers and duties; contested cases; variance; minor modification; how treated.

(1) The department shall review applications for permits for facilities and provide for the issuance, modification, suspension, denial, or revocation of permits after public notice. Applications shall be on forms provided by the department which solicit information necessary to make a determination on the application. The department shall issue public notice of its intent to grant or deny an application for a permit within sixty days after receipt of an application containing all required information. If an application is granted and the permit is issued or modified, any aggrieved person may file a petition for a contested case with the department within thirty days after the granting or modification of the permit, but such petition shall not act as a stay of the permit. If an application is denied, the department shall provide written rationale therefor to the applicant. Any change, modification, or other deviation from the terms or conditions of an approved permit must be approved by the director prior to implementation. Minor modifications described in subsection (5) of this section shall not require public notice or hearing.

(2) The department shall condition the issuance of permits on terms necessary to protect the public health and welfare and the environment as well as compliance with all applicable regulations. Any applicant may apply to the department for a variance from rules and regulations. The director may grant such variance if he or she finds that the public health and welfare will not be endangered or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. The considerations, procedures, conditions, and limita-

tions set forth in section 81-1513 shall apply to any variance granted pursuant to this section.

(3) The director shall require the owner or operator of a facility to undertake investigation and corrective action in the event of contamination or a threat of contamination caused by the facility. Financial assurance for investigative or corrective action may be required in an amount determined by the director following notice and hearing.

(4) In addition to the information required by this section, the following specific areas shall be addressed in detail in any application filed in conjunction with the issuance, renewal, or reissuance of a permit for a facility:

(a) A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure of the facility as defined by the council. The plan shall include, but not be limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting the costs;

(b) A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of such control and treatment; and

(c) An emergency response and remedial action plan, including provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment and the identification of possible occurrences that may endanger human health and environment.

(5) If such application is modified after approval by the department, the application shall be resubmitted as a new proposal. The director may approve a minor modification of an application if he or she finds that the public health and welfare will not be endangered. The following minor modifications to an application are subject to departmental approval but do not require public notice or hearing:

(a) Correction of typographical errors;

(b) Change of name, address, or telephone number of persons or agencies identified in the application;

(c) Administrative or informational changes;

(d) Changes in procedures for maintaining operating records;

(e) Changes to provide for more frequent monitoring, reporting, sampling, or maintenance;

(f) Request for a compliance date extension if such date is not more than one hundred twenty days after the date specified in the approved permit;

(g) Adjustments to the cost estimates or the financial assurance instrument for inflation;

(h) Changes in the closure schedule for a unit or in the final closure schedule for the facility or an extension of the closure schedule;

(i) Changes to the days or hours of operation if the hours of operation are within the period from 6:00 a.m. to 8:00 p.m.;

(j) Changes to the facility contingency plan;

(k) Changes which improve sampling or analysis methods, procedures, or schedules;

(l) Changes in quality control or quality assurance plans which will better ensure that the specifications for construction, closure, sampling, or analysis will be met;

(m) Changes in the facility plan of operation which conform to guidance or rules approved by the Environmental Quality Council or provide more efficient waste handling or more effective waste screening; or

(n) Replacement of an existing monitoring well with a new well if location is not changed.

Source: Laws 1992, LB 1257, § 36; Laws 1994, LB 1207, § 8; Laws 2007, LB263, § 1.

13-2037 Comprehensive state plan for solid waste management; department; duties; rules and regulations; requirements; approval of state plan.

(1) The department shall keep current the comprehensive state plan for solid waste management developed pursuant to section 81-15,166, including the rules, regulations, and guidelines adopted by the council for facilities in cooperation with local governments and with agencies.

(2) Rules and regulations adopted and promulgated by the council shall comply with rules and regulations promulgated by the Environmental Protection Agency pursuant to the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., including the exemptions and deadlines provided for in 40 C.F.R. 258.1.

(3) The department shall apply for approval to the Environmental Protection Agency to attain an approved state program for solid waste management.

Source: Laws 1992, LB 1257, § 37.

13-2038 Definition of certain solid wastes; council; adopt rules and regulations.

The council shall adopt and promulgate rules and regulations which define lead-acid batteries, discarded household appliances, waste oil, and unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act.

Source: Laws 1992, LB 1257, § 38; Laws 1994, LB 1207, § 9.

Cross References

Environmental Protection Act, see section 81-1532.

13-2039 Land disposal of certain solid wastes; prohibited; when; exceptions.

(1)(a) A landfill may accept yard waste without condition from December 1 through March 31 of each year.

(b) A landfill may accept yard waste year-round if such yard waste:

(i) Will be used for the production and recovery of methane gas for use as fuel (A) with the approval of the department and (B) at a landfill operating as a solid waste management facility with a permit issued pursuant to the department's rules and regulations; or

(ii) Has been separated at its source from other solid waste and will be used for the purpose of soil conditioning or composting.

(c) State and local governmental entities responsible for the maintenance of public lands shall give preference to the use of composted materials in all land maintenance activities. This section does not prohibit the use of yard waste as land cover or as soil-conditioning material.

(2) Land disposal of lead-acid batteries and waste oil is prohibited.

(3)(a) Land disposal of waste tires in any form is prohibited except tires that are nonrecyclable. For purposes of this subsection, nonrecyclable tire means a press-on solid tire, a solid pneumatic shaped tire, or a foam pneumatic tire.

(b) On and after September 1, 2003, placing or causing the placement or disposal of scrap tires in any form into the waters of the state is prohibited except as provided in section 13-2033.

(c) Tires are not considered disposed if they are (i) processed into crumb rubber form and reused or recycled in manufactured products such as, but not limited to, products used for schools, playgrounds, and residential, lawn, and garden applications, (ii) used as safety barriers for race courses for motorized vehicles, on the condition that the tires are bolted together and properly wrapped, and not in loose, compressed, or baled form, (iii) used as tire-derived fuel, (iv) retreaded, (v) processed into chip or shred form and used as drainage media in landfill construction or septic drain fields, (vi) used as a raw material in steelmaking, or (vii) processed into shred form and used as an alternative daily cover in a landfill or for a civil engineering project if such project is designed and constructed in compliance with the Engineers and Architects Regulation Act and prior approval for such project is obtained from the department by the tire shredder and the end user, except that departmental approval is not necessary for a tire project involving three thousand five hundred or fewer passenger tire equivalents of waste tires if the department receives notification of the project not later than thirty days prior to any construction on such project. The notification shall contain the name and address of the tire shredder and end user, the location of the project, a description of the type of project, the number of passenger tire equivalents of waste tires to be used, and any additional information the council determines is necessary to accomplish the purposes of the Integrated Solid Waste Management Act.

A race sponsor using tires as safety barriers pursuant to subdivision (3)(c)(ii) of this section prior to October 1, 2006, shall file an approved tire disposal plan with the department on or before January 1, 2007. A race sponsor using tires as safety barriers on or after October 1, 2006, shall file an approved tire disposal plan with the department prior to the sponsor's first such use of tires. An approved tire disposal plan shall provide for the disposal of tires which cease to be used as safety barriers in accordance with subsection (3) of section 13-2033, and any such race sponsor who ceases to use tires as safety barriers or whose facility ceases operation shall dispose of such tires in accordance with his or her approved tire disposal plan. Any modification to an approved tire disposal plan shall be submitted to and approved by the department prior to implementation of such modified plan. An approved tire disposal plan shall continue in effect as long as such sponsor uses tires as safety barriers.

(4) Land disposal of discarded household appliances is prohibited.

(5) Land disposal of unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act is prohibited unless such disposal occurs at a licensed hazardous waste disposal facility.

(6) For purposes of this section, land disposal shall include, but not be limited to, incineration at a landfill.

Source: Laws 1992, LB 1257, § 39; Laws 1994, LB 1034, § 1; Laws 1994, LB 1207, § 10; Laws 1995, LB 42, § 1; Laws 2003, LB 143, § 6; Laws 2006, LB 776, § 1; Laws 2006, LB 818, § 1.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.
Environmental Protection Act, see section 81-1532.

13-2040 Licenses issued under prior law; department review; expiration; permits issued under act; expiration.

The department shall review all licenses for solid waste management facilities which were issued under the Environmental Protection Act prior to July 15, 1992, and which expire after October 1, 1993, to determine whether the licensee is in compliance with the requirements of the Integrated Solid Waste Management Act and the rules and regulations adopted by the council.

The department may require such licensee to furnish written documentation evidencing compliance. If the department determines that the licensee is not in compliance with the Integrated Solid Waste Management Act and the rules and regulations adopted by the council, the department may issue an amended permit as necessary to bring the licensee into compliance with these provisions.

All licenses for solid waste management facilities issued under the Environmental Protection Act prior to July 15, 1992, shall expire at the stated date of expiration if such expiration date is before October 1, 1993, except that the department may extend such licenses to continue until October 1, 1993, if it finds that the facility remains in compliance with the Environmental Protection Act and the rules and regulations adopted thereunder by the council prior to July 15, 1992.

Permits for solid waste processing facilities, as defined in rules and regulations adopted and promulgated by the council, issued pursuant to the Integrated Solid Waste Management Act shall expire not more than ten years following the date of issuance, as determined by the department. Permits may be renewed only if the department determines, upon application, that the permitholder is in compliance with all requirements of the act.

Permits for solid waste disposal areas, as defined in rules and regulations adopted and promulgated by the council, issued pursuant to the act shall expire not more than five years following the date of issuance as determined by the department. Permits may be renewed only if the department determines, upon application, that the permitholder is in compliance with all requirements of the act.

Source: Laws 1992, LB 1257, § 40; Laws 1997, LB 752, § 72; Laws 2003, LB 143, § 7.

Cross References

Environmental Protection Act, see section 81-1532.

13-2041 Integrated Solid Waste Management Cash Fund; created; use; investment; application fee schedule; council; establish; permitholder; annual fee.

There is hereby created the Integrated Solid Waste Management Cash Fund. All fees collected by the department pursuant to this section or fees designated pursuant to section 13-2042 or money forfeited under subsection (21) of section 81-1505 shall be remitted to the State Treasurer for credit to the fund. Forfeited funds may only be used for purposes specified in the underlying financial assurance instrument. 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.

The council shall adopt and promulgate rules and regulations establishing a fee schedule to be paid to the department by persons applying for a permit to operate a facility pursuant to the Integrated Solid Waste Management Act or the Environmental Protection Act. Payment shall be made in full to the department before the application is processed.

By October 1 of each year, any person holding a permit under the Integrated Solid Waste Management Act or to operate a solid waste management facility under the Environmental Protection Act shall pay an annual fee in an amount to be determined by the council. The annual fee shall be sufficient to cover the costs of ongoing permit considerations. The fees collected pursuant to this section shall not exceed the amount necessary to pay reasonable costs of administering the permit program pursuant to the Integrated Solid Waste Management Act or the Environmental Protection Act.

The State Treasurer shall transfer one million three hundred eighty-four thousand four hundred eighty-four dollars from the Integrated Solid Waste Management Cash Fund to the Superfund Cost Share Cash Fund on or before June 1, 2006.

Source: Laws 1992, LB 1257, § 41; Laws 1994, LB 1066, § 12; Laws 2006, LB 1061, § 1.

Cross References

Environmental Protection Act, see section 81-1532.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

13-2042 Landfill disposal fee; payment; interest; use; grants; department; powers; council; duties.

(1) A disposal fee of one dollar and twenty-five cents is imposed for each six cubic yards of uncompacted solid waste, one dollar and twenty-five cents for each three cubic yards of compacted solid waste, or one dollar and twenty-five cents per ton of solid waste disposed of at landfills regulated by the department. Each operator of a landfill disposal facility shall make the fee payment quarterly. The fee shall be paid quarterly to the department on or before the forty-fifth day following the end of each quarter. For purposes of this section, landfill has the same definition as municipal solid waste landfill unit in 40 C.F.R. part 258, subpart A, section 258.2.

(2) Each fee payment shall be accompanied by a form prepared and furnished by the department and completed by the permitholder. The form shall state the total volume of solid waste disposed of at that facility during the

payment period and shall provide any other information deemed necessary by the department. The form shall be signed by the permitholder.

(3) If a permitholder fails to make a timely payment of the fee, he or she shall pay interest on the unpaid amount at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

(4) This section shall not apply to a site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

(5) Fifty percent of the total of such fees collected in each quarter shall be remitted to the State Treasurer for credit to the Integrated Solid Waste Management Cash Fund and shall be used by the department to cover the direct and indirect costs of responding to spills or other environmental emergencies, of regulating, investigating, remediating, and monitoring facilities during and after operation of facilities, or of performance of regulated activities under the Integrated Solid Waste Management Act, the Livestock Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act. The department may seek recovery of expenses paid from the fund for responding to spills or other environmental emergencies or for investigation, remediation, and monitoring of a facility from any person who owned, operated, or used the facility in violation of the Integrated Solid Waste Management Act, the Livestock Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act in a civil action filed in the district court of Lancaster County. Of the amount credited to the Integrated Solid Waste Management Cash Fund, the department may disburse amounts to political subdivisions for costs incurred in response to and remediation of any solid waste disposed of or abandoned at dump sites or discrete locations along public roadways or ditches and on any contiguous area affected by such disposal or abandonment. Such reimbursement shall be by application to the department on forms prescribed by the department. The department shall prepare and make available a schedule of eligible costs and application procedures which may include a requirement of a demonstration of preventive measures to be taken to discourage future dumping. The department may not disburse to political subdivisions an amount which in the aggregate exceeds five percent of total revenue from the disposal fees collected pursuant to this section in the preceding fiscal year. These disbursements shall be made on a fiscal-year basis, and applications received after funds for this purpose have been exhausted may be eligible during the next fiscal year but are not an obligation of the state. Any eligible costs incurred by a political subdivision which are not funded due to a lack of funds shall not be considered an obligation of the state. In disbursing funds under this section, the director shall make efforts to ensure equal geographic distribution throughout the state and may deny reimbursements in order to accomplish this goal.

(6) The remaining fifty percent of the total of such fees collected per quarter shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. For purposes of determining the total fees collected, any amount of fees rebated pursuant to section 13-2042.01 shall be included as if the fees had not been rebated, and the amount of the fees rebated pursuant to such section shall be deducted from the amount to be credited to the Waste Reduction and Recycling Incentive Fund.

(7) The council shall adopt and promulgate rules and regulations for the distribution of grants under subsection (6) of this section from the proceeds of the fees imposed by this section to counties, municipalities, and agencies for the purposes of planning and implementing facilities and systems to further the goals of the Integrated Solid Waste Management Act. The fees collected pursuant to this section shall not be used as grant proceeds to fund landfill closure site assessments, closure, monitoring, or investigative or corrective action costs for existing landfills or landfills already closed prior to July 15, 1992. The rules and regulations shall base the awarding of grants on a project's reflection of the integrated solid waste management policy and hierarchy established in section 13-2018, the proposed amount of local matching funds, and community need.

Source: Laws 1992, LB 1257, § 42; Laws 1994, LB 1207, § 11; Laws 1997, LB 495, § 2; Laws 1999, LB 592, § 1; Laws 2001, LB 128, § 1; Laws 2003, LB 143, § 8; Laws 2004, LB 916, § 1.

Cross References

Livestock Waste Management Act, see section 54-2416.
Nebraska Litter Reduction and Recycling Act, see section 81-1534.
Waste Reduction and Recycling Incentive Act, see section 81-15,158.01.

13-2042.01 Landfill disposal fee; rebate to municipality or county; application; Department of Environmental Quality; materiel division of Department of Administrative Services; municipality; county; duties; suspension or denial of rebate; appeal; rules and regulations.

(1) The Department of Environmental Quality shall rebate to the municipality or county of origin ten cents of the disposal fee required by section 13-2042 for each six cubic yards of uncompacted solid waste, for each three cubic yards of compacted solid waste, or for each ton of solid waste disposed of at landfills regulated by the department and originating in a municipality or county with a purchasing policy approved by the department. The fee shall be rebated quarterly on or before the thirtieth day after receipt of a quarterly report from the municipality or county of origin.

(2) Any municipality or county may apply to the department for the rebate authorized in subsection (1) of this section if the municipality or county has a written purchasing policy in effect requiring a preference for purchasing products, materials, or supplies which are manufactured or produced from recycled material. The policy shall provide that the preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality as determined by the municipality or county. Upon receipt of an application, the Department of Environmental Quality shall submit the application to the materiel division of the Department of Administrative Services for review. The materiel division shall review the application for compliance with this section and any rules and regulations adopted pursuant to this section and to determine the probable effectiveness in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material. The materiel division shall provide a report of its findings to the Department of Environmental Quality within thirty days after receiving the review request. The Department of Environmental Quality shall approve the application or suggest modifications to the application within sixty days after receiving the application based on the materiel division's report, any analysis by the Department of Environmental Quality, and

any factors affecting compliance with this section or the rules and regulations adopted pursuant to this section.

(3) A municipality or county shall file a report complying with the rules and regulations adopted pursuant to this section with the Department of Environmental Quality before April 1 of each year documenting purchasing practices for the past calendar year in order to continue receiving the rebate. The report shall include, but not be limited to, quantities of products, materials, or supplies purchased which were manufactured or produced from recycled material. The department shall provide copies of each report to the materiel division in a timely manner. If the department determines that a municipality or county is not following the purchasing policy presented in the approved application or that the purchasing policy presented in the approved application is not effective in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material, the department shall suspend the rebate until it determines that the municipality or county is giving a preference to products, materials, or supplies which are manufactured or produced from recycled material pursuant to a written purchasing policy approved by the department subsequent to the suspension. The materiel division may make recommendations to the department regarding suspensions and reinstatements of rebates.

(4) Any suspension of the rebate or denial of an application made under this section may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(5) The council shall adopt and promulgate rules and regulations establishing criteria for application procedures, for accepting and denying applications, for annual and quarterly reporting requirements, and for suspending and reinstating the rebate. The materiel division shall recommend to the council criteria for accepting and denying applications and for suspending and reinstating the rebate. The materiel division may make other recommendations to the council regarding rules and regulations authorized under this section. The Department of Administrative Services may adopt and promulgate rules and regulations establishing procedures for reviewing applications and for annual and quarterly reports.

Source: Laws 1994, LB 1207, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

13-2043 Construction of act.

Nothing in the Integrated Solid Waste Management Act shall be construed to apply to any operations or activities regulated by the Nebraska Oil and Gas Conservation Commission or to operations or activities regulated under subsection (10) of section 81-1505.

Source: Laws 1992, LB 1257, § 43.

ARTICLE 21
ENTERPRISE ZONES

Section
13-2101. Legislative findings.
13-2101.01. Act, how cited.

13-2101 Legislative findings.

The Legislature finds that:

(1) There exist in this state distressed areas where unemployment is higher than the state or national average, where poverty levels are higher than the state or national average, where the population is declining, where property is being abandoned, and where other forms of economic distress are occurring which adversely affect the general welfare of the people of this state;

(2) Such unemployment and other problems cause the distressed areas of the state to deteriorate and become substandard and blighted, making the areas economic or social liabilities which are harmful to the social and economic well-being of the state and the counties and communities in which they exist. Such distressed areas cause a needless increase in public expenditures, impose an onerous burden on the state and its political subdivisions, decrease the tax base, reduce tax revenue, substantially impair or arrest the sound growth of the state and its political subdivisions, depreciate general statewide and community-wide values, and contribute to the spread of disease and crime. This in turn necessitates excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, and punishment, for the treatment of juvenile delinquency, for the maintenance of adequate police, fire, and accident protection, and for other public services and facilities;

(3) From time to time, various communities in the state suffer extensive economic distress from the loss of a major employer in the area or from a major cut-back in employment by such an employer resulting in high local unemployment and threatening the economic balance of the community if not its continued existence; and

(4) Stimulation of economic development in the distressed areas is a matter of state policy, public interest, and concern and is within the power and authority inherent in and reserved to the state. Economic development is needed to insure that the state will not continue to be endangered by areas which consume an excessive proportion of revenue and that the economic base of the state may be broadened and stabilized by providing jobs and increasing the tax base.

Source: Laws 1992, LB 1240, § 1; Laws 1993, LB 725, § 2.

13-2101.01 Act, how cited.

Sections 13-2101 to 13-2114 shall be known and may be cited as the Enterprise Zone Act.

Source: Laws 1993, LB 725, § 1.

13-2102 Terms, defined.

For purposes of the Enterprise Zone Act:

(1) Census shall mean the federal decennial census;

(2) Department shall mean the Department of Economic Development;

(3) Economic distress shall mean conditions of unemployment, poverty, and declining population existing within the area of a proposed enterprise zone considered in the stated order as an order of priority from most to least significant;

(4) Enterprise zone or zone shall mean an area which is at least one but no more than sixteen square miles in total area composed of one or more discrete areas which have a combined total resident population of not less than two hundred fifty persons. If it is composed of more than one discrete area, each separate area must meet the eligibility criteria established by this subdivision and (a) must be no more than five miles from another area if the zone is located within a city of the metropolitan or primary class, (b) must be located within the same county if the zone is located outside of the boundaries of a city of the metropolitan or primary class, or (c) must be located within the boundaries of the applying political subdivisions if the application for zone designation is made jointly by counties or tribal government areas pursuant to subsection (4) of section 13-2103. No area or portion of an area located in a city of the metropolitan or primary class shall include any portion of a central business district. For purposes of this subdivision, central business district shall mean an area comprised of a high concentration of office, service, financial, lodging, entertainment, and retail businesses and government facilities and possessing a high traffic flow or an area composed of one or more complete federal census tracts defined as a central business district by the United States Bureau of the Census.

To qualify as an enterprise zone under this subdivision (4), such area must meet at least two of the following three criteria as measured by data from the United States Bureau of the Census:

(i) Population in the area or within a reasonable proximity to the area has decreased by at least ten percent between the date of the most recent census and the date of the immediately preceding census;

(ii) The average rate of unemployment in the area or within a reasonable proximity to the area is at least two hundred percent of the average rate of unemployment in the state during the same period covered by the most recent census; or

(iii) The average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area or within a reasonable proximity to the area when the area is located within the legal boundaries of a city of the metropolitan or primary class or the average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups which encompass the legal boundaries of a city of the first class, city of the second

class, village, or tribal government area when the area is located in such political subdivision.

For purposes of this subdivision (4), reasonable proximity shall refer to the federal census tracts or federal census block groups which either in whole or in part are within the boundaries of any portion of the proposed zone;

(5) Political subdivision shall mean any incorporated village, city, county, or tribal government area; and

(6) Tribal government area shall mean (a) that portion of Knox County under the jurisdiction of the Santee Sioux Tribe, (b) that portion of Thurston County under the jurisdiction of the Omaha Tribe, and (c) that portion of Thurston County under the jurisdiction of the Winnebago Tribe.

Source: Laws 1992, LB 1240, § 2; Laws 1993, LB 725, § 3.

13-2103 Designation; application; requirements; limitation; term.

(1)(a) Following the formal adoption of rules and regulations pursuant to section 13-2112, the department shall, for a period of one hundred twenty days, accept formal applications for the designation of enterprise zones. Within sixty days after the end of such application period, the department may designate not more than two areas as enterprise zones based on eligible applications it has received. Each area designated as an enterprise zone shall meet all eligibility criteria.

(b) For a period of one hundred eighty days following April 1 next immediately following the end of the application period specified in subdivision (a) of this subsection, the department shall accept formal applications for the designation of enterprise zones. Within sixty days after the end of such application period, the department may designate additional areas as enterprise zones based on eligible applications it has received, subject to the restriction on number of zones designated set out in subdivision (c) of this subsection. Each area designated as an enterprise zone shall meet all eligibility criteria.

(c) During the two application periods set out in subdivisions (a) and (b) of this subsection, the department shall not designate more than a total of five enterprise zones in this state. Of the five enterprise zones authorized, at least three shall be located outside of the boundaries of cities of the metropolitan and primary classes.

(d) In any application period, the department may reject from consideration any application which does not fully and completely comport with the provisions of section 13-2104 at the end of the designated application period. In choosing among eligible applications for enterprise zone designation, the department shall consider the levels of distress existing within the applicant areas and the contents of the applicant's formal enterprise zone application.

(2) Any city, village, tribal government area, or county may apply for designation of an area within such city, village, tribal government area, or county as an enterprise zone, except that if a county seeks to have an area within an incorporated city or village or a tribal government area designated as an enterprise zone, the consent of the governing body of such city, village, or tribal government area shall first be required.

(3) If an incorporated city or village or a tribal government area consents, a county may apply on behalf of the city, village, or tribal government area for certification of an area within such city, village, or tribal government area as an

enterprise zone. Both a county and a city, village, or tribal government area shall not apply for certification of the same area.

(4) Two or more counties or tribal government areas may jointly apply for designation of an area as an enterprise zone which is located on both sides of their common boundaries.

(5) Political subdivisions wishing to file an application for designation of an enterprise zone shall first follow the procedures set out in sections 13-2106 to 13-2108. An application for designation as an enterprise zone shall be in a form and contain information prescribed by the department pursuant to section 13-2104.

(6) An area designated as an enterprise zone shall retain such designation for a period of ten years from the date of such designation.

(7) All enterprise zones designated as such within a single county shall not exceed a total of sixteen square miles in area.

Source: Laws 1992, LB 1240, § 3; Laws 1993, LB 725, § 4.

13-2104 Application; contents.

An application for designation of an area as an enterprise zone shall contain at least the following:

(1) A description of the geographic location of the proposed zone;

(2) Documentation that the area of the proposed enterprise zone represents the area with the greatest level of economic distress within the boundaries of the applying political subdivision;

(3) An enterprise zone economic development plan containing goals, objectives, and a description of current and new actions to be undertaken to encourage private investment in the area, including: (a) Job training to be provided to new and existing businesses in the zone and to unemployed and displaced worker residents; (b) the provision of technical assistance to businesses in the zone, such as management training, marketing assistance, engineering or technology assistance, and business plan preparation; (c) efforts to be made to assure the safety of businesses and employees in the zone; (d) efforts to be made to market the zone to new and existing businesses as an appropriate place for location or expansion; (e) infrastructure investments to be made to lead to economic development; and (f) organizational structures to be created and processes to be undertaken which will lead toward economic development;

(4) A plan to insure that resources are available to assist residents of the area with self-help development;

(5) A description of any projected positive or negative effects of designation of the area as an enterprise zone;

(6) A plan to provide assistance to persons or businesses displaced as a result of zone activity;

(7) Documentation of substantial commitments to be made by the private sector of resources and contributions to the operation or development of the zone;

(8) Documentation that the requirements in sections 13-2106 to 13-2108 have been completed;

(9) Cities of the metropolitan, primary, and first classes shall provide documentation of the commitment of funds for expenditure in the proposed enter-

prise zone during the first three years of its existence if it is designated an enterprise zone by the department. Such funds shall be for the purpose of directly or indirectly assisting or enabling businesses to locate or expand existing operations within the area of the proposed enterprise zone. The funds to be committed and expended shall be from revenue of the city or any other local political subdivision, from private nongovernmental sources, or from any other nonstate government sources. For cities of the metropolitan and primary classes, such commitments from all permitted sources shall not be less than five hundred thousand dollars. For cities of the first class, such commitments from all permitted sources shall not be less than one hundred thousand dollars. No application for enterprise zone designation from a city of the metropolitan, primary, or first class shall be approved until commitments at the level designated have been documented to the department;

(10) Counties, tribal governments, cities of the second class, and villages shall document commitments to be made from private sector sources of resources and funds for the operation and development of the enterprise zone and commitments by the applicant and other local political subdivisions of local revenue and other nonstate government resources to encourage economic development in the area. Such commitments of funds shall be consistent with local government capabilities to raise additional funds from local sources and shall reflect the applicant's commitment to the proposed enterprise zone. If a county is making an application for designation of an area located in whole or in part within the boundaries of a city of the metropolitan, primary, or first class, the county shall provide documentation of the commitment of funds for expenditure in the proposed enterprise zone as provided in subdivision (9) of this section as if the application were being made by the city; and

(11) A description of any actions to be taken with regard to the removal, reduction, or simplification of any resolutions, regulations, ordinances, fees, or other items pursuant to the authority granted by section 13-2111.

Source: Laws 1992, LB 1240, § 4; Laws 1993, LB 725, § 5.

13-2105 Use of federal funds; state government interagency response team.

The Legislature shall encourage the targeting of funds from federal programs, including Community Development Block Grants, the Job Training Partnership Act, Community Services Block Grants, federal highway funds, or other federal funds received by the state for designated enterprise zones. Local governments shall be encouraged to use federal funds to provide assistance to business activities in enterprise zones and to seek designation of appropriate areas as community development areas under the Community Development Assistance Act. The Governor shall provide a state government interagency response team to work with local governments and enterprise zone associations on effective ways to use new and existing resources from all levels of government to improve development capacity in enterprise zones and accomplish the purposes of the Enterprise Zone Act.

Source: Laws 1992, LB 1240, § 5; Laws 1993, LB 725, § 6.

Cross References

Community Development Assistance Act, see section 13-201.

13-2106 City council, village board, county board, or tribal government; resolution to establish zone.

A city council, village board, county board, or tribal government may propose the creation of one or more enterprise zones by adopting a resolution of intention to establish a zone or zones. The resolution shall contain a description of the boundaries of the zone or zones, the time and place of a hearing to be held by the city council, village board, county board, or tribal government, a basic summary of the information to be provided to the department as specified in section 13-2104, and such other additional information as the proposing body may desire to include.

Source: Laws 1992, LB 1240, § 6; Laws 1993, LB 725, § 7.

13-2107 Public hearing; notice.

Any city council, village board, county board, or tribal government proposing to create an enterprise zone or zones shall hold a public hearing on the question. A notice of the hearing shall be given by one publication of the resolution of intention in a newspaper of general circulation in the city, village, county, or tribal government area at least ten days prior to the hearing.

Source: Laws 1992, LB 1240, § 7; Laws 1993, LB 725, § 8.

13-2108 City council, village board, county board, or tribal government; vote to make formal application.

Following the public hearing held pursuant to section 13-2107, the city council, village board, county board, or tribal government may vote to make formal application to the department for the creation of an enterprise zone or zones and take any additional appropriate action with regard to the creation of such zone or zones.

Source: Laws 1992, LB 1240, § 8; Laws 1993, LB 725, § 9.

13-2109 Enterprise zone association; board; membership; vacancies; powers and duties; dissolution.

(1) There shall be created an enterprise zone association within each proposed enterprise zone upon the decision by the political subdivision to submit an enterprise zone application. Such enterprise zone association shall be governed by an enterprise zone association board which shall consist of seven members. The initial members of the board shall be appointed by the mayor of the city or village with the approval of the city council or village board, by the county board, or by the tribal chairperson. The city council, village board, county board, or tribal government shall establish the length of the terms and shall establish staggered terms so that no more than four members of the enterprise zone association board shall be appointed in any one-year period. If an enterprise zone association board is already in existence upon July 15, 1998, and the terms of the board members have not been staggered as provided in this section, the next three members to be appointed after July 15, 1998, shall be appointed to serve terms equivalent to one-half of the length of the term established by the governing board of the city, village, or county or the tribal government. At the end of such terms, those appointed to fill their seats on the board shall be appointed for full terms as established by the governing body or tribal government.

(2) The city council, village board, county board, or tribal government shall, by majority vote, nominate candidates and appoint from the candidates qualified persons to fill each vacant, open, or opening seat on the enterprise zone

association board. A member of the enterprise zone association board, not otherwise disqualified, whose term of office has ended shall continue to serve as a member of the board until his or her successor is properly qualified and appointed.

(3) Vacancies on the enterprise zone association board shall be filled in the same manner as provided for appointments other than initial appointments, and such members shall serve for the balance of the unexpired terms. A board member may serve more than one term. Any board member appointed as a resident of the area constituting the enterprise zone shall cease to be a member of the enterprise zone association board at such time as he or she ceases to be a resident within the area constituting the zone, and at such time his or her seat shall be vacant.

(4) The enterprise zone association board shall select its own officers and may exercise such other additional powers and authority as may be granted it by the department or the city, village, county, or tribal government. The presence of at least four members of the enterprise zone association board shall be necessary to transact any business.

(5) Individuals chosen to serve as members of the enterprise zone association board shall include property owners, business operators, and users of space within the area of the enterprise zone as well as individuals representing groups or organizations with an interest in furthering the purposes and goals of the enterprise zone. Not less than two-thirds of the members of the enterprise zone association board shall be residents of the area constituting the enterprise zone. For purposes of this section, residents of the area constituting the enterprise zone shall be construed to include those persons residing within a county in which an enterprise zone is located when the enterprise zone is not located in a city of the primary or metropolitan class.

(6) The city, village, county, or tribal government establishing the enterprise zone association shall provide appropriate staff assistance and support to the association.

(7) If an applicant for designation as an enterprise zone does not receive such designation, the association of such applicant shall be dissolved.

Source: Laws 1992, LB 1240, § 9; Laws 1993, LB 725, § 10; Laws 1998, LB 1259, § 1.

13-2110 Enterprise zone association; powers and duties.

(1) An enterprise zone association created pursuant to section 13-2109 shall:

(a) Approve the application to be submitted by the political subdivision to the department for enterprise zone designation;

(b) Promote the enterprise zone to outside groups and individuals;

(c) Establish a formal line of communication with residents and businesses in the enterprise zone;

(d) Act as a liaison between residents, businesses, and the city, village, county, or tribal government for any development activity that may affect the enterprise zone or zone residents; and

(e) By majority vote of the full enterprise zone association board:

(i) Approve the acceptance by the city, village, county, or tribal government of any state or federal grant or loan for the enterprise zone;

(ii) Approve the purposes for and the conditions surrounding such grants or loans;

(iii) Approve any expenditures of funds by the city, village, county, or tribal government which are to be made for the purpose of complying with the Enterprise Zone Act; and

(iv) Approve the appointment of any staff member designated to work exclusively with the enterprise zone association board.

The city council, village board, county board, or tribal government shall not act affirmatively with regard to any matter requiring the approval of the enterprise zone association board until such time as it has received the approval of the enterprise zone association board.

(2) An enterprise zone association may:

(a) Initiate and coordinate any community development activities that aid in the employment of enterprise zone residents, improve the physical environment, or encourage the turnover or retention of capital in the enterprise zone. Such additional activities may include recommendations to the city, village, county, or tribal government and the department; and

(b) Make recommendations to the city, village, county, tribal government, state agency, or other political subdivision for the establishment of a plan or plans for public improvements or programs.

Source: Laws 1992, LB 1240, § 10; Laws 1993, LB 725, § 11; Laws 1998, LB 1259, § 2.

13-2111 Political subdivision; remove, reduce, or simplify certain resolutions, regulations, or ordinances; when.

In order to accomplish the purposes of the Enterprise Zone Act, any political subdivision may remove, reduce, or simplify, in whole or in part, the provisions of any resolution, regulation, or ordinance relating to fees or administrative or procedural requirements as they relate to enterprise zones or entities or persons within the boundaries of an enterprise zone, except that such removal, reduction, or simplification shall not occur unless there is a finding by the political subdivision that the proposed action would not endanger the health or safety of the public.

Source: Laws 1992, LB 1240, § 11; Laws 1993, LB 725, § 12.

13-2112 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Enterprise Zone Act.

Source: Laws 1992, LB 1240, § 12; Laws 1993, LB 725, § 15.

13-2113 Repealed. Laws 2003, LB 608, § 14.

13-2114 Report; contents; filing requirements.

Within one hundred twenty days of the end of the third year following the designation of an area as an enterprise zone and at the end of each two-year period thereafter, the original applying political subdivision shall file with the department a report on the enterprise zone detailing the status of the zone on the qualifying economic distress criteria, the current status of economic activity within the zone, including the number and type of new business enterprises

which have located within the zone and their levels of employment, the status of local efforts to carry out the enterprise zone economic development plan outlined in the original application, the status of local efforts to comply with commitments made under subdivisions (9) and (10) of section 13-2104, the membership and activities of the enterprise zone association, and such other items as the department shall request to enable it to assess the current status of the enterprise zone and to make appropriate recommendations to the Legislature upon the enterprise zone program as set out in the Enterprise Zone Act. Prior to filing such report, the applying political subdivision shall provide copies of the report to its enterprise zone association which shall attach thereto for filing with the department such comments or additional information or recommendations as it deems appropriate. Prior to the commencement of the next following legislative session, the department shall file copies of such reports with the Clerk of the Legislature along with any comments or recommendations it may have with regard thereto or with regard to the act.

Source: Laws 1993, LB 725, § 14.

ARTICLE 22

LOCAL GOVERNMENT MISCELLANEOUS EXPENDITURES

Section
13-2201. Act, how cited.
13-2202. Terms, defined.
13-2203. Additional expenditures; governing body; powers; procedures.
13-2204. Expenditures; limitations; exception.

13-2201 Act, how cited.

Sections 13-2201 to 13-2204 shall be known and may be cited as the Local Government Miscellaneous Expenditure Act.

Source: Laws 1993, LB 734, § 9.

13-2202 Terms, defined.

For purposes of the Local Government Miscellaneous Expenditure Act:

(1) Elected and appointed officials and employees shall mean the elected and appointed officials and employees of any local government;

(2) Governing body shall mean, in the case of a city of any class, the council; in the case of a village, cemetery district, community hospital for two or more adjoining counties, county hospital, road improvement district, sanitary drainage district, or sanitary and improvement district, the board of trustees; in the case of a county, the county board; in the case of a municipal county, the council; in the case of a township, the town board; in the case of a school district, the school board; in the case of a rural or suburban fire protection district, reclamation district, natural resources district, or hospital district, the board of directors; in the case of a health district, the board of health; in the case of an educational service unit, the board; in the case of a community college, the Community College Board of Governors for the area the board serves; in the case of an airport authority, the airport authority board; in the case of a weed control authority, the board; and in the case of a county agricultural society, the board of governors;

(3) Local government shall mean cities of any class, villages, cemetery districts, community hospitals for two or more adjoining counties, county

hospitals, road improvement districts, counties, townships, sanitary drainage districts, sanitary and improvement districts, school districts, rural or suburban fire protection districts, reclamation districts, natural resources districts, hospital districts, health districts, educational service units, community colleges, airport authorities, weed control authorities, and county agricultural societies;

(4) Public funds shall mean such public funds as defined in section 13-503 as are under the direct control of governing bodies of local governments;

(5) Public meeting shall mean all regular, special, or called meetings, formal or informal, of any governing body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the governing body; and

(6) Volunteer shall mean a person who is not an elected or appointed official or an employee of a local government and who, at the request or with the permission of the local government, engages in activities related to the purposes or functions of the local government or for its general benefit.

Source: Laws 1993, LB 734, § 10; Laws 1997, LB 250, § 3; Laws 2001, LB 142, § 27.

13-2203 Additional expenditures; governing body; powers; procedures.

In addition to other expenditures authorized by law, each governing body may approve:

(1)(a) The expenditure of public funds for the payment or reimbursement of actual and necessary expenses incurred by elected and appointed officials, employees, or volunteers at educational workshops, conferences, training programs, official functions, hearings, or meetings, whether incurred within or outside the boundaries of the local government, if the governing body gave prior approval for participation or attendance at the event and for payment or reimbursement either by the formal adoption of a uniform policy or by a formal vote of the governing body. Authorized expenses may include:

(i) Registration costs, tuition costs, fees, or charges;

(ii) Mileage at the rate allowed by section 81-1176 or actual travel expense if travel is authorized by commercial or charter means; and

(iii) Meals and lodging at a rate not exceeding the applicable federal rate unless a fully itemized claim is submitted substantiating the costs actually incurred in excess of such rate and such additional expenses are expressly approved by the governing body; and

(b) Authorized expenditures shall not include expenditures for meals of paid members of a governing body provided while such members are attending a public meeting of the governing body unless such meeting is a joint public meeting with one or more other governing bodies;

(2) The expenditure of public funds for:

(a) Nonalcoholic beverages provided to individuals attending public meetings of the governing body; and

(b) Nonalcoholic beverages and meals:

(i) Provided for any individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations, including, but not limited to, tornado, severe storm, fire, or accident;

(ii) Provided for any volunteers during or immediately following their participation in any activity approved by the governing body, including, but not limited to, mowing parks, picking up litter, removing graffiti, or snow removal; or

(iii) Provided at one recognition dinner each year held for elected and appointed officials, employees, or volunteers of the local government. The maximum cost per person for such dinner shall be established by formal action of the governing body, but shall not exceed twenty-five dollars. An annual recognition dinner may be held separately for employees of each department or separately for volunteers, or any of them in combination, if authorized by the governing body; and

(3) The expenditure of public funds for plaques, certificates of achievement, or items of value awarded to elected or appointed officials, employees, or volunteers, including persons serving on local government boards or commissions. Before making any such expenditure, the governing body shall, by official action after a public hearing, establish a uniform policy which sets a dollar limit on the value of any plaque, certificate of achievement, or item of value to be awarded. Such policy, following its initial adoption, shall not be amended or altered more than once in any twelve-month period.

Source: Laws 1993, LB 734, § 11.

13-2204 Expenditures; limitations; exception.

Nothing in the Local Government Miscellaneous Expenditure Act shall authorize the expenditure of public funds to pay for any expenses incurred by a spouse of an elected or appointed official, employee, or volunteer unless the spouse is also an elected or appointed official, employee, or volunteer of the local government. Nothing in the act shall be construed to limit, restrict, or prohibit the governing body of any local government from making any expenditure authorized by statute, ordinance, resolution, or home rule charter or pursuant to any authority granted by law, either express or implied, except to the extent that such statute, ordinance, resolution, home rule charter, or other grant of authority by law, express or implied, may conflict with the act.

Source: Laws 1993, LB 734, § 12.

ARTICLE 23

LOCAL GOVERNMENT INNOVATION AND RESTRUCTURING

Section
13-2301. Repealed. Laws 2003, LB 8, § 4.
13-2302. Repealed. Laws 2003, LB 8, § 4.
13-2303. Repealed. Laws 2003, LB 8, § 4.
13-2304. Repealed. Laws 2003, LB 8, § 4.
13-2305. Repealed. Laws 2003, LB 8, § 4.
13-2306. Repealed. Laws 2003, LB 8, § 4.
13-2307. Repealed. Laws 2003, LB 8, § 4.

13-2301 Repealed. Laws 2003, LB 8, § 4.

13-2302 Repealed. Laws 2003, LB 8, § 4.

13-2303 Repealed. Laws 2003, LB 8, § 4.

13-2304 Repealed. Laws 2003, LB 8, § 4.

13-2305 Repealed. Laws 2003, LB 8, § 4.

13-2306 Repealed. Laws 2003, LB 8, § 4.

13-2307 Repealed. Laws 2003, LB 8, § 4.

ARTICLE 24

RETIREMENT BENEFITS OF TRANSFERRED EMPLOYEES

Section
13-2401. Transfer between political subdivisions; rights of employee; transferring and receiving entities; powers and duties.

13-2401 Transfer between political subdivisions; rights of employee; transferring and receiving entities; powers and duties.

(1) For purposes of this section:

(a) Political subdivision includes villages, cities of all classes, counties, municipal counties, school districts, and all other units of local government, including entities created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. Political subdivision does not include any contractor with a political subdivision;

(b) Receiving entity means a political subdivision which receives transferred employees from a separate political subdivision; and

(c) Transferring entity means a political subdivision which is transferring employees to a separate political subdivision.

(2) 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 transferring entity 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 transferring entity so that the effect on the retirement system of the transferring entity will be actuarially neutral; and

(b) If the retirement system of the receiving entity 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 transferring entity 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 receiving entity so that the effect on the retirement system of the receiving entity will be actuarially neutral.

(3) A full-time or part-time employee of a transferring entity who becomes an employee of a receiving entity pursuant to a merger of services shall receive credit for his or her years of participation in the retirement system of the transferring entity for purposes of membership in the retirement system of the receiving entity.

(4) An employee referred to in subsection (3) of this section shall have his or her participation in the retirement system of the transferring entity transferred to the retirement system of the receiving entity through one of the following options:

(a) If the retirement system of the receiving entity maintains a defined contribution plan, the employee shall transfer all of his or her funds by paying to the retirement system of the receiving entity from funds held by the retirement system of the transferring entity an amount equal to one of the following: (i) If the retirement system of the transferring entity 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 transferring entity, or (ii) if the retirement system of the transferring entity 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 transferring entity. The employee shall receive eligibility and 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 transferring entity. 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 receiving entity maintains a defined benefit plan, the employee shall transfer all of his or her funds out of the retirement system of the transferring entity 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 transferring entity. After such purchase, the employee shall receive eligibility and vesting credit in the retirement system of the receiving entity 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 transferring entity. The amount to be paid by the member for such service credit shall equal the actuarial cost to the retirement system of the receiving entity for allowing such additional service credit to the employee. If any funds remain in the retirement system of the transferring entity after the employee has purchased service credits in the retirement system of the receiving entity, 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.

(5) The transferring entity, the receiving entity, 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 receiving entity 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 transferring entity is not sufficient to provide a final benefit transfer value in the retirement system of the receiving entity.

(6) The retirement system of the receiving entity 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 must 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.

(7) Cash transferred to the retirement system of the receiving entity as a rollover contribution shall be deposited as other contributions.

(8) The retirement system of the receiving entity 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.

(9) The receiving entity 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.

(10) Any retirement system authorized pursuant to section 14-1805, 15-1017, 16-1004, 16-1023, 19-3501, 23-1118, or 23-2330.04 or any retirement system for a city of the metropolitan class authorized pursuant to home rule charter shall be modified to conform with this section prior to any merger of service involving such system.

Source: Laws 1997, LB 250, § 4; Laws 1997, LB 624, § 45; Laws 1998, LB 1191, § 4; Laws 1999, LB 87, § 58; Laws 2001, LB 142, § 28.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

ARTICLE 25

JOINT PUBLIC AGENCY ACT

Section

Section
13-2520. Applicability of Political Subdivisions Tort Claims Act.
13-2521. Powers.
13-2522. Liability insurance coverage.
13-2523. Benefits.
13-2524. Bankruptcy petition; authorized.
13-2525. Biennial report; fee.
13-2526. Bidding procedures.
13-2527. Expenditures; bond requirements.
13-2528. Agreement; approval by state officer or agency; when required.
13-2529. Public agencies; powers.
13-2530. Revenue bonds authorized.
13-2531. General obligation bonds.
13-2532. Bonds; treatment.
13-2533. Bond issuance; procedure.
13-2534. Bonds; negotiation; sale.
13-2535. Bonds; signatures.
13-2536. Bond issuance; covenants.
13-2537. Refunding bonds authorized.
13-2538. Refunding bonds; proceeds.
13-2539. Refunding bonds; exchange for other bonds.
13-2540. Other bond provisions applicable.
13-2541. Bond issuance; consent not required.
13-2542. Notice; proceeding.
13-2543. Issuance of bonds; notice.
13-2544. Issuance of bonds; right to contest; procedure.
13-2545. Bonds; investment authorized.
13-2546. Bonds, property, and income; exempt from taxes; when.
13-2547. Act; how construed.
13-2548. Pledge of state.
13-2549. Joint public agency; status.
13-2550. Liberal construction.

13-2501 Act, how cited.

Sections 13-2501 to 13-2550 shall be known and may be cited as the Joint Public Agency Act.

Source: Laws 1999, LB 87, § 1.

13-2502 Purpose of act.

It is the purpose of the Joint Public Agency Act to permit local governmental units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Source: Laws 1999, LB 87, § 2.

13-2503 Terms, defined.

For purposes of the Joint Public Agency Act:

(1) Board means the board of representatives of a joint public agency;

(2) Governing body has the same meaning as in section 13-503 and, when referring to state agencies, includes the governing board of a state agency or the Governor and, when referring to federal agencies, includes the governing board of a federal agency or the President of the United States;

(3) Joint public agency means an entity created by agreement pursuant to the act;

(4) Person means 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. The term does not include a joint public agency;

(5) Public agency means any county, city, village, school district, or agency of the state government or of the United States, any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of this state, and any political subdivision of another state;

(6) Representative means a member of the board and includes an alternate representative; and

(7) State means a state of the United States and the District of Columbia.

Source: Laws 1999, LB 87, § 3.

13-2504 Agreements authorized; conditions; transfer of property and employees.

(1) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the Joint Public Agency Act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(2) Any such agreement shall specify the following:

(a) Its duration;

(b) The general organization, composition, and nature of any joint public agency created by the agreement together with the powers delegated to the entity;

(c) Its purpose or purposes;

(d) The manner of financing the joint undertaking and of establishing and maintaining a budget;

(e) The permissible method or methods to be employed in amending the agreement or accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination consistent with section 13-2518;

(f) The manner of levying, collecting, and accounting for any tax authorized under sections 13-318 to 13-326 or 13-2813 to 13-2816 and any allocation of tax authority under section 13-2507; and

(g) Any other necessary and proper matters.

(3) No agreement made pursuant to the Joint Public Agency Act shall relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance by a joint public agency created by an agreement made pursuant to the act, which performance may be offered in satisfaction of the obligation or responsibility.

(4) Participating public agencies may transfer property, other assets, and employees to a joint public agency as provided in the agreement. Notwithstanding other provisions of law, if employees are transferred any vested employ-

ment rights shall be transferred with the employee and the employee shall be vested with the joint public agency at the time of transfer.

(5) Any governing body as defined in section 13-503 which is a party to an agreement made pursuant to the Joint Public Agency Act shall provide information to the Auditor of Public Accounts regarding such agreements as required in section 13-513.

Source: Laws 1999, LB 87, § 4; Laws 2001, LB 142, § 29; Laws 2004, LB 939, § 4.

13-2505 Joint exercise of powers.

Notwithstanding any restrictions contained in a city charter, any power, privilege, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by the Joint Public Agency Act upon a public agency.

Source: Laws 1999, LB 87, § 5.

13-2506 Legislative power; limitation.

The Legislature may amend or repeal the Joint Public Agency Act or any law governing public agencies, and any agreement which creates a joint public agency is subject to the amendment or repeal of a law governing participating public agencies by subsequent acts of the Legislature, the United States, or another state, except that no act of the Legislature may impair any contractual obligation of a joint public agency or any participant thereof, including a contract for bonded indebtedness.

Source: Laws 1999, LB 87, § 6.

13-2507 Power to tax.

(1) A joint public agency shall have only those powers of taxation as one or more of the participating public agencies has and only as specifically provided in the agreement proposing creation of the joint public agency, except that a joint public agency shall not levy a local option sales tax. Participating public agencies may agree to allow the joint public agency to levy a property tax rate not to exceed a limit as provided in the agreement if the agreement also limits the levy authority of the overlapping participating public agencies collectively to the same amount. The levy authority of a joint public agency shall be allocated by the city or county as provided in section 77-3443, and the agreement may require allocation of levy authority by the city or county.

(2) If one or more of the participating public agencies is a municipality, the agreement may allow any occupation or wheel tax to be extended over the area encompassed by the joint public agency at a rate uniform to that of the city or village for the purpose of providing revenue to finance the services to be provided by the joint public agency. The tax shall not be extended until the procedures governing enactment by the municipality are followed by the joint public agency, including any requirement for a public vote.

(3) If the agreement calls for the allocation of property tax levy authority to the joint public agency, the amount of the allocation to the joint public agency and from each participating public agency shall be reported to the Property Tax Administrator.

Source: Laws 1999, LB 87, § 7.

13-2508 Joint public agencies; creation authorized.

Any combination of two or more public agencies may create one or more joint public agencies to exercise the powers and authority prescribed by the Joint Public Agency Act.

Source: Laws 1999, LB 87, § 8.

13-2509 Creation; procedure; appointment of representatives.

(1) The governing body of each public agency participating in the creation of a joint public agency shall adopt a resolution determining that there is a need for a joint public agency and setting forth the names of the proposed participating public agencies. The resolution shall be published in three issues, not less than seven days between issues, of a legal newspaper for each proposed participating public agency or a newspaper having general circulation in the area served by a proposed participating public agency if no legal newspaper exists for the participating public agency and of one or more newspapers of general circulation in the area to be served by the joint public agency. Any such resolution shall not be adopted by a public agency prior to five days after the last publication by the proposed participating public agency. In the case of a state agency, the governing board shall adopt the resolution, or if there is no governing board, the Governor shall issue a proclamation without notice in lieu of a resolution. In the case of a federal agency, the governing board shall adopt the resolution or, if there is no governing board, the President of the United States shall issue a proclamation without notice in lieu of a resolution. The resolution may be adopted by a governing body on its own motion upon determining, in its discretion, that a need exists for a joint public agency. In determining whether such a need exists, a governing body may take into consideration the present and future needs of the public agency with respect to the materials, goods, property, and services which a joint public agency may utilize or provide, the adequacy, suitability, and availability of such materials, goods, property, and services to meet the needs of the participating public agency if no joint public agency is formed, and economic or other advantages or efficiencies which may be realized by cooperative action through a joint public agency.

(2) Upon issuance of a certificate of creation by the Secretary of State, the Governor in the case of a participating state agency which does not have a governing board, the President of the United States or federal agency head in the case of a federal agency, the mayor or city manager in the case of a city which has not elected to be governed as a village, or the chairperson of the governing body of each participating public agency shall appoint representatives as provided by the agreement for creation of the joint public agency. Representatives, other than representatives appointed by the Governor, the President of the United States, or a federal agency head, must be members of the governing body of the participating public agency which they are appointed to represent. Upon issuance of an amended certificate of creation pursuant to

section 13-2513, a representative shall be appointed by each additional participating public agency as provided in this section. An alternate representative with the same qualifications may be appointed in the same manner as a representative and shall serve and exercise all powers of a representative in the absence of the representative for whom he or she is the alternate. The representatives shall constitute the board in which shall be vested all powers of the joint public agency.

Source: Laws 1999, LB 87, § 9.

13-2510 Creation; statement; contents.

Within thirty days after adoption of the resolutions for creation of a joint public agency by the proposed participating public agencies, the board shall file with the Secretary of State a statement signed by the representatives setting forth (1) the names of all the proposed participating public agencies, (2) a certified copy of each of the resolutions of the participating public agencies determining the need for such a joint public agency, (3) proof of publication as required in subsection (1) of section 13-2509, (4) a brief description of the nature of the joint public agency's activities, and (5) the name of the joint public agency.

Source: Laws 1999, LB 87, § 10.

13-2511 Creation; Secretary of State; duties; certificate of creation; issuance.

The Secretary of State shall examine the statement and, if he or she finds that the name proposed for the joint public agency is distinguishable from any other entity name registered or on file with the Secretary of State pursuant to Nebraska law and that the statement conforms to the requirements of the Joint Public Agency Act, the Secretary of State shall record it and issue and record a certificate of creation. The certificate shall state the name of the joint public agency, the fact and date of creation, and the names of the participating public agencies. Upon the issuance of the certificate, the existence of the joint public agency as a political subdivision and a body corporate and politic of this state shall commence. Notice of the issuance of the certificate shall be given to all of the proposed participating public agencies by the Secretary of State and shall be published in one issue of a legal newspaper for each proposed participating public agency or a newspaper having general circulation in the area served by a proposed participating public agency if no legal newspaper exists for the participating public agency and of one or more newspapers of general circulation in the area to be served by the joint public agency.

Source: Laws 1999, LB 87, § 11.

13-2512 Certificate of creation; proof of establishment.

In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the joint public agency, the joint public agency shall be conclusively deemed to have been established, except as against the state, in accordance with the Joint Public Agency Act upon proof of the filing of the certificate of creation by the Secretary of State. A copy of the certificate or amended certificate, duly certified by the Secretary of State, shall be admissible in evidence in any suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

Source: Laws 1999, LB 87, § 12.

13-2513 Participation by other public agencies; procedure.

After the creation of a joint public agency, any other public agency may become a participating public agency therein upon (1) the adoption of a resolution by the governing body of the public agency setting forth the determination prescribed in section 13-2509 and authorizing the public agency to become a participating public agency after notice as described in subsection (1) of section 13-2509, (2) application to the joint public agency, and (3) adoption by a majority vote of the representatives, unless the joint public agency's rules of governance require a greater percentage, of a resolution by the board admitting the public agency as a participating public agency. Thereupon the public agency shall become a participating public agency entitled to appoint a representative or representatives in the manner prescribed by sections 13-2509 and 13-2515 and to otherwise participate in the joint public agency to the same extent as if the public agency had participated in the creation of the joint public agency. Upon the filing with the Secretary of State of certified copies of the resolutions described in this section and proof of publication of notice, the Secretary of State shall issue an amended certificate of creation setting forth the names of the participating public agencies, the date of creation, and the name of the joint public agency. Notice shall be given as provided in section 13-2511.

Source: Laws 1999, LB 87, § 13.

13-2514 Representatives; terms; vacancy; expenses.

Each representative shall serve for a term specified in the agreement creating the joint public agency, not to exceed four years, or until his or her successor has been appointed and has qualified in the same manner as the original appointment. A representative shall be eligible for reappointment upon the expiration of his or her term. A certificate of the appointment or reappointment of any representative or alternate representative shall be issued by the governing body and shall be filed with the clerk or secretary of the public agency for which the representative acts and the joint public agency. The certificate shall be conclusive evidence of the due and proper appointment of the representative. A representative may be removed for any cause at any time by the governing body of the participating public agency for which the representative acts. A representative shall be removed if he or she is no longer a member of the governing body of the public agency which makes the appointment. A vacancy shall be filled for the balance of the unexpired term of a person who is no longer eligible to hold office in the same manner as the original appointment, until the term as representative expires, or until removed by the participating public agency which appointed him or her. A representative shall receive no compensation for his or her services but shall be entitled to actual and necessary expenses incurred in the discharge of his or her official duties, including mileage at the rate provided in section 81-1176.

Source: Laws 1999, LB 87, § 14.

13-2515 Representatives; number; voting; quorum; meetings.

(1) Each participating public agency shall at all times be entitled to appoint at least one representative. A joint public agency's rules of governance may allow any participating public agency to appoint additional representatives and shall specify the number of representatives to be appointed by each participat-

ing public agency. The number of representatives may be increased or decreased from time to time by an amendment to the rules of governance approved by each participating public agency as evidenced by a resolution of the governing body thereof unless the agreement provides for approval by less than all participating public agencies.

(2) Each representative shall be entitled to one vote. With the approval of each participating public agency as evidenced by a resolution of the governing body thereof unless the agreement provides for approval by less than all participating public agencies, a joint public agency's rules of governance may allow the representative of any participating public agency to cast more than one vote and shall specify the number of votes such representative may cast.

(3) A quorum of the board is required for conducting the business and exercising the powers of the joint public agency and for all other purposes. Unless the rules of governance require a larger quorum, the presence at the meeting of the number of representatives entitled to cast a majority of the total votes which may be cast by all of the representatives constitutes a quorum. Action may be taken upon a vote of a majority of the votes which the representatives present are entitled to cast unless the rules of governance require a larger vote.

(4) The manner of scheduling regular meetings and the method of calling special board meetings, including the giving or waiving of notice, shall be as provided in the rules of governance within the constraints of the Open Meetings Act.

Source: Laws 1999, LB 87, § 15; Laws 2004, LB 821, § 4.

Cross References

Open Meetings Act, see section 84-1407.

13-2516 Board; officers; employees.

The board shall elect a chairperson and vice-chairperson from among its representatives. The joint public agency may employ an executive director. The board shall elect a secretary who shall either be from among the representatives or the executive director. The joint public agency may employ or obtain the services of legal counsel, 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 its officers, agents, or employees such powers and duties as the board deems proper.

Source: Laws 1999, LB 87, § 16.

13-2517 Committees; meetings.

(1) The board may create an executive committee the composition of which shall be set forth in the joint public agency's rules of governance. 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 rules of governance, motions, or resolutions creating the executive committee. The terms of office of the members of the executive committee and the method of filling vacancies shall be fixed by the rules of governance.

(2) 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.

(3) The board shall be subject to the Open Meetings Act.

Source: Laws 1999, LB 87, § 17; Laws 2004, LB 821, § 5.

Cross References

Open Meetings Act, see section 84-1407.

13-2518 Dissolution; withdrawal.

Unless the agreement provides for dissolution, a joint public agency shall be dissolved upon the adoption, by the governing bodies of at least one-half of the participating public agencies, of a resolution setting forth the determination that the need for the public agencies to act cooperatively through a joint public agency no longer exists. A joint public agency shall not be dissolved so long as the agency has bonds outstanding unless provision for full payment of the bonds and interest thereon, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, indenture, or security instrument securing the bonds. If the governing bodies of one or more, but less than a majority, of the participating public agencies adopt such a resolution, such public agencies shall be permitted to withdraw from participation in the joint public agency, but withdrawal shall not affect the obligations of the withdrawing public agency pursuant to any contracts or other agreements with the joint public agency. Withdrawal shall not impair the payment of any outstanding bonds or interest thereon. In the event of the dissolution of a joint public agency, its board shall provide for the disposition, division, or distribution of the joint public agency's assets among the participating public agencies by such means as the board shall determine, in its sole discretion, to be fair and equitable or as provided in the agreement for creation of the joint public agency.

Source: Laws 1999, LB 87, § 18.

13-2519 Status as political subdivision.

A joint public agency shall constitute a political subdivision and a public body corporate and politic of this state exercising public powers separate from the participating public agencies. A joint public agency shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a political subdivision and a public body corporate and politic exercising powers and acting on behalf of the participating public agencies.

Source: Laws 1999, LB 87, § 19.

13-2520 Applicability of Political Subdivisions Tort Claims Act.

A joint public agency may be sued subject to the Political Subdivisions Tort Claims Act.

Source: Laws 1999, LB 87, § 20.

Cross Reference

Political Subdivisions Tort Claims Act, see section 13-901.

13-2521 Powers.

The powers of a joint public agency shall include the power:

(1) To sue;

(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;

(4) From time to time, to make, amend, and repeal rules of governance not inconsistent with the Joint Public Agency Act or the terms of the agreement for its creation to carry out and effectuate its powers and purposes;

(5) To adopt and promulgate rules and regulations as authorized for at least one of the participating public agencies and as provided in the agreement;

(6) 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 as provided by law;

(7) To incur debts, liabilities, or obligations, including the borrowing of money and the issuance of bonds, secured or unsecured, pursuant to the Joint Public Agency Act;

(8) To borrow money or accept contributions, grants, or other financial assistance from a public agency 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;

(9) To fix, maintain, revise, and collect fees, rates, rents, and charges for functions, services, or facilities provided by the joint public agency;

(10) 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;

(11) To join and pay dues to organizations, membership in which is deemed by the board to be beneficial to the accomplishment of the joint public agency's purposes; and

(12) To exercise any other powers which are deemed necessary and convenient to carry out the Joint Public Agency Act.

A joint public agency may perform any governmental service, activity, or undertaking which at least one of the participating public agencies is authorized to perform. In exercising its powers under this section to perform any governmental service, activity, or undertaking, a joint public agency shall be subject to the same procedures, regulations, and restrictions as the participating public agency which is granted the power by law to perform the governmental service, activity, or undertaking.

Source: Laws 1999, LB 87, § 21.

13-2522 Liability insurance coverage.

The board may provide its representatives, its officers, and agents and employees of the joint public agency and participating public agencies, either collectively or individually, with personal liability insurance coverage insuring against any liability and claim arising by reason of any act or omission in any manner relating to the performance, attempted performance, or failure of

performance of official duties as a participating public agency, representative, officer, agent, or employee and may authorize the payment of the premium, cost, and expense of insurance from the general fund of the joint public agency. The agreement may provide that such coverage be the responsibility of one or more of the participating public agencies.

Source: Laws 1999, LB 87, § 22.

13-2523 Benefits.

The agreement creating a joint public agency may provide that insurance, retirement, indemnification, and other benefits be provided by one or more participating public agencies. If the agreement so provides, the insurance, retirement, indemnification, or other benefits applicable to the participating public agencies shall include the officers or employees of the joint public agency as provided in the agreement.

Source: Laws 1999, LB 87, § 23.

13-2524 Bankruptcy petition; authorized.

A joint public agency may file a petition in the United States Bankruptcy Court under 11 U.S.C. chapter 9 and any acts amendatory thereto and supplementary thereof and may incur and pay the expenses incident to the consummation of a plan of adjustment of debts as contemplated by the petition.

Source: Laws 1999, LB 87, § 24.

13-2525 Biennial report; fee.

(1) Commencing in 2001 and each odd-numbered year thereafter, each joint public agency shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(a) The name of the joint public agency;

(b) The street address of its principal office and the name of its manager or executive director, if any, at the office in this state;

(c) The names and business or residence addresses of its representatives and principal officers;

(d) A brief description of the nature of its activities; and

(e) The names of the participating public agencies.

(2) The information in the biennial report must be current on the date the biennial report is executed on behalf of the joint public agency.

(3) 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 the joint public agency 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. 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.

(4) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting joint public agency 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.

(5) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee of twenty dollars. 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.

Source: Laws 1999, LB 87, § 25.

13-2526 Bidding procedures.

If all participating public agencies are of the same type, the bidding procedures for that type of public agency apply to the joint public agency. If the participating public agencies are not all of the same type, the bidding requirements set out in the County Purchasing Act apply to the joint public agency.

Source: Laws 1999, LB 87, § 26.

Cross References

County Purchasing Act, see section 23-3101.

13-2527 Expenditures; bond requirements.

(1) All money of the joint public agency shall be paid out or expended only by check, draft, warrant, or other instrument in writing, signed by the chairperson and the treasurer, assistant treasurer, or such other officer, employee, or agent of the joint public agency as is authorized by the treasurer to sign in his or her behalf. The authorization by the treasurer shall be in writing and filed with the secretary of the joint public agency.

(2) In the event that there is no treasurer's bond that expressly insures the joint public agency against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the joint public agency, together with the written authorization filed with the secretary, a surety bond, effective for protection against the 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 joint public 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 1999, LB 87, § 27.

13-2528 Agreement; approval by state officer or agency; when required.

In the event that an agreement made pursuant to the Joint Public Agency Act deals in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by the officer or agency as to all matters within the officer's or agency's jurisdiction.

Source: Laws 1999, LB 87, § 28.

13-2529 Public agencies; powers.

Any public agency entering into an agreement pursuant to the Joint Public Agency Act may appropriate funds and may sell, lease, give, or otherwise supply the board, joint public agency, or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as it may employ or contract to furnish.

Source: Laws 1999, LB 87, § 29.

13-2530 Revenue bonds authorized.

(1) Any joint public 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, from one or more revenue-producing contracts, including securities acquired from any person, bonds issued by any qualified public agency under the Public Facilities Construction and Finance Act, or leases made by the joint public agency with any person, including any of the public agencies which are parties to the agreement creating the joint public agency, 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 joint public agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

(2) Any bonds issued by such joint public agency shall be issued on behalf of the joint public agency solely for the specific purpose or purposes for which the joint public agency has been created. Such specific purposes may include, but shall not be limited to, joint projects authorized by the Public Facilities Construction and Finance Act; solid waste collection, management, and disposal; waste recycling; sanitary sewage treatment and disposal; public safety communications; correctional facilities; water treatment plants and distribution systems; drainage systems; flood control projects; fire protection services; ground water quality management and control; river-flow enhancement; education and postsecondary education; hospital and other health care services; bridges, roads, and streets; and law enforcement.

(3) As an alternative to issuing bonds for financing public safety communication projects, any joint public agency may enter into a financing agreement with the Nebraska Investment Finance Authority for such purpose.

(4) Any joint public agency formed for purposes of providing or assisting with the provision of public safety communications may enter into an agreement with any other joint public agency relating to (a) the operation, maintenance, or management of the property or facilities of such joint public agency or (b) the operation, maintenance, or management of the property or facilities of such other joint public agency.

Source: Laws 1999, LB 87, § 30; Laws 2002, LB 1211, § 2; Laws 2005, LB 217, § 10; Laws 2007, LB701, § 14.

Cross References

Public Facilities Construction and Finance Act, see section 72-2301.

13-2531 General obligation bonds.

Any joint public agency may from time to time issue its bonds in such principal amounts as its board determines is necessary to provide sufficient funds to carry out any of the joint public agency's purposes and powers, including the establishment or increase of reserves, the payment of 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 joint public agency incident to and necessary or convenient to carry out its purposes and powers. Except as provided in section 72-2304, bonds issued for purposes of the Public Facilities Construction and Finance Act may be issued with no requirement for a vote.

Source: Laws 1999, LB 87, § 31; Laws 2005, LB 217, § 11.

Cross References

Public Facilities Construction and Finance Act, see section 72-2301.

13-2532 Bonds; treatment.

(1) The representatives or agents of the board and a person executing the bonds shall not be liable personally on such bonds by reason of the issuance thereof.

(2) The bonds shall not be a debt of any political subdivision other than the joint public agency or of this state, and neither this state nor any other political subdivision shall be liable thereon. Bonds shall be payable only out of any funds or properties of the issuing joint public agency. Such limitations shall be plainly stated upon the face of the bonds.

Source: Laws 1999, LB 87, § 32.

13-2533 Bond issuance; procedure.

Bonds shall be authorized by resolution of the board and may be issued under a resolution, 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, 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.

Source: Laws 1999, LB 87, § 33.

13-2534 Bonds; negotiation; sale.

(1) Except as the 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 board may provide and at such price or prices as such board shall determine.

Source: Laws 1999, LB 87, § 34.

13-2535 Bonds; signatures.

If any of the officers whose signatures appear on any bonds or coupons 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 1999, LB 87, § 35.

13-2536 Bond issuance; covenants.

Any joint public agency may in connection with the issuance of its bonds:

(1) Covenant as to the use of any or all of its property, real or personal;

(2) Redeem the bonds, covenant for their redemption, and provide the terms and conditions thereof;

(3) Covenant to charge or seek necessary approvals to charge rates, fees, and charges sufficient to meet operating and maintenance expenses of the joint public 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 joint public agency, 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 project or projects or any revenue-producing contract or contracts made by the joint public 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) Covenant as to the custody, collection, securing, investment, and payment of any revenue, assets, money, funds, or property with respect to which the joint public agency may have any rights or interest;

(7) 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) 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 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) Covenant as to the custody, safekeeping, and insurance of any of its properties or investments 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 joint public agency 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 joint public agency 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 powers in the Joint Public Agency Act 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 1999, LB 87, § 36.

13-2537 Refunding bonds authorized.

Any joint public 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 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 board in its discretion or to the date or dates of maturity, whichever is determined to be most advantageous or convenient for the joint public 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. A determination by the board that any refinancing is advantageous or necessary to the joint public agency, 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 1999, LB 87, § 37.

13-2538 Refunding bonds; proceeds.

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, 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 1999, LB 87, § 38; Laws 2001, LB 362, § 9.

13-2539 Refunding bonds; exchange for other bonds.

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 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 1999, LB 87, § 39.

13-2540 Other bond 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 joint public agency in respect of the same shall be governed by the Joint Public Agency Act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

Source: Laws 1999, LB 87, § 40.

13-2541 Bond issuance; consent not required.

Bonds may be issued under the Joint Public Agency Act 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 the act, 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 1999, LB 87, § 41.

13-2542 Notice; proceeding.

The board may provide for the publication of any resolution or other proceeding adopted by it pursuant to the Joint Public Agency Act in a newspa-

per of general circulation published in the area served by the joint public agency or, if no newspaper is so published, in a newspaper qualified to carry legal notices having general circulation in the area served by the joint public agency.

Source: Laws 1999, LB 87, § 42.

13-2543 Issuance of bonds; notice.

In the case of a resolution or other proceeding providing for the issuance of bonds pursuant to the Joint Public Agency Act, 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 the act, titled as such, containing:

(1) The name of the joint public agency;

(2) The purpose of the issue, including a brief description of the project and the name of the public agencies 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 joint public agency, identified in the notice, during regular business hours of the joint public agency as described in the notice and for a period of at least thirty days after the publication of the notice.

Source: Laws 1999, LB 87, § 43.

13-2544 Issuance of bonds; right to contest; procedure.

For a period of thirty days after such publication, any interested person 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, or any contract of purchase, sale, or lease relating to the issuance of such bonds. 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 1999, LB 87, § 44.

13-2545 Bonds; investment authorized.

Bonds issued pursuant to the Joint Public Agency Act 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 1999, LB 87, § 45.

13-2546 Bonds, property, and income; exempt from taxes; when.

(1) All bonds of a joint public 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 a joint public agency, including any pro rata share of any property owned by a joint public 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 a joint public agency shall be exempt from all taxes and assessments of the state or any political subdivision of the state if used for a public purpose.

Source: Laws 1999, LB 87, § 46; Laws 2001, LB 173, § 12.

13-2547 Act; how construed.

The provisions of the Joint Public Agency Act shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized by the act and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon political subdivisions, agencies, and others by law. Insofar as the provisions of the Joint Public Agency Act are inconsistent with the provisions of any general or special law, administrative order, or regulation, the provisions of the Joint Public Agency Act shall be controlling.

Source: Laws 1999, LB 87, § 47.

13-2548 Pledge of state.

The State of Nebraska does hereby pledge to and agree with the holders of any bonds and with those persons who may enter into contracts with any joint public agency under the Joint Public Agency Act 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 the Joint Public Agency Act shall preclude such alteration, impairment, or limitation if and when adequate provisions are made by law for the protection of the holders of the bonds or persons entering into contracts with any joint public agency. Each joint public agency may include this pledge and undertaking for the state in such bonds or contracts.

Source: Laws 1999, LB 87, § 48.

13-2549 Joint public agency; status.

A joint public agency created by public agencies pursuant to the Joint Public Agency Act shall not be considered a state agency, and an employee of such an entity or agency shall not be considered a state employee.

Source: Laws 1999, LB 87, § 49.

13-2550 Liberal construction.

The Joint Public Agency Act is necessary for the welfare of the state and its inhabitants and shall be construed liberally to effect its purposes.

Source: Laws 1999, LB 87, § 50.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section

13-2601 Act, how cited.

Sections 13-2601 to 13-2612 shall be known and may be cited as the Convention Center Facility Financing Assistance Act.

Source: Laws 1999, LB 382, § 1.

Cross References

Limitation on applications, see section 13-2612.

13-2602 Legislative findings.

(1) The Legislature finds that it will be beneficial to the economic well-being of the people of this state that there be convention and meeting center facilities and sports arena facilities of appropriate size and quality to host regional, national, or international events. Regional refers to states that border Nebraska; national refers to states other than those that border Nebraska; and international refers to nations other than the United States.

(2) The Legislature further finds that such facilities may (a) generate new economic activity as well as additional state and local taxes from persons residing within and outside the state and (b) create new economic opportunities for residents.

(3) In order that the state may receive any long-term economic and fiscal benefits from such facilities, a need exists to provide some state assistance to political subdivisions endeavoring to construct, acquire, substantially reconstruct, expand, operate, improve, or equip such facilities.

(4) Therefor, it is deemed to be in the best interest of both the state and its political subdivisions that the state assist political subdivisions in financing the construction, acquisition, substantial reconstruction, expansion, operation, improvement, or equipping of such facilities.

(5) The amount of state assistance shall be limited to a designated portion of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels.

Source: Laws 1999, LB 382, § 2; Laws 2007, LB551, § 1.

Cross References

Limitation on applications, see section 13-2612.

13-2603 Terms, defined.

For purposes of the Convention Center Facility Financing Assistance Act:

(1) Associated hotel means any publicly owned facility in which the public may, for a consideration, obtain sleeping accommodations and which is located within two hundred yards of an eligible facility;

(2) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(3) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(4) Convention and meeting center facility means a temperature-controlled building and personal property primarily used as a convention and meeting center, including an auditorium, an exhibition hall, a facility for onsite food preparation and serving, an onsite, directly connected parking facility for the use of the convention and meeting center facility, and an onsite administrative office of the convention and meeting center facility;

(5) Eligible facility means any publicly owned convention and meeting center facility approved for state assistance on or before June 1, 2007, any publicly owned sports arena facility attached to such convention and meeting center facility, or any publicly owned convention and meeting center facility or publicly owned sports arena facility acquired, constructed, improved, or equipped after June 1, 2007;

(6) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(7) Political subdivision means any local governmental body formed and organized under state law and any joint entity or joint public agency created under state law to act on behalf of political subdivisions which has statutory authority to issue general obligation bonds;

(8) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax; and

(9) Sports arena facility means any enclosed temperature-controlled building primarily used for competitive sports, including arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities.

Source: Laws 1999, LB 382, § 3; Laws 2007, LB551, § 2.

Cross Reference

Limitation on applications, see section 13-2612.

13-2604 State assistance.

Any political subdivision that has acquired, constructed, improved, or equipped or has approved a general obligation bond issue to acquire, construct, improve, or equip eligible facilities may apply to the board for state assistance. The state assistance may be used to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip eligible facilities until repayment in full of the amounts expended or borrowed by the political subdivision, including the principal of and interest on bonds, for eligible facilities. The political subdivision may continue to apply to the board for continuing state assistance in reimbursing the costs of financing the acquisition, construction, improvement, and equipping of the eligible facility.

Source: Laws 1999, LB 382, § 4.

Cross References

Limitation on applications, see section 13-2612.

13-2605 State assistance; application; contents.

(1) All applications for state assistance under the Convention Center Facility Financing Assistance Act shall be in writing and shall include a certified copy of the approving action of the governing body of the applicant describing the proposed eligible facility and the anticipated financing.

(2) The application shall contain:

(a) A description of the proposed financing of the eligible facility, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the eligible facility or the amounts necessary to repay the original investment by the applicant in the eligible facility;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project; and

(c) Any other project information deemed appropriate by the board.

(3) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional information needed for a proper evaluation of the application.

(4) Any state assistance received pursuant to the act shall be used only for public purposes.

Source: Laws 1999, LB 382, § 5; Laws 2007, LB551, § 3.

Cross References

Limitation on applications, see section 13-2612.

13-2606 Board; powers and duties; hearing.

(1) After reviewing an application submitted under section 13-2605 and upon reasonable notice to the applicant, the board shall hold a public hearing on the application.

(2) The board shall give notice of the time, place, and purpose of the public hearing by publication three times in a newspaper of statewide circulation. Such publication shall be not less than ten days prior to the hearing. The notice shall describe generally the facilities for which state assistance has been requested. The applicant shall pay the cost of the notice.

(3) At the public hearing, representatives of the applicant and any other interested persons may appear and present evidence and argument in support of or in opposition to the application or neutral testimony. The board may seek expert testimony and may require testimony of persons whom the board desires to comment on the application. The board may provide for the acceptance of additional evidence after conclusion of the public hearing.

Source: Laws 1999, LB 382, § 6.

Cross References

Limitation on applications, see section 13-2612.

13-2607 Board; assistance approved; when; quorum.

(1) After consideration of the application and the evidence, the board shall issue a finding of whether the convention and meeting center facility or sports arena facility described in the application is eligible for state assistance.

(2) If the board finds that the facility described in the application is an eligible facility and that state assistance is in the best interest of the state, the application shall be approved.

(3) In determining whether state assistance is in the best interest of the state, the board shall consider the fiscal and economic capacity of the applicant to finance the local share of the eligible facility.

(4) A majority of the board members constitutes a quorum for the purpose of conducting business. All actions of the board shall be by a majority vote of all the board members, one of whom must be the Governor.

Source: Laws 1999, LB 382, § 7; Laws 2007, LB551, § 4.

Cross References

Limitation on applications, see section 13-2612.

13-2608 Repealed. Laws 2007, LB 551, § 10.

13-2609 Tax Commissioner; duties; certain retailers and operators; reports required.

(1) If an application is approved, the Tax Commissioner shall:

(a) Audit or review audits of the approved convention and meeting center facility, sports arena facility, or associated hotel to determine the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels; and

(b) Certify annually the amount of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, to the State Treasurer.

(2) State sales tax revenue collected by retailers and operators that are not eligible facilities but are doing business at eligible facilities shall be reported on informational returns developed by the Department of Revenue and provided to any such retailers and operators by the eligible facility. The informational returns shall be submitted to the department by the retailer or operator by the twenty-fifth day of the month following the month the sales taxes are collected.

The Tax Commissioner shall use the data from the informational returns and sales tax returns of eligible facilities and associated hotels to determine the appropriate amount of state sales tax revenue.

(3) Changes made to the Convention Center Facility Financing Assistance Act by Laws 2007, LB 551, shall apply to state sales tax revenue collected commencing on July 1, 2006.

Source: Laws 1999, LB 382, § 9; Laws 2007, LB551, § 5.

Cross References

Limitation on applications, see section 13-2612.

13-2610 Convention Center Support Fund; created; use; investment; distribution to area with high concentration of poverty; development fund; committee.

(1) Upon the annual certification under section 13-2609, the State Treasurer shall transfer after the audit the amount certified to the Convention Center Support Fund. The Convention Center Support Fund is created. 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)(a) It is the intent of the Legislature to appropriate from the fund to any political subdivision for which an application for state assistance under the Convention Center Facility Financing Assistance Act has been approved an amount not to exceed (i) seventy percent of the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, (ii) seventy-five million dollars for any one approved project, or (iii) the total cost of acquiring, constructing, improving, or equipping the eligible facility. State assistance shall not be used for an operating subsidy or other ancillary facility.

(b) Ten percent of such funds appropriated to a city of the metropolitan class under this subsection shall be equally distributed to areas with a high concentration of poverty to showcase important historical aspects of such areas.

(c) Each area with a high concentration of poverty that has been distributed funds under subdivision (b) of this subsection shall establish a development fund and form a committee which shall identify and research potential projects and make final determinations on the use of state sales tax revenue received for such projects.

(d) A committee formed in subdivision (c) of this subsection shall include the following three members:

(i) The member of the city council whose district includes a majority of the census tracts which each contain a percentage of families below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty;

(ii) The commissioner of the county whose district includes a majority of the census tracts which each contain a percentage of families below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty; and

(iii) A resident of the area with a high concentration of poverty, appointed by the other two members of the committee.

(e) A committee formed in subdivision (c) of this subsection shall solicit project ideas from the public and shall hold a public hearing in the area with a high concentration of poverty. Notice of a proposed hearing shall be provided in accordance with the procedures for notice of a public hearing pursuant to section 18-2115. The committee shall research potential projects in its area and make the final determination regarding the annual distribution of funding to such projects.

(f) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of families below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census.

(3) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subdivision (2)(a) of this section, whichever comes first.

(4) The remaining thirty percent of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, shall be appropriated by the Legislature to the Local Civic, Cultural, and Convention Center Financing Fund.

(5) Any municipality that has applied for and received a grant of assistance under the Local Civic, Cultural, and Convention Center Financing Act may not receive state assistance under the Convention Center Facility Financing Assistance Act.

Source: Laws 1999, LB 382, § 10; Laws 2007, LB551, § 6.

Cross References

Limitation on applications, see section 13-2612.
Local Civic, Cultural, and Convention Center Financing Act, see section 13-2701.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

13-2611 Bonds; issuance; election.

(1) The applicant political subdivision may issue from time to time its bonds and refunding bonds to finance and refinance the acquisition, construction, improving, and equipping of eligible facilities and appurtenant public facilities that are a part of the same project. The bonds may be sold by the applicant in such manner and for such price as the applicant determines, at a discount, at par, or at a premium, at private negotiated sale or at public sale, after notice published prior to the sale in a legal newspaper having general circulation in the political subdivision or in such other medium of publication as the applicant deems appropriate. The bonds shall have a stated maturity of thirty years or less and shall bear interest at such rate or rates and otherwise be issued in accordance with the respective procedures and with such other terms and

provisions as are established, permitted, or authorized by applicable state laws and home rule charters for the type of bonds to be issued. Such bonds may be secured as to payment in whole or in part by a pledge, as shall be determined by the applicant, from the income, proceeds, and revenue of the eligible facilities financed with proceeds of such bonds, from the income, proceeds, and revenue of any of its eligible facilities, or from its revenue and income, including its sales, use, or occupation tax revenue, fees, or receipts, as may be determined by the applicant. The applicant may further secure the bonds by a mortgage or deed of trust encumbering all or any portion of the eligible facilities and by a bond insurance policy or other credit support facility. No general obligation bonds, except refunding bonds, shall be issued until authorized by greater than fifty-one percent of the applicant's electors voting on the question as to their issuance at a statewide regular primary or general election. The face of the 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 of the applicant 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.

(2) All payments to political subdivisions under the Convention Center Facility Financing Assistance Act are made subject to specific appropriation for such purpose. Nothing in the act precludes the Legislature from amending or repealing the act at any time.

Source: Laws 1999, LB 382, § 11.

Cross References

Limitation on applications, see section 13-2612.

13-2612 Act; applications; limitation.

The board shall not accept applications for assistance under the Convention Center Facility Financing Assistance Act after June 1, 2010.

Source: Laws 1999, LB 382, § 12; Laws 2007, LB551, § 7.

ARTICLE 27

LOCAL CIVIC, CULTURAL, AND CONVENTION CENTER FINANCING ACT

Section
13-2701. Act, how cited.
13-2702. Purpose of act.
13-2703. Terms, defined.
13-2704. Local Civic, Cultural, and Convention Center Financing Fund; created; use; investment.
13-2705. Conditional grant approval.
13-2706. Grant application.
13-2707. Department; evaluation criteria.
13-2708. Grant; approval.
13-2709. Annual report.
13-2710. Rules and regulations.

13-2701 Act, how cited.

Sections 13-2701 to 13-2710 shall be known and may be cited as the Local Civic, Cultural, and Convention Center Financing Act.

Source: Laws 1999, LB 382, § 13.

13-2702 Purpose of act.

The purpose of the Local Civic, Cultural, and Convention Center Financing Act is to support the development of civic, cultural, and convention centers throughout Nebraska. Furthermore, the act is intended to support projects that attract new civic, cultural, and convention activity to Nebraska from outside of Nebraska.

Source: Laws 1999, LB 382, § 14.

13-2703 Terms, defined.

For purposes of the Local Civic, Cultural, and Convention Center Financing Act:

(1) Center means a civic, cultural, or convention facility or area;

(2) Department means the Department of Economic Development; and

(3) Fund means the Local Civic, Cultural, and Convention Center Financing Fund.

Source: Laws 1999, LB 382, § 15.

13-2704 Local Civic, Cultural, and Convention Center Financing Fund; created; use; investment.

The Local Civic, Cultural, and Convention Center Financing Fund is created. The fund shall be administered by the department. 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. The fund may be used for assistance for the construction of new centers or the renovation or expansion of existing centers. The fund may not be used for planning, programming, marketing, advertising, and related activities.

Source: Laws 1999, LB 382, § 16.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

13-2705 Conditional grant approval.

The department may conditionally approve grants of assistance from the fund to eligible and competitive applicants within the following limits:

(1) A grant request shall be at least twenty thousand dollars but no more than:

(a) For a city of the primary class, one million dollars;

(b) For a municipality with a population of forty thousand but less than one hundred thousand, five hundred thousand dollars;

(c) For a municipality with a population of twenty thousand but less than forty thousand, four hundred thousand dollars;

(d) For a municipality with a population of ten thousand but less than twenty thousand, three hundred thousand dollars;

(e) For a municipality with a population of five thousand but less than ten thousand, two hundred thousand dollars; and

(f) For a municipality with a population of less than five thousand, one hundred thousand dollars;

(2) Assistance from the fund shall not amount to more than fifty percent of the cost of construction, renovation, or expansion; and

(3) A municipality shall not be awarded more than one grant in any five-year period.

Source: Laws 1999, LB 382, § 17; Laws 2003, LB 385, § 1.

13-2706 Grant application.

Any municipality, except a city that has received funding under the Convention Center Facility Financing Assistance Act, may apply for a grant of assistance from the fund. Application shall be made on forms developed by the department.

Source: Laws 1999, LB 382, § 18; Laws 2003, LB 385, § 2; Laws 2007, LB551, § 8.

Cross References

Convention Center Facility Financing Assistance Act, see section 13-2601.

13-2707 Department; evaluation criteria.

The department shall evaluate all applications for grants of assistance based on the following criteria:

(1) Attraction impact. Funding decisions by the department shall be based in part on the likelihood of the project attracting new cultural, civic, or convention activity to Nebraska from outside of Nebraska. A project with greater out-of-state draw shall be preferred over a project with less impact;

(2) Socioeconomic impact. The project's potential for long-term positive impacts on the local and regional economy and society;

(3) Financial support. Assistance from the fund shall be matched at least equally from local sources. At least eighty percent of the local match must be in cash. Projects with a higher level of local matching funds shall be preferred as compared to those with a lower level of matching funds;

(4) Readiness. The applicant's fiscal and economic capacity to finance the local share and ability to proceed and implement its plan and operate the convention center; and

(5) Project location. A project shall be located in the municipality that applies for the grant.

Source: Laws 1999, LB 382, § 19; Laws 2003, LB 385, § 3.

13-2708 Grant; approval.

If a grant of assistance is approved by the department, the applicant shall receive conditional approval of the level of assistance. Projects shall receive funding from the fund in the order conditional approval is received and whenever there is sufficient money in the fund to provide the assistance. It is the intent of the Legislature to appropriate funds to support projects which have received conditional approval from the department. A grant of assistance

shall be finally approved when funds for the project are appropriated by the Legislature.

Source: Laws 1999, LB 382, § 20; Laws 2003, LB 385, § 4.

13-2709 Annual report.

The department shall submit to the Governor, the Clerk of the Legislature, and the Legislative Fiscal Analyst an annual report on or before December 1 each year documenting the grants conditionally approved for funding by the Legislature in the following fiscal year.

Source: Laws 1999, LB 382, § 21.

13-2710 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Local Civic, Cultural, and Convention Center Financing Act.

Source: Laws 1999, LB 382, § 22.

ARTICLE 28

MUNICIPAL COUNTIES

Section
13-2801. Municipal county; creation; procedure.
13-2802. Metropolitan utilities district; how treated.
13-2803. Council; members; quorum; election; executive officer.
13-2804. Municipal county; powers and duties; provisions governing transition.
13-2805. Ordinances; adoption; procedure.
13-2806. Ordinances; requirements.
13-2807. Ordinance; form; publication; emergency.
13-2808. Levy authorized; allocations.
13-2809. Municipalities and fire protection districts within municipal county; treatment.
13-2810. Election; requirements.
13-2811. Approval of formation of municipal county; effect.
13-2812. Dissolution; procedure.
13-2813. Sales and use tax authorized.
13-2814. Sales and use tax; administration.
13-2815. Sales and use tax proceeds; use.
13-2816. Nebraska Revenue Act of 1967; applicability.
13-2817. Municipality; payments to municipal county; when; amount; how determined.
13-2818. Sanitary and improvement districts; treatment; payments to municipal county; when; amount; how determined.
13-2819. Sanitary and improvement district; consolidated with municipal county; procedure.

13-2801 Municipal county; creation; procedure.

(1) One or more counties and at least one of the municipalities in each county may create a municipal county to carry out all county services and all municipal services. The process of creating a municipal county shall begin by passage of a joint resolution by the governing bodies of the counties and municipalities involved. The joint resolution may be initiated by the governing bodies or by petition as provided in subsection (2) of this section.

(2) Whenever registered voters of any county and of at least one municipality in the county, equal in number to ten percent of the total vote cast for Governor in the county or municipality at the preceding election, petition the respective

county board and city council or village board of trustees to pass a resolution as contemplated by this section, it shall be the duty of the county board and city council or village board to pass a joint resolution creating an interjurisdictional planning commission. Petitions shall be filed with the county clerk, election commissioner, city clerk, or other officer having charge of the records of the governing body. The official shall ascertain the number of registered voters signing such petitions and transmit his or her findings, along with the petition, to the county board and city council or village board of trustees.

(3) Within ninety days after the passage of the joint resolution or within ninety days after receipt of a petition by the registered voters, the governing bodies of the counties and municipalities involved shall create an interjurisdictional planning commission. A commission may also be created by the district court having jurisdiction over the counties and municipalities involved upon the failure by the counties and municipalities to pass a joint resolution after submission of a petition by the registered voters. The commission shall have no less than nine members and no more than twenty-one members representing the counties and municipalities involved as determined by the governing bodies of the counties and municipalities involved in order to achieve proportionate representation. The governing bodies shall select the members. Representation on the commission shall be prorated based upon population of the counties and municipalities involved, except that (a) each county and each municipality involved shall have at least one representative selected by its respective governing body and (b) not more than forty percent of the total membership shall be public officials. Meetings of the commission shall be subject to the Open Meetings Act.

(4)(a) The commission shall hold at least one public hearing prior to preparing the plan for the creation of the municipal county, study all governmental subdivisions in the affected area, and then make a determination of whether creation of a municipal county is in the public interest. If it is not in the public interest to do so, the commission shall issue a report stating its findings, including, but not limited to, any recommendations regarding (i) interlocal agreements, (ii) agreements to provide for the joint delivery of services, or (iii) any other such recommendations. If it is in the public interest to do so, the commission shall prepare one plan for the creation of the municipal county. Such plan shall be approved by the governing body of each county and each municipality involved prior to submission of the issue to a vote of the registered voters unless the commission was created by a petition of the registered voters.

(b) The plan shall specify (i) which counties and municipalities will be dissolved upon creation of the municipal county, (ii) the form of government, with an elected executive officer, a professional municipal county manager or administrator appointed by the commission, or both, to operate the executive functions of the municipal county, (iii) the number of council members of the municipal county and whether they will be elected by district or at large, and (iv) which elected officials, if any, will be eliminated.

(c) At least ninety days prior to submission of the issue to a vote of the registered voters, the commission and the governing body of each county and each municipality involved shall hold at least one public hearing in its respective jurisdiction and make available for review by residents of the county and municipality all material terms and conditions set forth in the resolution to create the municipal county, including information regarding the tax implica-

tions and quality and cost of services to be provided by the proposed plan to create the municipal county.

(5) Upon approval of the plan by the governing body of each county and each municipality involved, if required, or upon the governing bodies' approval or failure to approve if the commission was created by a petition of the registered voters, the county clerks or election commissioners shall place the issue on the ballot at the next primary, general, or special election.

Source: Laws 2001, LB 142, § 1; Laws 2004, LB 821, § 6.

Cross References

Open Meetings Act, see section 84-1407.

13-2802 Metropolitan utilities district; how treated.

Whenever creation of a municipal county is proposed involving a city of the metropolitan class, the interjurisdictional planning commission shall include in its plan a recommendation with regard to the territory within which any metropolitan utilities district shall have and may exercise the power of eminent domain pursuant to subsection (2) of section 14-2116. The plan shall further include a recommendation with regard to the territory which shall be deemed to be within the corporate boundary limits or extraterritorial zoning jurisdiction of a municipality or a municipality dissolved by the creation of the municipal county for purposes of the State Natural Gas Regulation Act. The question of creation of the municipal county shall not be submitted to a vote under section 13-2810 until a law adopting the provisions required by this section has been enacted.

Source: Laws 2001, LB 142, § 2; Laws 2006, LB 1249, § 1.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

13-2803 Council; members; quorum; election; executive officer.

(1)(a) Except as provided in subdivision (1)(b) of this section, a municipal county created under section 13-2801 shall be governed by a council of five to nine members, at least two-thirds of whom shall be elected by district. The council members shall be elected on a nonpartisan ballot. The area involved in the consolidation shall be divided into districts of as equal population as possible so that at least a majority of the members of the council are elected by district. The division shall be made by the county board members of each county involved by January 31 of the year in which the council members are to be elected. A majority of the council members shall constitute a quorum for the purpose of transacting business. The council shall annually elect a chairperson from among its members. Each council member shall be elected to a four-year term beginning with the first general election following the formation, except that at the first election, fifty to sixty percent of the members shall be elected to four-year terms and the others shall be elected to two-year terms. If there are to be at-large members, the district-elected members shall be elected to four-year terms and the at-large members shall be elected to two-year terms. If there are to be no at-large members, the members elected to four-year terms and the members elected to two-year terms shall be selected by lot.

(b) A municipal county created under section 13-2801, in which is situated a city of the metropolitan class, shall be governed by a council of fifteen members

who shall be elected by districts. The council members shall be elected on a nonpartisan ballot. The area involved in the consolidation shall be divided into fifteen council districts of compact and contiguous territory. Such districts shall be numbered consecutively from one to fifteen. One council member shall be elected from each district. The division shall be made by the county board members of each county involved, by January 31 of the year in which the council members are to be elected. Each council member shall be elected to a four-year term, except that at the first general election following the formation, the members elected from even-numbered districts shall be elected to four-year terms and members elected from odd-numbered districts shall be elected to two-year terms and to four-year terms thereafter. A majority of the council members shall constitute a quorum for the purpose of transacting business. The council shall annually elect a chairperson from among its members. The council shall be responsible for redrawing the council district boundaries pursuant to section 32-553.

(c) Initial elections of the council members and the executive officer, if applicable, shall be completed by May 15 of the year the municipal county is created.

(2) If the plan to create the municipal county provides for an executive officer to operate the executive functions of the municipal county, the executive officer shall be elected to a four-year term beginning with the first general election following the formation of the municipal county.

(3) The resolution proposing creation of the municipal county may retain, as an elected position, any elected county office in any county to be consolidated into the municipal county. If such elected officials are to be retained, the officials in such offices at the time the municipal county is created may be retained or, if more than one such elected official are in office at the time the municipal county is created, the officials shall be elected together with the council members and executive officer of the municipal county.

Source: Laws 2001, LB 142, § 3.

13-2804 Municipal county; powers and duties; provisions governing transition.

(1) A municipal county has the powers and duties of a county and shall fulfill the same role as other counties and county officials of the municipal county as would be applicable to a county of the same population as the municipal county. Any reference in law to counties shall be deemed to refer to a municipal county. A municipal county has the powers and duties of cities and villages as would be applicable to the largest municipality consolidated into the municipal county. Any reference in law to cities, villages, or municipalities shall be deemed to apply also to a municipal county.

(2) On the date of creation of a municipal county, all ordinances, bylaws, acts, motions, rules, resolutions, and proclamations enacted by the governing body of each county or municipality involved shall continue in full force and effect, with respect to the counties and municipalities consolidated into the municipal county, until amended, repealed, or otherwise superseded by the council of the municipal county. All obligations, leases, and contracts of the counties or municipalities consolidated into the municipal county, except for bonded indebtedness, shall become obligations, leases, and contracts of the municipal county. In the event any utility, lease, franchise, or service area

agreement has been entered into by or is applicable to a county or municipality involved, the utility, lease, franchise, or service area agreement shall be unaffected by the creation of the municipal county and unchanged by the elimination of the municipal or county boundaries. In the event any service area or territory in which powers of a political subdivision could be exercised or boundaries of a political subdivision were previously defined by reference, in whole or in part, to the boundaries of a participating municipality or county, the boundaries of such service area or territory or political subdivision, and the exercise of the powers of the political subdivision, shall be unaffected by the creation of a municipal county and unchanged by the elimination of the municipal or county boundaries.

Source: Laws 2001, LB 142, § 4.

13-2805 Ordinances; adoption; procedure.

(1) A municipal county may adopt ordinances, and any such ordinances shall supersede those of any municipality or county consolidated into the municipal county.

(2) 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 council. When printed or published in book or pamphlet form and purporting to be published by authority of the municipal county, 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 an ordinance shall be sufficiently proved by a certificate from the council showing that the ordinance was passed and approved and when and in what newspaper the ordinance was published or when, by whom, and where the ordinance was posted. When ordinances are published in book or pamphlet form, purporting to be published by authority of the council, the same need not be otherwise published, and the book or pamphlet shall be received as evidence of the passage and legal publication of the ordinances, as of the dates mentioned in the book or pamphlet, in all courts without further proof.

Source: Laws 2001, LB 142, § 5.

13-2806 Ordinances; requirements.

(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 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 members vote to suspend this requirement.

(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 for an ordinance revising all the ordinances of the municipal county the only title necessary shall be: ''An ordinance of the municipal county of ....., revising all the ordinances of the municipal county.'' 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.

Source: Laws 2001, LB 142, § 6.

13-2807 Ordinance; form; publication; emergency.

The style of ordinances shall be: ''Be it ordained by the council of the municipal county of .....,'' and all ordinances of a general nature shall, within fifteen days after they are passed, be published in one or more newspapers in general circulation within the municipal county, or in pamphlet form, to be distributed or sold, as may be provided by ordinance. Every ordinance fixing a penalty or forfeiture for its violation shall, before the same takes effect, be published for at least one week in one or more newspapers in general circulation within the municipal county. 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 council immediately upon its first publication.

Source: Laws 2001, LB 142, § 7.

13-2808 Levy authorized; allocations.

A municipal county may levy up to one dollar per one hundred dollars of taxable value, not including bonded indebtedness. From the levy authority of the municipal county, the municipal county may allocate to miscellaneous political subdivisions as provided in section 77-3443. In no event shall the levies of the municipal county and any miscellaneous political subdivisions allocated levy authority by the municipal county total more than one dollar per one hundred dollars of taxable value on any one parcel in the municipal county, except for bonded indebtedness approved according to law, lease-purchase agreements approved prior to July 1, 1998, and judgments obtained against the municipal county or one of its predecessors which obligate the municipal county to pay the judgments to the extent not paid by liability insurance and except as provided in section 77-3444.

Source: Laws 2001, LB 142, § 8.

13-2809 Municipalities and fire protection districts within municipal county; treatment.

(1) An area within the boundaries of a municipality which remains within the boundaries of a municipal county and is not consolidated into the municipal county at the time of the formation of the municipal county shall not be considered to be part of the municipal county for any purpose. Such a municipality shall not be annexed by the municipal county, and such a municipality shall not annex any territory, for at least four years after the date of creation of the municipal county. Such a municipality shall retain:

(a) The authority to levy property taxes, not to exceed ninety cents per one hundred dollars of taxable value except as provided in sections 77-3442 and 77-3444; and

(b) All the other powers and duties applicable to a municipality of the same population with the same form of government in effect on the date of creation of the municipal county, including, but not limited to, its zoning jurisdiction and the authority to impose a tax as provided in the Local Option Revenue Act.

(2) In order to provide economical and efficient services, a municipality within the boundaries of a municipal county may annex adjacent territory within the municipal county if the municipal county consents. Consent shall be granted if the services will be provided by the municipality within the annexed territory at less cost than similar services provided by the municipal county.

(3) All fire protection districts subject to municipal county levy authority under section 77-3443 which are within the boundaries of a municipal county shall continue to exist after formation of the municipal county.

Source: Laws 2001, LB 142, § 9.

Cross References

Local Option Revenue Act, see section 77-27,148.

13-2810 Election; requirements.

(1) The powers granted by sections 13-2801 to 13-2809 shall not be exercised unless and until the question has been submitted at a primary, general, or special election held within the county or counties involved and in which registered voters within the boundaries of the proposed municipal county are entitled to vote on such question. The ballot question may combine the issues of creation of the municipal county, the merger of the county or counties and its offices, the merger of each municipality proposed to be merged, and the authorization of a local sales and use tax under section 13-2813.

(2) The officials of each county and each municipality seeking to form the municipal county shall order the submission of the question for creation by submitting a certified copy of the resolution calling for creation to the election commissioner or county clerk. The question may include any terms or conditions set forth in the resolution, such as the timing of the consolidation implementation, the number and method of election of council members, and any proposed name for the municipal county, and shall specifically state any offices to be eliminated.

(3) The election commissioner or county clerk shall give notice of the submission of the question not more than thirty days nor less than ten days before the election by publication one time in one or more newspapers published in or of general circulation within the boundaries of the proposed municipal county in which the question is to be submitted. This notice is in addition to any other notice required under the Election Act.

(4)(a) The vote shall be tabulated for (i) all those voting on the question, (ii) those voting who reside in each county and any municipality which would be consolidated into the municipal county, (iii) those voting who reside in each county but outside any municipality, and (iv) those voting who reside in each county but outside any municipality or any sanitary and improvement district.

(b) If a majority of those voting on the question, a majority of those voting who reside in at least one county to be consolidated, a majority of those voting who reside in at least one municipality which is in one county voting in favor of consolidation, a majority of those voting who reside in areas in the county to be consolidated which are outside any municipality to be consolidated, and a majority of those voting who reside in each county but outside any municipality or any sanitary and improvement district vote in favor of consolidation, the municipal county shall be deemed to be created for each county and municipality which had a majority of those voting in favor of consolidation according to

the terms of the resolution. If no date of creation is provided in the resolution, the municipal county shall be deemed to be created on the following July 1. Any county in which a majority of those voting approve the consolidation shall be deemed to be abolished, and any municipality in such county which was proposed to be consolidated and in which a majority of those voting who reside in such municipality approve the consolidation shall be deemed to be abolished.

(c) The municipal county shall not be created (i) if a majority of those voting on the question are opposed, (ii) if a majority of those voting who reside in every county to be consolidated are opposed, (iii) if a majority of those voting who reside in every municipality to be consolidated which is in a county which approved are opposed, (iv) if a majority of those voting who reside in areas in a county which approved which are outside any municipality are opposed, or (v) if a majority of those voting who reside in a county which approved but outside any municipality or sanitary and improvement district are opposed.

(5) If a municipality within the boundaries of a municipal county is not a part of the municipal county either because the governing body of the municipality did not approve the resolution seeking inclusion or because the voters of the municipality disapproved the consolidation, the municipality may later seek inclusion into an existing municipal county by passing a resolution seeking inclusion and approval by those voting at a primary, general, or special election. The officials of the municipality shall deliver a certified copy of the resolution to the appropriate officer of the municipal county proposing inclusion. If a majority of those voting in the municipality approve inclusion and a majority of the elected council members of the municipal county vote to approve inclusion of such municipality, the municipality shall be merged into the municipal county. If a majority of those voting in the municipality disapprove or a majority of the elected council members of the municipal county do not vote to approve inclusion of such municipality, it shall not be merged.

(6) Any election under this section shall be conducted in accordance with the procedures provided in the Election Act.

Source: Laws 2001, LB 142, § 10.

Cross References

Election Act, see section 32-101.

13-2811 Approval of formation of municipal county; effect.

Approval of the formation of a municipal county shall abolish all county and municipal offices at the end of the then current officeholders' terms except as provided in subsection (3) of section 13-2803 and shall terminate all townships located within the municipal county. All debt of abolished counties and municipalities consolidated into a municipal county shall remain the responsibility of the county or municipality responsible at the time consolidation is approved.

Source: Laws 2001, LB 142, § 11.

13-2812 Dissolution; procedure.

(1) A municipal county may be dissolved by submitting the question of dissolution at a primary, general, or special election held within the county or counties involved and in which all registered voters are entitled to vote on such question. The ballot question may combine the issues of dissolution of the municipal county, the division of the municipal county into the county or

counties and its offices, and the division of each merged municipality. The process of dissolving a municipal county shall begin by passage of a resolution by the council of the municipal county. The resolution may be initiated by the council or by petition as provided in subsection (2) of this section.

(2) Whenever registered voters of the municipal county, equal in number to ten percent of the total vote cast for Governor in the municipal county at the preceding election, petition the council to pass a resolution as contemplated by this section, it shall be the duty of the council to pass a resolution creating a dissolution planning commission. Petitions shall be filed with the election official. The election official shall ascertain the number of registered voters signing such petitions and transmit his or her findings, along with the petition, to the council.

(3) Within ninety days after the passage of the resolution or within ninety days after receipt of a petition by the registered voters, the council shall create a dissolution planning commission. A commission may also be created by the district court having jurisdiction over the municipal county upon the failure by the municipal county to pass a resolution after submission of a petition by the registered voters. The commission shall have no less than nine members and no more than twenty-one members representing the proposed counties and proposed municipalities to be reestablished as determined by the council in order to achieve proportionate representation. The council shall select the members. Representation on the commission shall be prorated based upon population of the proposed counties and proposed municipalities involved, except that (a) each proposed county and each proposed municipality involved shall have at least one representative selected by the council and (b) not more than forty percent of the total membership shall be public officials. Meetings of the commission shall be subject to the Open Meetings Act.

(4) The commission shall hold at least one public hearing prior to preparing the plan for the dissolution of the municipal county, study the affected area, and then make a determination of whether dissolution of a municipal county is in the public interest. If it is not in the public interest to do so, the commission shall issue a report stating its findings. If it is in the public interest to do so, the commission shall prepare one plan for the dissolution of the municipal county. Such plan shall be approved by the council prior to submission of the issue to a vote of the registered voters unless the commission was created by a petition of the registered voters. The plan shall specify (a) which counties and municipalities will be reestablished upon dissolution of the municipal county, and (b) which elected officials, if any, will be reestablished. At least ninety days prior to submission of the issue to a vote of the registered voters, the commission and the council shall hold at least one public hearing in each county and municipality proposed to be reestablished and make available for review by residents of the municipal county all material terms and conditions set forth in the resolution to dissolve the municipal county, including information regarding the tax implications and quality and cost of services to be provided by the proposed plan to dissolve the municipal county.

(5) Upon approval of the plan by the council, if required, or upon the council's approval or failure to approve if the commission was created by a petition of registered voters, the election official shall place the issue on the ballot at the next primary, general, or special election. The question may include any terms or conditions set forth in the resolution, such as the services

to be provided by the municipalities and the timing of the dissolution implementation, and shall include any offices to be reestablished.

(6) The election official shall give notice of the submission of the question not more than thirty days nor less than ten days before the election by publication one time in one or more newspapers published in or of general circulation in the municipal county in which the question is to be submitted. This notice is in addition to any other notice required under the Election Act.

(7) The vote shall be tabulated in each municipality which is proposed to be created by the dissolution separately from the areas outside the boundaries of the proposed municipalities. If a majority of those voting on the question in the area within the boundaries of any proposed municipality and the areas outside the proposed municipalities vote in favor of dissolution, the municipal county shall be deemed to be dissolved according to the terms of the resolution. If the dissolution is not approved by a majority of those voting in the election in the area within the boundaries of any proposed municipality or the areas outside the proposed municipalities, the dissolution shall be deemed rejected.

(8) Any election under this section shall be conducted in accordance with the procedures provided in the Election Act.

Source: Laws 2001, LB 142, § 12; Laws 2004, LB 821, § 7.

Cross References

Election Act, see section 32-101.
Open Meetings Act, see section 84-1407.

13-2813 Sales and use tax authorized.

(1) A municipal county by ordinance of its council may impose a sales and use tax of one-half percent, one percent, or one and one-half percent upon the same transactions within the entire municipal county on which the state is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time.

(2) A municipal county shall not impose a new sales and use tax, increase the tax, or extend the territory of an existing sales and use tax until an election is held and a majority of the registered voters as provided in section 13-2810 have approved the tax, increase, or extension. The ballot issue proposing approval of a new sales and use tax or the increase or territorial extension of an existing sales and use tax may be combined with the issue proposing creation of a municipal county.

Source: Laws 2001, LB 142, § 13.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

13-2814 Sales and use tax; administration.

(1) The Tax Commissioner shall administer all sales and use taxes adopted under section 13-2813. The Tax Commissioner may prescribe forms and adopt and promulgate rules and regulations in conformity with the Nebraska Revenue Act of 1967, as amended, for the making of returns and for the ascertainment, assessment, and collection of taxes. The council shall furnish a certified copy of the adopting or repealing resolution to the Tax Commissioner in accordance with such rules and regulations. The tax shall begin the first day of the next calendar quarter following receipt by the Tax Commissioner of the certified

copy of the adopted resolution if the certified copy of the adopted resolution is received sixty days prior to the start of the next calendar quarter.

(2) For resolutions containing a termination date, the termination date is the first day of a calendar quarter. The council shall furnish a certified statement to the Tax Commissioner no more than one hundred twenty days and at least sixty days before the termination date stating that the termination date in the resolution is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least sixty days after receipt of the certified statement notwithstanding the termination date stated in the resolution.

(3) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee.

(4) The Tax Commissioner shall collect the sales and use tax concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the municipal county imposing the tax, after deducting the amount of refunds made and three percent of the remainder as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident thereto. The Tax Commissioner shall keep full and accurate records of all money received and distributed. All receipts from the three percent administrative fee shall be deposited in the Municipal Equalization Fund.

(5) Upon any claim of illegal assessment and collection, the taxpayer has the same remedies as provided for claims of illegal assessment and collection of the state tax. It is the intention of the Legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected apply to the recovery of sales and use taxes illegally assessed and collected under section 13-2813.

Source: Laws 2001, LB 142, § 14; Laws 2003, LB 381, § 2; Laws 2005, LB 274, § 223.

Cross References

Motor Vehicle Registration Act, see section 60-301.
Nebraska Revenue Act of 1967, see section 77-2701.

13-2815 Sales and use tax proceeds; use.

The proceeds of the sales and use tax imposed by a municipal county under section 13-2813 shall be distributed to the municipal county for deposit in its general fund.

Source: Laws 2001, LB 142, § 15.

13-2816 Nebraska Revenue Act of 1967; applicability.

(1) All relevant provisions of the Nebraska Revenue Act of 1967, as amended, not inconsistent with sections 13-2813 to 13-2815, shall govern transactions, proceedings, and activities pursuant to any sales and use tax imposed by a municipal county.

(2) For purposes of the sales and use tax imposed by a municipal county, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, are consummated:

(a) At the place where title, possession, or segregation takes place, with the exception of sales or leases or rentals for more than one year of motor vehicles, trailers, semitrailers, and motorboats, if a purchaser takes possession of tangible personal property within a municipal county, which has enacted a tax under section 13-2813, regardless of the business location of the Nebraska retailer;

(b) At the point of delivery of utility services and community antenna television services or where such services are provided, with the exception that Nebraska intrastate message toll telephone and telegraph services which are consummated in the county where the customer is normally billed for such services;

(c) At the physical location of individual vending machines; and

(d) At the place designated on the application for registration for motor vehicles, trailers, semitrailers, and motorboats sold or leased or rented for more than one year.

Source: Laws 2001, LB 142, § 16.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

13-2817 Municipality; payments to municipal county; when; amount; how determined.

(1) Any municipality that is within the boundaries of a municipal county that is not merged into the municipal county shall be required to pay the municipal county for services that were previously provided by the county and are not ordinarily provided by a municipality. Except as provided in subsection (2) of this section, the amount paid shall be equal to the attributable cost of county services times a ratio, the numerator of which is the total valuation of all municipalities that are within the boundaries of the municipal county and the denominator of which is the total valuation of the municipal county and all municipalities and unconsolidated sanitary and improvement districts that are within the boundaries of the municipal county that are not merged into the municipal county, times a ratio the numerator of which is the valuation of the particular municipality and the denominator of which is the total valuation of all municipalities that are within the boundaries of the municipal county, except that (a) the amount paid shall not exceed the total taxable valuation of the municipality times forty-five hundredths of one percent and (b) the municipality shall not be required to pay the municipal county for fire protection or ambulance services.

(2) The amount paid for law enforcement by a municipality that is within the boundaries of a municipal county but is not merged into the municipal county shall be as follows: (a) If the county did not provide law enforcement services prior to the formation of the municipal county or if the municipality continues its own law enforcement services after formation of the municipal county, the total cost of services budgeted by the municipal county for law enforcement shall be the net cost of services that are the express and exclusive duties and responsibilities of the county sheriff by law times the same ratios calculated in

subsection (1) of this section; (b) if the municipality discontinues providing law enforcement services after the formation of the municipal county (i) the municipal county shall provide a level of service in such municipality that is equal to the level provided in the area or areas of the municipal county that were municipalities prior to the formation of the municipal county and (ii) the municipality shall pay the municipal county for the cost of county services for law enforcement as calculated in subsection (1) of this section, except that for the first five years, the amount shall be no more than the amount budgeted by the municipality for law enforcement services in the last year the municipality provided the services for itself; and (c) if the municipal county has deputized the police force of the municipality to perform the express and exclusive duties and responsibilities of the county sheriff by law, there shall be no amount paid to the municipal county for law enforcement services.

(3) Disputes regarding the amounts any municipality that is within the boundaries of a municipal county that is not merged into the municipal county must pay to the municipal county for services that were previously provided by the county and are not ordinarily provided by a municipality shall be heard in the district court of such municipal county.

(4) For purposes of this section and section 13-2818, attributable cost of county services means the total budgeted cost of services that were previously provided by the county for the immediately prior fiscal year times a ratio, the numerator of which is the property tax request of the municipal county or the county and all cities to be consolidated for the prior fiscal year, not including any tax for bonded indebtedness, and the denominator of which is the total of the restricted funds as defined in section 13-518 plus inheritance taxes, fees, and charges and other revenue that were budgeted for the immediately prior fiscal year by the municipal county or the county and all cities to be consolidated.

Source: Laws 2001, LB 142, § 17.

13-2818 Sanitary and improvement districts; treatment; payments to municipal county; when; amount; how determined.

(1) Sanitary and improvement districts located within a municipal county created under sections 13-2801 to 13-2819, unless consolidated into a municipal county in accordance with section 13-2819, shall be deemed to be unconsolidated sanitary and improvement districts and shall continue to exist after approval of the formation of the municipal county except as provided in this section.

(2) An unconsolidated sanitary and improvement district shall have and retain its authority to levy property taxes, and the municipal county shall have no authority to levy property taxes on the lands within an unconsolidated sanitary and improvement district other than for bonded indebtedness incurred by the county prior to creation of the municipal county. The area of the unconsolidated sanitary and improvement district shall not be considered to be within the municipal county except as provided by law.

(3) Parcels of land which are contiguous to each other and are included within the municipal county, but not included in an unconsolidated municipality, may be included in a sanitary and improvement district with the approval of the council of the municipal county.

(4) Each unconsolidated sanitary and improvement district shall pay the municipal county for services that were previously provided by the county. The amount paid shall be equal to the attributable cost of county services times a ratio, the numerator of which is the total valuation of all unconsolidated sanitary and improvement districts that are within the boundaries of the municipal county and the denominator of which is the total valuation of the municipal county and all unconsolidated sanitary and improvement districts and unconsolidated municipalities that are within the boundaries of the municipal county, times a ratio the numerator of which is the valuation of the particular unconsolidated sanitary and improvement district and the denominator of which is the total valuation of all unconsolidated sanitary and improvement districts that are within the boundaries of the municipal county, except that the amount paid shall not exceed the total taxable valuation of the unconsolidated sanitary and improvement district times forty-five hundredths of one percent. Any disputes arising under this subsection shall be heard in the district court of such municipal county.

(5) Unless the unconsolidated sanitary and improvement district is located wholly within the extraterritorial zoning jurisdiction of an unconsolidated municipality, an unconsolidated sanitary and improvement district shall be deemed to be within the zoning jurisdiction of the municipal county.

(6) Any municipal county sales and use tax that has been approved under section 13-2813 shall be imposed upon transactions within the entire municipal county, including all unconsolidated sanitary and improvement districts.

Source: Laws 2001, LB 142, § 18.

13-2819 Sanitary and improvement district; consolidated with municipal county; procedure.

A municipal county may by ordinance cause any unconsolidated sanitary and improvement district located (1) within the extraterritorial zoning jurisdiction of an unconsolidated municipality with the consent of the governing body of the unconsolidated municipality, or (2) within any portion of the municipal county, to be consolidated, in whole or part, into the municipal county, and thereafter the municipal county shall succeed to the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the sanitary and improvement district, and the municipal county shall be liable for and recognize, assume, and carry out the valid contracts and obligations of the district. Any such consolidation, in whole or in part, shall be accomplished by the municipal county and the sanitary and improvement district in accordance with sections 31-763 to 31-766, and other applicable law, as if the municipal county were a city and the consolidation were an annexation or partial annexation.

Source: Laws 2001, LB 142, § 19.

CHAPTER 14
CITIES OF THE METROPOLITAN CLASS

Article.

Cross References

Constitutional provisions:

Charter, adoption and amendment, see Article XI, sections 2 to 5, Constitution of Nebraska.
Charter, home rule, see Article XI, section 5, Constitution of Nebraska.
City property, exemption from taxation, see Article VIII, section 2, Constitution of Nebraska.
Corporate debts of municipal corporations, private property not liable for, see Article VIII, section 7, Constitution of Nebraska.
Industrial and economic development, see Article XIII, section 2, Constitution of Nebraska.

ARTICLE 1
GENERAL POWERS

Section

14-101 Cities of the metropolitan class, defined; population required; general powers.

All cities in this state which have attained a population of three hundred thousand inhabitants or more shall be cities of the metropolitan class and governed by this act. Whenever the words this act occur in sections 14-101 to 14-138, 14-201 to 14-229, 14-360 to 14-376, 14-501 to 14-556, 14-601 to 14-609, 14-702 to 14-704, and 14-804 to 14-816, they shall be construed as referring exclusively to those sections. The population of a city of the metropolitan 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. Each city of the metropolitan 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, acquire by gift or devise, and hold real and personal property within or without the limits of the city for the use of the city, and real estate sold for taxes, (3) to sell, exchange, lease, and convey any real or personal estate owned by the city, in such manner and upon such terms as may be to the best interests of the city, except that real estate acquired for state armory sites shall be conveyed strictly in the manner 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 or administrative powers, and (5) to exercise such other and further powers as may be conferred by law. The powers hereby granted shall be exercised by the mayor and council of such city, as hereinafter set forth, except when otherwise specially provided.

Source: Laws 1921, c. 116, art. I, § 1, p. 398; C.S.1922, § 3488; C.S.1929, § 14-101; Laws 1935, Spec. Sess., c. 10, § 2, p. 72; Laws 1941, c. 130, § 8, p. 494; C.S.Supp.,1941, § 14-101; R.S.1943, § 14-101; Laws 1947, c. 50, § 1, p. 170; Laws 1961, c. 58, § 1, p. 215; Laws 1963, c. 43, § 1, p. 218; Laws 1965, c. 85, § 1, p. 327; Laws 1967, c. 40, § 1, p. 170; Laws 1993, LB 726, § 3.

1. Home Rule Charter
2. Powers
3. Miscellaneous

1. Home Rule Charter

The chapter of which this section is the beginning section was adopted in toto in 1922 as the Omaha home rule charter. Ash v. City of Omaha, 152 Neb. 393, 41 N.W.2d 386 (1950).

This chapter includes legislative act adopted as home rule charter of Omaha. Reid v. City of Omaha, 150 Neb. 286, 34 N.W.2d 375 (1948).

City of Omaha became, on July 18, 1922, a home rule city by adopting the existing charter governing it as its home rule charter. Carlberg v. Metcalfe, 120 Neb. 481, 234 N.W. 87 (1930).

2. Powers

Under this section and section 14-102, a city of the metropolitan class has the power to provide firefighting services to an airport authority. Professional Firefighters of Omaha v. City of Omaha, 243 Neb. 166, 498 N.W.2d 325 (1993).

The Legislature has impliedly empowered the City of Omaha to obtain a decree in equity abating a public nuisance without proving special damage to city. City of Omaha v. Danner, 186 Neb. 701, 185 N.W.2d 869 (1971).

This section recognizes that metropolitan cities have powers provided by law in addition to those prescribed by charter, and levy may be made to pay judgments when amount of revenue to be derived from maximum levy for general municipal purposes is insufficient. Benner v. County Board of Douglas County, 121 Neb. 773, 238 N.W. 735 (1931).

City has no implied power to license or regulate business of constructing artificial stone walks. Gray v. City of Omaha, 80 Neb. 526, 114 N.W. 600 (1908), 14 L.R.A.N.S. 1033 (1908).

Title to act of 1905 was broad enough to cover all subjects of legislation contained in act, and was sustained as constitutional. Cathers v. Hennings, 76 Neb. 295, 107 N.W. 586 (1906).

Constitutionality of 1897 act sustained incorporating cities of metropolitan class. State ex rel. Wheeler v. Stuht, 52 Neb. 209, 71 N.W. 941 (1897).

3. Miscellaneous

Courts should not interfere with enforcement of ordinance unless its unreasonableness, or want of necessity for such measure, is shown by satisfactory evidence. State ex rel. Krittenbrink v. Withnell, 91 Neb. 101, 135 N.W. 376 (1912), 40 L.R.A.N.S. 898 (1912).

City warrant is not invalidated by recital that it is to be paid out of special unauthorized fund or fund which city negligently fails to provide. Rogers v. City of Omaha, 82 Neb. 118, 117 N.W. 119 (1908).

Act incorporating a city must be accepted as a whole, and the city accepting benefits derived therefrom must perform the duties required by law. City of Omaha v. Olmstead, 5 Neb. 446 (1877).

Nebraska private citizens cannot maintain action under Clayton Act for alleged injury to municipality arising from alleged Sherman Act violations. Cosentino v. Carver-Greenfield Corp., 433 F.2d 1274 (8th Cir. 1970).

14-102 Additional powers.

In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

(1) To levy any tax or special assessment authorized by law;

Corporate seal.

(2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties under

this act or under any ordinance require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings as this act or the ordinances of the city require;

Regulation of public health.

(3) To provide all needful rules and regulations for the protection and preservation of health within the city; and for this purpose they may provide for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

Appropriations for debts and expenses.

(4) To appropriate money and provide for the payment of debts and expenses of the city;

Protection of strangers and travelers.

(5) To adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property;

Concealed weapons, firearms, fireworks, explosives.

(6) To punish and prevent the carrying of concealed weapons and the discharge of firearms, fireworks, or explosives of any description within the city;

Sale of foodstuffs.

(7) To regulate the inspection and sale of meats, flour, poultry, fish, milk, vegetables, and all other provisions or articles of food exposed or offered for sale in the city;

Official bonds.

(8) To require all officers or servants elected or appointed in pursuance of this act to give bond and security for the faithful performance of their duties; but no officer shall become security upon the official bond of another or upon any bond executed to the city;

Official reports of city officers.

(9) To require from any officer of the city at any time a report, in detail, of the transactions of his or her office or any matter connected therewith;

Cruelty to children and animals.

(10) To provide for the prevention of cruelty to children and animals;

Dogs; taxes and restrictions.

(11) To regulate, license, or prohibit the running at large of dogs and other animals within the city as well as in areas within three miles of the corporate limits of the city, to guard against injuries or annoyance from such dogs and other animals, and to authorize the destruction of the dogs and other animals when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for dog guides, hearing aid dogs, and service dogs;

Cleaning sidewalks.

(12) To provide for keeping sidewalks clean and free from obstructions and accumulations, to provide for the assessment and collection of taxes on real

estate and for the sale and conveyance thereof, and to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as herein provided;

Planting and trimming of trees; protection of birds.

(13) To provide for the planting and protection of shade or ornamental and useful trees upon the streets or boulevards, to assess the cost thereof to the extent of benefits upon the abutting property as a special assessment, and to provide for the protection of birds and animals and their nests; to provide for the trimming of trees located upon the streets and boulevards or when the branches of trees overhang the streets and boulevards when in the judgment of the mayor and council such trimming is made necessary to properly light such street or boulevard or to furnish proper police protection and to assess the cost thereof upon the abutting property as a special assessment;

Naming and numbering streets and houses.

(14) To provide for, regulate, and require the numbering or renumbering of houses along public streets or avenues; to care for and control and to name and rename streets, avenues, parks, and squares within the city;

Weeds.

(15) To require weeds and worthless vegetation growing upon any lot or piece of ground within the city to be cut and destroyed so as to abate any nuisance occasioned thereby, to prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city and to require the removal thereof so as to abate any nuisance occasioned thereby, and if the owner fails to cut and destroy weeds and worthless vegetation or remove litter, or both, after notice as required by ordinance, to assess the cost thereof upon the lots or lands as a special assessment. The notice required to be given may be by publication in the official newspaper of the city and may be directed in general terms to the owners of lots and lands affected without naming such owners;

Animals running at large.

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits and provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition; and to provide for the forfeiture and sale of animals impounded to pay the expense of taking up, caring for, and selling such impounded animals, including the cost of advertising and fees of officers;

Use of streets.

(17) To regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to regulate the width of wagon tires and tires of other vehicles;

Playing on streets and sidewalks.

(18) To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks or to frighten teams or horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city;

Combustibles and explosives.

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

Public sale of chattels on streets.

(20) To 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 ground within the city;

Signs and obstruction in streets.

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition or carrying or conveying of banners, placards, advertisements, or the distribution or posting of advertisements or handbills in the streets or public grounds or upon the sidewalks;

Disorderly conduct.

(22) To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places or otherwise violating the public peace by indecent or disorderly conduct or by lewd and lascivious behavior;

Vagrants and tramps.

(23) To provide for the punishment of vagrants, tramps, common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, or 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; and to punish trespassers upon private property;

Disorderly houses, gambling, offenses against public morals.

(24) To prohibit, restrain, and suppress tippling shops, houses of prostitution, opium joints, gambling houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling and desecration of the Sabbath, commonly called Sunday, and all kinds of indecencies; to regulate and license or prohibit the keeping and use of billiard tables, ten pins or ball alleys, shooting galleries, and other similar places of amusement; and to prohibit and suppress all lotteries and gift enterprises of all kinds under whatsoever name carried on, except that nothing in this subdivision 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;

Police regulation in general.

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens thereof in addition to the police powers expressly granted herein; and in the exercise of the police power, to pass all needful and proper ordinances and impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof; and in default of payment to 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;

Fast driving on streets.

(26) To prevent horseracing and immoderate driving or riding on the street and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets;

Libraries, art galleries, and museums.

(27) To establish and maintain public libraries, reading rooms, art galleries, and museums and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity, and instruction therefor; to receive donations and bequests of money or property for the same in trust or otherwise and to pass necessary bylaws and regulations for the protection and government of the same;

Hospitals, workhouses, jails, firehouses, etc.; garbage disposal.

(28) To erect, designate, establish, maintain, and regulate hospitals or workhouses, houses of correction, jails, station houses, fire engine houses, asphalt repair plants, and other necessary buildings; and to erect, designate, establish, maintain, and regulate plants for the removal, disposal, or recycling of garbage and refuse or to make contracts for garbage and refuse removal, disposal, or recycling, or all of the same, and to charge equitable fees for such removal, disposal, or recycling, or all of the same, except as hereinafter provided. The fees collected pursuant to this subdivision shall be credited to a single fund to be used exclusively by the city for the removal, disposal, or recycling of garbage and refuse, or all of the same, including any costs incurred for collecting the fee. Before any contract for such removal, disposal, or recycling is let, the city council shall make specifications therefor, bids shall be advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in this act, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage or refuse accumulates as a byproduct from selling, recycling, or otherwise disposing of his, her, or its garbage or refuse or hauling such garbage or refuse through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage or refuse;

Market places.

(29) To erect and establish market houses and market places and to 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; and such market houses and market places and buildings aforesaid may be located on any street, alley, or public ground or on land purchased for such purpose;

Cemeteries, registers of births and deaths.

(30) To prohibit the establishment of additional cemeteries within the limits of the city, to regulate the registration of births and deaths, to direct the keeping and returning of bills of mortality, and to impose penalties on physicians, sextons, and others for any default in the premises;

Plumbing, etc., inspection.

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plumbings, to regulate their erection and construction, to appoint inspectors, and to declare their powers and duties, except as herein otherwise provided;

Fire limits and fire protection.

(32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation or concerning any particular lot or building; to direct that all and any building within such fire limits, when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors therein and thereon, and to provide for the inspection of elevators and hoist-way openings to avoid accidents; to prescribe, regulate, and provide for the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory and to cause the same to be removed or placed in safe condition when they are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, or imperfectly burned brick or other unsuitable building material within the city limits and provide for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults and to regulate partition fences; to enforce proper heating and ventila-

tion of buildings used for schools, workhouses, or shops of every class in which labor is employed or large numbers of persons are liable to congregate;

Warehouses and street railways.

(34) To regulate levees, depots and depot grounds, and places for storing freight and goods and to provide for and regulate the laying of tracks and the passage of steam or other railways through the streets, alleys, and public grounds of the city;

Lighting railroad property.

(35) To require the lighting of any railway within the city, the cars of which are propelled by steam, and to fix and determine the number, size, and style of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location for such lampposts; and in case any company owning or operating such railways shall fail to comply with such requirements, the council 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 and may be collected in the same manner as taxes for general purposes;

City publicity.

(36) To provide for necessary publicity and to appropriate money for the purpose of advertising the resources and advantages of the city;

Offstreet parking.

(37) To erect, establish, and maintain offstreet parking areas on publicly owned property located beneath any elevated segment of the National System of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 12, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities, and to regulate parking thereon by time limitation devises or by lease;

Public passenger transportation systems.

(38) To acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, operate, or contract for the operation of public passenger transportation systems, excluding taxicabs and 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 of Nebraska 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 city of the metropolitan class shall acquire under the provisions of this act, and to exercise such other and further powers as may be necessary, incident, or appropriate to the powers of such city; and

Regulation of air quality.

(39) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, to implement and enforce an air pollution control program within the corporate limits of the city under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

Source: Laws 1921, c. 116, art. I, § 2, p. 398; C.S.1922, § 3489; C.S.1929, § 14-102; R.S.1943, § 14-102; Laws 1963, c. 314, § 1, p. 945; Laws 1971, LB 237, § 1; Laws 1972, LB 1274, § 1; Laws 1974, LB 768, § 1; Laws 1981, LB 501, § 1; Laws 1986, LB 1027, § 186; Laws 1991, LB 356, § 1; Laws 1991, LB 849, § 59; Laws 1992, LB 1257, § 63; Laws 1993, LB 138, § 61; Laws 1993, LB 623, § 1; Laws 1997, LB 814, § 2; Laws 1999, LB 87, § 59.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
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.
"This act", defined, see section 14-101.

1. Use of streets

This section does not deprive the State Railway Commission of jurisdiction over the regulation of taxicabs in a metropolitan city. In re Yellow Cab & Baggage Company, 126 Neb. 138, 253 N.W. 80 (1934).

A metropolitan city may impose a tax for use of streets upon a ''rolling store'' as a means of regulating transportation through its streets. Erwin v. City of Omaha, 118 Neb. 331, 224 N.W. 692 (1929).

City has authority to regulate the use of autobuses upon its streets. Omaha & C. B. Street Ry. Co. v. City of Omaha, 114 Neb. 483, 208 N.W. 123 (1926).

City cannot authorize construction in a public street of a canopy that deprives abutting property owner of light, air or view. World Realty Co. v. City of Omaha, 113 Neb. 396, 203 N.W. 574 (1925).

City may regulate housemoving upon its streets, and can compel street railway to pay expense of removal of wires so houses can be moved. State ex rel. Barnum v. Omaha & C. B. Street Ry. Co., 100 Neb. 716, 161 N.W. 170 (1916).

An ordinance prohibiting distribution of dodgers, handbills or circulars upon streets, alleys or sidewalks or public grounds of the city does not violate state Constitution. In re Anderson, 69 Neb. 686, 96 N.W. 149 (1903).

City could not prohibit transportation of munitions by interstate motor carrier. Watson Bros. Transp. Co. v. City of Omaha, 132 F. Supp. 6 (D. Neb. 1955).

2. Health and safety

City is authorized to provide for detention of persons infected with communicable venereal disease. Brown v. Manning, 103 Neb. 540, 172 N.W. 522 (1919).

City cannot arbitrarily classify ashes, manure, or other rubbish having some value as garbage, and grant an exclusive contract for removal. Iler v. Ross, 64 Neb. 710, 90 N.W. 869 (1902).

Authority is conferred to license and regulate the production and sale of milk within the corporate limits, and a reasonable license fee may be exacted. Littlefield v. State, 42 Neb. 223, 60 N.W. 724 (1894).

City can make exclusive contract with party for removing garbage and other noxious and unwholesome matter amounting to nuisances. Smiley v. MacDonald, 42 Neb. 5, 60 N.W. 355 (1894).

3. Occupations

Metropolitan city was authorized to enact ordinance prohibiting sale or exchange of motor vehicles and keeping open a place of business for that purpose on Sunday. Stewart Motor Co. v. City of Omaha, 120 Neb. 776, 235 N.W. 332 (1931).

City ordinance requiring closing grocery and meat markets on Sunday is valid. State v. Somberg, 113 Neb. 761, 204 N.W. 788 (1925).

4. Miscellaneous

Under section 14-101 and this section, a city of the metropolitan class has the power to provide firefighting services to an airport authority. Professional Firefighters of Omaha v. City of Omaha, 243 Neb. 166, 498 N.W.2d 325 (1993).

Public officials of cities of the metropolitan class are vested with the power to provide for keeping sidewalks clean and free from obstructions and accumulation. Hartford v. Womens Services, P.C., 239 Neb. 540, 477 N.W.2d 161 (1991).

Under subsection (25) of this section, zoning ordinances enacted by a city, as a lawful exercise of police power, must be consistent with public health, safety, morals, and the general welfare. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

Ordinance regulating advertising signs held not unreasonable or discriminatory. Schaffer v. City of Omaha, 197 Neb. 328, 248 N.W.2d 764 (1977).

This section discussed in connection with expenditure of municipal or county funds, for public purpose, through private agency. Chase v. County of Douglas, 195 Neb. 838, 241 N.W.2d 334 (1976).

City empowered hereunder to require bonds of police officers, and recovery may be had thereon by persons injured as result of negligent acts of policeman in discharge of municipal duties, although bond runs to city as obligee. Curnyn v. Kinney, 119 Neb. 478, 229 N.W. 894 (1930).

Mayor and city council are given ample power to make and enforce regulations for the good government, general welfare, health, safety, and security of the city and citizens thereof. State ex rel. Thompson v. Donahue, 91 Neb. 311, 135 N.W. 1030 (1912).

Metropolitan city may enact ordinance forbidding construction of brick kilns within city. State ex rel. Krittenbrink v. Withnell, 91 Neb. 101, 135 N.W. 376 (1912), 40 L.R.A.N.S. 898 (1912).

City is not liable in negligence action on account of original construction of viaduct where plan designed by competent engineers was carried out. Watters v. City of Omaha, 86 Neb. 722, 126 N.W. 308 (1910); Watters v. City of Omaha, 76 Neb. 855, 107 N.W. 1007 (1906), affirmed on rehearing 76 Neb. 859, 110 N.W. 981 (1907).

Power to establish fire-engine houses, under this section, together with section conferring power to issue bonds for construction and purchase of needful buildings for use of the city, conferred authority upon metropolitan city to issue bonds to pay cost of construction of fire-engine houses. Linn v. City of Omaha, 76 Neb. 552, 107 N.W. 983 (1906).

Unless reasonable notice is given to owner to perform work, all proceedings and assessments by city are void. Shannon v. City of Omaha, 72 Neb. 281, 100 N.W. 298 (1904); Albers v. City of Omaha, 56 Neb. 357, 76 N.W. 911 (1898).

City was not liable for acts of building inspector. Murray v. City of Omaha, 66 Neb. 279, 92 N.W. 299 (1902).

Charter granting power to impound animals running at large is not in conflict with state herd law which is not applicable to cultivated lands within limits of cities. Lingonner v. Ambler, 44 Neb. 316, 62 N.W. 486 (1895).

14-102.01 Cities of the metropolitan class; ordinances, bylaws, rules, regulations, and resolutions; powers.

A city of the metropolitan 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 for preserving order, securing persons or property from violence, danger, and destruction, for protecting public and private property, for promoting the public health, safety, convenience, comfort, morals, and general interests, and welfare of the inhabitants of the city.

Source: Laws 1967, c. 40, § 2, p. 171.

Under this section the city of Omaha is given power by the State of Nebraska to enact ordinances relating to the safety and security of its citizens and to impose fines, forfeitures, penalties, and imprisonment for violation thereof. State v. Belitz, 203 Neb. 375, 278 N.W.2d 769 (1979).

The Legislature has impliedly empowered the city of Omaha to obtain a decree in equity abating a public nuisance without proving special damage to city. City of Omaha v. Danner, 186 Neb. 701, 185 N.W.2d 869 (1971).

14-102.02 Fire and police departments; rules and regulations; adoption; duty of city council.

All powers and duties connected with and incident to the appointment, removal, government, and discipline of the officers and members of the fire and police departments of any metropolitan city in the State of Nebraska, under such rules and regulations as may be adopted by the city council, shall be vested in and exercised by said council. Rules and regulations for the guidance of the officers and men of said departments, and for the appointment, promotion, removal, trial or discipline of said officers, men and matrons, shall be such as the council shall consider proper and necessary.

Source: Laws 1921, c. 116, art. VI, § 1, p. 504; C.S.1922, § 3701; C.S.1929, § 14-701; R.S.1943, § 14-701; Laws 1961, c. 30, § 8, p. 150; R.S.1943, (1983), § 14-701.

Under this and other sections in this article, firemen are officers and come under workmen's compensation law, even though receiving pension from city. Shandy v. City of Omaha, 127 Neb. 406, 255 N.W. 477 (1934).

14-103 City council; powers; health regulation; jurisdiction.

The council shall have power to define, regulate, suppress and prevent nuisances. The council may create a board of health in cases of a general epidemic or may cooperate with the boards of health provided by the laws of this state. The council may provide rules and regulations for the care, treatment, regulation, and prevention of all contagious and infectious diseases, for the regulation of all hospitals, dispensaries, and places for the treatment of the sick, for the sale of dangerous drugs, for the regulation of cemeteries and the burial of the dead. The jurisdiction of the council in enforcing the foregoing regulations shall extend over such city and over all grounds and property within three miles thereof.

Source: Laws 1921, c. 116, art. I, § 3, p. 406; C.S.1922, § 3490; C.S.1929, § 14-103.

The Legislature has impliedly empowered the city of Omaha to obtain a decree in equity abating a public nuisance without proving special damage to city. City of Omaha v. Danner, 186 Neb. 701, 185 N.W.2d 869 (1971).

14-104 City council; powers; bridges; construction; licensing and regulation of toll bridges; jurisdiction.

The council shall have power to construct any bridge declared by ordinance necessary and proper for the passage of railway trains, street cars, motor trains, teams and pedestrians across any stream either adjacent to or wholly within any city of the metropolitan class at any point on such stream or within two miles from the corporate limits of such city, with such conditions and regulations concerning the use of such bridge as may be deemed proper. It shall have power to license and regulate the keeping of toll bridges within or terminating within the city for the passage of persons, teams, 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 1921, c. 116, art. I, § 4, p. 407; C.S.1922, § 3491; C.S.1929, § 14-104.

14-105 City council; powers; drainage of lots; duty of owner; assessment of cost.

The council shall have power to require any and all lots or pieces of ground within the city to be drained, filled or graded, and upon the failure of the owners of such lots or pieces of ground to comply with such requirements, after thirty days' notice in writing, the council may cause the same to be drained, filled or graded, and the cost and expense thereof shall be levied upon the property so filled, drained or graded and shall be equalized, assessed, and collected as other special assessments.

Source: Laws 1921, c. 116, art. I, § 5, p. 407; C.S.1922, § 3492; C.S.1929, § 14-105.

Owner of lot must have been requested to fill lot and failed to comply before cost of drainage can be assessed against lot. If nuisance is caused by negligence of city in grading, cost of filling or drainage cannot be assessed against the lot. Lasbury v. McCague, 56 Neb. 220, 76 N.W. 862 (1898).

This section in charter of 1887, authorizing cost of filling and draining to be assessed where nuisance existed, was held constitutional, and a valid exercise of police power. Horbach v. City of Omaha, 54 Neb. 83, 74 N.W. 434 (1898).

It is within police power of state to authorize a municipal corporation to fill lots within its limits so as to prevent stagnant water thereon and to assess cost against lots so filled. Patrick v. City of Omaha, 1 Neb. Unof. 250, 95 N.W. 477 (1901).

14-106 City council; powers; regulation of utilities; rates.

The council shall have the power to regulate and provide for the lighting of streets, laying down gas and other pipes, and erection of lampposts, electric towers or other apparatus; to regulate the sale and use of gas and electric lights, and fix and determine from time to time the price of gas, the charge of electric lights and power, and the rents of gas meters within the city, when not furnished by public authority, and regulate the inspection thereof; to prohibit or regulate the erection of telegraph, telephone or electric wire poles or other poles for whatsoever purpose desired or used in the public grounds, streets or alleys, and the placing of wires thereon; and to require the removal from the public grounds, streets or alleys, of any or all such poles, and require the removal and placing under ground of any or all telegraph, telephone or electric wires.

Source: Laws 1921, c. 116, art. I, § 6, p. 407; C.S.1922, § 3493; C.S.1929, § 14-106.

Proper for city to grant permits for defendant's private use of streets. Dunmar Inv. Co. v. Northern Nat. Gas Co., 185 Neb. 400, 176 N.W.2d 4 (1970).

Under power conferred by this section, city could grant franchise for distribution of electric current for power and heating purposes as well as lighting purposes. Old Colony Trust Co. v. City of Omaha, 230 U.S. 100 (1913).

Mayor and council were authorized to grant a franchise for twenty-five years to furnish gas at a fixed rate. Omaha Gas Co. v. City of Omaha, 249 F. 350 (D. Neb. 1914).

14-107 City council; powers; public utility plants, subways, landing fields; construction and maintenance; rates and charges.

The city council may erect, construct, purchase, maintain and operate subways or conduits, waterworks, gas works, electric light and power plants, and provide and equip aerial landing fields, and may determine, fix and charge rentals for subways and conduits and fix rates to be charged by such enterprises, except as otherwise provided by general law. As to all the activities authorized in this section, the council may adopt all needful and proper rules and regulations and enforce the same, in connection with the operation of any such enterprises.

Source: Laws 1921, c. 116, art. I, § 7, p. 408; C.S.1922, § 3494; C.S.1929, § 14-107.

Proper for city to grant permits for defendant's private use of streets. Dunmar Inv. Co. v. Northern Nat. Gas Co., 185 Neb. 400, 176 N.W.2d 4 (1970).

Mayor and council were authorized to grant a franchise for twenty-five years to furnish gas at a fixed rate. Omaha Gas Co. v. City of Omaha, 249 F. 350 (D. Neb. 1914).

14-108 City council; powers; utilities; contracts; terms; limitation.

The council shall have power by ordinance to contract with any competent party for the supplying and furnishing of electric light, electric heat or power, or other similar service for the use of the city on its streets and public places. The ordinance shall contain specifically the rates, terms and conditions upon which the same may and shall be supplied and furnished during the period named in the ordinance or contract. Any such contract exceeding the term of forty years shall be void.

Source: Laws 1921, c. 116, art. I, § 8, p. 408; C.S.1922, § 3495; C.S.1929, § 14-108; R.S.1943, § 14-108; Laws 1967, c. 41, § 1, p. 172.

14-109 City council; powers; occupation and license taxes; wheel tax; conditions; limitations.

The council shall have power to tax for revenue, license, and regulate pawnbrokers, peddlers, auctioneers, brokers, hawkers, commission merchants, showmen, jugglers, innkeepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express companies and vendors of patents. Such tax may include both a tax for revenue and license. If the applicant is an individual, an application for a license shall include the applicant's social security number. The city council shall have power to raise revenue by levying and collecting a tax on any occupation or business within the limits of the city and regulate the 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 taxation, as well as concerts and all other musical entertainments given exclusively by the citizens of the city. It shall be the duty of the city clerk to deliver to the city treasurer the certified copy of the ordinance levying such tax, and the city clerk shall append thereto a warrant requiring the city treasurer to collect such tax. The city council shall also have power to require any person, firm, or corporation owning or using any vehicle in a city of the metropolitan class annually to register such vehicle in such manner as may be provided and to require such person to pay an annual registration fee therefor and to require the payment of registration fees upon the change of ownership of such vehicle. All registration fees which may be thus provided for shall be credited to a separate fund of the city, thereby created, to be used exclusively for the repairing of streets in such city. No registration fee shall be required where a vehicle is used but temporarily in such city for a period of not more than one week.

Source: Laws 1921, c. 116, art. I, § 9, p. 408; C.S.1922, § 3496; C.S.1929, § 14-109; R.S.1943, § 14-109; Laws 1997, LB 752, § 73.

Statute does not deprive State Railway Commission of jurisdiction to control operation of taxicab companies in city of Omaha. In re Yellow Cab and Baggage Co., 126 Neb. 138, 253 N.W. 80 (1934).

City may, by ordinance, define ''peddlers'' and include in such term a ''rolling store'', and impose a permit fee and occupation tax. Erwin v. City of Omaha, 118 Neb. 331, 224 N.W. 692 (1929).

The municipal year may be declared coextensive with the fiscal year. Johnson v. Leidy, 86 Neb. 818, 126 N.W. 514 (1910).

License tax cannot be exacted from persons, the regulation of whose compensation is not permitted, and the attempt to tax vehicles rented out by the month is not authorized by this section. McCauley v. State, 83 Neb. 431, 119 N.W. 675 (1909).

An ordinance imposing an occupation tax is void if it can only be enforced by illegal methods. City of Omaha v. Harmon, 58 Neb. 339, 78 N.W. 623 (1899).

14-110 City council; supplemental powers; authorized.

If the manner of exercising any power conferred upon the city council is not prescribed, the council may provide by ordinance therefor.

Source: Laws 1921, c. 116, art. I, § 10, p. 409; C.S.1922, § 3947; C.S.1929, § 14-110.

Right to levy taxes having been conferred on municipal authorities, they have power to supply the details necessary to full exercise of such right. Chicago & N. W. Ry. Co. v. Bauman, 132 Neb. 67, 271 N.W. 256 (1937).

This section does not deprive State Railway Commission of jurisdiction to control operation of taxicab companies in city of Omaha. In re Yellow Cab & Baggage Co., 126 Neb. 138, 253 N.W. 80 (1934).

City may provide for notice to property owners of a hearing of claims for damages arising from grading of a street. Burkley v. City of Omaha, 102 Neb. 308, 167 N.W. 72 (1918).

In absence of constitutional or statutory restrictions upon its power, city may prescribe by ordinance means of acquiring jurisdiction of a certain subject. Ives v. Irey, 51 Neb. 136, 70 N.W. 961 (1897).

City has only such powers as are expressly conferred upon it by statute, or as are necessary to carry into effect some enumerated power. State ex rel. Ransom v. Irey, 42 Neb. 186, 60 N.W. 601 (1894).

14-111 City council; powers; city property and finances.

The council shall have the care, management and control of the city, its property and finances, and shall have power to pass, amend or repeal any and all ordinances necessary or proper to execute or carry into effect any of the provisions of this act, or any of the powers herein granted, except as otherwise provided herein.

Source: Laws 1921, c. 116, art. I, § 11, p. 409; C.S.1922, § 3498; C.S. 1929, § 14-111.

Cross References

"This act", defined, see section 14-101.

An ordinance, providing that it shall be unlawful to erect a gas reservoir without written consent of all property owners within radius of one thousand feet, is void. State ex rel. Omaha Gas Co. v. Withnell, 78 Neb. 33, 110 N.W. 680 (1907).

14-112 City council; powers; public comfort stations.

In each city of the metropolitan class, the city shall have power by ordinance to erect, establish and maintain public comfort stations. It may locate such public comfort stations on any street, alley, public grounds, or on any lands acquired for such purpose.

Source: Laws 1921, c. 116, art. I, § 12, p. 409; C.S.1922, § 3499; C.S. 1929, § 14-112.

14-113 City council; powers; armory; establishment; lease to state authorized.

In each city of the metropolitan class the city council shall have power by ordinance to erect, establish and maintain an armory in said city, and may rent or lease such armory to the State of Nebraska for the purpose of housing the National Guard and State Guard of the state, or any unit thereof, under such terms and conditions as it may deem proper.

Source: Laws 1921, c. 116, art. I, § 12 ½, p. 410; C.S.1922, § 3500; C.S.1929, § 14-113; Laws 1935, Spec. Sess., c. 10, § 3, p. 73; Laws 1941, c. 130, § 9, p. 495; C.S.Supp.,1941, § 14-113; R.S. 1943, § 14-113; Laws 1972, LB 1046, § 1.

14-114 City council; powers; municipal coal yard; establishment; operation; limitation.

In each city of the metropolitan class, the council shall have power to establish, conduct and maintain a municipal coal yard, and for that purpose it may engage in the general business of buying and selling coal; *Provided, however*, that such city shall not sell coal to any but inhabitants thereof, nor charge for coal sold by it more than the cost thereof to the city, plus the cost of handling the same.

Source: Laws 1921, c. 116, art. I, § 13, p. 410; C.S.1922, § 3501; C.S. 1929, § 14-114.

Metropolitan cities have been granted the power to maintain municipal coal yards, disclosing the legislative view that it is for a public purpose. Consumers Coal Co. v. City of Lincoln, 109 Neb. 51, 189 N.W. 643 (1922).

14-115 Real estate; subdividing; procedure; conditions; replatting; powers of city council; vacation of street or alley; effect.

No owner of real estate within the corporate limits of such city shall be permitted to subdivide the real estate into blocks and lots, or parcels, without

first having obtained from the city engineer a plat or plan for the avenues, streets, and alleys to be laid out within or across the same and, when applicable, having complied with sections 39-1311 to 39-1311.05. A copy of such plat must be filed in the office of the city clerk for at least two weeks before such plat can be approved. Public notice must be given for two weeks of the filing of the plat, and such plat, if ordered by the council, shall be made so that such avenues, streets, and alleys so far as practicable, shall correspond in width, name, and direction and be continuous of the avenues, streets, and alleys in the city contiguous to or near the real estate to be subdivided. The council shall have power to compel the owner of such real estate, in subdividing the same, to lay out and dedicate to the public the avenues, streets, and alleys, to be within or across such real estate in accordance with the plat. It shall further have the power to prohibit the selling or offering for sale of any lots or parts of such real estate not subdivided and platted as herein required. It shall also have power to establish the grade of all such streets and alleys and to require the same to be graded to such established grade before selling or offering for sale any of the lots or parts of the real estate. Any and all additions to be made to the city shall be made so far as the same relates to the avenues, streets, and alleys therein, under and in accordance with the foregoing provisions. Whenever the owners of all the lots and lands, except streets and alleys, embraced and included in any existing plat or subdivision shall desire to vacate the plat or subdivision for the purpose of replatting the land embraced in the plat or subdivision, and shall present a petition praying for such vacation to the city council, and submit therewith for the approval of the city council a proposed replat of the same, which shall in all things be in conformity with the requirements of this section, the city council may, by concurrent resolution, declare the existing plat and the streets and alleys therein vacated and approve the proposed replat. Thereupon the existing plat or subdivision shall be vacated and the land comprised within the streets and alleys so vacated shall revert to and the title thereto vest in the owners of the abutting property and become a part of such property, each owner taking title to the centerline of the vacated street or alley adjacent to his or her property. When a portion of a street or alley 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. It shall require a two-thirds vote of all the members of the city council to adopt such resolution. Upon the vacation of any plat as aforesaid, it shall be the duty of the owners petitioning for same to cause to be recorded in the office of the register of deeds and county assessor of the county a duly certified copy of the petition, the action of the council therein, and the resolution vacating the plat.

Source: Laws 1921, c. 116, art. I, § 14, p. 410; C.S.1922, § 3502; C.S. 1929, § 14-115; R.S.1943, § 14-115; Laws 1969, c. 58, § 1, p. 362; Laws 1974, LB 757, § 1; Laws 2003, LB 187, § 1.

Dedication and plat of addition operated to ratify and confirm a preexisting title of city in certain streets as shown on plat. McCague v. Miller, 55 Neb. 762, 76 N.W. 422 (1898).

Acknowledgment and recording of plat is equivalent to a deed in fee simple to city of the streets and parks therein platted. Jaynes v. Omaha St. Ry. Co., 53 Neb. 631, 74 N.W. 67 (1898).

14-116 Real estate within three miles of city; subdividing; platting; conditions; powers of city council; requirements.

No owner of any real estate located in an area which is within three miles of the corporate limits of any city of the metropolitan class, when such real estate

is located in any county in which a city of the metropolitan class is located, and is outside of any organized city or village, shall be permitted to subdivide, plat, or lay out the 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 city council of such city and, when applicable, having complied with sections 39-1311 to 39-1311.05. No plat of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same shall have been first approved by the city council of such city. Such city shall have authority within such area to regulate the subdivision of land for the purpose, whether immediate or future, of transfer of ownership or building development; to prescribe standards for laying out subdivisions in harmony with a comprehensive plan; to require the installation of improvements by the owner or by the creation of public improvement districts; by requiring a good and sufficient bond guaranteeing installation of such improvement, or by requiring the execution of a contract with the city insuring the installation of such improvements; and to require the dedication of land for adequate streets, drainage ways, and easements for sewers and utilities. All such requirements for improvements shall operate uniformly throughout the area of jurisdiction of such city. For purposes of this section, subdivision shall mean the division of a lot, tract, or parcel of land into two or more lots, blocks, or other divisions of lands for the purpose, whether immediate or future, of ownership or building developments except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in size. The city council of any such city may withhold approval of a plat until the appropriate department of the city has certified that the improvements required by ordinance have been satisfactorily installed or until a sufficient bond guaranteeing installation of the improvements has been posted with the city or until public improvement districts have been created or until a contract has been executed insuring the installation of such improvements.

Source: Laws 1921, c. 116, art. I, § 15, p. 411; C.S.1922, § 3503; C.S. 1929, § 14-116; R.S.1943, § 14-116; Laws 1961, c. 29, § 1, p. 144; Laws 1980, LB 61, § 1; Laws 2003, LB 187, § 2.

This section does not govern the subdivision of property within an organized city or village, nor does it apply to the doctrine of adverse possession. Wanha v. Long, 255 Neb. 849, 587 N.W.2d 531 (1998).

This section gives the city of Omaha the power to accept dedication of streets in subdivisions within three miles of its corporate limits. Baker v. Buglewicz, 205 Neb. 656, 289 N.W.2d 519 (1980).

Power of city over platting is restricted to county in which property is located. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

14-117 Corporate limits; how fixed; annexation of cities or villages; limitation; powers and duties of city council.

The corporate limits of any city of the metropolitan class shall be fixed and determined by ordinance by the council of such city. The city council of any city of the metropolitan class may at any time extend the corporate limits of such city over any contiguous or adjacent lands, lots, tracts, streets, or highways, such distance as may be deemed proper in any direction, and may include, annex, merge, or consolidate with such city of the metropolitan class, by such extension of its limits, any adjoining city of the first class having less than ten thousand population or any adjoining city of the second class or village. Any other laws and limitations defining the boundaries of cities or villages or the

increase of area or extension of limits thereof shall not apply to lots, lands, cities, or villages annexed, consolidated, or merged under this section.

Source: Laws 1921, c. 116, art. I, § 16, p. 412; C.S.1922, § 3504; C.S. 1929, § 14-117; R.S.1943, § 14-117; Laws 1998, LB 611, § 1.

1. Powers of city
2. Constitutionality
3. Miscellaneous

1. Powers of city

The act of annexation is a matter of statewide concern, and therefore the state statutes, not the city charter provisions, are controlling. S.I.D. No. 95 v. City of Omaha, 221 Neb. 272, 376 N.W.2d 767 (1985).

No restriction on right to extend corporate limits of metropolitan city when properly exercised, and when proper procedures followed taxpayers have no right to intervene in legal actions involving annexation proceedings. Airport Authority of City of Millard v. City of Omaha, 185 Neb. 623, 177 N.W.2d 603 (1970).

Annexation pursuant to this section is a legislative matter, however, courts have power to inquire into and determine whether conditions exist which authorize the annexation. Sullivan v. City of Omaha, 183 Neb. 511, 162 N.W.2d 227 (1968).

This section does not confer power upon a city of the metropolitan class to annex property in an adjoining county. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

This section governs the annexation of territory by a city of the metropolitan class. Bierschenk v. City of Omaha, 178 Neb. 715, 135 N.W.2d 12 (1965).

Annexation of rural lands was denied. Wagner v. City of Omaha, 156 Neb. 163, 55 N.W.2d 490 (1952).

This section authorized merger and consolidation of cities, towns and villages with metropolitan city. Omaha Water Co. v. City of Omaha, 162 F. 225 (8th Cir. 1908).

2. Constitutionality

Constitutional for metropolitan city to annex city of first class operating under home rule charter. City of Millard v. City of Omaha, 185 Neb. 617, 177 N.W.2d 576 (1970).

Annexation ordinance extending corporate limits of metropolitan city was not unconstitutional. Buller v. City of Omaha, 164 Neb. 435, 82 N.W.2d 578 (1957).

3. Miscellaneous

Use of land for agricultural purposes does not mean, by itself, that it is rural in character. Location as well as use must be considered in making the determination. Omaha Country Club v. City of Omaha, 214 Neb. 3, 332 N.W.2d 206 (1983).

Method of annexation under this section compared with method of annexation prescribed for cities of the first class. State ex rel. City of Grand Island v. Tillman, 174 Neb. 23, 115 N.W.2d 796 (1962).

14-118 Annexation or merger of city or village; rights and liabilities; rights of franchise holders and licensees.

Whenever any city of the metropolitan class shall extend its boundaries so as to annex or merge with it any city or village, the laws, ordinances, powers, and government of such metropolitan city shall extend over the territory embraced within such city or village so annexed or merged with the metropolitan city from and after the date of annexation. The date of annexation or merger shall be set forth in the ordinance providing for the same, and after said date the metropolitan city 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 city or village annexed or merged with it, and the metropolitan city shall be liable for and recognize, assume, and carry out all valid contracts, obligations and licenses of any city or village so annexed or merged with the metropolitan city. Any city or village so merged or annexed with the metropolitan city shall be deemed fully compensated by virtue of such annexation or merger and assumption of its obligations and contracts, for all its properties and property rights of every kind acquired as aforesaid by the metropolitan city; *Provided, however*, that any public franchise, license or privilege granted to or held by any person or corporation from any of the cities or villages annexed or merged with any metropolitan city, before such annexation or merger, shall not by virtue of such annexation or merger be extended into, upon or over the streets, alleys or public places of the metropolitan city involved in such consolidation and merger.

Source: Laws 1921, c. 116, art. I, § 17, p. 412; C.S.1922, § 3505; C.S. 1929, § 14-118.

Property and obligations of airport authority belonging to annexed city become property and obligation of annexing city. Airport Authority of City of Millard v. City of Omaha, 185 Neb. 623, 177 N.W.2d 603 (1970).

Consolidated city is required to perform all valid, unperformed, subsisting contracts made by city of South Omaha. State ex rel. Parks Co. v. Dahlman, 100 Neb. 416, 160 N.W. 117 (1916).

14-119 Repealed. Laws 1972, LB 1032, § 287.

14-120 Annexed or merged city or village; taxes; fines; fees; claims; payment; collection.

All taxes, assessments, fines, license fees, claims and demands of every kind, due or to become due or owing to any city or village thus annexed or merged with any metropolitan city, shall be paid to and collected by the metropolitan city.

Source: Laws 1921, c. 116, art. I, § 19, p. 413; C.S.1922, § 3507; C.S. 1929, § 14-120.

14-121 Annexed or merged city or village; authorized taxes or assessments; city of the metropolitan class; powers.

All taxes or special assessments which any city or village so annexed or merged was authorized to levy or assess, but which are not levied or assessed at the time of such annexation or merger for any kind of public improvements made by it or in process of construction or contracted for, may be levied or assessed by such metropolitan city as consolidated. Such metropolitan city shall have the power to reassess all special assessments or taxes levied or assessed by such city or village thus consolidated with it in all cases where any city or village was authorized to make reassessments or relevies of such taxes or assessments.

Source: Laws 1921, c. 116, art. I, § 20, p. 413; C.S.1922, § 3508; Laws 1925, c. 166, § 2, p. 434; C.S.1929, § 14-121; R.S.1943, § 14-121; Laws 1953, c. 278, § 1, p. 905; Laws 1961, c. 30, § 1, p. 146; Laws 1971, LB 4, § 1.

Metropolitan city had authority to levy special assessments after annexation and consolidation with city of smaller class to carry out paving contracts entered into by latter city prior to consolidation. State ex rel. Parks Co. v. Dahlman, 100 Neb. 416, 160 N.W. 117 (1916).

14-122 Annexed or merged city or village; licenses; extension for remainder of license year; city of the metropolitan class; powers.

Where, at the time of any such annexation or merger, the municipal license year, for any kind of license, of any city or village so consolidated with the metropolitan city extends beyond or overlaps the municipal license year of the metropolitan city, then the proper authorities of the metropolitan city are hereby authorized to issue to the lawful holder of any yearly license issued by any such city or village annexed or merged with the metropolitan city, or to any new applicants applying for license to continue the business at the place covered by such expiring city or village license, a new license under such conditions as may be provided in the laws or ordinances governing the metropolitan city for the remainder of the metropolitan city license year, extending from the expiration of such city or village license up to the end of the metropolitan city license year, and charging and collecting therefor only such portion of the yearly amount fixed for any such license by the laws or ordinances governing the metropolitan city as will represent proportionately the time for which the new license shall be granted.

Source: Laws 1921, c. 116, art. I, § 21, p. 413; C.S.1922, § 3509; C.S. 1929, § 14-122.

14-123 Annexed or merged city or village; actions pending; claims; claimants' rights.

All actions in law or in equity pending in any court in favor of or against any city or village thus annexed or merged with the metropolitan city at the time such annexation or merger takes effect, shall be prosecuted by or defended by such metropolitan city. All rights of action existing against any city or village consolidated with such metropolitan city at the time of such consolidation, or accruing thereafter on account of any transaction had with or under any law or ordinance of such city or village, may be prosecuted against such metropolitan city as existing after annexation or merger.

Source: Laws 1921, c. 116, art. I, § 22, p. 414; C.S.1922, § 3510; C.S. 1929, § 14-123.

14-124 Annexed or merged city or village; books, records or property; transfer to city of the metropolitan class; offices; termination.

All officers of any city or village so annexed or merged with the metropolitan city, having books, papers, bonds, funds, effects or property of any kind in their hands or under their control belonging to any such city or village shall, upon the taking effect of such consolidation, deliver the same to the respective officers of the metropolitan city as may be by law or ordinance or resolution of such metropolitan city entitled or authorized to receive the same. Upon such annexation and merger taking effect the terms and tenure of all offices and officers of any city or village so consolidated with the metropolitan city shall terminate and entirely cease except as herein otherwise provided.

Source: Laws 1921, c. 116, art. I, § 23, p. 414; C.S.1922, § 3511; C.S. 1929, § 14-124.

14-125 Annexed or merged city or village; rights acquired under earlier consolidation; continuance.

Any rights, power or authority acquired, granted or received or possessed by any person, city or village through consolidation effectuated under the terms of Chapter 212 of the Session Laws of Nebraska for 1915, are hereby granted and continued.

Source: Laws 1921, c. 116, art. I, § 24, p. 414; C.S.1922, § 3512; C.S. 1929, § 14-125.

14-126 Board of public welfare; powers and duties; limitations; power of board of education to grant use of property.

In each city of the metropolitan class there may be a board of public welfare, which shall be selected as provided by ordinance. The board of public welfare shall have such power as may be provided, which shall include, subject to such limitations as may be provided by the city council, the authority (1) to provide a unified and comprehensive recreation system and the supervision of such recreation; *Provided*, that, whenever the council shall authorize such public welfare board to take charge of any part of the recreation system of any such city, it may authorize said board to take charge of and utilize the buildings and grounds under the control of the board of education with the consent of said board of education, and said board of education is hereby given power and authority under such regulations as it may provide, to grant to the public

welfare board the right to thus utilize the property under its control; (2) to supervise and regulate commercial amusements; (3) to parole or pardon persons convicted under the ordinances of the city; (4) to establish an employment bureau; (5) to provide for a legal aid bureau to which the poor may go to get protection in their legal rights; (6) to establish a charity bureau to render assistance to the poor of the city as its funds will permit, and to cooperate with other charitable organizations of such city; (7) to establish a municipal farm and workhouse; (8) to establish a welfare loan agency, but no funds of the city shall ever be loaned; (9) to investigate into the housing of inhabitants of the city, especially with reference to tenements, and to provide regulations for the housing of the inhabitants of such city; (10) to provide for the study of and research into causes of poverty, delinquency, crime and disease, and other social problems in the community, and to provide for the necessary publicity; and (11) to provide for regulations to promote the health and general welfare of the city.

Source: Laws 1921, c. 116, art. I, § 25, p. 415; C.S.1922, § 3513; C.S. 1929, § 14-126.

14-127 Repealed. Laws 1981, LB 497, § 1.

14-128 Repealed. Laws 1981, LB 497, § 1.

14-129 Repealed. Laws 1981, LB 497, § 1.

14-130 Repealed. Laws 1981, LB 497, § 1.

14-131 Repealed. Laws 1955, c. 20, § 7.

14-132 Repealed. Laws 1981, LB 497, § 1.

14-133 Repealed. Laws 1981, LB 497, § 1.

14-134 Repealed. Laws 1981, LB 497, § 1.

14-135 Repealed. Laws 1981, LB 497, § 1.

14-135.01 Repealed. Laws 1981, LB 497, § 1.

14-135.02 Repealed. Laws 1981, LB 497, § 1.

14-135.03 Repealed. Laws 1981, LB 497, § 1.

14-135.04 Repealed. Laws 1981, LB 497, § 1.

14-135.05 Repealed. Laws 1981, LB 497, § 1.

14-136 City council; investigations; attendance and examination of witnesses; 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 the chairman of such committee for the time being, may administer the 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 1921, c. 116, art. I, § 35, p. 418; C.S.1922, § 3523; C.S. 1929, § 14-136.

14-137 Ordinances; how enacted.

The enacting clause of all ordinances shall be as follows: Be it ordained by the city council of the city of ..... . All ordinances of the city shall be passed pursuant to such rules and regulations as the council may prescribe; *Provided*, upon the passage of all ordinances the yeas and nays shall be entered upon the record of the city council, and a majority of the votes of all the members of the council shall be necessary to their passage. No ordinance shall be passed within a week after its introduction, except the general appropriation ordinances for salaries and wages.

Source: Laws 1921, c. 116, art. I, § 36, p. 418; C.S.1922, § 3524; C.S. 1929, § 14-137.

An ordinance pending and previously twice read may be passed at special meeting, call for which specifies consideration of ordinance. National Life Ins. Co. v. City of Omaha, 73 Neb. 41, 102 N.W. 73 (1905).

14-138 Ordinances; how proved.

All ordinances of the city may be proved by a certificate of the clerk under the seal of the city, and when printed or published in a book or pamphlet form, and purporting to be published or printed by authority of the city council, shall be read and received in all courts and places without further proof.

Source: Laws 1921, c. 116, art. I, § 37, p. 419; C.S.1922, § 3525; C.S. 1929, § 14-138.

ARTICLE 2

OFFICERS, ELECTIONS, BONDS, SALARIES, RECALL OF OFFICERS, INITIATIVE, REFERENDUM

Section

Section

14-201 City council members; election; term.

In any city of the metropolitan class, seven council members shall be elected to the city council as provided in section 32-536. The general city election for the election of elective officers of cities of the metropolitan class shall be held on the first Tuesday after the second Monday in May 1993 and every four years thereafter. The terms of office of such council members shall commence on the fourth Monday after such election.

Source: Laws 1921, c. 116, art. II, § 1, p. 419; C.S.1922, § 3526; C.S. 1929, § 14-201; Laws 1935, c. 78, § 1, p. 264; C.S.Supp.,1941, § 14-201; R.S.1943, § 14-201; Laws 1951, c. 30, § 1, p. 128; Laws 1979, LB 80, § 1; Laws 1979, LB 329, § 2; Laws 1982, LB 807, § 38; Laws 1989, LB 165, § 3; Laws 1994, LB 76, § 469.

14-201.01 Repealed. Laws 1994, LB 76, § 615.

14-201.02 Legislative findings.

The Legislature finds and declares that the election of the city council at large in cities of the metropolitan class denies representation to some socioeconomic segments of the population. The Legislature further finds and declares that fair and adequate representation of all areas and all socioeconomic segments of the population of cities of the metropolitan class is a matter of general statewide concern, the provisions of any home rule charter notwithstanding.

Source: Laws 1979, LB 329, § 1.

The primary concern of this statute is to insure proportionate representation to every socioeconomic segment of the population of a metropolitan class city. This statute was enacted to protect the right to vote, which is a legitimate matter of statewide concern for which the Legislature may act without violating Neb. Const., art. XI, § 5, concerning home rule charters. Jacobberger v. Terry, 211 Neb. 878, 320 N.W.2d 903 (1982).

14-201.03 City council districts; duties.

The election commissioner in any county in which is situated a city of the metropolitan class shall divide the city into seven city council districts of

compact and contiguous territory. Such districts shall be numbered consecutively from one to seven. One council member shall be elected from each district. The city council shall be responsible for redrawing the city council district boundaries pursuant to section 32-553.

Source: Laws 1979, LB 329, § 3; Laws 1989, LB 165, § 4; Laws 1994, LB 76, § 470; Laws 2001, LB 71, § 1.

14-201.04 Repealed. Laws 1994, LB 76, § 615.

14-202 Special election; notice; vote; requirements.

The city council is authorized to call, by ordinance, special elections and to submit thereat such questions and propositions as may be authorized by this act to be submitted to the electors at a special election. Unless otherwise specifically directed, it shall be sufficient to give, in the manner required by law, thirty days' notice of the time and place of holding such special election. Unless otherwise specially designated, a majority vote of the electors voting on any proposition shall be regarded sufficient to approve or carry the same. The vote thereat shall be canvassed by the authority or officer authorized to canvass the vote at the general city election and the result thereof certified or declared and certificate of election, if required, shall be issued.

Source: Laws 1921, c. 116, art. II, § 2, p. 419; C.S.1922, § 3527; C.S. 1929, § 14-202; R.S.1943, § 14-202; Laws 1949, c. 16, § 1, p. 81; Laws 1967, c. 42, § 1, p. 172.

Cross References

"This act", defined, see section 14-101.

Requirement of sixty percent of vote to carry proposition submitted does not apply where specific statute authorizing submission requires majority only. Rasp v. City of Omaha, 113 Neb. 463, 203 N.W. 588 (1925).

14-203 Repealed. Laws 1979, LB 329, § 13.

14-204 City council; candidates; qualifications; primary election; filing.

(1) A candidate for council member of a city of the metropolitan class shall be a registered voter and a resident of the district from which he or she seeks election and shall have been a resident in the city and district or any area annexed by the city for one year. The primary election for nomination of council members shall be held on the first Tuesday of April preceding the date of the general city election.

(2) Any person desiring to become a candidate for council member shall file a candidate filing form pursuant to sections 32-606 and 32-607.

Source: Laws 1921, c. 116, art. II, § 4, p. 420; C.S.1922, § 3529; C.S. 1929, § 14-204; R.S.1943, § 14-204; Laws 1949, c. 16, § 2, p. 81; Laws 1953, c. 21, § 1, p. 91; Laws 1979, LB 80, § 3; Laws 1979, LB 329, § 5; Laws 1982, LB 807, § 39; Laws 1994, LB 76, § 471.

14-205 City council; primary election; ballot; form.

Notwithstanding any more general law respecting primary elections in force in this state, the official ballot to be prepared and used at the primary election under section 14-204 shall be in substantially the form provided in this section. The names of all candidates shall be placed upon the ballot without any party designation.

Candidate for Nomination for Council Member from City Council District No. . . . . , of the City of . . . . . , at the Primary Election Vote for only one:

. . . . . .

(Names of candidates)

In all other respects the general character of the ballot to be used shall be the same as authorized by the Election Act.

In printing, the names shall not be arranged alphabetically but shall be rotated according to the following plan: The form shall be set up by the printer, with the names in the order in which they are placed upon the sample ballot prepared by the officer authorized to conduct the general city election. In printing the ballots for the various election districts or precincts, the position of the names shall be changed for each election district, and in making the change of position the printer shall take the line of type containing the name at the head of the form and place it at the bottom, shoving up the column so that the name that was second before the change shall be the first after the change. The primary election shall be conducted pursuant to the Election Act except as provided in section 14-204 and unless otherwise provided in the home rule charter or city code.

Source: Laws 1921, c. 116, art. II, § 5, p. 421; C.S.1922, § 3530; C.S. 1929, § 14-205; R.S.1943, § 14-205; Laws 1949, c. 17, § 1, p. 83; Laws 1979, LB 80, § 4; Laws 1979, LB 329, § 6; Laws 1994, LB 76, § 472.

Cross References

Election Act, see section 32-101.

14-206 City council; election; candidates; number.

The two candidates receiving the highest number of votes in each city council district at the primary election under section 14-204 shall be the candidates and the only candidates whose names shall be placed upon the official ballot for council members in such city council district at the general city election in such city.

Source: Laws 1921, c. 116, art. II, § 6, p. 422; C.S.1922, § 3531; C.S. 1929, § 14-206; R.S.1943, § 14-206; Laws 1979, LB 80, § 5; Laws 1979, LB 329, § 7; Laws 1994, LB 76, § 473.

14-207 City council; general election; ballot; form; applicable law.

At the general city election at which council members are to be elected, the ballot shall be prepared in substantially the same form as provided in section 14-205, and the person receiving the highest number of votes in each of the city council districts shall be the council member elected. The general city election shall be conducted pursuant to the Election Act unless otherwise provided in the home rule charter or city code.

Source: Laws 1921, c. 116, art. II, § 7, p. 422; C.S.1922, § 3532; C.S. 1929, § 14-207; R.S.1943, § 14-207; Laws 1979, LB 80, § 6; Laws 1979, LB 329, § 8; Laws 1994, LB 76, § 474.

Cross References

Election Act, see section 32-101.

14-208 City council; members; bond or insurance.

All members of the city council of a city of the metropolitan class shall qualify and give bond or evidence of equivalent insurance in the sum of five thousand dollars.

Source: Laws 1921, c. 116, art. II, § 8, p. 423; C.S.1922, § 3533; C.S. 1929, § 14-208; R.S.1943, § 14-208; Laws 1979, LB 80, § 7; Laws 1994, LB 76, § 475; Laws 2007, LB347, § 2.

This section does not apply to ''holdover officers'', as they are governed by section 11-117. State ex rel. Shaw v. Rosewater, 79 Neb. 450, 113 N.W. 206 (1907).

14-209 Repealed. Laws 1984, LB 975, § 14.

14-210 Ordinances; adoption by initiative; procedure.

The right to enact ordinances for any metropolitan city is hereby granted to the qualified electors of such city, but such grant is made upon the following conditions and in addition to the right herein granted to the council to legislate:

Whenever qualified electors of any such city equal in number to fifteen percent of the vote cast at the last preceding city election petition the council to enact a proposed ordinance, it shall be the duty of the council to either enact such ordinance without amendment within thirty days or submit the same to a vote of the people at the next election held within such city regardless of whether such election be a city, county or state election. Whenever such proposed ordinance is petitioned for by qualified electors equal in number to twenty-five percent of the votes cast at the last preceding city election and such petition requests that a special election be called to submit the proposed ordinance to a vote of the people in the event that the council shall fail to enact the same, it shall be the duty of the council to either enact such ordinance without amendment within thirty days or submit such ordinance to a vote of the people at a special election called by the council for that purpose. The date of such election shall not be less than fifty days nor more than seventy days after the filing of the petition for the proposed ordinance. The petition herein provided for shall be in the general form and as to signatures and verification as provided in section 14-212, shall be filed with the city clerk, and if there be no city clerk, then with such other officer having charge of the records of the city council. Said officer shall immediately ascertain the percent of the voters signing such petition and transmit his findings, together with such petition, to the council. In the event the council shall fail to enact such ordinance, the council shall submit the same to a vote of the people of such city as herein provided. The mayor shall issue a proclamation notifying the electors of such election at least fifteen days prior to such election, and the council shall cause to have published a notice of the election, and a copy of such proposed ordinance once in each of the daily newspapers of general circulation in the city, and, if there be no daily newspaper published within such city, then once in each weekly newspaper of general circulation in such city, such publication to be not more than twenty nor less than five days before the submission of the proposed ordinance to the electors. All proposed ordinances shall have a title which shall state in a general way the purpose and intent of such ordinance. The ballots used when voting upon such proposed ordinance shall contain the following: For the ordinance (set forth the title thereof) and Against the ordinance (set forth the title thereof). If a majority of the electors voting on the

proposed ordinance shall vote in favor thereof such ordinance shall thereupon become a valid and binding ordinance of the city. An ordinance so adopted shall not be altered or modified by the council within one year after the adoption thereof by the people. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this section; *Provided*, the same measure, either in form or essential substance, shall not be submitted more often than once in two years.

Source: Laws 1921, c. 116, art. II, § 10, p. 425; C.S.1922, § 3535; C.S.1929, § 14-210.

Electors of a city cannot, under the initiative law, propose an ordinance which the city council does not have the power to enact. State ex rel. Andersen v. Leahy, 189 Neb. 92, 199 N.W.2d 713 (1972).

14-211 Ordinances; repeal by referendum; procedure.

No ordinance passed by any such council, except when otherwise required by the general laws of the state, or by other provisions of sections 14-201 to 14-229, except ordinances appropriating money to pay the salary of officers and employees of the city, emergency ordinances for the immediate preservation of the public peace, health or safety, and which contain a statement of such emergency, shall go into effect before fifteen days from the time of its final passage. If during said fifteen days a petition, signed and verified, as hereinbefore provided, by electors of the city equal in number to at least fifteen percent of the highest number of votes cast for any of such councilmen at the last preceding general city election, protesting against the passage of such ordinance, shall be presented to such council, then such ordinance shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance. If the same be not entirely repealed by the council, then the council shall proceed to submit to the voters such ordinance at a special election to be called for that purpose or at a general city election, and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Such petition shall be in all respects in accordance with the provisions of section 14-212 relating to signatures, verification, inspection and certification.

Source: Laws 1921, c. 116, art. II, § 11, p. 426; C.S.1922, § 3536; C.S.1929, § 14-211.

Where no referendum petition is filed as prescribed herein, it appears under the express terms of the statute that no action was taken to delay the effectiveness of the ordinance. State ex rel. Andersen v. Leahy, 189 Neb. 92, 199 N.W.2d 713 (1972).

Referendum did not apply to ordinance establishing location of city auditorium. State ex rel. Ballantyne v. Leeman, 149 Neb. 847, 32 N.W.2d 918 (1948).

14-212 Petitions; signatures; verification.

All petitions provided for in sections 14-204, 14-210, and 14-211 shall be signed by none but legal voters of the city and each petition shall contain, in addition to the names of the petitioners, the street and house number where the petitioner resides. The signatures to such petition need not all be appended to one paper, and at least one of the signatories of each paper shall make oath before some officer, competent to administer oaths, that the statements made in any such petition are true as he or she verily believes, and that the signatories were, at the time of signing such petition, legal voters of the city as he or she verily believes. He or she shall also state in the affidavit the number of

signatories upon the petition, or part thereof, sworn to by him or her, at the time he or she makes such affidavit.

Source: Laws 1921, c. 116, art. II, § 12, p. 427; C.S.1922, § 3537; C.S.1929, § 14-212; R.S.1943, § 14-212; Laws 1984, LB 975, § 9.

14-213 City council; departments; distribution of powers; duties of officers and employees.

The executive and administrative powers, authorities and duties in such cities shall be distributed among departments as follows: (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. The council shall determine 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. It 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 1921, c. 116, art. II, § 13, p. 427; C.S.1922, § 3538; C.S.1929, § 14-213.

14-214 City council; powers; how exercised; officers and employees; appointment; removal.

The council shall possess and exercise, by itself or through such methods as it may provide, all executive, legislative or judicial powers of the city, except as otherwise expressly provided by general law or this act. It shall have the power to elect or appoint any officer and define his duties, or any employee it may deem necessary, and any such officer or employee elected or appointed by the council may be removed by it at any time, except as otherwise provided in this act.

Source: Laws 1921, c. 116, art. II, § 13½, p. 428; C.S.1922, § 3539; C.S.1929, § 14-214.

Cross References

"This act", defined, see section 14-101.

The city council of a metropolitan city may exercise executive, legislative and judicial powers. Horbach v. Butler, 135 Neb. 394, 281 N.W. 804 (1938).

Where right of removal is reserved in the appointing power, without necessity of making charges, it may be exercised in discretion of appointing power, even before expiration of term. State ex rel. Gapen v. Somers, 35 Neb. 322, 53 N.W. 146 (1892).

14-215 City council; powers; offices, boards, employment; officers and employees; salaries.

The council shall have power to create any office or board it deems necessary, and 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. It shall have power to fix the salary and compensation of all city officers and employees where such salary or compensation is not fixed

or established by this act. It may create a board of three or more members and confer upon such board powers not required to be exercised by the council itself, and may require such other officers to serve upon any such board and perform the services required of it, with or without any compensation or additional compensation for such services or additional services.

Source: Laws 1921, c. 116, art. II, § 14, p. 428; C.S.1922, § 3540; C.S.1929, § 14-215.

Cross References

"This act", defined, see section 14-101.

Salary of an officer created by the Constitution cannot be increased or diminished during his official term. This applies to police judge. State ex rel. Gordon v. Moores, 61 Neb. 9, 84 N.W. 399 (1900).

14-216 City council; meetings; quorum; majority vote; veto; override.

The regular meetings of the city council shall be held once each week upon such day and hour as the council may designate. Special meetings of the council may be called from time to time by the mayor or two council members, giving notice in such manner as may be fixed or determined by ordinance or resolution. 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. The vote of five members shall be required to override any veto by the mayor.

Source: Laws 1921, c. 116, art. II, § 15, p. 429; C.S.1922, § 3541; C.S.1929, § 14-216; R.S.1943, § 14-216; Laws 1979, LB 80, § 9; Laws 1979, LB 329, § 12.

No particular form for notice of special meeting of city council is required, nor is it required that object of the meeting shall be stated in call. Call set out in opinion was sufficient. Richardson v. City of Omaha, 74 Neb. 297, 104 N.W. 172 (1905); National Life Ins. Co. v. City of Omaha, 73 Neb. 41, 102 N.W. 73 (1905).

14-217 Repealed. Laws 1979, LB 329, § 13.

14-217.01 Mayor; election.

A city of the metropolitan class shall elect a mayor for such term as may be provided by the laws and ordinances of such city.

Source: Laws 1979, LB 329, § 10.

14-217.02 Mayor or council members; vacancy; how filled; salaries.

Vacancies in the office of mayor or council shall be filled as provided in section 32-568. Salaries of the mayor and members of the council shall be determined by local law.

Source: Laws 1979, LB 329, § 11; Laws 1994, LB 76, § 476.

14-218 Mayor; general powers and duties.

The mayor shall, in a general way, constantly investigate all public affairs concerning the interest of the city, and shall investigate and ascertain in a general way the efficiency and manner in which all departments of the city government are being conducted. He shall recommend to the city council all such matters as in his judgment should receive the investigation, consideration or action of that body.

Source: Laws 1921, c. 116, art. II, § 17, p. 430; C.S.1922, § 3543; C.S.1929, § 14-218.

14-219 Mayor; executive powers; jurisdiction outside corporate limits.

The mayor shall be the chief executive officer and conservator of the peace throughout the city. He shall have such jurisdiction as may be vested in him by ordinance over all places within three miles of the corporate limits of the city, for the enforcement of any health and quarantine ordinance or the regulations thereof.

Source: Laws 1921, c. 116, art. II, § 18, p. 430; C.S.1922, § 3544; C.S.1929, § 14-219; R.S.1943, § 14-219; Laws 1976, LB 782, § 10.

14-220 Mayor; executive, administrative powers; absence from city; notice.

The mayor shall have the superintending control of all officers and affairs of the city except when otherwise specially provided. He may, when he deems it necessary, require any officer of the city to exhibit his accounts or any other papers and to make report to the council, in writing, touching any subject or matter he may require pertaining to his office. He 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, police, health, security, ornament, comfort and general prosperity of the city. He shall be active and vigilant in enforcing all laws and ordinances of the city and shall cause all subordinate officers to be dealt with promptly in any neglect or violation of duty. He shall give written notice to the city clerk of his intended absence from the city.

Source: Laws 1921, c. 116, art. II, § 19, p. 430; C.S.1922, § 3545; C.S.1929, § 14-220.

It is duty of mayor and chief of police to interfere for the prevention of public violation of law, such as pool room used for gambling. Moores v. State ex rel. Dunn, 71 Neb. 522, 99 N.W. 249 (1904).

14-221 Mayor; law, ordinances; duty to enforce; cooperation with county sheriff.

It shall be the duty of the mayor to enforce the laws of the state and the ordinances of the city; to order, direct and enforce, through the officers of the police department, the arrest and prosecution of persons violating such laws and ordinances; to cooperate with and assist the sheriff of the county in suppressing riots and mobs, and in the arrest and prosecution of persons charged with crimes and misdemeanors.

Source: Laws 1921, c. 116, art. II, § 20, p. 430; C.S.1922, § 3546; C.S.1929, § 14-221.

Mayor is required to assist sheriff of county in certain cases. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

14-222 Repealed. Laws 1979, LB 329, § 13.

14-223 City council; superintendents of departments; power to transfer.

In all such cities, the council may change the superintendency of any of the departments, except that of public affairs, from one of the council members to another, whenever it appears that the public service and management of the business affairs of the city would be benefited by such change.

Source: Laws 1921, c. 116, art. II, § 21, p. 431; C.S.1922, § 3547; C.S.1929, § 14-222; R.S.1943, § 14-223; Laws 1979, LB 80, § 12.

14-224 City council, officers, employees; receipt or solicitation of gifts; violations; penalty.

The mayor and council members and all other officers, agents, and employees of the city are prohibited from soliciting or receiving, directly or indirectly, any contribution of money or supplies of whatsoever kind, or any valuable or special privilege at the hands of any city contractor, or his or her agents, or from any franchised municipal corporation for any purpose whatsoever, and such conduct shall constitute malfeasance in office. No officer, appointee, agent, or employee shall directly or indirectly solicit or receive any gift or contribution of money or supplies, or any valuable service, from any appointee, agent, or employee of such city, for the benefit of the person asking for such gift or contribution or for the benefit of another. Any violation of this provision shall constitute a Class III misdemeanor.

Source: Laws 1921, c. 116, art. II, § 22, p. 431; C.S.1922, § 3548; C.S.1929, § 14-223; R.S.1943, § 14-224; Laws 1979, LB 80, § 13.

This section condemns the action of the city official and not the donor to a fund with which the city may acquire by gift real estate for establishing parks and playgrounds. Ash v. City of Omaha, 152 Neb. 393, 41 N.W.2d 386 (1950).

This section condemns the act of the city official, and not the purpose of the donor. Reid v. City of Omaha, 150 Neb. 286, 34 N.W.2d 375 (1948).

14-225 City council, officers, employees; solicitation of political support; persons, corporations furnishing same; violations; penalties.

No officer or agent of the city shall solicit, directly or indirectly the political support of any contractor, municipal franchised corporation or railway company, or the officials or agents of such companies, for any municipal election or for any other election or primary election held in the city in pursuance of law. Nor shall any franchised corporation or railway company through its agents or officials, or by any other means, furnish or appropriate any money, directly or indirectly, to promote the success or defeat of any person whomsoever, in any election or primary election held in such city, or to promote or prevent the appointment or confirmation of any appointive officer of such city. A violation of any of these provisions on the part of any officer or agent of the city shall be deemed malfeasance in office, and upon conviction thereof such officer shall be removed from office by the order of the court, and fined in any sum not to exceed five hundred dollars. A violation of any of these provisions on the part of any franchised corporation through its officials or agents, upon conviction by any court of competent jurisdiction, shall subject such corporation to forfeiture of its franchise and the imposition of a fine of not exceeding five hundred dollars upon every officer or agent of such company who shall have been proved guilty of such violation.

Source: Laws 1921, c. 116, art. II, § 23, p. 431; C.S.1922, § 3549; C.S.1929, § 14-224.

14-226 City council, officers, employees; extortion; soliciting bribe; violations; penalty.

If any officer or agent of the city shall make a demand for money or other consideration of a franchised corporation or public contractor, or their agents, with a threat to introduce or support a measure or vote for any specific, or propose a resolution or ordinance, adverse to their interests, if such demand be not complied with, or if such officer or agent shall offer to prepare or introduce

or support a resolution or ordinance favorable to such company or contractor for a valuable consideration, such action shall be deemed a malfeasance in office, and upon conviction such offender shall be fined in any sum not exceeding five hundred dollars, and such officer shall be removed from office by direction of the court.

Source: Laws 1921, c. 116, art. II, § 23, p. 432; C.S.1922, § 3549; C.S.1929, § 14-224.

14-227 Fines and penalties; collection; duty to pay to city treasurer; violation; penalty; duty of comptroller to audit.

All fines, penalties, and forfeitures collected for offenses against the ordinances of the city, or for misdemeanors against the laws of the state, committed within the city, shall, unless otherwise provided by law, be paid by the person receiving the same to the city treasurer. Any person receiving such fines, penalties and forfeitures, who shall fail to pay the same over as above provided within thirty days after the receipt of the same by him, or within ten days after being requested by the mayor so to do, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine of not to exceed one thousand dollars and imprisonment not to exceed six months in the county jail. Such person shall be guilty of malfeasance in office and shall be removed from office. It shall be the duty of the comptroller to audit the accounts of all such officers at least once each month and to approve or disapprove their reports.

Source: Laws 1921, c. 116, art. II, § 24, p. 432; C.S.1922, § 3550; C.S.1929, § 14-225.

The disposition of forfeited cash bail bonds is controlled by the Constitution and not this section. School Dist. of Omaha v. City of Omaha, 175 Neb. 21, 120 N.W.2d 267 (1963).

This section did not control disposition of fines, penalties, and license money under general laws of the state. School Dist. No. 54 v. School Dist. of Omaha, 171 Neb. 769, 107 N.W.2d 744 (1961).

In charging violation of this section, the time elapsing during which failure to pay over existed, is material and must be stated. Grier v. State, 81 Neb. 129, 115 N.W. 551 (1908).

14-228 Officers; reports at expiration of term; requirements.

It shall be the duty of all officers at the expiration of their terms of office to prepare written detailed abstracts of all books, documents, tools, implements, and materials of every kind belonging to the city in their trust and care, also all work or storehouses owned or leased by the city for storage or other purposes, in duplicate, and to certify as members of such boards, to the correctness thereof. Such certified abstracts shall be delivered to the mayor, who shall file one of each of such copies for record with the city clerk, and the other copies shall be handed to the heads of the respective departments to be used as a basis of checking up the abstract.

Source: Laws 1921, c. 116, art. II, § 25, p. 433; C.S.1922, § 3551; C.S.1929, § 14-226.

14-229 Officers, employees; exercise of political influence; violations; penalty.

Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence directly or indirectly to influence any other officers or employees of such city to adopt his political views shall be guilty of a misde-

meanor and upon conviction shall be punished by a fine not exceeding one hundred dollars or be imprisoned in the county jail not exceeding thirty days.

Source: Laws 1921, c. 116, art. II, § 26, p. 433; C.S.1922, § 3552; C.S.1929, § 14-227.

14-230 City council; mayor; candidate; public officeholder not disqualified from candidacy.

The Legislature, recognizing the importance to the entire State of Nebraska of sound and stable government in cities of the metropolitan class, hereby declares that the qualifications for candidacy for the office of mayor and council member of such cities, whether any such city is governed by a home rule charter or not, are matters of general statewide concern. The provisions of any ordinance or home rule charter of any such city to the contrary notwithstanding, no person shall be disqualified from candidacy for the office of mayor or council member of any such city because of the fact that such person holds any other public office, either elective or appointive except any office subordinate to the mayor and council member of such city, and no holder of any such other office shall be required to resign such other office in order to become and remain a candidate for the office of mayor or council member of any such city.

Source: Laws 1965, c. 162, § 1, p. 513; Laws 1979, LB 80, § 14.

ARTICLE 3

PUBLIC IMPROVEMENTS

(a) STREETS AND SIDEWALKS

Section

14-301. Repealed. Laws 1959, c. 36, § 46.
14-302. Repealed. Laws 1959, c. 36, § 46.
14-303. Repealed. Laws 1959, c. 36, § 46.
14-304. Repealed. Laws 1959, c. 36, § 46.
14-305. Repealed. Laws 1959, c. 36, § 46.
14-306. Repealed. Laws 1959, c. 36, § 46.
14-307. Repealed. Laws 1959, c. 36, § 46.
14-308. Repealed. Laws 1959, c. 36, § 46.
14-309. Repealed. Laws 1959, c. 36, § 46.
14-310. Repealed. Laws 1959, c. 36, § 46.
14-311. Repealed. Laws 1959, c. 36, § 46.
14-312. Repealed. Laws 1959, c. 36, § 46.
14-313. Repealed. Laws 1959, c. 36, § 46.
14-314. Repealed. Laws 1959, c. 36, § 46.
14-315. Repealed. Laws 1959, c. 36, § 46.
14-316. Repealed. Laws 1959, c. 36, § 46.
14-317. Repealed. Laws 1959, c. 36, § 46.
14-318. Repealed. Laws 1959, c. 36, § 46.
14-319. Repealed. Laws 1959, c. 36, § 46.
14-320. Repealed. Laws 1959, c. 36, § 46.
14-321. Repealed. Laws 1959, c. 36, § 46.
14-322. Repealed. Laws 1959, c. 36, § 46.
14-323. Repealed. Laws 1959, c. 36, § 46.
14-324. Repealed. Laws 1959, c. 36, § 46.
14-325. Repealed. Laws 1959, c. 36, § 46.
14-326. Repealed. Laws 1959, c. 36, § 46.
14-327. Repealed. Laws 1959, c. 36, § 46.
14-328. Repealed. Laws 1959, c. 36, § 46.
14-329. Repealed. Laws 1959, c. 36, § 46.

Section
14-3,104. Temporary sidewalks; when.
14-3,105. Sidewalks; construction or repair; notice; service.
14-3,106. Sidewalks; construction or repair; failure of owner; effect.
14-3,107. Streets; vacation; narrow; reversion to abutting owners; improvements; assessment of benefits; vacation of minimal secondary right-of-way; procedure.
14-3,108. Streets; improvements; control of work; rules and regulations.
14-3,109. Streets; public utilities; connections; power of city to compel; cost.
14-3,110. Public property; abutting streets; not subject to special assessment; cost, how paid.
14-3,111. Streets and sidewalks; contract for improvements; bids; advertisement.
14-3,112. Sections, how construed.
14-3,113. Intersections, certain lands; improvement by city; priority on use of funds; street improvement districts.
14-3,114. Petitions; form; contents; signatures.
14-3,115. Improvement districts; estimate of cost; bids; advertisement.
14-3,116. Materials; petition to designate; form.
14-3,117. Improvements; petition; recording.
14-3,118. Improvements; petitions; restrictions.
14-3,119. Improvements; petitions; examination; certification; notice of irregularity; publication; supplemental petitions.
14-3,120. Improvements; petition; publication; notice to file protest.
14-3,121. Improvements; petition; protest; procedure; supplemental petition; hearing; appeal.
14-3,122. Protest; filing; hearing.
14-3,123. Petition; sufficiency.
14-3,124. Materials; standards; adopt.
14-3,125. Improvement district; materials to be used; designate by petition.
14-3,126. Streets; improvement or construction; materials to be used; designate by petition.
14-3,127. Improvements; protests by majority of abutting property owners; filing; time; effect.

(h) SPECIAL ASSESSMENT BONDS

14-3,128. Public improvements; special assessment bonds; issuance; purpose; sinking fund; limitations.

(i) STREET LIGHTING

14-3,129. Ornamental or decorative street lighting; city; maintain; exception; costs.

(j) CITY OF OMAHA PUBLIC EVENTS FACILITIES FUND

14-3,130. Repealed. Laws 2000, LB 1349, § 15.

(a) STREETS AND SIDEWALKS

14-301 Repealed. Laws 1959, c. 36, § 46.

14-302 Repealed. Laws 1959, c. 36, § 46.

14-303 Repealed. Laws 1959, c. 36, § 46.

14-304 Repealed. Laws 1959, c. 36, § 46.

14-305 Repealed. Laws 1959, c. 36, § 46.

14-306 Repealed. Laws 1959, c. 36, § 46.

14-307 Repealed. Laws 1959, c. 36, § 46.

14-308 Repealed. Laws 1959, c. 36, § 46.

14-309 Repealed. Laws 1959, c. 36, § 46.

14-310 Repealed. Laws 1959, c. 36, § 46.

14-311 Repealed. Laws 1959, c. 36, § 46.

14-312 Repealed. Laws 1959, c. 36, § 46.

14-313 Repealed. Laws 1959, c. 36, § 46.

14-314 Repealed. Laws 1959, c. 36, § 46.

14-315 Repealed. Laws 1959, c. 36, § 46.

14-316 Repealed. Laws 1959, c. 36, § 46.

14-317 Repealed. Laws 1959, c. 36, § 46.

14-318 Repealed. Laws 1959, c. 36, § 46.

14-319 Repealed. Laws 1959, c. 36, § 46.

14-320 Repealed. Laws 1959, c. 36, § 46.

14-321 Repealed. Laws 1959, c. 36, § 46.

14-322 Repealed. Laws 1959, c. 36, § 46.

14-323 Repealed. Laws 1959, c. 36, § 46.

14-324 Repealed. Laws 1959, c. 36, § 46.

14-325 Repealed. Laws 1959, c. 36, § 46.

14-326 Repealed. Laws 1959, c. 36, § 46.

14-327 Repealed. Laws 1959, c. 36, § 46.

14-328 Repealed. Laws 1959, c. 36, § 46.

14-329 Repealed. Laws 1959, c. 36, § 46.

14-330 Repealed. Laws 1959, c. 36, § 46.

14-331 Repealed. Laws 1959, c. 36, § 46.

14-332 Repealed. Laws 1959, c. 36, § 46.

14-333 Repealed. Laws 1959, c. 36, § 46.

14-334 Repealed. Laws 1959, c. 36, § 46.

14-335 Repealed. Laws 1959, c. 36, § 46.

14-336 Repealed. Laws 1959, c. 36, § 46.

14-337 Repealed. Laws 1959, c. 36, § 46.

14-338 Repealed. Laws 1959, c. 36, § 46.

14-339 Repealed. Laws 1959, c. 36, § 46.

14-340 Repealed. Laws 1959, c. 36, § 46.

14-341 Repealed. Laws 1959, c. 36, § 46.

14-342 Repealed. Laws 1959, c. 36, § 46.

14-343 Repealed. Laws 1959, c. 36, § 46.

14-344 Repealed. Laws 1959, c. 36, § 46.

14-345 Repealed. Laws 1959, c. 36, § 46.

14-346 Repealed. Laws 1959, c. 36, § 46.

14-347 Repealed. Laws 1959, c. 36, § 46.

14-348 Repealed. Laws 1963, c. 339, § 1.

14-349 Repealed. Laws 1963, c. 339, § 1.

14-350 Repealed. Laws 1963, c. 339, § 1.

14-351 Repealed. Laws 1963, c. 339, § 1.

14-352 Repealed. Laws 1963, c. 339, § 1.

14-353 Repealed. Laws 1963, c. 339, § 1.

14-354 Repealed. Laws 1963, c. 339, § 1.

(b) VIADUCTS

14-355 Repealed. Laws 1949, c. 28, § 20.

14-356 Repealed. Laws 1949, c. 28, § 20.

14-357 Repealed. Laws 1949, c. 28, § 20.

14-358 Repealed. Laws 1949, c. 28, § 20.

14-359 Repealed. Laws 1949, c. 28, § 20.

(c) SEWERAGE, DRAINAGE, SPRINKLING, PAVING REPAIR, AND CONTRACTORS' BONDS

14-360 Sewerage and drainage; regulations; creation of districts; powers of city; territory outside corporate limits.

The city shall have power to lay out the city, or parts thereof, or portions of the territory within three miles of the corporate limits thereof, into suitable districts for the purpose of establishing a system of sewerage and drainage; to provide such system and regulate the construction and repair and use of sewers and drains, the reconstruction of sewers in any district or part thereof and all proper house construction and branches; to provide penalties for any obstruction of, or injury to, any sewer or part thereof; and to require and compel sewer connections to be made; *Provided*, the city shall not create a district outside the corporate limits of such city, when the district includes land already included

within an existing district created under the provisions of Chapter 31, article 7, without the consent of the trustees of such district.

Source: Laws 1921, c. 116, art. III, § 51, p. 455; C.S.1922, § 3604; C.S.1929, § 14-352; R.S.1943, § 14-360; Laws 1959, c. 30, § 1, p. 183.

City has power to create a sewerage district and construct therein a sewerage system, but the exercise of such power is discretionary. Wilson v. City of Omaha, 138 Neb. 13, 291 N.W. 732 (1940).

City is authorized but is not required to construct storm sewers. Adams v. City of Omaha, 119 Neb. 753, 230 N.W. 680 (1930).

City may create new district within larger one and assess cost on abutting owners according to special benefits derived therefrom, and party seeking to enjoin collection of assessment must show injury by said division. Shannon v. City of Omaha, 73 Neb. 507, 103 N.W. 53 (1905), affirmed on rehearing 73 Neb. 514, 106 N.W. 592 (1906).

Unless finding of board shows that benefits are equal as to all lots within sewerage district, levy according to frontage is void. John v. Connell, 64 Neb. 233, 89 N.W. 806 (1902).

City cannot include property not specially benefited thereby in sewerage district and levy assessment on it for cost of sewer. Hanscom v. City of Omaha, 11 Neb. 37, 7 N.W. 739 (1881).

14-361 Sewerage and drainage; connections; city may require; notice to property owners; construction by city; assessment of cost.

Whenever sewer connections for sewerage or drainage may be deemed necessary or advisable, whether within the corporate limits or within areas within three miles of such corporate limits, the property owners shall be given thirty days from the publication of the ordinance ordering such improvements and connections, to make the same in conformity with approved plans to be kept on file by the city. The publication of such ordinance ordering such connections in the official newspaper shall be the only notice required to be given such property owners. Upon the failure or neglect of the property owners to construct such connections within the time fixed, the city shall cause such work to be done and shall contract therefor with the lowest responsible bidder. The cost thereof, including superintendence and inspection, shall be assessed against the property to which such connections have been made in the same manner as special taxes are levied for other purposes.

Source: Laws 1921, c. 116, art. III, § 52, p. 455; C.S.1922, § 3605; C.S.1929, § 14-353; R.S.1943, § 14-361; Laws 1959, c. 30, § 2, p. 184.

Person filing protest against special assessments before time fixed in notice for meeting of board thereby waives all defects in notice. Shannon v. City of Omaha, 73 Neb. 507, 103 N.W. 53 (1905), affirmed on rehearing 73 Neb. 514, 106 N.W. 592 (1906).

14-362 Sewerage and drainage; connections; permit required; assessment of cost; conditions.

The city shall require the issuance of a permit to connect with any sewer on any street, alley or private property within the corporate limits or within three miles thereof, and shall require the sewer assessment on the abutting property to be paid before such permit is issued; *Provided*, that if such assessment is being paid in installments as by law provided, the city shall require delinquent and current installments to be paid before such permit is issued. In case the cost of the sewer has not been assessed, or such assessment has been declared invalid by any court of competent jurisdiction, the city shall require the payment of the pro rata share of the cost of such sewer before such permit is issued.

Source: Laws 1921, c. 116, art. III, § 53, p. 455; C.S.1922, § 3605; C.S.1929, § 14-354; R.S.1943, § 14-362; Laws 1959, c. 31, § 1, p. 186.

14-363 Street sprinkling or armor-coating districts; creation; contracts; bids; special assessments; collection.

The city council may provide for the sprinkling or armor coating of the streets of the city and, for the purpose of accomplishing such work, may by ordinance create suitable districts to be designated sprinkling or armor-coating districts and may order and direct the work, including preparatory grading, to be done upon any or all of the streets in the districts. The work shall be done upon contract in writing let upon advertisement to the lowest responsible bidder. Such advertisement shall specify the district or districts proposed to be so worked, especially describing the same, and bids shall be made and contracts let with reference to such district or districts so specified. For the purpose of paying the cost of the work contemplated and contracted for, the city council may levy and assess the cost upon all lots, lands, and real estate in the district, such tax or assessment to be equal and uniform upon all front footage or property within or abutting upon the streets within the district so created. The assessment shall be a lien upon all such lots, lands, and real estate and shall be enforced and collected as are other special assessments.

Source: Laws 1921, c. 116, art. III, § 54, p. 456; C.S.1922, § 3607; C.S.1929, § 14-355; R.S.1943, § 14-363; Laws 1991, LB 745, § 1.

14-364 Paving repair plant; establishment; cost of operation; payment.

The city council may establish and maintain a paving repair plant and may pave or repair paving. The cost of such repairs may be paid from the funds of the city or may be assessed upon the abutting property, except that the cost may be assessed against abutting property only following the creation of a paving repair or repaving district established and assessed in the same manner provided for a sprinkling or armor-coating district by section 14-363. The assessable paving repairs shall be only those made with asphaltic concrete on streets in previously developed areas which were not constructed to city permanent design standards.

Source: Laws 1921, c. 116, art. III, § 55, p. 456; C.S.1922, § 3608; C.S.1929, § 14-356; R.S.1943, § 14-364; Laws 1991, LB 745, § 2.

14-365 Public contractors; bonds required.

All persons who contract with the city for work to be done, or material or supplies to be furnished, shall give bond to the city, with not less than two sureties in an amount not less than fifty percent of the amount of the contract price, for the faithful performance of the same. The sureties on the bonds shall be resident freeholders of the county within which the city is situated and shall justify under oath that they are worth double the amount for which they may sign the bond, over and above all debts, liabilities, obligations and exemptions. The city council may, however, accept security from one or more reliable sureties or guaranty companies for the same amount.

Source: Laws 1921, c. 116, art. III, § 56, p. 456; C.S.1922, § 3609; C.S.1929, § 14-357.

Right to recover on bond does not depend upon questions of negligence of city or contractor, but under terms of bond, upon whether city has suffered a damage because of excavations made by contractor. Omaha Gas Co. v. City of South Omaha, 71 Neb. 115, 98 N.W. 437 (1904).

14-365.01 Sewerage systems and sewage disposal plants; construction; operation; territorial limits; tax authorized.

Any city of the metropolitan class 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, 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 the area or to extend or improve any existing sewerage system, including any storm sewer system. It shall have authority to acquire by gift, grant, purchase, or condemnation necessary lands therefor, either within or without the corporate limits of such municipality. For the purpose of owning, operating, constructing, maintaining, and equipping such sewage disposal plant and sewerage system, including any storm sewer system, or improving or extending such existing system, any city of the metropolitan class is also authorized and empowered to make a special levy 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 city, as well as all taxable property within three miles of the corporate limits of such city, which property is within a district established under section 14-360, subject to sections 14-365.12 and 14-365.13. The proceeds of the tax shall be used for any of the purposes enumerated in this section and for no other purpose.

Source: Laws 1953, c. 24, § 1, p. 99; Laws 1959, c. 30, § 3, p. 184; Laws 1979, LB 187, § 29; Laws 1992, LB 719A, § 34.

The application of this entire act is discussed with reference to a lease-purchase agreement relating to financing a waste disposal plant. Cosentino v. City of Omaha, 186 Neb. 407, 183 N.W.2d 475 (1971).

14-365.02 Sewerage systems and sewage disposal plants; mortgage bonds.

For the purpose of owning, operating, constructing, and equipping such sewage disposal plant or sewerage system, including any storm sewer system, or improving or extending such existing system, a municipality may issue mortgage bonds therefor. Such mortgage bonds as provided in this section shall not impose any general liability upon the municipality but shall be secured only on the property and revenue, as provided in section 14-365.04, of such utility including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the system. Such franchise shall in no case extend for a longer period than twenty years from the date of the sale thereof on foreclosure. Such mortgage bonds shall be sold for not less than par. The amount of such mortgage 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 1953, c. 24, § 2, p. 99; Laws 1969, c. 51, § 17, p. 283.

14-365.03 Sewerage systems and sewage disposal plants; rules and regulations; charges; collection; special assessments.

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 the owner of the property served or by the person, firm, or corporation using the services. If any 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 re-

turned, or it may be assessed against the premises served in the same manner as special taxes or assessments are assessed by such city and shall be certified, enforced, collected, and returned as other special taxes or assessments of such city.

Source: Laws 1953, c. 24, § 3, p. 100; Laws 1959, c. 32, § 4, p. 187; Laws 1961, c. 30, § 2, p. 147; Laws 1965, c. 38, § 1, p. 230.

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).

Metropolitan utilities district may establish just and equitable rates for use of sewer system. Metropolitan Utilities Dist. v. City of Omaha, 171 Neb. 609, 107 N.W.2d 397 (1961).

14-365.04 Sewerage systems and sewage disposal plants; mortgage bonds; payment.

Bonds which are issued and secured by a mortgage on the utility, as provided in section 14-365.02, 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 14-365.03, or from a sale of the property and the franchise, referred to in section 14-365.02, to operate the system, under a foreclosure proceeding. If a service rate is charged, 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.

Source: Laws 1953, c. 24, § 4, p. 100.

14-365.05 Sewerage systems and sewage disposal plants; franchises; power to grant; service; payment.

For the purpose of providing for such sewage disposal plant and sewerage system, including any storm sewer 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. 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 provided in section 14-365.03, and paid into a fund to be used to defray such contract charges.

Source: Laws 1953, c. 24, § 5, p. 100.

A lease-purchase agreement relating to financing of a waste disposal plant and authorized by this section is not a franchise that violates section 14-811. Cosentino v. City of Omaha, 186 Neb. 407, 183 N.W.2d 475 (1971).

14-365.06 Sewerage systems and sewage disposal plants; general obligation bonds; interest; power to issue.

For the purpose of owning, operating, constructing, and equipping such sewage disposal plant and sewerage system, including any storm sewer system, or improving or extending such existing system, or for the purpose stated in sections 14-365.01 to 14-365.05, any such municipality is also authorized and

empowered hereby to issue and sell the general obligation bonds of such municipality upon compliance with section 14-365.07. Such bonds shall not be sold or exchanged for less than the par value thereof and shall bear interest payable semiannually. The governing body of any such municipality shall have power to determine the denominations of such bonds, and the date, time, and manner of payment.

Source: Laws 1953, c. 24, § 6, p. 101; Laws 1969, c. 51, § 18, p. 283.

14-365.07 Sewerage systems and sewage disposal plants; revenue bonds; ordinance; general obligation bonds; election; amount.

(1) Revenue bonds authorized by section 14-365.02 may be issued by ordinance duly passed by the mayor and city council of any city of the metropolitan class without any other authority.

(2) General obligation bonds authorized by section 14-365.06 may be issued only (a) after the question of their issuance has been submitted to the electors of the city of the metropolitan class at a general or special election, of which three weeks' notice has been published in a legal newspaper in or of general circulation in such city, and (b) if a majority of the electors voting at the election have voted in favor of the issuance of the bonds. Publication of such a notice in such a newspaper once each week during three consecutive weeks prior to the date of such election shall constitute a compliance with the requirements of this section for notice of such election. General obligation bonds shall not be issued in excess of one and eight-tenths percent of the taxable value of all the taxable property in the city or in excess of the amount authorized by sections 14-365.12 and 14-365.13.

Source: Laws 1953, c. 24, § 7, p. 101; Laws 1971, LB 534, § 9; Laws 1979, LB 187, § 30; Laws 1980, LB 599, § 4; Laws 1992, LB 719A, § 35.

14-365.08 Sewerage systems and sewage disposal plants; minutes; plans; contracts; bids.

Whenever the governing body of any metropolitan city shall have ordered the installation of a sewerage system, including any storm sewer 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, including any storm sewer 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 three consecutive weeks in a legal paper published in or of general circulation within said municipality. The contract for such construction shall be awarded to the lowest responsible bidder.

Source: Laws 1953, c. 24, § 8, p. 102.

Requirements for competitive bidding are strictly construed against public authorities, but where a process or article is patented, public authorities may specify its use without competitive bidding if it possesses such exceptional superiority that it would be a public injury not to use it. Cosentino v. City of Omaha, 186 Neb. 407, 183 N.W.2d 475 (1971).

14-365.09 Sewerage system and sewage disposal plants; service beyond corporate limits.

The owner of any sewerage system, including any storm sewer system, or sewage disposal plant provided for in sections 14-365.01 to 14-365.08, or the municipality, is hereby authorized to extend the same beyond the limits of the metropolitan city 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 metropolitan city shall have authority to enter into contracts with users of such sewerage system, including any storm sewer system; *Provided,* no contract shall call for furnishing of such service for a period in excess of ten years.

Source: Laws 1953, c. 24, § 9, p. 102.

14-365.10 Sewerage system; rental or use charges; collection; lien; proceeds; disposition.

The mayor and city council of any metropolitan city, in addition to other sources of revenue available to the city, may by ordinance set up appropriate rental or use charges to be collected from users of any of its system of sanitary sewerage and provide methods of collection thereof; *Provided*, that users shall include in part any users outside of such city where the sewer is directly or indirectly connected to the sewerage system of such city and users within any sanitary and improvement district now existing or hereafter organized under the laws of this state when the sewerage system, or any part thereof, of the sanitary and improvement district directly or indirectly connects to any part of the sewerage system of the metropolitan city. The charges shall be charged to each property served by its sewerage system, shall be a lien upon the property served, and may be collected either from the owner or the person, firm, or corporation using the service. All money raised from the charges 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 14-365.06, or to create a reserve fund for the payment of future maintenance, operation, or construction of a new sewer system for or additions to the sewerage system of the city. 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 1953, c. 24, § 10, p. 103; Laws 1959, c. 32, § 5, p. 188; Laws 1965, c. 38, § 2, p. 231.

Imposition of sewer use fee pursuant to contract between city and district was authorized. Metropolitan Utilities Dist. v. City of Omaha, 171 Neb. 609, 107 N.W.2d 397 (1961).

14-365.11 Sewerage systems and sewage disposal plants; terms, defined; powers construed.

The terms sewage system, sewerage system, including storm sewer 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, surface waters, and storm waters. It is intended that the powers conferred by the terms of sections 14-365.01 to 14-365.13 may also be em-

ployed in connection with sewage and sewer projects which do not include the erection or enlargement of a sewage disposal plant.

Source: Laws 1953, c. 24, § 11, p. 103.

14-365.12 Sewerage systems and sewage disposal plants; tax levy; general obligation bonds; limitation.

If any tax is levied or general obligation bonds are issued by a metropolitan city as authorized by the provisions of Chapter 18, article 5, the amount of the tax that may be levied by the provisions of section 14-365.01, or the amount of general obligation bonds that may be issued by the provisions of section 14-365.07 by such metropolitan city must be reduced by the amount of the tax levied or bonds issued as authorized by the provisions of Chapter 18, article 5.

Source: Laws 1953, c. 24, § 12, p. 104.

14-365.13 Sewerage systems and sewage disposal plants; sections; cumulative.

The provisions of sections 14-365.01 to 14-365.13 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, including any storm sewer system, in metropolitan cities. The provisions of sections 14-365.01 to 14-365.13 shall not be considered amendatory of or limited by any other provision of the laws of the State of Nebraska, except as provided in section 14-365.12.

Source: Laws 1953, c. 24, § 13, p. 104.

(d) EMINENT DOMAIN; CITY PLANNING BOARD

14-366 Property; purchase or acquisition by eminent domain; scope of power; exercise beyond corporate limits.

The city may purchase or acquire by the exercise of the power of eminent domain private property or public property which is not at the time devoted to a specific public use, for the following purposes and uses: (1) For streets, alleys, avenues, parks, recreational areas, parkways, playgrounds, boulevards, sewers, public squares, market places, and for other needed public uses or purposes authorized by this act, and for adding to, enlarging, widening, or extending any of the foregoing; and (2) for constructing or enlarging waterworks, gas plants, or other municipal utility purposes or enterprises authorized by this act. The power to so purchase or appropriate private property or public property, as in this act specified, for parks, recreational areas, parkways, boulevards, sewers, and for the purpose of constructing waterworks, gas works, light plants, or other municipal enterprises authorized by this act, may be exercised by the city within the corporate limits of the city or within seventy-five miles thereof. The power to so purchase or appropriate private property or public property, as in this act specified, for streets, alleys, avenues, and other construction of like kind may be exercised by the city within the corporate limits of the city or within three miles thereof.

Source: Laws 1921, c. 116, art. III, § 57, p. 457; C.S.1922, § 3610; C.S.1929, § 14-358; R.S.1943, § 14-366; Laws 1955, c. 21, § 2, p. 99; Laws 1959, c. 33, § 1, p. 189.

Cross References

"This act", defined, see section 14-101.

1. Authorized purposes
2. Procedure
3. Damages
4. Miscellaneous

1. Authorized purposes

This section gives the city of Omaha the power to accept dedication of streets in subdivisions within three miles of its corporate limits. Baker v. Buglewicz, 205 Neb. 656, 289 N.W.2d 519 (1980).

City of metropolitan class may exercise power of eminent domain for street purposes. Phillips Petroleum Co. v. City of Omaha, 171 Neb. 457, 106 N.W.2d 727 (1960).

City is given power to acquire by condemnation real property for the purpose of extending streets. Van Patten v. City of Omaha, 167 Neb. 741, 94 N.W.2d 664 (1959).

City may purchase or acquire by the exercise of the power of eminent domain property for parks and playgrounds, and purchase must be authorized by ordinance. Ash v. City of Omaha, 152 Neb. 393, 41 N.W.2d 386 (1950).

Park board may designate real estate desirable for park purposes, and thereby initiate steps for condemnation. Shannon v. Bartholomew, 83 Neb. 821, 120 N.W. 460 (1909).

City was authorized to condemn property for waterworks outside of city limits. Omaha Water Co. v. City of Omaha, 162 F. 225 (8th Cir 1908).

2. Procedure

Acquisition of property for park purposes must be made by ordinance. Reid v. City of Omaha, 150 Neb. 286, 34 N.W.2d 375 (1948).

Aggrieved property owner, failing to pursue statutory remedies, cannot attack validity of special assessments in collateral proceeding except for fraud or some fundamental defect or entire want of jurisdiction. Penn Mutual Life Ins. Co. v. City of Omaha, 129 Neb. 733, 262 N.W. 861 (1935).

This section sustained as constitutional, and city council authorized to sit as a board of equalization and ascertain and levy the amount of special benefits against property especially benefited. Burgess-Nash Bldg. Co. v. City of Omaha, 116 Neb. 862, 219 N.W. 394 (1928).

3. Damages

Measure of damages for land taken without condemnation for boulevard is value of land taken. City of Omaha v. Croft, 60 Neb. 57, 82 N.W. 120 (1900).

4. Miscellaneous

Cited but not discussed. Connor v. City of Omaha, 185 Neb. 146, 174 N.W.2d 205 (1970).

City taking title by eminent domain is estopped to deny the validity of liens deducted from appraisement of property sold at judicial sale. City Safe Deposit & Agency Co. v. City of Omaha, 79 Neb. 446, 112 N.W. 598 (1907).

Where city acquired mortgaged land without making mortgagee party to proceedings and paid condemnation money to mortgagor, it is discharged from its obligation, but takes land subject to mortgage, if recorded. Rieck v. City of Omaha, 73 Neb. 600, 103 N.W. 283 (1905).

14-367 Property; acquisition by eminent domain; procedure.

Whenever property is purchased for any of the purposes stated in section 14-366 the purchase thereof shall be made by ordinance. Whenever it becomes necessary to appropriate property for the purposes stated in section 14-366 the purpose and necessity for such appropriation shall be declared by ordinance. Thereupon the procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1921, c. 116, art. III, § 57, p. 457; C.S.1922, § 3610; C.S.1929, § 14-358; R.S.1943, § 14-367; Laws 1951, c. 101, § 35, p. 461.

Amendment to this section providing condemnation procedure be in manner of cited sections repealed by implication succeeding sections. Connor v. City of Omaha, 185 Neb. 146, 174 N.W.2d 205 (1970).

Where city purchases or condemns property for parks or playgrounds, appraisers must be appointed and their award reported to the city council. Ash v. City of Omaha, 152 Neb. 393, 41 N.W.2d 386 (1950).

Appraisal of property is required when acquired for park purposes. Reid v. City of Omaha, 150 Neb. 286, 34 N.W.2d 375 (1948).

Although board of appraisers does not constitute a court, it exercises functions judicial in their nature. In re Appraisement of Omaha Gas Plant, 102 Neb. 782, 169 N.W. 725 (1918).

Award of damages by appraisers, unless appealed from, is conclusive, and city having lien for special assessment and failing to have same established, cannot, after expiration of time for appeal, offset amount of same against warrants issued to property for damages. State ex rel. Katelman v. Fink, 84 Neb. 185, 120 N.W. 938 (1909).

Special tax for opening street cannot be levied until report of appraisement of damages has been confirmed by council. Merrill v. Shields, 57 Neb. 78, 77 N.W. 368 (1898).

14-368 Repealed. Laws 1969, c. 59, § 1.

14-369 Repealed. Laws 1969, c. 59, § 1.

14-370 Repealed. Laws 1969, c. 59, § 1.

14-371 Repealed. Laws 1969, c. 59, § 1.

14-372 Utilities; acquisition by eminent domain; funds; title.

Whenever property is acquired for the purpose of constructing or enlarging waterworks, gas plants, or other municipal utility purposes or enterprises authorized by this act, the same shall be paid for from such funds as may be provided for any such purposes. The title thereto shall be lodged in the city after the condemnation proceedings have been completed and the amount awarded has been paid by the city.

Source: Laws 1921, c. 116, art. III, § 57, p. 460; C.S.1922, § 3610; C.S.1929, § 14-358; R.S.1943, § 14-372; Laws 1951, c. 101, § 36, p. 462.

Cross References

"This act", defined, see section 14-101.

Owner whose land is condemned is not required to look to the fund sought to be raised by special assessment for payment of his damages. City of Omaha v. State ex rel. Metzger, 69 Neb. 29, 94 N.W. 979 (1903).

Judgment against city for value of land vests title to land in city. City of Omaha v. Redick, 61 Neb. 163, 85 N.W. 46 (1901).

Right of landowner to condemnation money accrues immediately upon Termination of condemnation proceedings and taking possession of land by city. Spalding v. City of Omaha, 4 Neb. Unof. 447, 94 N.W. 714 (1903).

14-373 City plan; planning board; scope; lands outside corporate limits.

Each city of the metropolitan class is authorized and required to prepare a plan for its future physical development and growth. Such plan shall be prepared and shall be carried out by an appropriate city board or official. The plan may include such lands outside the corporate limits of the city as may bear a relation to the development of the city. A planning board may be given such other powers and duties by statute or charter as may be appropriate, and on or after January 1, 1998, the planning board shall have one member qualified and appointed as provided in section 14-373.02.

Source: Laws 1921, c. 116, art. III, § 57a, p. 460; C.S.1922, § 3611; C.S.1929, § 14-359; R.S.1943, § 14-373; Laws 1959, c. 34, § 1, p. 191; Laws 1996, LB 575, § 1.

Cross References

Duties of city planning board, see section 14-407.

Provisions of this section do not apply where a city of the metropolitan class seeks to adopt an ordinance annexing lands adjacent to the city's boundaries. S.I.D. No. 95 v. City of Omaha, 221 Neb. 272, 376 N.W.2d 767 (1985).

Efficacy of city plan depends on its being adopted by the city council. Van Patten v. City of Omaha, 167 Neb. 741, 94 N.W.2d 664 (1959).

City planning commission has power to carry out and maintain city plan after its adoption by city council. Ash v. City of Omaha, 152 Neb. 393, 41 N.W.2d 386 (1950); Reid v. City of Omaha, 150 Neb. 286, 34 N.W.2d 375 (1948).

Zoning ordinance, drafted in general terms and providing reasonable margin to secure effective enforcement, is within police power of state and constitutional. Pettis v. Alpha Alpha Chapter of Phi Beta Pi, 115 Neb. 525, 213 N.W. 835 (1927).

Metropolitan city is not permitted to impose unreasonable regulations upon the owners of property with respect to the area sought to be covered by a proposed building. State ex rel. Westminster Presbyterian Church v. Edgecomb, 108 Neb. 859, 189 N.W. 617 (1922), 27 A.L.R. 437 (1922).

14-373.01 Planning board; legislative findings.

The Legislature finds that:

(1) The exercise of zoning, planning, and other concomitant powers by a city of the metropolitan class in the area of extraterritorial jurisdiction described and authorized by state law necessarily affects property outside the corporate boundaries of the city and persons who are not inhabitants of or electors in the city;

(2) The protection of unrepresented persons and property affected by a statutorily created zoning and planning process is a matter of state concern; and

(3) The protection of such unrepresented persons and property would be facilitated by requiring that at least one person residing in the area of extraterritorial jurisdiction and appointed by an elected body of the area of extraterritorial jurisdiction serve as a member of the planning board of the city of the metropolitan class if a planning board exists.

Source: Laws 1996, LB 575, § 2.

Cross References

Planning board, organized, see section 14-407.

14-373.02 Planning board; extraterritorial member; vacancy; how filled; procedure.

(1) Notwithstanding any provision of a city charter to the contrary, the next vacancy that occurs on a city planning board on or after January 1, 1998, shall be filled by the appointment of a person who resides in the area of extraterritorial jurisdiction as provided in subsection (2) of this section. At all times following the initial appointment of a planning board member who resides in the area of extraterritorial jurisdiction, one member of the planning board shall be so qualified and appointed.

(2) The city clerk shall formally notify the county clerk of the existence of the next vacant position that occurs on the planning board on or after January 1, 1998, within ten days after the date of the vacancy. The county board, within thirty days after such notice, shall hold a meeting to consider nominations for appointment to the vacancy and shall appoint a person qualified under subsection (1) of this section to fill the vacancy. Prior to holding such meeting, the county board shall cause to be published a notice of the vacancy and the date of the meeting. The notice shall be published in a newspaper of general circulation in the county in which such planning board is located at least once in each of the two weeks immediately preceding the week of the meeting. A nominee for the vacancy shall be appointed by majority vote of the county board. The appointee shall become a member of the planning board when the city clerk receives certification from the county clerk of the name of the appointee.

(3) Following the initial appointment of the extraterritorial member to the planning board pursuant to this section, the city clerk shall inform the county clerk of any vacancy occurring in the extraterritorial member's position within ten days after its occurrence or at least thirty days prior to the expiration of the extraterritorial member's term.

(4) Any person qualified and appointed under this section shall serve for terms equal to that of the planning board members who reside within the corporate boundaries of the city and shall become a member of the planning board with all rights, duties, responsibilities, and perquisites appertaining to the position by state law, city charter, or city ordinance.

(5) For purposes of this section:

(a) Area of extraterritorial jurisdiction means the area outside the corporate boundaries of a city of the metropolitan class but within the largest area subject to such city's zoning, planning, and concomitant jurisdiction as described in sections 14-116, 14-418, and 14-419;

(b) City means a city of the metropolitan class;

(c) County board means the county board of a county in which a city of the metropolitan class is located;

(d) County clerk means the county clerk of a county in which a city of the metropolitan class is located; and

(e) Planning board means a planning board as organized pursuant to section 14-407.

Source: Laws 1996, LB 575, § 3.

14-374 City plan; acquisition and disposition of property; public purposes.

Each city of the metropolitan class shall have the power to acquire by gift, purchase, condemnation, or bequest, such real estate within the corporate limits and within three miles thereof as may be necessary for any public use and may later convey, lease, sell, or otherwise dispose of any real estate thus acquired and not necessary for present use or future development upon such terms as it may deem appropriate. In addition to any other public uses, the following are declared to be for a public purpose and for the public health and welfare: Establishing, laying out, widening, and enlarging waterways, streets, bridges, boulevards, parkways, parks, playgrounds, sites for public buildings, and property for administrative, institutional, educational, and all other public uses, and for reservations in, about, along, or leading to any or all of the same. The powers provided in this section shall be in addition to and not in restriction of any other powers now held by such cities.

Source: Laws 1921, c. 116, art. III, § 57b, p. 461; C.S.1922, § 3612; C.S.1929, § 14-360; R.S.1943, § 14-374; Laws 1959, c. 34, § 2, p. 191.

A city has the power of eminent domain to acquire real estate for a public use and to later sell portions thereof no longer needed by it. Monarch Chemical Works, Inc. v. City of Omaha, 203 Neb. 33, 277 N.W.2d 423 (1979).

A request for injunction is a proper form in which to present the question of unlawful or improper exercise of the power of eminent domain, because the attempt to deprive a private citizen of an estate in his property, if successful, makes the resulting damage irreparable and legal remedies inadequate. Monarch Chemical Works, Inc. v. City of Omaha, 203 Neb. 33, 277 N.W.2d 423 (1979).

Cities of the metropolitan class are empowered to acquire real estate by gift. Bowley v. City of Omaha, 181 Neb. 515, 149 N.W.2d 417 (1967).

This section has application only to those condemnations within a city plan approved by the city council. Van Patten v. City of Omaha, 167 Neb. 741, 94 N.W.2d 664 (1959).

14-375 City planning board; vacation of streets or alleys; procedure; appointment of committees; effect; appeal.

Upon the recommendation of the city planning board, the city council may, by ordinance or resolution, vacate any street or alley within any such city without any petition being filed therefor. Before any such street or alley shall be vacated, the council shall appoint a committee of at least three members thereof, who shall faithfully and impartially and after reasonable notice to the owners and parties interested in property affected by such vacation, assess the damages, if any, to such owners and parties affected. They shall take into consideration the amount of special benefits, if any, arising from such vacation and shall file their report in writing with the city clerk. Any owner or party interested in property affected by such vacation, who shall file a written protest with such committee, may appeal from the adoption by the council of such appraisers' report in the manner provided in section 14-813, but such appeal shall not stay the passage of the ordinance or resolution vacating such street or alley. The award of appraisers shall be final and conclusive as the order of a

court of general jurisdiction, unless appealed from. When the city vacates 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 or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

Source: Laws 1921, c. 116, art. III, § 57c, p. 461; C.S.1922, § 3613; C.S.1929, § 14-361; R.S.1943, § 14-375; Laws 1959, c. 35, § 1, p. 192; Laws 1961, c. 30, § 3, p. 147; Laws 2001, LB 483, § 1.

This section authorizes the mayor and city council to vacate a street under whatever restrictions and regulations might be provided by law and makes no provision for reversion of the fee title to abutting property owners. Valasek v. Bernardy, 242 Neb. 398, 495 N.W.2d 275 (1993).

Right of appeal is preserved. Hanson v. City of Omaha, 157 Neb. 768, 61 N.W.2d 556 (1953).

Vacation of street was not an exercise of power of eminent domain. Hanson v. City of Omaha, 157 Neb. 403, 59 N.W.2d 622 (1953).

Before street may be vacated under this section, committee must be appointed to assess damages. Hanson v. City of Omaha, 154 Neb. 72, 46 N.W.2d 896 (1951).

14-376 Public utilities; acquisition by eminent domain; procedure.

Whenever the qualified electors of any city of the metropolitan class vote at any general or special election to acquire and appropriate by an exercise of the power of eminent domain, any waterworks, waterworks system, gas plant, electric light plant, or electric light and power plant, or street railway, or street railway system, located or operating within or partly within and partly without such city if the main part of such works, plant or system be within any such city and even though a franchise for the construction and operation of any such works, plant, or system may or may not have expired, then any such city shall 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, any such works, plant, or system. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The duly constituted authorities of any such city shall have the power to submit such question or proposition, in the usual manner, to the qualified electors of any such city at any general city election or at any special city election and may submit such proposition in connection with any city 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 election. Such city authorities shall submit such question at any of such elections whenever a petition asking for such submission is signed by the legal voters of the city equaling in number fifteen percent of the votes cast at the last general city election, and is filed in the city clerk's office at least fifteen days before the election at which the submission is asked.

Source: Laws 1921, c. 116, art. III, § 58, p. 462; C.S.1922, § 3614; C.S.1929, § 14-362; R.S.1943, § 14-376; Laws 1951, c. 101, § 37, p. 462.

Act, of which this section was part, sustained as constitutional against contention that appointment by Supreme Court of board of appraisers violated constitutional provisions as to separation of powers of government. In re Appraisement of Omaha Gas Plant, 102 Neb. 782, 169 N.W. 725 (1918).

14-377 Repealed. Laws 1951, c. 101, § 127.

14-378 Repealed. Laws 1951, c. 101, § 127.

14-379 Repealed. Laws 1951, c. 101, § 127.

14-380 Repealed. Laws 1951, c. 101, § 127.

14-381 Repealed. Laws 1951, c. 101, § 127.

(e) BUILDING RESTRICTIONS

14-382 Repealed. Laws 1959, c. 37, § 4.

(f) PARKS, RECREATIONAL AREAS, AND PLAYGROUNDS

14-383 Parks, recreational areas, and playgrounds; special levy; improvement district; creation; election.

Without limiting the applicability of sections 14-366 to 14-372, the city council is authorized to levy special taxes and assessments on properties benefited by parks, recreational areas, and playgrounds acquired either by purchase or condemnation without regard to whether the benefited property is within or without the corporate limits of such city when an improvement district is created by the city council and approved by a majority of the property owners in the district as provided in this section. Each property owner may cast one vote at an election to be held to determine whether such improvement district shall be created for each fifteen thousand dollars of taxable valuation, or fraction thereof, of real property and improvements in the proposed district as determined by the official records of the county assessor for the previous calendar year. When such a district is created by the city council and approved by a majority of the property owners, the special taxes shall be levied proportionately to the taxable valuation of the district. Notice of the election shall be given and the election shall be held in the same manner as other special elections are held in such a city.

Source: Laws 1955, c. 21, § 3, p. 100; Laws 1979, LB 187, § 31; Laws 1992, LB 719A, § 36.

(g) STREETS, SIDEWALKS, AND HIGHWAYS

14-384 Terms, defined.

As used in sections 14-384 to 14-3,127, unless the context otherwise requires:

(1) Alley shall mean an established public way for vehicles and pedestrians affording a secondary means of access in the rear to properties abutting on a street or highway;

(2) Major traffic street shall mean a street primarily for through traffic and contained as such in the master plan of the city;

(3) City shall mean a city of the metropolitan class;

(4) Connecting link shall mean the roads, streets, and highways designated as part of the State Highway System and which are within the corporate limits of a city of the metropolitan class;

(5) Controlled-access facility shall mean a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts on such controlled-access facility or for any other reason;

(6) Main thoroughfare shall mean a street primarily for through travel having been determined as such by the city and contained as such in the master plan of the city;

(7) Highway shall mean a road or street including the entire area within the right-of-way which has been designated a part of the State Highway System by appropriate authority;

(8) Boulevard shall mean a street for noncommercial traffic with full or partial control of access, usually located within a park or a ribbon of park-like development;

(9) Street shall mean a public way for the purpose of vehicular and pedestrian travel in the city and shall include the entire area within the right-of-way; and

(10) Temporary surfacing shall mean surfacing applied to any major traffic street, connecting link, controlled-access facility, main thoroughfare, highway, boulevard or street wherein it is planned by the city that the grade or surfacing of any of the aforementioned shall be changed within two years from the date of completion of said temporary surfacing and a permanent grade established or surfacing applied.

Source: Laws 1959, c. 36, § 1, p. 195.

Cross References

State highway system, see Chapter 39, article 13.

14-385 Streets; improvements; improvement districts; authorized.

The city shall have the power and 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; to curb; to gutter as provided in sections 14-386 to 14-388; to improve in combinations as authorized in section 14-391; and to recurb and regutter streets, boulevards, alleys, public grounds and parts thereof; to regulate, restrict, eliminate or prohibit access to, and vehicular travel upon any existing or hereafter acquired street or other public way, to construct malls thereon, and landscape, beautify and enhance such streets and other public ways in any manner the council may deem proper, and to create separate or combined street and sidewalk, or street, or sidewalk improvement districts all according to and subject to the requirements of sections 14-384 to 14-3,127; but the city may not be required to make any of the improvements authorized in this section if for good reason it deems the same should not be made even though such be petitioned for as provided in section 14-390.

Source: Laws 1959, c. 36, § 2, p. 196; Laws 1961, c. 30, § 4, p. 148; Laws 1969, c. 60, § 1, p. 365.

14-386 Streets; improvement districts; delineation.

To accomplish any of the purposes stated in section 14-385, the city is authorized in all such proceedings to delineate proposed street improvement districts, proposed mall improvement districts, proposed separate or combined street and sidewalk, or street, or sidewalk, or streets and sidewalks improvement districts which shall embrace therein the street or streets, sidewalk or sidewalks, street or sidewalk, or streets and sidewalks, 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.

Source: Laws 1959, c. 36, § 3, p. 196; Laws 1969, c. 60, § 2, p. 366.

14-387 Streets; improvements without petition.

The city is authorized without petition to order any of the improvements specified in section 14-385 within street improvement districts, mall improvement districts, separate or combined street and sidewalk, or street, or sidewalk, or streets and sidewalks improvement districts within the corporate limits of the city or when the improvement is on a controlled-access facility or a major traffic street contained in the approved master plan of the city, and on sidestreets connecting with such major traffic streets for a distance not to exceed one block from such major traffic street.

Source: Laws 1959, c. 36, § 4, p. 197; Laws 1969, c. 60, § 3, p. 366.

14-388 Streets; main thoroughfares; major traffic streets; improvement districts; area included; cost.

The city may without petition order any main thoroughfare or major traffic street or part thereof improved in any manner specified in section 14-385 after the city shall determine it to be such a main thoroughfare or major traffic street, which determination shall be conclusive. Such main thoroughfares or major traffic streets shall include all connecting links as well as county highways leading into the city, and may include part or all of any street which lies partly in the city and partly in the abutting county. It may create improvement districts for such purposes, including the abutting, adjacent, or benefited property. The costs of such improvements to the extent of special benefits occasioned by the improvement may be assessed in whole or in part against the property in such districts and the assessments supplemented either by federal or state aid or both or by other municipal funds, but including permanent improvement funds, all other street resurfacing funds, or highway bond funds.

Source: Laws 1959, c. 36, § 5, p. 197; Laws 1963, c. 44, § 1, p. 219.

14-389 Streets; controlled-access facilities; property; powers; terms and conditions; frontage roads; access.

The city shall have the power to designate and establish controlled-access facilities, and may design, construct, maintain, improve, alter, and vacate such facilities and may by ordinance regulate, restrict, or prohibit access to such facilities so as best to serve the traffic for which such facilities are intended. The city may provide for the elimination of intersections at grade with existing roads, streets, highways, or alleys if it finds the public interest shall be served thereby. An existing road, street, alley, or other traffic facility may be included within such facilities or such facilities may include new or additional roads, streets, highways, or the like. In order to carry out the purposes of this section, in addition to any other powers it may have, the city may acquire in public or private property such rights of access as are deemed necessary, including but not necessarily limited to air, light, view, ingress, and egress. Such acquisitions may be by gift, devise, purchase, agreement, adverse possession, prescription, condemnation, or otherwise as provided by law and may be in fee simple absolute or in any lesser estate or interest. The city may make provision to mitigate damages caused by such acquisitions, terms and conditions regarding the abandonment or reverter of such acquisitions, and any other provisions or conditions that are desirable for the needs of the city and the general welfare of the public. The city is further authorized to designate, establish, design and construct, maintain, vacate, alter, improve, and regulate frontage roads within

the boundaries of any present or hereafter acquired right-of-way and exercise the same powers over such frontage roads as is exercised over controlled-access facilities. Such frontage roads may be connected to or separated from the controlled-access facilities at such places as the city shall determine to be consistent with public safety. Upon the construction of any frontage road, any right of access between the controlled-access facility and property abutting or adjacent to such frontage roads shall terminate and ingress and egress shall be provided to the frontage road at such places as will afford reasonable and safe connections. If the construction or reconstruction of any controlled-access facility results in the abutment of property on such facility that did not theretofore have direct egress from or ingress to it, no rights of direct access shall accrue because of such abutment, but the city may prescribe and define the location of the privilege of access, if any, of properties that then, but not theretofore, abut on such facility.

Source: Laws 1959, c. 36, § 6, p. 197.

14-390 Streets; improvements; petition of property owners.

Except as otherwise specified and provided in sections 14-384 to 14-3,127, the city shall not order or cause to be made any of the improvements herein enumerated in any improvement district except upon a petition of the record owners of the majority of the frontage of taxable property in the district abutting upon the streets or parts of streets proposed to be improved.

Source: Laws 1959, c. 36, § 7, p. 198.

14-391 Streets; improvements; petition of property owners; improvement districts; create; districts partly within and partly outside city.

The city may, upon a petition of the record owners of a majority of the frontage of taxable property upon the streets or parts of streets within a district created for that purpose, order any of the improvements authorized in section 14-385, on any street or any number of consecutive streets which extend in the same general direction, together with parts of streets, alleys, and ways either intersecting or connecting therewith, within reasonable, appropriate, or necessary limits in one proceeding and in one improvement district, by causing the same in whole or in part to be paved, repaved, curbed, or recurbed, or the grades changed or graded or the paving resurfaced or relaid or any combination of such work to be done, including a change of grade and grading or either or both, construction of malls, street or sidewalk, or streets and sidewalks on any of the streets or ways within such districts. The city may also include in such districts the replacement, or repair of sidewalks. In addition to the creation of districts lying wholly within the corporate limits, the city may create such districts on streets lying partly within the city and partly without the corporate limits.

Source: Laws 1959, c. 36, § 8, p. 199; Laws 1963, c. 45, § 1, p. 221; Laws 1969, c. 60, § 4, p. 367.

14-392 Streets; improvements; assessment of cost.

For the purpose of covering in whole or in part the costs of any of the improvements and costs incident thereto, authorized in sections 14-384 to 14-3,127, including grading done in combination with any other improvements, the city is empowered to assess the property within the improvement district or

the property benefited by change of grade or grading when not made in combination with other improvements, to the full extent of the special benefits thereby conferred upon the respective lots, tracts, and parcels of land, or if the city council shall find that there are common benefits enjoyed by the public at large without reference to the ownership of property abutting or adjacent to the improvement or improvements, or that there is a common benefit to the property embraced within the district or districts, the city is empowered to assess the costs of such improvement or improvements against all the property included in such district or districts, according to such rules as the city council sitting as a board of equalization, shall adopt for the distribution or adjustment of the costs of the improvement or improvements. All such assessments shall be equalized, levied, and collected as provided by law for the equalization, levying, and collection of special assessments.

Source: Laws 1959, c. 36, § 9, p. 199; Laws 1969, c. 60, § 5, p. 367.

14-393 Streets; establish or change grade; authorization of city; requirements.

Whenever it is desired to establish or to change the previously established grade of any street, highway, boulevard, main thoroughfare, controlled-access facility, connecting link, major traffic street, alley, or part thereof, such establishment or change may be authorized by the city. Such authorization shall state the proposed grade by elevations or other definite data and shall refer to a plat with specifications fully detailing and showing the established grade or the amount of change in the grade line, which plat shall remain on file in the city offices. The authorization for and the order establishing or changing the previous grade may include the establishment of or the change of the previously established grade on any number of intersecting or connecting streets which may be reasonably appropriate and necessary to a proper adjustment of grade lines to the principal grade line proposed to be changed or to include the change of grade on cross streets so that traffic on such cross streets may pass under the street to the principal grade line to be changed by a subway or over the street to the principal grade line on a bridge, viaduct, or overpass.

Source: Laws 1959, c. 36, § 10, p. 199.

14-394 Streets; change of grade; petition of property owners; sufficiency.

The city is authorized to change the grade of any street, boulevard, highway, main thoroughfare, controlled-access facility, connecting link, major traffic street, alley, or part thereof when a petition for a proper and satisfactory change of grade has been signed and filed by the record owners of a majority of the frontage of taxable property abutting upon that part of the street of which the change of grade is proposed. A petition for the order changing the grade may include the change of grade of any number of intersecting or connecting streets which may be reasonably appropriate and necessary to a proper adjustment of grades. In such event the sufficiency of the petition shall be determined by a consideration of the total frontage feet of taxable property upon all the streets or parts thereof upon which it is proposed to change the grades.

Source: Laws 1959, c. 36, § 11, p. 200.

14-395 Streets; establish or change grade; authority of city.

The city may authorize any street, boulevard, highway, main thoroughfare, controlled-access facility, connecting link, major traffic street, alley, or part thereof graded to a grade as established or changed in accordance with section 14-393.

Source: Laws 1959, c. 36, § 12, p. 200.

14-396 Streets; grade; petition of property owners; order of city.

The city may order any street or alley or part thereof graded to an established grade whenever there is filed an approved petition of the record owners of a majority of the frontage of taxable property upon that part of the street proposed to be graded.

Source: Laws 1959, c. 36, § 13, p. 200.

14-397 Streets; change of grade; special assessment.

In order to cover the entire cost of changing the grade or grading, as provided by sections 14-384 to 14-3,127, of any street, boulevard, highway, main thoroughfare, controlled-access facility, connecting link, major traffic street, alley, or part thereof, including as well, intersections and damages awarded, the city is authorized to levy special assessments to the extent of the special benefits conferred by the improvement on the lots and parcels of land especially benefited by reason of the grading of any street or part thereof whether such property abuts on or is in the vicinity of the street or the part of the street so graded. All such special assessments shall be equalized, levied, and collected in the manner provided by law for the equalization, levying, and collection of special assessments. All grading shall be done to the full width of the street unless for good and sufficient reason the city directs a different width.

Source: Laws 1959, c. 36, § 14, p. 201.

14-398 Streets; change of grade; special assessment; how determined.

Under the methods provided in sections 14-384 to 14-3,127 to grade streets, boulevards, highways, main thoroughfares, controlled-access facilities, connecting links, major traffic streets, alleys, and parts thereof, any number of intersecting and connecting streets reasonably required and proper and necessary to the better and improved use of said streets may be authorized to be graded in one and the same proceeding. The cost thereof as provided in sections 14-384 to 14-3,127 may be assessed upon property specially benefited. In such instances, in determining the sufficiency of either an authorized protest or petition, the total frontage of taxable property on all sides on all of the streets to be graded shall be taken into consideration.

Source: Laws 1959, c. 36, § 15, p. 201.

14-399 Streets; grade; petition; contents; requirements.

All petitions authorized by sections 14-384 to 14-3,127 for changing the grade of streets or grading streets shall contain provisions waiving damages on account thereof, and such petitions as well as protests authorized shall be signed and executed and filed in the manner required for petitions for street improvements.

Source: Laws 1959, c. 36, § 16, p. 201.

14-3,100 Streets; grade; special assessments; appraisers; fees; damages; award.

After the grade of any street or alley shall be finally changed or the grading thereof finally ordered as provided in sections 14-384 to 14-3,127 and before any assessments are levied, a committee of at least three disinterested residents of the city shall be appointed by the city to appraise the damages caused by the change of grade or grading. The committee shall promptly make an appraisal of and report its award of such damages as it determines have been occasioned by such change of grade or grading. Prior to entering upon their duties, such appraisers shall take and file such oath as may be by law or ordinance required. The committee shall hold meetings on such reasonable notice to the interested parties as the city may from time to time provide, and may take testimony with respect to the question of damages. The committee shall report its award to the city and the city shall thereupon have authority to approve the same, to change or modify any award on reasonable notice to the interested parties, or to reject the entire report or the award as to any particular property. The appraisers appointed under this section shall be entitled to fees for their time spent which shall be determined in such manner as the city shall from time to time provide.

Source: Laws 1959, c. 36, § 17, p. 201; Laws 1969, c. 60, § 6, p. 368; Laws 2005, LB 626, § 1.

14-3,101 Streets; grade; award of damages; when payable; appeal.

Whenever an award of damages for a change in grade or grading has been finally approved the same may be assessed to the extent of the special benefits conferred by the improvement against the lots and parcels of land abutting upon or in the vicinity of the improvements made. Within sixty days after such assessment the award of damages shall become due and payable and they must be paid by warrants drawn against the special assessment fund thus created. Any person feeling aggrieved by reason of an award of damages or failure to award sufficient damages may appeal to the district court of the county within which the property is located within the time and in the manner provided by law for such appeals.

Source: Laws 1959, c. 36, § 18, p. 202.

14-3,102 Streets; improvements; notice; service; protest; effect; assessments.

Whenever it is desired to make any improvement or improvements authorized in section 14-385, where the costs of such improvement or improvements are to be assessed against the adjacent and abutting property benefited thereby, and no petition has been filed therefor in accordance with section 14-391, the city for that purpose may propose such improvement or improvements stating the specific character of the improvement or improvements thus to be made. The city shall cause to be published in the official newspaper a brief notice of such proposal stating the character of the improvement or improvements proposed thereby, and shall give additional notice to the property owners in the district or districts, or proposed district or districts, as required by the provisions of section 25-520.01. If within thirty days thereafter the owners of fifty-one percent of the taxable property abutting upon the street or streets, or part or parts thereof proposed thus to be improved protest against such project, such work shall not be done. In the absence of such protest, the city shall be authorized to proceed with the work as proposed. The cost and expense thereof,

as provided by law, may be assessed against the property within the district or districts specially benefited to the extent of such benefits. Where assessment against the property within the district or districts specially benefited is not made, or where the improvement or improvements are on a main thoroughfare, major traffic street, or connecting link, or made pursuant to sections 14-3,103 to 14-3,106, this section shall not apply.

Source: Laws 1959, c. 36, § 19, p. 202; Laws 1963, c. 46, § 1, p. 222; Laws 1969, c. 60, § 7, p. 369.

14-3,103 Sidewalks; construction or repair; required, when; assessment of cost; equalization.

The city shall have the power to construct or repair sidewalks along any street or part thereof, or any boulevard or part thereof, of such material and in such manner as it deems necessary and assess the cost thereof upon abutting property. Such assessments except for temporary sidewalks and sidewalk repairs shall be equalized and levied as other special assessments. The city shall cause the construction of sidewalks on at least one side of every major traffic street and main thoroughfare in the city, excluding freeways, expressways, controlled-access facilities, and other streets deemed by the city to demonstrate no or very limited demand for pedestrian use, and may assess the cost thereof upon abutting property. Such construction shall be completed within a reasonable time, based upon an annual review of construction program priorities and available funding sources, following either July 10, 1984, or the creation or annexation of such major traffic street or main thoroughfare, whichever is later.

Source: Laws 1959, c. 36, § 20, p. 203; Laws 1971, LB 237, § 2; Laws 1984, LB 992, § 1.

14-3,104 Temporary sidewalks; when.

Where the grade of any street or part of a street has not been established or where a street has not been worked or filled to the established grade or where the street has been graded but does not conform to the established grade the owner of any lots or lands abutting on such street shall only be required to construct or repair such temporary sidewalk along such street with such material as the city may direct.

Source: Laws 1959, c. 36, § 21, p. 203.

14-3,105 Sidewalks; construction or repair; notice; service.

Before any sidewalk shall be constructed or repaired by the city, the owner or owners of the lots or lands to be assessed shall be given notice to construct or repair such sidewalk and shall have twenty days after the giving of such notice within which to construct or repair the same. Such notice shall be served or published as directed by ordinance and if the notice be by publication it shall be sufficient to address such notice to the owners generally. The city shall give an additional notice by registered letter or certified mail directed to the last-known address of such owners or their agents, but failure to give such additional notice shall not invalidate the proceedings, or the special assessments for such sidewalk.

Source: Laws 1959, c. 36, § 22, p. 203.

14-3,106 Sidewalks; construction or repair; failure of owner; effect.

In case the owner or owners shall fail to construct or repair such sidewalk as directed, the city may construct or repair such sidewalk or cause the same to be done and assess the cost thereof upon the abutting property. Where the owner or owners of abutting property fail to keep in repair the sidewalk adjacent thereto, they shall be liable for all damages or injuries occasioned or recovered by reason of the defective or dangerous condition of such sidewalk.

Source: Laws 1959, c. 36, § 23, p. 204.

14-3,107 Streets; vacation; narrow; reversion to abutting owners; improvements; assessment of benefits; vacation of minimal secondary right-of-way; procedure.

(1) Except as provided in subsection (2) of this section, the city may vacate or narrow any street, highway, main thoroughfare, controlled-access facility, connecting link, boulevard, major traffic street, or alley upon petition of the owners of seventy-five percent of the taxable frontage feet abutting upon such street or alley proposed to be vacated and asking for such vacation, or the city, for purposes of construction of a controlled-access highway or to conform to a master plan of the city, may, without petition having been filed therefor, vacate any street or alley or any part thereof in the city. Whenever a street is vacated or narrowed, the part so vacated shall revert to the abutting owners on the respective sides thereof, except that if part or all of the vacated street lies within the State of Nebraska but one side or any part of the street is adjacent to the boundary of the State of Nebraska, all of the street lying within the State of Nebraska or that part lying within the State of Nebraska shall revert to the owner of the abutting property lying wholly within the State of Nebraska. The city may open, improve, and make passable any street, highway, boulevard, main thoroughfare, controlled-access facility, connecting link, major traffic street, or alley. For purposes of this subsection, open refers to the adaptation of the surface of the street to the needs of ordinary travel but does not necessarily require the grading to an established grade. The costs of any of the improvements mentioned in this subsection, except as otherwise provided in sections 14-384 to 14-3,127, to the extent of special benefits thereby conferred, may be assessed against the property specially benefited thereby in the usual manner for assessing special benefits. When the city vacates all or any portion of a street, highway, main thoroughfare, controlled-access facility, connecting link, boulevard, major traffic street, or alley pursuant to this subsection, the city 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.

(2) The city may vacate any minimal secondary right-of-way in the manner described in this subsection. The city may vacate any segment of such right-of-way by ordinance without petition and without convening any committee for the purpose of determining any damages if all affected abutting properties have primary access to an otherwise open and passable public street right-of-way. An abutting property shall not be determined to have primary access if such abutting property has an existing garage and such garage is not accessible without altering or relocating such garage. Title to such vacated rights-of-way shall vest in the owners of abutting property and become a part of such

property, each owner taking title to the center line of such vacated street or alley adjacent to such owner's property subject to the following: (a) There is reserved to the city the right to maintain, operate, repair, and renew sewers now existing there and (b) there is reserved to the public utilities and cable television systems the right to maintain, repair, renew, and operate installed water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances above, on, and below the surface of the ground for the purpose of serving the general public or abutting properties, including such lateral connection or branch lines as may be ordered or permitted by the city or such other utility or cable television system and to enter upon the premises to accomplish such purposes at any and all reasonable times. The city 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. For purposes of this subsection, minimal secondary right-of-way means any street or alley which either is unpaved, has substandard paving, or has pavement narrower than sixteen feet and which is a secondary means of access to or from any property abutting the portion to be vacated.

Source: Laws 1959, c. 36, § 24, p. 204; Laws 1967, c. 43, § 1, p. 173; Laws 2001, LB 483, § 2; Laws 2003, LB 97, § 1.

This section provides a method by which property owners in a metropolitan city may initiate a petition for vacation of nominal streets. Aro Investment Co. v. City of Omaha, 179 Neb. 569, 139 N.W.2d 349 (1966).

14-3,108 Streets; improvements; control of work; rules and regulations.

The city shall have the right to control and direct all work upon the public streets. The city may adopt any and all reasonable regulations relating to excavations in the streets or public grounds by any and all parties, including waterworks, gas, and other franchised corporations or public contractors and to enforce such regulations and impose such penalties for the violation thereof as may be deemed proper.

Source: Laws 1959, c. 36, § 25, p. 205.

14-3,109 Streets; public utilities; connections; power of city to compel; cost.

The city shall have the power to compel any water company, gas company, or other person, corporation, or firm owning or controlling any pipe or other underground conduits or other appliances usually installed under the surface of the streets, to provide for and construct all connections that may be deemed necessary for the future, to the curb or property lines in all streets, highways, boulevards, controlled-access facilities, main thoroughfares, connecting links, major traffic streets, or alleys to be paved, repaved, or otherwise improved in such manner and in conformity with such plans as may be determined upon. If any such companies or other parties shall neglect to carry out such construction or fail to make the connections required within thirty days after the same shall have been ordered, the city shall be empowered to cause the same to be done and for the purpose of paying therefor the cost thereof shall be deducted from such accounts as the city may have with such companies or persons.

Source: Laws 1959, c. 36, § 26, p. 205.

14-3,110 Public property; abutting streets; not subject to special assessment; cost, how paid.

Property of the United States Government at the time devoted to governmental uses, property of the State of Nebraska, any county, or the city, abutting upon and adjacent to the streets or parts of streets being improved or included within any improvement district authorized in sections 14-384 to 14-3,127, shall not be subject to special assessment, but the amount of the cost of such improvement which would otherwise be assessable against such property shall be paid from funds created and maintained for that purpose as provided by law and such property shall not be counted in determining the sufficiency of a petition or protest.

Source: Laws 1959, c. 36, § 27, p. 205.

14-3,111 Streets and sidewalks; contract for improvements; bids; advertisement.

No contract for any of the improvements provided by sections 14-384 to 14-3,127 shall be let unless first the city shall have made a detailed estimate of the costs of the contemplated improvement, nor shall any such contract be let until after the city has advertised for and received bids for the performance of such work. If no bid is received within the estimate, no award shall be made upon any bids received until after fifteen days after the time for receiving bids under such advertisement shall have expired. Within such time anyone desiring to do so may file a bid within the estimate and award may be made thereon in like manner as if said bid had been received in pursuance to the advertisement calling for bids. All improvements authorized by sections 14-384 to 14-3,127 shall be done under contract with the lowest responsible bidder, except that when bids are called for by advertisement for grading in a street or alley and no bid is received within the estimate, the city may enter into a contract to do such grading without further advertisement for bids if the contract price be within the estimate and the contract be entered into within thirty days after the time for receiving bids under the advertisement calling therefor.

Source: Laws 1959, c. 36, § 28, p. 206.

14-3,112 Sections, how construed.

Nothing in sections 14-384 to 14-3,127 shall be construed as in any way abridging, modifying, or limiting the authority or right heretofore granted to and now possessed by any metropolitan city under general law to improve any road, highway, or boulevard leading into such city for a distance not to exceed six miles from the corporate limits thereof, nor as modifying the procedure under such grant or the power or authority to issue bonds in connection therewith, but such authority is hereby expressly recognized and the power so granted by general law shall not be subject to any of the limitations contained in sections 14-384 to 14-3,127.

Source: Laws 1959, c. 36, § 29, p. 206.

14-3,113 Intersections, certain lands; improvement by city; priority on use of funds; street improvement districts.

The city is authorized to improve intersections, spaces opposite alleys, and spaces opposite property not subject to special assessment, with the like material in the manner provided in sections 14-384 to 14-3,127 for improving streets whenever a street, highway, boulevard, main thoroughfare, controlled-access facility, major traffic street, or alley is ordered to be improved at the

time of improving such street and in such event is authorized to include in such improvement of such intersection and spaces the construction, replacement, or repair of sidewalks therein and, except as may be otherwise provided, pay for all such improvements from funds provided for the purpose of improving intersections; *Provided*, that the first priority in the expenditure of funds for such purposes shall be given to improvements within street improvement districts; *and provided further*, the city shall maintain, in a separate fund, not less than twenty-five thousand dollars to be expended solely for the purpose of improving intersections. Such sidewalk construction, replacement, or repair may be included either in the contract for curbings at an intersection or in the contract for paving the same; *Provided*, that such restrictions shall not apply to any funds derived from Chapter 66, articles 4 and 6, which accumulated prior to December 31, 1962.

Source: Laws 1959, c. 36, § 30, p. 206; Laws 1963, c. 47, § 1, p. 223.

14-3,114 Petitions; form; contents; signatures.

All petitions for improvements provided for in sections 14-384 to 14-3,127 shall be upon printed blanks and shall describe the street to be improved and improvement desired. The city shall from time to time prescribe the form of such blanks. Signatures to such petitions shall have no conditions attached and all signatures shall be acknowledged before a notary public.

Source: Laws 1959, c. 36, § 31, p. 207.

14-3,115 Improvement districts; estimate of cost; bids; advertisement.

The city shall, when it creates an improvement district for paving, repaving, curbing, or guttering, or other improvements of like character, prepare an estimate of the cost of such improvement and shall thereafter advertise for and receive bids upon such material as may be designated by the city for such improvement. The advertisements, specifications for bids, and petitions designating materials shall contain such information and be worded in such language as the city may from time to time direct. All bids shall be received and opened at the same time as provided by ordinance except as otherwise provided in section 14-3,111. The city may reject any and all bids.

Source: Laws 1959, c. 36, § 32, p. 207; Laws 1972, LB 1046, § 2.

14-3,116 Materials; petition to designate; form.

All petitions for the purpose of designating material shall be on printed blanks furnished by the city upon application and shall contain such information and shall be worded in such language as the city may from time to time direct.

Source: Laws 1959, c. 36, § 33, p. 207.

14-3,117 Improvements; petition; recording.

Whenever a petition for an improvement is filed with the city, the hour, day, month, and year when so filed shall be officially marked upon such petition and such petition shall be recorded in such manner as the city may from time to time provide.

Source: Laws 1959, c. 36, § 34, p. 207.

14-3,118 Improvements; petitions; restrictions.

Petitions after having been filed with the city shall not be returned or withdrawn, nor shall any person be allowed to add, cancel, erase, or withdraw or in any way modify any signature or writing thereon. Where two or more petitions are filed for the same improvement they shall be considered and taken together as one petition.

Source: Laws 1959, c. 36, § 35, p. 208.

14-3,119 Improvements; petitions; examination; certification; notice of irregularity; publication; supplemental petitions.

Petitions for improvements shall be examined and certified for sufficiency as the city may provide. Certificates as to sufficiency when properly filed as provided by the city shall be prima facie evidence of the truth and correctness of the matter therein certified. If such certificates show the petition for any improvement to be irregular, illegal, or insufficient it shall be the duty of the city to give notice by publication for three successive days in the official newspaper of the city of such irregularity, illegality, or insufficiency and the property owners within such districts may at any time file supplemental petitions for such improvement and such supplemental petitions shall be considered and taken as a part of the original petition. Such supplemental petitions shall be examined and certified as in the case of the original petition.

Source: Laws 1959, c. 36, § 36, p. 208.

14-3,120 Improvements; petition; publication; notice to file protest.

If the certificates required by section 14-3,119 show that the petition is regular, legal, and sufficient the city shall cause a copy of the petition to be published for three days in the official newspaper of the city with a notice thereto attached directing the property owners generally in the district that they shall have thirty days from the first day of publication of the petition and notice to file a protest with the city against the regularity or the sufficiency of the petition or signatures thereon.

Source: Laws 1959, c. 36, § 37, p. 208.

14-3,121 Improvements; petition; protest; procedure; supplemental petition; hearing; appeal.

The property owners in any improvement district shall have thirty days from the first day of publication of the petition and notice as provided in section 14-3,120 to file with the city a protest against the regularity, legality, or sufficiency of the petition or any signature thereon. Such protest shall be verified by the party making the same, who shall state under oath and set forth with particularity all the alleged defects in the petition, and if the protest relates to the ownership of any property, it shall give the name and address of the true owner thereof and shall state under oath that such protest is made in good faith. At any time within ten days after the expiration of the time for filing the protest supplemental petitions for the improvement may be filed and when so filed shall be considered as a part of the original petition, but the property owners within such district shall have ten days from the date of the filing of such supplemental petitions in which to file a protest against the regularity, legality, or sufficiency of any of the signatures thereon or against the original

petition as so supplemented. No further notice of the filing of such supplemental petition shall be required and such supplemental petition need not be published. When any such protest has been filed with the city within the times specified, the improvement petitioned for shall not be ordered until the city shall have given the party protesting a hearing upon such protest and shall have, upon the evidence, found, adjudged, and determined the petition to be regular, legal, and sufficient and not then until after the time has expired for perfecting an appeal from such finding, judgment, and determination. Any protesting party or parties may appeal from such finding, judgment, and determination in the manner provided by section 14-813.

Source: Laws 1959, c. 36, § 38, p. 208; Laws 1961, c. 30, § 5, p. 148.

14-3,122 Protest; filing; hearing.

In case a protest is filed the city shall have power and it shall be its duty to hear, determine, and adjudicate the objections raised by any protest in all matters relating to regularity, legality, and sufficiency of such petition and supplemental petition upon such notice to the party protesting of the time, place, and purpose of the hearing as the city may from time to time provide.

Source: Laws 1959, c. 36, § 39, p. 209.

14-3,123 Petition; sufficiency.

In case no protest is filed within the time provided in section 14-3,121, the city shall have the power, without further notice, to find, adjudge, and determine that such petition is regular, legal, and sufficient.

Source: Laws 1959, c. 36, § 40, p. 209.

14-3,124 Materials; standards; adopt.

In all specifications for materials to be used in paving, curbing, and guttering of every kind, the city shall establish a standard or standards of strength and quality, to be demonstrated by physical, chemical, or other tests within the limits of reasonable variations. In every instance the materials shall be so described in the specifications, either by standard or quality, to permit genuine competition between contractors so that there may be two or more bids by individuals or companies in no manner connected with each other and no material shall be specified which shall not be subject to such competition.

Source: Laws 1959, c. 36, § 41, p. 209.

14-3,125 Improvement district; materials to be used; designate by petition.

The city shall give the property owners within any improvement district such opportunity to designate by petition to be filed with the city the specified material which such property owners desire to be used in the improvement of the street or alley or other grounds within the district.

Source: Laws 1959, c. 36, § 42, p. 210.

14-3,126 Streets; improvement or construction; materials to be used; designate by petition.

The property owners may designate the material to be used in the improvement or construction of streets or alleys or other grounds within the district by

petition, signed by a majority thereof, filed with the city within thirty days after notice of the proposed improvement.

Source: Laws 1959, c. 36, § 43, p. 210.

14-3,127 Improvements; protests by majority of abutting property owners; filing; time; effect.

In any of the improvements or alterations authorized by sections 14-363, 14-364, 14-384 to 14-3,102, and 14-3,108 to 14-3,127 and subsection (1) of section 14-3,107 in which any of the cost of the improvements or alterations is to be assessed in whole or in part to the abutting property owners, the record owners of a majority of the frontage of the taxable abutting property may, by petition filed with the city within thirty days after notice of the improvements or alterations, protest against the improvements or alterations, and when such petition is filed, the improvements or alterations shall not be done.

Source: Laws 1959, c. 36, § 44, p. 210; Laws 1965, c. 39, § 1, p. 232; Laws 1969, c. 60, § 8, p. 369; Laws 1991, LB 745, § 3; Laws 2003, LB 97, § 2.

(h) SPECIAL ASSESSMENT BONDS

14-3,128 Public improvements; special assessment bonds; issuance; purpose; sinking fund; limitations.

(1) Any city of the metropolitan class is hereby authorized and empowered to issue and sell special assessment bonds to cover the cost of the work of construction of any and all public improvements to be paid for by special assessments which such city is authorized by law to make.

(2) Any special assessments levied on account of such work shall constitute a sinking fund for the payment of interest and principal on the bonds as the bonds become due.

(3) The city council shall have power to determine the denominations of such bonds, and the date, time, and manner of payment.

(4) Such bonds shall not be sold or exchanged for less than the par value thereof and shall bear interest payable semiannually.

(5) Special assessment bonds issued as authorized in this section shall not be chargeable against the debt limit of any metropolitan-class city issuing such bonds.

Source: Laws 1977, LB 86, § 1.

(i) STREET LIGHTING

14-3,129 Ornamental or decorative street lighting; city; maintain; exception; costs.

When a system of ornamental or decorative street lighting has been continuously maintained in a residential neighborhood in a city of the metropolitan class for forty years or longer, it shall be the duty of such city to preserve and maintain such lighting system unless the city council votes by a four-fifths majority of its members to discontinue such lighting. No special assessment of any kind shall be made to the property owners within an ornamental or

decorative street lighting system for the costs of any preservation or maintenance of such system.

Source: Laws 1979, LB 509, § 1.

(j) CITY OF OMAHA PUBLIC EVENTS FACILITIES FUND

14-3,130 Repealed. Laws 2000, LB 1349, § 15.

ARTICLE 4

CITY PLANNING, ZONING

Section
14-401. Buildings and structures; regulations; board of appeals; powers of city council.
14-402. Building zones; creation; powers of city council; uniformity; manufactured homes.
14-403. Building zones; regulations; purposes; limitations.
14-404. Building zones; boundaries; regulations; recommendation of city planning board required; hearing; notice.
14-405. Building zones; boundaries; change or repeal; protest.
14-406. Building zones; nonconforming use; continuance authorized; changes.
14-407. Zoning; exercise of powers; planning board or official.
14-408. Building zones; board of appeals; members; term; vacancy; removal; meetings; oaths; subpoenas; record; public access.
14-409. Board of appeals; powers and duties; vote required for reversal.
14-410. Board of appeals; appeal; procedure; effect.
14-411. Board of appeals; appeal; notice; hearing; powers of board.
14-412. Board of appeals; special permits; power to grant; conditions.
14-413. Board of appeals; decision; review by district court; procedure.
14-414. Board of appeals; decision; review by district court; priority; evidence; judgment; costs.
14-415. Building regulations; enforcement; inspection; violations; penalty.
14-416. Building regulations; other laws; applicability.
14-417. Existing commission, board of appeals; regulations, decisions; continuance.
14-418. Building regulations; scope of operation; jurisdiction of city council.
14-419. Building regulations; within three miles of corporate limits; jurisdiction of city council; powers granted.
14-420. Request for change in zoning; notice; requirements; failure to give; effect.

14-401 Buildings and structures; regulations; board of appeals; powers of city council.

For the purpose of promoting the health, safety, morals or the general welfare of the community, the city council in a city of the metropolitan class is hereby empowered to 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. Such regulations may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

Source: Laws 1925, c. 45, § 1, p. 178; C.S.1929, § 14-404.

The Nebraska Legislature has granted the City of Omaha the power to zone property lying within its jurisdiction. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

Zoning ordinances enacted by a city, as a lawful exercise of police power, must be consistent with public health, safety, morals, and the general welfare. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

This article sets forth the powers and duties of a metropolitan city with respect to planning and zoning. State v. Buttner, 180 Neb. 529, 143 N.W.2d 907 (1966).

This section is cited as a background for history of zoning power of city of Omaha. Wolf v. City of Omaha, 177 Neb. 545, 129 N.W.2d 501 (1964).

This section constitutes a grant of power to zone. Davis v. City of Omaha, 153 Neb. 460, 45 N.W.2d 172 (1950).

City council is empowered to regulate and restrict height and size of buildings, and the percentage of lot that may be occupied. Roncka v. Fogarty, 152 Neb. 467, 41 N.W.2d 745 (1950).

This and subsequent sections of this article became a part of city charter subsequent to provisions relating to gifts made to the city for parks and playground purposes. Ash v. City of Omaha, 152 Neb. 393, 41 N.W.2d 386 (1950).

Ordinance of city of metropolitan class prescribing a restricted zone for high-type residential use was sustained as constitutional under police power. Dundee Realty Co. v. City of Omaha, 144 Neb. 448, 13 N.W.2d 634 (1944).

Zoning ordinance, drafted in general terms and providing reasonable margin to secure effective enforcement, is within police power of state and constitutional. Pettis v. Alpha Alpha Chapter of Phi Beta Pi, 115 Neb. 525, 213 N.W. 835 (1927).

Cities of metropolitan class under this article are not authorized to impose unreasonable regulations upon the owners of city lots with respect to the area which may be occupied for building purposes. State ex rel. Westminster Presbyterian Church v. Edgecomb, 108 Neb. 859, 189 N.W. 617 (1922), 27 A.L.R. 437 (1922).

14-402 Building zones; creation; powers of city council; uniformity; manufactured homes.

(1) For any or all of the purposes listed in section 14-401, the city council 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 14-401 to 14-418. Within such districts the city council may regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of buildings, structures, or land. 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.

(2)(a) The city council 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 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 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 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.

Source: Laws 1925, c. 45, § 2, p. 179; C.S.1929, § 14-405; R.S.1943, § 14-402; Laws 1981, LB 298, § 1; Laws 1985, LB 313, § 1; Laws 1994, LB 511, § 1; Laws 1996, LB 1044, § 54; Laws 1998, LB 1073, § 1.

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.

The Nebraska Legislature has granted the City of Omaha the power to zone property lying within its jurisdiction. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

The uniformity requirement in this section does not prohibit reasonable classifications within a district. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

To successfully challenge a rezoning ordinance on the grounds it violates the uniformity requirement of this section, the challengers must prove that the actions of the city in adopting the rezoning ordinance were unreasonable, discriminatory, or arbitrary and that the regulation bears no relationship to the purpose or purposes sought to be accomplished by the ordinance. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

This section is cited as a background for history of zoning power of city of Omaha. Wolf v. City of Omaha, 177 Neb. 545, 129 N.W.2d 501 (1964).

City is authorized to regulate the use of buildings and land within districts created in the city. Bucholz v. City of Omaha, 174 Neb. 862, 120 N.W.2d 270 (1963).

Spot zoning of block was not authorized. Davis v. City of Omaha, 153 Neb. 460, 45 N.W.2d 172 (1950).

14-403 Building zones; regulations; purposes; limitations.

Such regulations shall be made in accordance with a comprehensive plan and 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, and to promote convenience of access. Such regulations shall be made with reasonable consideration, among other things, as to 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. Whenever the city council shall determine that the use or contemplated use of any building, structure or land will cause congestion in the streets, increase the danger from fire or panic, imperil public safety, cause undue concentration or congregation of people, or impede transportation, the council may include in such regulations requirements for alleviating or preventing such conditions when any change in use or zoning classification is requested by the owner.

Source: Laws 1925, c. 45, § 3, p. 179; C.S.1929, § 14-406; R.S.1943, § 14-403; Laws 1967, c. 430, § 1, p. 1317; Laws 1971, LB 166, § 1.

The city, in adopting a rezoning ordinance, is not required to accomplish all the objectives of this section. To determine whether a rezoning ordinance complies with a comprehensive plan pursuant to this section, this court will review the land uses surrounding the rezoned property. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

The Nebraska Legislature has granted the City of Omaha the power to zone property lying within its jurisdiction. Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

The term ''comprehensive plan'' in this section is not the same as ''city plan'', and does not refer to any special document drafted by a city of the metropolitan class. Sasich v. City of Omaha, 216 Neb. 864, 347 N.W.2d 93 (1984).

This section is cited as a background for history of zoning power of city of Omaha. Wolf v. City of Omaha, 177 Neb. 545, 129 N.W.2d 501 (1964).

Ordinance rezoning property within city to permit construction of regional shopping center was a proper exercise of zoning power. Bucholz v. City of Omaha, 174 Neb. 862, 120 N.W.2d 270 (1963).

Where zoning action did not follow a comprehensive plan, it was an unreasonable and arbitrary exercise of zoning power. Davis v. City of Omaha, 153 Neb. 460, 45 N.W.2d 172 (1950).

Zoning regulations are required to be made in accordance with a comprehensive plan designed to lessen congestion in the streets. Roncka v. Fogarty, 152 Neb. 467, 41 N.W.2d 745 (1950).

14-404 Building zones; boundaries; regulations; recommendation of city planning board required; hearing; notice.

The city 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 city shall not determine the boundaries of any district or impose any regulations or restrictions until after the appropriate planning board of the city has made recommendations thereon, and no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which citizens shall have an opportunity to be heard. At least one day's notice of the time, place, and purpose of such hearing shall be published in the official paper or a paper of general circulation in such municipality, and not less than ten days before such hearing.

Source: Laws 1921, c. 116, art. III, § 66, p. 467; C.S.1922, § 3622; Laws 1925, c. 45, § 4, p. 179; C.S.1929, § 14-402; C.S.1929, § 14-407; R.S.1943, § 14-404; Laws 1959, c. 37, § 1, p. 211.

Much ministerial work is involved in following the statutory directive for planning and zoning. State v. Buttner, 180 Neb. 529, 143 N.W.2d 907 (1966).

14-405 Building zones; boundaries; change or repeal; protest.

Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. When a protest against a change of boundaries is presented to the city clerk at least six days prior to the city council vote on such change and such change is not in accordance with the comprehensive development plan, such change shall not become effective except by a favorable vote of five-sevenths of all members of the city council. The protest shall be in writing, signed, and sworn and acknowledged pursuant to section 64-206 by the required owners. For purposes of this section, the required owners means those fee simple owners of record as recorded by the register of deeds owning at least twenty percent of the area: (1) Included in the proposed change; (2) abutting either side of the proposed change; (3) abutting the rear of the proposed change; (4) abutting the front of the proposed change; or (5) directly opposite of the proposed change on the other side of a dedicated public right-of-way and extending fifty feet on either side of such opposite lot.

Source: Laws 1925, c. 45, § 5, p. 180; C.S.1929, § 14-408; R.S.1943, § 14-405; Laws 1986, LB 971, § 1; Laws 2005, LB 161, § 1.

14-406 Building zones; nonconforming use; continuance authorized; changes.

The lawful use of land existing on April 1, 1925, although such use does not conform to the provisions hereof, may be continued, but if such nonconforming use is abandoned, any future use of said premises shall be in conformity with the provisions of sections 14-401 to 14-418. The lawful use of a building existing on April 1, 1925, may be continued, although such use does not conform with the provisions hereof, and such use may be extended throughout the building, provided no structural alterations, except those required by law or ordinance are made therein. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or a higher classification. Whenever a use district shall be changed, any then existing nonconforming use in such changed district may be continued or changed to a use permitted in that district, provided all other regulations governing the new use are complied with. Whenever a nonconforming use of a building has been changed to a more restricted use or to a conforming use such use shall not thereafter be changed to a less restricted use.

Source: Laws 1925, c. 45, § 6, p. 180; C.S.1929, § 14-409.

There was no conflict between this section and home rule charter of Omaha with respect to zoning as to dog kennels. Wolf v. City of Omaha, 177 Neb. 545, 129 N.W.2d 501 (1964).

Dog kennel was not a nonconforming permitted use. City of Omaha v. Gsantner, 162 Neb. 839, 77 N.W.2d 663 (1956).

14-407 Zoning; exercise of powers; planning board or official.

The city shall exercise the powers conferred by sections 14-401 to 14-418 through such appropriate planning board or official as exists in such city.

Source: Laws 1925, c. 45, § 7, p. 181; C.S.1929, § 14-410; R.S.1943, § 14-407; Laws 1959, c. 37, § 2, p. 212.

Cross References

Planning board, extraterritorial member, see sections 14-373.01 and 14-373.02.

14-408 Building zones; board of appeals; members; term; vacancy; removal; meetings; oaths; subpoenas; record; public access.

The city council may provide for the appointment of a board of appeals consisting of five regular members. Two additional alternate members shall be appointed and designated as first alternate and second alternate members, either or both of whom may attend any meeting and may serve as voting and participating members of the board with the authority of a regular board member at any time when less than the full number of regular board members is present and capable of voting. If both alternate members are present when only a single regular member is absent, the first alternate member shall serve for the balance of the meeting. Upon the expiration of the initial terms of such regular and alternate members, all members and alternates shall be appointed for a term of five years. The appointing authority shall have the power to remove any regular or alternate member of the board for cause and after public hearing. Vacancies shall be filled for the unexpired term of a regular or alternate member whose place has become vacant. All meetings of the board of appeals shall be held at the call of the chairperson and at such other times as such 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 such board shall be open to the public. Such board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. Every rule or regulation,

every amendment or repeal thereof, and every order, requirement, decision, or determination of the board shall immediately be filed in the office of the board and shall be a public record.

Source: Laws 1925, c. 45, § 8, p. 181; C.S.1929, § 14-411; R.S.1943, § 14-408; Laws 1974, LB 703, § 1; Laws 2001, LB 179, § 1.

Board of appeals is vested with discretion in determination of matters within its province subject to court review for abuse of discretion. Peterson v. Vasak, 162 Neb. 498, 76 N.W.2d 420 (1956).

This section provides for the appointment of members of a zoning board of appeals, their tenure of office, meetings, hearings, and records. Roncka v. Fogarty, 152 Neb. 467, 41 N.W.2d 745 (1950).

14-409 Board of appeals; powers and duties; vote required for reversal.

Such board of appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to sections 14-401 to 14-418. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. 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 any matter upon which it is required to pass under any such ordinance or to affect any variation in such ordinance.

Source: Laws 1925, c. 45, § 8, p. 182; C.S.1929, § 14-411.

Zoning board of appeals may review any order made by an administrative official charged with enforcement of a zoning ordinance. Roncka v. Fogarty, 152 Neb. 467, 41 N.W.2d 745 (1950).

14-410 Board of appeals; appeal; procedure; effect.

Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality. Such appeal shall be taken within such time as shall be prescribed by the board of appeals by general rule, by filing with the officer from whom the appeal is taken and with the board of appeals 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 appeals, 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 which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

Source: Laws 1925, c. 45, § 8, p. 182; C.S.1929, § 14-411.

Appeal procedure is provided. Peterson v. Vasak, 162 Neb. 498, 76 N.W.2d 420 (1956).

14-411 Board of appeals; appeal; notice; hearing; powers of board.

The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give due notice thereof to the parties and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision

or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of appeals shall have the power in passing upon appeals, 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 spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

Source: Laws 1925, c. 45, § 8, p. 183; C.S.1929, § 14-411.

Due to the similarity between this section and section 19-910 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).

Relief is required hereunder where a certificate of occupancy has been properly obtained and the certificate holder has incurred substantial expenses, commitments and obligations. A. C. Nelsen Enterprises, Inc. v. Cook, 188 Neb. 184, 195 N.W.2d 759 (1972).

Ruling of zoning board of appeal was arbitrary. City of Omaha v. Cutchall, 173 Neb. 452, 114 N.W.2d 6 (1962).

Board of appeals has power to give appropriate relief in hardship cases. Peterson v. Vasak, 162 Neb. 498, 76 N.W.2d 420 (1956).

Zoning board of appeals has power on appeal to vary or modify the application of zoning regulations. Roncka v. Fogarty, 152 Neb. 467, 41 N.W.2d 745 (1950).

14-412 Board of appeals; special permits; power to grant; conditions.

The board of appeals shall have specific power to grant special permits to the state, or any political subdivision thereof, and to public utilities for public service purposes, although the application may be in conflict with the provisions of ordinances or regulations adopted under the authority of sections 14-401 to 14-418; *Provided*, that the permit shall be granted upon such conditions as the board of appeals may deem necessary, proper or expedient, to promote the objects of said sections.

Source: Laws 1925, c. 45, § 8, p. 183; C.S.1929, § 14-411.

14-413 Board of appeals; decision; review by district court; procedure.

Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, 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, specifying the grounds of such illegality. Such petition must be presented to the court within thirty days after the filing of the decision in the office of the board.

Source: Laws 1925, c. 45, § 8, p. 183; C.S.1929, § 14-411.

A decision of a zoning board of appeals may be reviewed by a district court, but this section limits the scope of the district court's review to the legality or illegality of the board's decision. Kuhlmann v. City of Omaha, 251 Neb. 176, 556 N.W.2d 15 (1996).

Any person aggrieved by order of zoning board of appeals may file petition in district court setting up the illegality of action of board. Roncka v. Fogarty, 152 Neb. 467, 41 N.W.2d 745 (1950).

14-414 Board of appeals; decision; review by district court; priority; evidence; judgment; costs.

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. Costs shall not be allowed against the board, unless it

shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. All issues in any proceeding under sections 14-408 to 14-414 shall have preference over all other civil actions and proceedings.

Source: Laws 1925, c. 45, § 8, p. 184; C.S.1929, § 14-411.

Pursuant to this section, the district court is given only the power to reverse, modify, or affirm the decision of the zoning board of appeals brought up for review. Kuhlmann v. City of Omaha, 251 Neb. 176, 556 N.W.2d 15 (1996).

Acts of board of appeals are judicial in nature and subject to court review. Peterson v. Vasak, 162 Neb. 498, 76 N.W.2d 420 (1956).

On review of action of zoning board of appeals, district court is empowered to reverse or affirm, wholly or partly, or may modify the decision brought up for review. Roncka v. Fogarty, 152 Neb. 467, 41 N.W.2d 745 (1950).

When a district court hears a zoning board decision on appeal, the district court cannot grant a motion of summary judgment. Eastroads, L.L.C. v. Omaha Zoning Bd. of Appeals, 7 Neb. App. 951, 587 N.W.2d 413 (1998).

A district court reviewing a decision of a zoning board of appeals under this section, without taking additional evidence or appointing a referee to do so, functions as an intermediate court of appeals. The filing of a motion for new trial in a court which functions as an intermediate court of appeals does not stop the running of the time within which to perfect an appeal. Morello v. City of Omaha, 5 Neb. App. 785, 565 N.W.2d 41 (1997).

14-415 Building regulations; enforcement; inspection; violations; penalty.

The city, in addition to other remedies, may institute any appropriate action or proceedings to prevent an unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use of any building or structure in violation of any ordinance or regulations enacted or issued pursuant to sections 14-401 to 14-418, 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. Said regulations shall be enforced by the city as it may provide. In addition to and not in restriction of any other powers, the city may cause any building, structure, place or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of the regulations made under authority of said sections. The owner, general agent, lessee, or tenant of a building or premises or of any part of such building or premises, where a violation of any provision of said regulations has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist, shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars and not more than one hundred dollars for each and every day that such violation continues.

Source: Laws 1925, c. 45, § 9, p. 184; C.S.1929, § 14-412; R.S.1943, § 14-415; Laws 1959, c. 37, § 3, p. 212.

14-416 Building regulations; other laws; applicability.

Wherever the regulations made under authority of sections 14-401 to 14-418 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, 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 1925, c. 45, § 10, p. 185; C.S.1929, § 14-413.

14-417 Existing commission, board of appeals; regulations, decisions; continuance.

Where there already exist a city planning commission and a board of appeals, their continuance is hereby authorized without further act of the city council. All ordinances, rules and regulations, hearings, orders or decisions existing or in effect on April 1, 1925, or substituted or in effect thereafter, shall continue in effect, except insofar as any such shall be in conflict with the provisions hereof.

Source: Laws 1925, c. 45, § 11, p. 185; C.S.1929, § 14-414.

14-418 Building regulations; scope of operation; jurisdiction of city council.

The powers granted in sections 14-401 to 14-417 may be exercised by the authorities in whom the powers are vested in said sections over such city and all territory not over three miles beyond the limits of such city.

Source: Laws 1925, c. 45, § 12, p. 186; C.S.1929, § 14-415.

Cities of metropolitan class were authorized to zone territory within three miles of corporate limits. Schlientz v. City of North Platte, 172 Neb. 477, 110 N.W.2d 58 (1961).

Authority of city to zone may be exercised over all territory not over three miles beyond city limits. Peterson v. Vasak, 162 Neb. 498, 76 N.W.2d 420 (1956).

14-419 Building regulations; within three miles of corporate limits; jurisdiction of city council; powers granted.

The city council, in cities of the metropolitan class, shall have the power by ordinance to regulate, in areas within three miles of the corporate limits, except as to construction on farms for farm purposes, (1) the minimum standards of construction of buildings, dwellings, and other structures, in order to provide safe and sound condition thereof for the preservation of health, safety, security, and general welfare, and as to electric wiring, heating, plumbing, pipefitting, sewer connections, ventilation, size of habitable rooms, and the method of constructing buildings, and to provide for inspection thereof and building permits, (2) the removal and tearing down of buildings, dwellings, and other structures in such areas which constitute nuisances because of the dilapidated, unsafe, or rundown condition or conditions, and (3) except as to the United States of America, the State of Nebraska, any county of the state, or any city or village in the state, the nature, kind, and manner of constructing streets, alleys, sidewalks, curbing or abridging curbs, driveway approaches constructed on public right-of-way, and sewers.

Source: Laws 1955, c. 21, § 1, p. 99; Laws 1965, c. 40, § 1, p. 233.

A district court cannot properly order a zoning board of appeals to issue building permits, as this section provides that issuance of those permits is the province of a city council. Stratbucker Children's Trust v. Zoning Bd. of Appeals, 243 Neb. 68, 497 N.W.2d 671 (1993).

Power was granted to city of metropolitan class to regulate curb cuts within three-mile zoning limits. Jacobs v. City of Omaha, 181 Neb. 101, 147 N.W.2d 160 (1966).

14-420 Request for change in zoning; notice; requirements; failure to give; effect.

(1) A city of the metropolitan class shall provide written notice of any properly filed request for a change in the zoning classification of a subject property to the owners of adjacent property in the manner set out in this section.

(2) Initial notice of the proposed zoning change on the subject property shall be sent to the owners of adjacent property by regular United States mail, postage prepaid, to the owner's address as it appears in the records of the office of the register of deeds, postmarked at least ten working days prior to the planning board public hearing on the proposed change with a certified letter to any registered neighborhood association when the subject property is located within the boundary of the area of concern of such association. Each neighborhood association desiring to receive such notice shall register with the city the area of concern of such association and the name and address of the individual who is to receive notice on behalf of such association. The registration shall be in accordance with any rules adopted and promulgated by the city. Such notice shall describe the subject property or give its address, describe the nature of the zoning change requested, and contain the date, time, and location of the planning board hearing.

(3) A second notice of the proposed zoning change on the subject property shall be sent to the same owners of adjacent property who were provided with notice under subsection (2) of this section. Such notice shall be sent by regular United States mail, postage prepaid, to the owner's address as it appears in the records of the office of the register of deeds, postmarked at least ten working days prior to the city council public hearing on the proposed change. Such notice shall describe the subject property or give its address, describe the nature of the zoning change requested, and contain the date, time, and location of the city council public hearing.

(4) No additional or further notice beyond that required by subsections (2) and (3) of this section shall be necessary in the event that the scheduled planning board or city council public hearing on the proposed zoning change is adjourned, continued, or postponed until a later date.

(5) The requirements of this section shall not apply to proposed changes in the text of the zoning code itself or any proposed changes in the zoning code affecting whole classes or classifications of property throughout the jurisdiction of the city.

(6) Except for a willful or deliberate failure to cause notice to be given, no zoning decision made by a city of the metropolitan class either to accept or reject a proposed zoning change with regard to a subject property shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made. No action to challenge the validity of the acceptance or rejection of a proposed zoning change on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the zoning change by the city council.

(7) Except for a willful or deliberate failure to cause notice to be given, the city and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed zoning change by the city council.

(8) For purposes of this section:

(a) Adjacent property shall mean any piece of real property any portion of which is located within three hundred feet of the nearest boundary line of the subject property or within one thousand feet of the nearest boundary line of the subject property if the proposed zoning change involves a heavy industrial district classification;

(b) Owner shall mean the owner of a piece of adjacent property as indicated on the records of the office of the register of deeds as provided to or made available to the city no earlier than the last business day before the twenty-fifth day preceding the planning board public hearing on the zoning change proposed for the subject property; and

(c) Subject property shall mean any tract of real property located within the boundaries of a city of the metropolitan class or within the zoning jurisdiction of a city of the metropolitan class which is the subject of a properly filed request for a change of its zoning classification.

Source: Laws 1993, LB 367, § 1.

ARTICLE 5

FISCAL MANAGEMENT, REVENUE, AND FINANCES

(a) GENERAL PROVISIONS

Section

(b) MUNICIPAL BONDS FOR VARIOUS PURPOSES

(a) GENERAL PROVISIONS

14-501 Statutory funds; appropriation; limitation.

The city council shall annually or biennially and within the first week of January, if possible, appropriate money and credits of the city in such amounts as may be deemed necessary and proper and set the same aside to the following designated funds to be known as statutory funds: (1) For the fire department of the city, (2) for the police department of the city, (3) for the health department of the city, (4) for the public library, (5) for the purposes of the welfare board, and (6) for the purpose of paying judgments and costs. The amounts so appropriated and set aside to such funds respectively shall be the maximum amounts that may be appropriated to or expended from such funds within the fiscal year or biennial period for the purposes for which such funds respectively are created.

Source: Laws 1921, c. 116, art. IV, § 1, p. 468; C.S.1922, § 3624; C.S.1929, § 14-501; R.S.1943, § 14-501; Laws 2000, LB 1116, § 10.

Levy of city and school district taxes within metropolitan city is computed on actual valuation and assessment as returned by county assessor and as equalized for preceding year. Chicago & N. W. Ry. Co. v. Bauman, 132 Neb. 67, 271 N.W. 256 (1937).

14-501.01 Biennial budget authorized.

A city of the metropolitan class may adopt biennial budgets for biennial periods if such budgets are provided for by a city charter provision. For purposes of this section:

(1) Biennial budget means a budget that provides for a biennial period to determine and carry on the city's financial and taxing affairs; and

(2) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered years.

Source: Laws 2000, LB 1116, § 2.

14-502 Department funds; appropriation; miscellaneous expense fund; requirements; use.

The city council shall at the same time appropriate, from the remaining amount of tax levy of such year and from revenue to be derived from all other sources available for such purposes, money and credits of the city and set the same aside to funds to be designated department funds. The department funds shall be of the same number and of the same designation as the departments into which the government of the city is divided for administration under the commission form of government. The amount so appropriated and set aside to each of the funds respectively shall be an amount deemed sufficient and necessary to take care of the expenses in such department for the fiscal year or biennial period for which the appropriation is made. The amount thus appropriated to each of such departments respectively may be divided and subdivided for the purpose of expenditure as the council may direct, but shall be the maximum amount which may be appropriated to any such department for the fiscal year or biennial period, or which may be expended for the purpose of such department for the fiscal year or biennial period. Any transfer of duties or burdens of one department to another, after an appropriation has been made, shall carry with it a just and equitable pro rata proportion of the appropriation. The amounts so appropriated to the several department funds shall be used

only for the purpose of paying the expenses and liabilities for which appropriated. The city council shall, at the time of the appropriation, estimate the total credits available from taxes levied and other sources for municipal purposes for the fiscal year or biennial period, and the amount remaining after deducting therefrom the amounts appropriated for statutory and department funds shall be the miscellaneous expense fund. The money and credits in the miscellaneous expense fund may be used from time to time to pay the miscellaneous expenses and obligations of the city for which an appropriation has not been made or which are not properly included within the purposes of the appropriation to any of the other funds.

Source: Laws 1921, c. 116, art. IV, § 2, p. 469; C.S.1922, § 3625; C.S.1929, § 14-502; R.S.1943, § 14-502; Laws 2000, LB 1116, § 11.

14-503 Fund balances; disposition.

The balances remaining in any of the funds created by sections 14-501 and 14-502 and against which lawful obligations have not been created shall at the expiration of each fiscal year or biennial period be transferred to the general sinking fund of the city by the department of accounts and finances.

Source: Laws 1921, c. 116, art. IV, § 3, p. 470; C.S.1922, § 3626; C.S.1929, § 14-503; R.S.1943, § 14-503; Laws 2000, LB 1116, § 12.

14-504 Funds; separate accounts required; apportionment of income to each.

As soon as the apportionment of funds has been made, the department of accounts and finances shall open an account with each such fund authorized to be established by sections 14-501 and 14-502 and shall place a credit to each such fund of ninety percent of the tax levy apportioned to it. Thereafter the department shall credit such funds pro rata with money coming to the city from taxation and other sources which are applicable to current expense purposes until all such credits shall equal one hundred percent of such apportionment. The foregoing pro rata credits in excess of ninety percent shall not apply to the miscellaneous expense fund, but the miscellaneous expense fund shall be credited with all money collected and applicable to current expense purposes after the other funds have received the full one hundred percent of their appropriation.

Source: Laws 1921, c. 116, art. IV, § 4, p. 470; C.S.1922, § 3627; C.S.1929, § 14-504; R.S.1943, § 14-504; Laws 2000, LB 1116, § 13.

When city council has good reason to believe that funds apportioned to a department would be exhausted, it is within the right of the city to suspend an employee of the department, but city cannot, in addition to suspension, arbitrarily deduct additional sums from salary. Bishop v. City of Omaha, 130 Neb. 162, 264 N.W. 447 (1936).

14-505 Income other than taxes; to what funds credited.

All receipts derived from the county road fund shall be credited to the fund provided for the maintenance of parks. All receipts from franchises or royalties derived from lighting companies shall be credited to the funds for lighting streets and public grounds; and all receipts hereafter collected for permits issued by the engineering department or for paving repairs to streets shall be placed in, and credited to the fund for the department of public improvements.

Such receipts shall be added to the maximum amounts that may be expended from such funds.

Source: Laws 1921, c. 116, art. IV, § 4a, p. 470; C.S.1922, § 3628; C.S.1929, § 14-505.

14-506 Funds; limitations upon withdrawals.

The council shall at no time draw warrants or create obligations against any of the funds provided in sections 14-501 and 14-502 in excess of the amount credited thereto at the time of drawing the warrant or creating the obligation. Nor shall the superintendent of any department draw or cause to be drawn a warrant or create or cause to be created an obligation against the appropriation to his department in excess of the amount credited thereto.

Source: Laws 1921, c. 116, art. IV, § 5, p. 470; C.S.1922, § 3629; C.S.1929, § 14-506.

Section cited as showing background for action of city council in suspending fireman three days each month and attempting to deduct an additional sum from salary. Bishop v. City of Omaha, 130 Neb. 162, 264 N.W. 447 (1936).

14-507 Funds; transfer or diversion prohibited; exception; liability.

The money and credits in each fund authorized and created by sections 14-501 and 14-502 shall be devoted strictly to the purposes for which the fund is created and no part thereof shall be transferred or diverted in any manner or for any purpose. 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 appropriated shall render any city councilman voting therefor liable on his official bond for the amount so diverted or used; *Provided*, inspectors of public works paid from special funds may receive pay for their services from the general fund of the city monthly as other employees. Upon the completion of such work, and the levy and collection of the special fund to pay for the same, or the sale of bonds for public works or improvements, an amount equal to that paid said inspectors from the general fund may be taken from such special funds and returned to the general fund from which it was temporarily taken; and the council is hereby authorized to include the cost of inspection in such special funds to be levied and collected.

Source: Laws 1921, c. 116, art. IV, § 6, p. 471; C.S.1922, § 3630; C.S.1929, § 14-507.

14-508 Funds; obligation and expenditure; limits upon; effect of exceeding; exceptions.

Neither the city council nor any officer of the city or superintendent of a department shall expend or incur obligations for the expenditure of more money than has been provided and appropriated for the purposes for which the expenditure or obligations for expenditure are made. Any contract or obligation calling for an expenditure in excess of the money and credits provided and appropriated to the purposes for which such contract or obligation is created, shall be void and shall not be enforceable against the city, and the city shall refuse to recognize the validity thereof or to pay or satisfy any such obligation. The foregoing limitations and those contained in sections 14-506 and 14-507 shall not apply to additional expenditures and obligations unavoidably made necessary in efforts to abate or control an extreme or unusual outbreak or epidemic of disease or to expenditures made imperatively necessary by the

occurrence of some unforeseen or uncontrollable disaster to the city at large or a considerable section thereof. Expenditures for the emergency purposes in this section specified shall be made only in pursuance of an ordinance duly passed reciting the conditions making necessary the further appropriation of funds, and the expenditures of such appropriation, shall be limited exclusively to the purposes for which made.

Source: Laws 1921, c. 116, art. IV, § 7, p. 471; C.S.1922, § 3631; C.S.1929, § 14-508; Laws 1935, Spec. Sess., c. 10, § 9, p. 77; Laws 1941, c. 130, § 15, p. 499; C.S.Supp.,1941, § 14-508; R.S.1943, § 14-508; Laws 1961, c. 30, § 6, p. 149.

14-509 Funds; obligation and expenditure; violations; liability of officers; actions to recover; duty of city attorney.

To attempt to incur, to incur, to attempt to pay, or to pay any obligation prohibited by sections 14-501 to 14-508 shall be malfeasance in office on the part of the city officer participating therein. To attempt to transfer, to transfer, or to use any of the money or credits appropriated to a fund, to another fund or to other and different purposes and uses for which appropriated shall be held to be malfeasance in office on the part of the officer participating therein. The creation or attempted creation of obligations not authorized by this act or prohibited thereby shall render the members of the city council voting therefor liable to the city for the amount of the obligation so created or the amount of money or credits unlawfully diverted or used, and the voting for such shall be prima facie evidence of malfeasance in office. Thereupon it shall become the duty of the city attorney forthwith to proceed to enforce by suit in the courts of the state such liability against the delinquent officers and the sureties on their bonds. In the event of the refusal or failure of the city attorney so to proceed as above directed, a taxpayer may demand in writing that the city attorney proceed as directed herein, and on his failure so to do within thirty days thereafter, such taxpayer may commence the action herein authorized on the part of the city attorney in the name of the taxpayer and prosecute the same to final judgment. The taxpayer shall, however, as a condition of his right to commence and prosecute such suit give such security for costs as may be directed by the court.

Source: Laws 1921, c. 116, art. IV, § 8, p. 472; C.S.1922, § 3632; C.S.1929, § 14-509.

Cross References

"**This act**", defined, see section 14-101.

14-510 Warrants; payments; requirements.

(1) Warrants of the city shall be drawn by the comptroller upon the treasurer and shall be signed by the mayor and comptroller and shall state the particular fund or appropriation to which the same is chargeable and the person to whom payable. Money of the city shall not be otherwise paid except in instances where it is otherwise specifically provided.

(2) The city may adopt by ordinance an imprest system of accounting for the city and authorize the establishment of an imprest vendor, payroll, or other

account for the payment of city warrants in accordance with any guidelines issued by the Auditor of Public Accounts for county imprest accounts.

Source: Laws 1921, c. 116, art. IV, § 9, p. 472; C.S.1922, § 3633; C.S.1929, § 14-510; R.S.1943, § 14-510; Laws 2001, LB 317, § 1.

14-511 Obligations; payment; method; requirements.

At the first meeting of the council in each month, it shall provide, by ordinance, for the payment of all indebtedness of the city incurred during the preceding month, or at any time prior thereto, except those liabilities for wages of laborers and allowed claims for overtime, the payment of which may be provided for weekly but in the same manner as provided for in this act. Money of the city shall not be expended except as in this act specified. The ordinance providing for the payment of money shall be duly passed by a majority vote of the entire council, and the ayes and nays thereon shall be called and recorded in the proceedings of the council.

Source: Laws 1921, c. 116, art. IV, § 10, p. 473; C.S.1922, § 3634; C.S.1929, § 14-511.

Cross References

"**This act**", defined, see section 14-101.

14-512 Sinking fund; purposes; investment.

The council shall provide and maintain a sinking fund for the payment of the general bonds of the city and the interest thereon. Such sinking fund shall be maintained from the following sources of revenue: (1) Amounts raised by taxation for that purpose; (2) balances transferred at the end of each fiscal year or biennial period from the several funds provided for in sections 14-501 and 14-502; and (3) such other amounts and sums as may be transferred thereto by the council. Money and credits in the sinking fund shall be held inviolate, shall not be transferred to any other fund, and shall be used for the purpose of paying (a) the interest on the general bonds of the city, (b) maturing bonds of the city, and (c) bonds of the city which may be paid before maturity. The money and credits thereof when not used or needed for the purposes specified in this section may temporarily be invested in registered general warrants of the city or of the school district situated within the city under such conditions as will enable the same to be obtained and available at any time desired for the purposes specified in this section.

Source: Laws 1921, c. 116, art. IV, § 11, p. 473; C.S.1922, § 3635; C.S.1929, § 14-512; R.S.1943, § 14-512; Laws 1989, LB 33, § 8; Laws 1999, LB 317, § 1; Laws 2000, LB 1116, § 14.

14-513 Obligations; payment; deduction of sums owed city; appeal.

The comptroller shall deduct from the amount of any credit or warrant all amounts which the payee may owe the city, and where there has been an assignment thereof he shall likewise deduct as well all amounts which the assignee may owe the city. Should the amounts owing exceed the amount of the warrant, the amounts thus deducted shall be credited pro tanto on the obligations owing the city. An assignment of the claim shall not defeat the right of the city to deduct the amount of the debt from the amount due the claimant.

The claimant or his assignee may appeal from the action of the comptroller in so deducting any amount from the claim in the manner provided for appeals in section 14-813. The city treasurer may likewise deduct from the amount of any warrant city taxes and special assessments which have not been deducted by the comptroller.

Source: Laws 1921, c. 116, art. IV, § 12, p. 474; C.S.1922, § 3636; C.S.1929, § 14-513.

14-514 Taxation; annual certification for levy; bonds; limits.

(1) The city council shall annually certify to the county clerk of the county in which the city is located, by resolution, the tax upon the taxable value of all the taxable property in such city, not to exceed fifty cents on each one hundred dollars, which the city desires to be levied as taxation for all municipal purposes for the ensuing year, subject to the levy limitations contained in section 77-3442.

(2) In addition to the tax set forth in subsection (1) of this section, the council shall also and further certify not less than fourteen cents on each one hundred dollars and such tax as may be necessary to pay bond issues maturing within the year or bond issues maturing in the near future, the object of this requirement being to create a fund to accomplish a partial retirement of the bonded obligations of the city in such a manner as to avoid unusual and heavy levies during particular years when large maturities occur.

(3) The proceeds derived from each respective levy provided for in subsections (1) and (2) of this section shall be devoted exclusively and entirely to the purposes for which the levy is made. The certification provided for under such subsections shall be made before the county board of equalization has made its tax levy for each respective year.

Source: Laws 1921, c. 116, art. IV, § 13, p. 474; C.S.1922, § 3637; C.S.1929, § 14-514; Laws 1937, c. 176, § 1, p. 692; Laws 1939, c. 8, § 1, p. 72; C.S.Supp.,1941, § 14-514; R.S.1943, § 14-514; Laws 1949, c. 18, § 1, p. 85; Laws 1953, c. 287, § 3, p. 929; Laws 1955, c. 23, § 1, p. 114; Laws 1979, LB 187, § 32; Laws 1992, LB 719A, § 37; Laws 1999, LB 141, § 2.

Cross References

For levy of health district, see section 71-1611.

It is the duty of county board of equalization to make the levy certified by city council of city of metropolitan class. State ex rel. City of Omaha v. Lynch, 181 Neb. 810, 151 N.W.2d 278 (1967).

Certification of levy of city of metropolitan class is made to county clerk of county in which the city is located. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

Levy in excess of limitation herein is authorized to pay judgment recovered against municipal corporation. Benner v. County Board of Douglas County, 121 Neb. 773, 238 N.W. 735 (1931).

City council is required to certify annually to the county clerk the amount of general tax required for the ensuing year. Parry Mfg. Co. v. Fink, 93 Neb. 137, 139 N.W. 863 (1913).

A purchaser of municipal bonds must take notice of recitals therein, and is bound by them. Wilbur v. Wyatt, 63 Neb. 261, 88 N.W. 499 (1901).

Proceeds of sale of bonds issued for a particular purpose must be strictly applied to that purpose. Tukey v. City of Omaha, 54 Neb. 370, 74 N.W. 613 (1898).

Under this section, taxes accrued for income tax purposes the year they became a lien, rather than the year the taxes were levied and assessed. Helvering v. Schimmel, 114 F.2d 554 (8th Cir. 1940).

(b) MUNICIPAL BONDS FOR VARIOUS PURPOSES

14-515 Bonds; form; issuance; sale; delivery; interest; requirements.

Bonds of the city shall be prepared under the direction of the city council, shall be signed by the mayor and countersigned and registered by the comptrol-

ler, and shall be sold and disposed of by and under the direction of the city council. They shall be delivered by the superintendent of the department of accounts and finances, who shall report the proceeds therefrom to the city treasurer in all cases except where an exchange of bonds is directed. The purpose of the issue of bonds shall be stated therein and the proceeds received from the sale shall be used for no other purpose. Whenever an issue of bonds is required to be submitted to the electors for authority to issue the same, the proposition submitting such question shall contain but a single issue and but one subject, shall specify the maximum amount proposed for issue and state distinctly the purpose for which the same is to issue. Bonds of the city shall not be sold or exchanged for less than par value thereof and shall bear interest payable semiannually. Interest coupons at the rate of interest specified may be annexed thereto. Interest coupons may be signed by the lithographed signatures of the mayor and city clerk. Bonds shall be made payable at the office or place provided by general law for the payment of bonds of the city. Where this section, in its application to water bonds or bonds issued for the extension or improvement of a gas plant or other public utility, is in conflict with any provision which has been or may be made by statute respecting such bonds, the latter shall control.

Source: Laws 1921, c. 116, art. IV, § 14, p. 475; C.S.1922, § 3638; C.S.1929, § 14-515; R.S.1943, § 14-515; Laws 1969, c. 51, § 19, p. 284.

14-516 Sewer bonds; amount authorized; issuance.

The city council may issue annually bonds not to exceed five hundred thousand dollars, for the purpose of constructing main sewers, and to be denominated sewer bonds. Such bonds shall be issued in accordance with the provisions of section 14-515, and the proceeds therefrom shall not be used for any other purpose than to construct main sewers.

Source: Laws 1921, c. 116, art. IV, § 15, p. 475; C.S.1922, § 3639; C.S.1929, § 14-516.

14-517 Sewers; special assessment bonds; when authorized; limit; how paid; interest; sinking fund.

Cities of the metropolitan class in the State of Nebraska are hereby authorized and empowered to issue and sell special assessment sewer bonds, said bonds not to exceed two hundred thousand dollars, without a vote of the electors, and to use the proceeds of such bonds for the purpose of constructing or reconstructing storm or sanitary sewers where at least five-sixths of the cost of same will be borne by some agency of the government of the United States of America. All principal and interest of such bonds shall be payable solely from the proceeds of special assessments levied and collected on real estate within special assessment sewer districts and, as shall be recited in such bonds, such city shall incur no liability, obligation, or indebtedness of any kind or nature thereon, and the city shall not pledge its credit, its general taxing power, or any part thereof to support or pay the same. Such bonds shall be sold or exchanged for not less than the par value thereof 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, payable semiannually. Special assessments levied for the purpose of paying such bonds shall be made payable

in ten equal annual installments. The first installment shall be due and delinquent fifty days from the date of levy, the second, one year from date of levy, and a like installment shall be due and delinquent annually thereafter until all such installments are paid. Each of said installments, except such as are paid within fifty days from the date of levy, 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 date of levy aforesaid until the same shall become delinquent, and after the same shall become delinquent, 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. Such assessment shall be collected and enforced as in other cases of special assessments. All such special assessments and all interest accruing thereon in any district in which such bonds are issued and sold shall constitute a sinking fund and shall be used solely for the purpose of paying the interest on the bonds so issued and sold as the same accrues and for paying the principal sum of such bonds at the maturity thereof. All powers herein granted are further and in addition to any other powers which may now have been or hereafter may be conferred upon any such city.

Source: Laws 1935, Spec. Sess., c. 4, § 1, p. 59; C.S.Supp.,1941, § 14-559; R.S.1943, § 14-517; Laws 1947, c. 15, § 8, p. 86; Laws 1980, LB 933, § 1; Laws 1981, LB 167, § 2.

14-518 Sewers; special assessment bonds; special assessment sewer district; creation; petition; notice; withdrawal of signature.

The powers granted in section 14-517 shall be conditioned upon the following: A petition for the creation of such district and the issuance of such bonds shall be filed with the city clerk of such city, signed by the owners of sixty percent of the real estate contained in any such special assessment sewer district. At the time of the filing of such petition the city clerk shall cause to be published in the official newspaper of said city for not less than three consecutive days the plan of assessment and amounts proposed to be assessed against each parcel of real estate in such proposed district. Any person signing such petition shall have the absolute right within ten days after the same shall have been filed with the city clerk to withdraw his name therefrom and in such event his name shall not be counted in computing the sixty percent.

Source: Laws 1935, Spec. Sess., c. 4, § 2, p. 60; C.S.Supp.,1941, § 14-560.

14-519 Public comfort stations; bonds; amount; issuance.

The city council is authorized to issue bonds for the purpose of constructing public comfort stations. The council may issue bonds for such purpose without a vote of the electors in an amount not exceeding fifty thousand dollars in any one year.

Source: Laws 1921, c. 116, art. IV, § 16, p. 476; C.S.1922, § 3640; C.S.1929, § 14-517.

14-520 Armory; bonds; issuance; election required; applicability of section.

The city council may issue bonds for the purpose of constructing an armory in any city of the metropolitan class if the issuance of such bonds is first authorized by a majority of the electors of such city voting on such proposition. This section shall not be applicable to the acquisition of real estate for armory

purposes and its conveyance to the State of Nebraska as provided in sections 18-1001 to 18-1006.

Source: Laws 1921, c. 116, art. IV, § 16½, p. 476; C.S.1922, § 3641; C.S.1929, § 14-518; Laws 1935, Spec. Sess., c. 10, § 4, p. 73; Laws 1941, c. 130, § 10, p. 495; C.S.Supp.,1941, § 14-518; R.S. 1943, § 14-520; Laws 1971, LB 534, § 10; Laws 1988, LB 793, § 1.

14-521 Parks and playgrounds; bonds; issuance; amount authorized; use of proceeds.

The city council is authorized to issue bonds, as in this section provided, for the purpose of improving lands, lots, or grounds purchased, appropriated or acquired for parks, parkways, boulevards or playgrounds. Bonds so issued shall be known as park bonds and the issuance thereof except as herein provided shall be governed by the general provisions of section 14-515. The city council may issue in any one year and without a vote of the electors one hundred thousand dollars of such bonds. The city council may issue bonds if the same are authorized by a majority vote of the electors of the city voting on the proposition at a general city election or a special election called for that purpose. A part of the proceeds from the sale of such bonds may be used to pay for improvements upon streets, sidewalks or thoroughfares abutting upon or immediately adjacent to parks, parkways, boulevards, and playgrounds when such costs would otherwise be chargeable to the city.

Source: Laws 1921, c. 116, art. IV, § 17, p. 476; C.S.1922, § 3642; C.S.1929, § 14-519; R.S.1943, § 14-521; Laws 1967, c. 44, § 1, p. 175.

14-522 Fire engine house; bonds; issuance; amount.

The council may issue bonds of the city not to exceed thirty thousand dollars in any one year for the purpose of erecting fire engine houses.

Source: Laws 1921, c. 116, art. IV, § 18, p. 476; C.S.1922, § 3643; C.S.1929, § 14-520.

14-523 Auditorium; bonds; issuance; amount; election required; vote.

The city council may issue bonds not to exceed in amount two hundred and twenty-five thousand dollars for the construction, remodeling or completion of a municipal auditorium. But no such bonds shall be issued until authorized by the electors thereof by a majority of those voting thereon.

Source: Laws 1921, c. 116, art. IV, § 18½, p. 477; C.S.1922, § 3644; C.S.1929, § 14-521.

14-524 Other municipal purposes; bonds; issuance.

In addition to the authority expressly granted to the city council to issue bonds for stated purposes, the city council is authorized to issue bonds for the following general purposes, on compliance with the requirements of section 14-515: (1) To construct subways and conduits when authorized by a vote of the electors, (2) to renew or to fund or refund outstanding bonds, (3) to construct necessary buildings for the use of the city when authorized by a vote of the electors, (4) to construct necessary bridges when authorized by a vote of the

electors, (5) to acquire property and to construct gas works, waterworks, electric light plants or power plants, when authorized by a vote of the electors, (6) to pay off floating indebtedness of the city, but the total amount of bonds issued for such purpose shall not exceed five hundred thousand dollars and not then until authorized by a vote of the electors, and (7) for any necessary or proper municipal purpose or use, when authorized so to do by a vote of the electors of the city.

Source: Laws 1921, c. 116, art. IV, § 19, p. 477; C.S.1922, § 3645; C.S.1929, § 14-522.

14-525 Bonds; maximum indebtedness allowed; how computed; deductions allowed.

The bonded indebtedness of the city shall not at any time exceed in the aggregate five percent of the taxable value of the taxable property within its corporate limits. The value shall be determined from the assessment of the taxable value of the property of the city. In order to arrive at the net amount of the aggregate indebtedness referred to in this section, there shall be deducted from the total bonded indebtedness of the city and excepted therefrom bonds issued to acquire the water plant and the gas plant and any bonds which may be issued to acquire or construct electric light or power plants or other utility plants or systems when a charge for the service is provided sufficient to pay the bonded obligations therefor and pledges made to that end, bonds which may be issued to construct subways or conduits when the revenue charged for the use of such may be sufficient to retire the bonds and is pledged to that end, and all other bonds the payment of which is secured by pledges of a special assessment sinking fund in the nature of a sinking fund of any character other than the general sinking fund of the city. There shall be included in such indebtedness all floating indebtedness of the city which under section 14-524 may be funded by the issuance of bonds.

Source: Laws 1921, c. 116, art. IV, § 20, p. 477; C.S.1922, § 3646; C.S.1929, § 14-523; R.S.1943, § 14-525; Laws 1992, LB 719A, § 38.

14-526 Bonds; maximum amount authorized annually; exceptions.

Bonds in excess of two hundred and fifty thousand dollars may not be issued in any one year, except for renewal or refunding to fund floating indebtedness or district improvement bonds, to finance grading, to finance public improvements, sewers and intersections, to erect police stations and workhouses, to acquire existing utility property, to construct, remodel or complete a municipal auditorium, to pay for property purchased or acquired in condemnation proceedings, for a public library, subways and conduits, and useful and needed public buildings, to pay for the construction and maintenance of gas works, waterworks, electric light plants or power plants, or any other public utility authorized by this act, or land therefor.

Source: Laws 1921, c. 116, art. IV, § 21, p. 478; C.S.1922, § 3647; C.S.1929, § 14-524.

Cross References

"**This act**", defined, see section 14-101.

14-527 Bonds; issuance; election required; exceptions.

Bonds of the city shall not be issued without a vote of the electors in the manner provided for in this act except the following which may be issued by the city council without such vote: (1) To finance street improvements, grading, renewal or refunding; (2) police station, not to exceed one hundred thousand dollars in any one year; (3) park, not to exceed one hundred thousand dollars in any one year; (4) sewer, not to exceed five hundred thousand dollars in any one year; (5) public comfort station, not to exceed fifty thousand dollars in any one year; (6) fire engine house, not to exceed thirty thousand dollars in any one year; and (7) to pay for the acquisition of existing utility systems or plants by condemnation proceedings.

Source: Laws 1921, c. 116, art. IV, § 22, p. 478; C.S.1922, § 3648; C.S.1929, § 14-525.

Cross References

"This act", defined, see section 14-101.

(c) STREET IMPROVEMENT; BONDS; GRADING; ASSESSMENTS

14-528 Street improvements; bonds; issuance; amount; use of proceeds.

The city council is authorized to issue and sell bonds of the city, from time to time, to finance street improvements, as in this section specified. The amount of bonds which may be issued and sold at any one time shall not exceed the total amount of bona fide contracts actually entered into for the kinds of street improvements included within this section and for the financing of which provisions have not otherwise been made. The proceeds from bonds sold under the authority of this section may be used and employed to finance or to aid in financing the classes and kinds of improvement, inclusive of all proper intersection charges, designated in this section, to wit: Paving, repaving, surfacing and renewing surfaces, changing character of paving, guttering, reguttering, curbing and recurbing, and improvements made in combination as authorized in section 14-391, and macadamizing streets, avenues, alleys, and public thoroughfares of the city.

Source: Laws 1921, c. 116, art. IV, § 23, p. 479; C.S.1922, § 3649; C.S.1929, § 14-526; R.S.1943, § 14-528; Laws 1961, c. 30, § 7, p. 150.

Language of resolution, declaring it "expedient and necessary" to grade street, is sufficient compliance. Burkley v. City of Omaha, 102 Neb. 308, 167 N.W. 72 (1918).

14-529 Street improvements; bonds; issuance; interest; term.

Bonds issued under the authority of the provisions of section 14-528 shall be denominated bonds to finance street improvements, shall be issued and sold in accordance with the provisions of section 14-515 governing the issuance and sale of bonds, and shall bear an interest rate not greater than the rate of interest specified in said section as respects general bonds of the city. Such bonds so issued may be made payable in not less than five years and in not more than twenty years from date of issue.

Source: Laws 1921, c. 116, art. IV, § 23, p. 479; C.S.1922, § 3649; C.S.1929, § 14-526; R.S.1943, § 14-529; Laws 1947, c. 15, § 9, p. 87.

14-530 Street improvements; bonds; proceeds, uses; special assessment sinking fund; purpose.

The proceeds from the sale of bonds herein authorized, together with all special taxes and assessments to be levied for the classes of improvements designated in section 14-528, and the proceeds in the nature of all earnings and income from the investment and use thereof shall be used and employed to finance such classes of improvements, inclusive of all proper intersection charges. All such proceedings shall be credited to a fund to be designated special assessment sinking fund, and, except such part thereof as may be required to pay proper intersection charges, shall be kept and maintained within such fund. The accumulations in this fund, less the amounts thereof necessary to pay proper intersection charges from time to time, shall constitute a sinking fund to pay interest as it accrues and finally to pay at maturity all bonds issued and sold under the provisions hereof, except such part thereof as has been devoted to the payment of proper intersection charges. The proportion of bonds authorized hereunder and necessary to pay proper intersection charges, inclusive of interest thereon, shall be paid and redeemed from the general sinking fund of the city. In all cases where taxes and special assessments levied under section 14-533 have been paid and have been credited to the special assessment sinking fund, such taxes and special assessments as well as all other credits in said fund may be used to finance other improvements, but only to the extent which will leave the fund available to pay all bonds issued to finance street improvements and interest thereon when maturing or due, except such part as by this section is charged to the general sinking fund of the city.

Source: Laws 1921, c. 116, art. IV, § 23, p. 479; C.S.1922, § 3649; C.S.1929, § 14-526.

14-531 Street improvements; bonds; fund to finance intersections; requirements.

The department of accounts and finances shall establish and maintain a fund to be designated fund to finance intersections. Immediately upon the completion of the work of any contract for improvements herein authorized, the city engineer shall carefully estimate and correctly certify to the city council the exact amount which has been spent in the performance of such contract for proper intersection purposes. The council shall at once carefully examine such certification and either approve or reject the amount so certified. If it is rejected, further certifications shall be required until a proper amount has been certified, which shall be approved. As soon as approved, the department of accounts and finances shall charge the special assessment sinking fund with the full amount as approved and shall credit the fund to finance intersections with a like amount. Just before each interest payment date an account shall be correctly and exactly stated between said funds so as to apportion as properly and exactly as possible the respective interest charge against each fund. The two funds above mentioned shall be continuously kept and maintained so that the fund to finance intersections will show exactly or approximately the total amount of bonds which has been devoted to the payment of intersection charges.

Source: Laws 1921, c. 116, art. IV, § 23, p. 480; C.S.1922, § 3649; C.S.1929, § 14-526.

14-532 Street improvements; bonds; special assessment sinking fund; investment; special use.

The avails and proceeds of the special assessment sinking fund may, when not required for any of the purposes heretofore specified in section 14-530, be temporarily invested in securities of the United States Government, State of Nebraska, Douglas County, metropolitan city, school district of such city, or publicly owned and operated municipal utilities thereof; but all such investments shall be made so as to be closed out and realized upon whenever the proceeds so invested are needed for the purpose specified in said section. The proceeds of the special assessment sinking fund, insofar as required, may be used to complete the work under a contract where the contractor fails or refuses to perform such work.

Source: Laws 1921, c. 116, art. IV, § 23, p. 481; C.S.1922, § 3649; C.S.1929, § 14-526.

14-533 Street improvements; special assessments authorized; use.

Upon the completion of the work under any contract authorized by sections 14-528 to 14-532, the city council is authorized to levy and assess, in the usual manner, special taxes and assessments to the extent of benefits conferred thereby to pay the costs of the improvements less the amount of proper intersection costs under such contract, all of which taxes and special assessments shall constitute a sinking fund, as and for the purposes specified in section 14-530.

Source: Laws 1921, c. 116, art. IV, § 23, p. 481; C.S.1922, § 3649; C.S.1929, § 14-526.

14-534 Streets; grading; estimate of cost; contract for.

Before any street, avenue, alley or thoroughfare is graded, the city engineer shall make a careful and detailed estimate of the total cost of such grading, and shall report the same to the council as an approximate estimate of such cost. If such estimate is approved by the council, thereupon a contract may be let for the grading in the manner provided for letting improvement contracts, which contract, however, shall not exceed in total amount the approved approximate estimate.

Source: Laws 1921, c. 116, art. IV, § 24, p. 481; C.S.1922, § 3650; C.S.1929, § 14-527.

14-535 Streets; grading; bonds; requirements; interest; maturity; sale; use of proceeds.

As soon as any such contract is let, the city council is thereupon authorized to issue and dispose of bonds of the city in amounts sufficient to pay for the total work to be done under such contract. Unless bonds are disposed of for such purpose, the contract shall not be performed and shall not be binding upon the city. Bonds issued under the provisions hereof shall be denominated grading bonds, and shall state upon the face thereof the street or part of street to be graded from the proceeds thereof. Such bonds shall be due and payable in five years from date thereof, 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, payable semiannually, shall have interest coupons annexed, and shall not be sold or disposed of below par, and the proceeds therefrom shall be used only for the purpose of paying the costs of the grading for which issued. Such bonds may be sold or disposed of in the manner deemed

best or advisable. As the work of grading progresses, partial estimates may be allowed and paid and the final estimates paid as soon as allowed.

Source: Laws 1921, c. 116, art. IV, § 24, p. 482; C.S.1922, § 3650; C.S.1929, § 14-527; R.S.1943, § 14-535; Laws 1980, LB 933, § 2; Laws 1981, LB 167, § 3.

14-536 Streets; grading; special assessments; rate of interest; sinking fund; use.

Upon the completion of any grading of a street, avenue, alley, or thoroughfare, the city council shall levy in the manner provided in sections 14-501 to 14-566 special assessments, to the extent of the benefits, to cover the total costs of such grading. Special assessments so levied shall be made payable as provided in section 14-537. All installments 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 levy until due, and the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, whenever such become delinquent. All such special assessments and all interest accruing thereon shall constitute a sinking fund and shall be used only for the purpose of paying the interest on the bonds issued in that connection as the same accrues and of paying the principal sum of the bonds at the maturity thereof.

Source: Laws 1921, c. 116, art. IV, § 24, p. 482; C.S.1922, § 3650; C.S.1929, § 14-527; R.S.1943, § 14-536; Laws 1980, LB 933, § 3; Laws 1981, LB 167, § 4; Laws 1991, LB 745, § 4.

14-537 Special assessments; when payable; rate of interest; collection and enforcement.

The assessments of special taxes for improving the streets, alleys, sewers, and sidewalks within any improvement district, except where otherwise provided, shall be made in accordance with this section. The total cost of improvements shall be levied at one time upon the property and become delinquent as provided in this section. The city may require that the total amount of such assessment be paid in less than ten years if, in each year of the payment schedule, the maximum amount payable, excluding interest, is five hundred dollars. If the total amount is more than five thousand dollars, then it shall become delinquent as follows: One-tenth of the total amount shall be delinquent in fifty days after such levy; one-tenth in one year; one-tenth in two years; one-tenth in three years; one-tenth in four years; one-tenth in five years; one-tenth in six years; one-tenth in seven years; one-tenth in eight years; and one-tenth in nine years. Each of the 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 levy until the same becomes delinquent and, after the same becomes delinquent, 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, payable in advance, as in case of other special taxes. Such assessments shall be collected and enforced as in other cases of special assessments.

Source: Laws 1921, c. 116, art. IV, § 25, p. 482; C.S.1922, § 3651; C.S.1929, § 14-528; Laws 1933, c. 136, § 12, p. 523;

C.S.Supp.,1941, § 14-528; R.S.1943, § 14-537; Laws 1959, c. 38, § 1, p. 214; Laws 1963, c. 48, § 1, p. 224; Laws 1980, LB 933, § 4; Laws 1981, LB 167, § 5; Laws 1991, LB 745, § 5.

Statute authorizes creation of improvement districts and assessment of special taxes for improvement of streets and alleys. Wead v. City of Omaha, 124 Neb. 474, 247 N.W. 24 (1933).

14-538 Special assessments; relevy; when authorized.

Whenever any special tax or assessment upon any lot or lots, lands or parcels of land is found to be invalid, uncollectible and void, 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 lands in the same manner as other special taxes and assessments are levied, without regard to whether the formalities, prerequisites, and conditions, prior to equalization, have been had or not.

Source: Laws 1921, c. 116, art. IV, § 26, p. 483; C.S.1922, § 3652; C.S.1929, § 14-529.

Reassessment of benefits is provided for when original assessment is invalid. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

Omaha charter of 1897 contained sufficient authority for relevy of special assessment which was attempted to be levied but failed because of irregularities. Mercer Co. v. City of Omaha, 76 Neb. 289, 107 N.W. 565 (1906).

Whether property is benefited by park or boulevard is a question of fact. Hart v. City of Omaha, 74 Neb. 836, 105 N.W. 546 (1905).

14-539 Special assessments; depth to which property may be assessed.

In case the lots and real estate abutting upon that part of the street ordered paved as shown upon any such plat or map are not of uniform depth, as well as in all cases where, in the discretion of the board of equalization, it is just and proper so to do, the board shall have the right and authority to fix and determine the depth to which the real estate shall be charged and assessed with the cost of such improvement, without regard to the line of such lots, the same to be fixed and determined upon the basis of benefits accruing to the real estate by reason of such improvement. The provisions of this section, in regard to the depth to which real estate may be charged and assessed, shall apply to all special assessments.

Source: Laws 1921, c. 116, art. IV, § 27, p. 483; C.S.1922, § 3653; C.S.1929, § 14-530; R.S.1943, § 14-539; Laws 1969, c. 61, § 1, p. 370.

14-540 Special assessments; defects; irregularities; relevy.

In cases of omission, mistake, defect or any irregularity in the preliminary proceedings on any special assessment, the city council shall have power to correct such mistake, omission, defect or irregularity, and levy or relevy a special assessment on any or all property in the district, in accordance with the special benefits 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 on the original levy.

Source: Laws 1921, c. 116, art. IV, § 28, p. 484; C.S.1922, § 3654; C.S.1929, § 14-531.

14-541 Sewers and drains; special assessments; levy.

Special assessments may be levied by the city council for the purpose of paying the cost of constructing or reconstructing sewers or drains within the city, such assessments to be levied on the real estate benefited by the sewer so constructed or reconstructed to the extent of the benefits to such property, to be determined, equalized, levied, and collected as in other cases for special assessments. Where the city council, sitting as a board of equalization, shall find the benefits to be equal and uniform, the levy may be according to the front footage of lots or real estate benefited, or according to such other rule as the city council, sitting as a board of equalization, may adopt for the distribution or adjustment of cost upon the lots or real estate benefited by the improvement.

Source: Laws 1921, c. 116, art. IV, § 29, p. 484; C.S.1922, § 3655; C.S.1929, § 14-532.

14-542 Improvements; property exempt from assessment; cost of improvement; how paid.

When public improvements are made upon a street or part thereof and there are lots or grounds belonging to the city but held or used as a part of any utility system or plant owned by it, either abutting upon or adjacent to such street or embraced within any improvement district, such property shall not be subject to special assessments for the costs of the improvement, but the costs of improving one-half, or such parts of the costs as might otherwise be assessed against such property, shall be paid out of the water fund, gas fund, or other fund available for such purpose and created to pay the costs of operation of such utility. The board or body having charge of such fund is directed to pay such costs of such improvement upon the completion thereof to the city treasurer, and the amount so paid shall be applied to pay the partial costs of such improvement. Whenever any water main is laid by a metropolitan utilities district in a street of a city of the metropolitan class and there are lots or grounds abutting upon such street or embraced within any improvement district which are owned and controlled by the city, one-half the cost of constructing such water main in front of such lot or grounds, if special benefits equal such an amount, to be determined by the metropolitan utilities district, but not to exceed fifty cents per lineal front foot, shall be paid out of the general fund of the city. The city council shall provide for the payment of such costs to the metropolitan utilities district.

Source: Laws 1921, c. 116, art. IV, § 30, p. 484; C.S.1922, § 3656; C.S.1929, § 14-533; R.S.1943, § 14-542; Laws 1992, LB 746, § 59; Laws 2001, LB 177, § 1.

Error of city council in including exempt property in improvement district is at most a mere irregularity, not defeating jurisdiction. Penn Mutual Life Ins. Co. v. City of Omaha, 129 Neb. 733, 262 N.W. 861 (1935).

City of Omaha waterworks is exempt from taxation under the Constitution. City of Omaha v. Douglas County, 96 Neb. 865, 148 N.W. 938 (1914).

Public parks belonging to a city are not taxable property. Herman v. City of Omaha, 75 Neb. 489, 106 N.W. 593 (1906).

14-543 Terms, defined.

The word lot as used in this act shall be taken to mean a lot as described and designated upon the recorded plat of any such city, and in case there is no recorded plat of any such city, it shall mean a lot as described and designated upon any generally recognized map of such city. The word lands shall mean

any unsubdivided real estate. The word street shall be deemed to include boulevards, avenues, alleys and lanes, or any form of public roadway in the city.

Source: Laws 1921, c. 116, art. IV, § 31, p. 485; C.S.1922, § 3657; C.S.1929, § 14-534.

Cross References

"This act", defined, see section 14-101.

Right-of-way of railroad crossing street at an angle was subject to special assessment. Chicago & N.W. Ry. Co. v. City of Omaha, 154 Neb. 442, 48 N.W.2d 409 (1951).

14-544 Special assessments; cost of improvement; expenses included.

A special assessment shall not be declared void or invalid because said board of equalization has included in the total cost of the improvement (1) the cost of inspection under the direction of the city engineer, (2) the cost of such grading, filling or street repairs incidental to such improvement, (3) the additional cost of maintenance or repair of such improvement included in the contract for such work, (4) the cost of removing obstructions and removing and lowering pipes owned and controlled by the city.

Source: Laws 1921, c. 116, art. IV, § 32, p. 485; C.S.1922, § 3658; C.S.1929, § 14-535.

14-545 Special assessments; determination of amounts.

All special assessments to cover the cost of any public improvements herein authorized shall be levied and assessed on all lots, parts of lots, lands, and real estate specially benefited by such improvement, or within the district created for the purpose of making such improvement, to the extent of the benefits to such lots, parts of lots, lands, and real estate by reason of such improvements, such benefits to be determined by the council sitting as a board of equalization. Where they shall find such benefits to be equal and uniform, such assessment may be according to the foot frontage, and may be prorated and scaled back from the line of such improvements according to such rules as the board of equalization shall consider fair and equitable.

Source: Laws 1921, c. 116, art. IV, § 33, p. 486; C.S.1922, § 3659; C.S.1929, § 14-536.

1. Benefits
2. Powers

1. Benefits

Section was not unconstitutional as authorizing levy of the full cost of improvement according to front foot rule without regard to special benefits. Murphy v. Metropolitan Utilities Dist., 126 Neb. 663, 255 N.W. 20 (1934).

Determination by city council of special benefits may not be attacked in a collateral proceeding, except for fraud, a fundamental defect, or an entire want of jurisdiction. Wead v. City of Omaha, 124 Neb. 474, 247 N.W. 24 (1933).

All taxes for special improvements must be levied on property specially benefited by the improvement, but no taxes can be levied on property outside of the improvement district. McCaffrey v. City of Omaha, 91 Neb. 184, 135 N.W. 552 (1912).

Front footage cannot be adopted unless finding is made that benefits are equal and uniform. Morse v. City of Omaha, 67 Neb. 426, 93 N.W. 734 (1903).

Record of board must show affirmatively that council found that benefits were equal and uniform. John v. Connell, 64 Neb. 233, 89 N.W. 806 (1902).

Special benefits which may be set off against damages are such as increase the value of adjacent property, while common benefits are such as are enjoyed by the public at large without reference to the ownership of property adjacent to the public improvement. Barr v. City of Omaha, 42 Neb. 341, 60 N.W. 591 (1894); Kirkendall v. City of Omaha, 39 Neb. 1, 57 N.W. 752 (1894); City of Omaha v. Schaller, 26 Neb. 522, 42 N.W. 721 (1889).

2. Powers

Special assessments could be levied against railroad right-of-way. Chicago & N.W. Ry. Co. v. City of Omaha, 154 Neb. 442, 48 N.W.2d 409 (1951).

Council will not be restrained from passing ordinance levying special taxes, equalized by it, in absence of proof of fraud or mistake in equalization. Richardson v. City of Omaha, 78 Neb. 79, 110 N.W. 648 (1907).

Board of equalization, when regularly in session, with due notices published of matters to come before it, acts judicially upon matters within its jurisdiction, and such action is not open to collateral attack. Portsmouth Savings Bank v. City of Omaha, 67 Neb. 50, 93 N.W. 231 (1903).

Compensation of appraiser's fees for assessment of damages may be included in special assessment. Kuhns v. City of Omaha, 55 Neb. 183, 75 N.W. 562 (1898).

14-546 Special assessments; land; how described; apportionment.

It shall be sufficient in any case in making a levy or assessment of any tax, 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 several persons, the owner of any part thereof may pay his proportion of the tax on such lot or piece of ground, and his proper share may be determined by the city treasurer.

Source: Laws 1921, c. 116, art. IV, § 34, p. 486; C.S.1922, § 3660; C.S.1929, § 14-537.

14-547 Special assessments; board of equalization; meetings; notice; procedure; appointment of referee; ordinance; finality.

In all cases when special assessments are authorized by this act, except as otherwise provided, before any special tax or assessment is levied, it shall be the duty of the city council to sit as a board of equalization for one or more days each month as the city council shall elect. The council shall by rule provide for the day or days on which such meetings shall be held and for the opening and closing hours of such meetings. Notice of the date, time, and place of such meeting or meetings shall be published in the official newspaper for at least three days, the first publication to be at least seven days prior to the first session of the board. A majority of all 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. The proceedings of such board shall not be invalidated by the absence of a quorum during the advertised hours of sitting but the city clerk or some member of the board shall be present to receive complaints and applications and to give information. No final action shall be taken by the board except by a quorum in open session. When sitting as a board of equalization, the council may adopt such reasonable rules as to the manner of presenting complaints and applying for remedy and relief as shall seem just.

The council may appoint one or more suitable persons to act as a referee. The council may direct that any protest filed shall be heard in the first instance by the referee in the manner provided for the hearing of protests by the board of equalization. Upon the conclusion of the hearing in each case, the referee shall transmit to the board of equalization all papers relating to the case, together with his or her findings and recommendations in writing. The board of equalization, after considering all papers relating to the protest and the findings and recommendations of the referee, may make the order recommended by the referee or any other order in the judgment of the board of equalization required by the findings of the referee, may hear additional testimony, or may set aside such findings and hear the protest anew. If a referee is not appointed, the board shall hear and determine all such complaints and shall equalize and correct such assessment. After final deliberation and after all corrections and equalization of assessments have been made, the council may levy such special assessments by ordinance at a regular meeting thereafter. The ordinance levying a

special assessment shall be final and binding as the final order or judgment of a court of general jurisdiction. After the passage of such ordinance no court shall entertain any action for relief against such special assessment, except upon appeal from such final order, which remedy shall be deemed exclusive.

Source: Laws 1921, c. 116, art. IV, § 35, p. 486; C.S.1922, § 3661; C.S.1929, § 14-538; R.S.1943, § 14-547; Laws 1959, c. 39, § 1, p. 215; Laws 1963, c. 49, § 1, p. 225; Laws 1987, LB 167, § 1.

Cross References

"**This act**", defined, see section 14-101.

1. Authority to levy
2. Notice to property owners
3. Protest
4. Meetings of council
5. Effect of action taken
6. Review
7. Miscellaneous

1. Authority to levy

Above section was adopted and incorporated by reference into Laws 1921, Chapter 110 (sections 18-401 to 18-411). Murphy v. Metropolitan Utilities Dist., 126 Neb. 663, 255 N.W. 20 (1934).

2. Notice to property owners

Effect of failure to publish notice raised but not decided. Chicago & N.W. Ry. Co. v. City of Omaha, 156 Neb. 705, 57 N.W.2d 753 (1953).

Publication for specified time in three daily papers, one of them in German language in German newspaper, is sufficient. John v. Connell, 71 Neb. 10, 98 N.W. 457 (1904).

Notice is sufficient if it describes lots to be assessed without giving name of owners. Morse v. City of Omaha, 67 Neb. 426, 93 N.W. 734 (1903).

3. Protest

A protest filed before or during session of boards is an appearance and waiver of any defects in notice. Shannon v. City of Omaha, 73 Neb. 507, 103 N.W. 53 (1905), affirmed on rehearing, 73 Neb. 514, 106 N.W. 592 (1906); Eddy v. City of Omaha, 72 Neb. 550, 101 N.W. 25 (1904), modified on rehearing 72 Neb. 559, 102 N.W. 70 (1905), modified on rehearing, 72 Neb. 561, 103 N.W. 692 (1905).

4. Meetings of council

City council must meet at place and at time designated in notice. Portsmouth Savings Bank v. City of Omaha, 67 Neb. 50, 93 N.W. 231 (1903); Grant v. Bartholomew, 58 Neb. 839, 80 N.W. 45 (1899).

Council must remain in session all the time specified in notice or proceedings are invalid. Hutchinson v. City of Omaha, 52 Neb. 345, 72 N.W. 218 (1897).

5. Effect of action taken

Aggrieved property owner, failing to pursue statutory remedies, cannot attack validity of special assessments in collateral proceeding except for fraud or some fundamental defect or entire want of jurisdiction. Penn Mutual Life Ins. Co. v. City of Omaha, 129 Neb. 733, 262 N.W. 861 (1935).

City council, sitting as board of equalization, acts judicially, and its decisions are conclusive, unless reversed or modified in manner provided by law. Wead v. City of Omaha, 124 Neb. 474, 247 N.W. 24 (1933).

Board with notice given acts judicially, and its actions are not open to collateral attack except for fraud, gross injustice or mistake. Wead v. City of Omaha, 73 Neb. 321, 102 N.W. 675 (1905).

If council levies special assessment without jurisdiction, it is void, and may be collaterally attacked. Morse v. City of Omaha, 67 Neb. 426, 93 N.W. 734 (1903).

Where charter does not require notice and hearing as to sufficiency of petition, the determination reached at such hearing is not in nature of judgment and can be collaterally attacked. Portsmouth Savings Bank v. City of Omaha, 67 Neb. 50, 93 N.W. 231 (1903).

A void special assessment is not validated by voluntary payments made thereon. Wakeley v. City of Omaha, 58 Neb. 245, 78 N.W. 511 (1899).

Where special assessments are void, they cannot be enforced solely on ground of benefit of improvements to owners of abutting lands. Harmon v. City of Omaha, 53 Neb. 164, 73 N.W. 671 (1897).

6. Review

Review of proceeding for equalization and assessment of special taxes by metropolitan water district is by proceedings in error and not by appeal. McCague Inv. Co. v. Metropolitan Water District, 101 Neb. 820, 165 N.W. 158 (1917).

7. Miscellaneous

Where tax is not void but merely irregular and excessive the court should determine amount to be paid as condition of granting relief. Wead v. City of Omaha, 73 Neb. 321, 102 N.W. 675 (1905).

Where a purchaser assumes and agrees to pay special assessments as part of purchase price, or takes advantage of deduction of lien from appraised value of property sold at judicial sale, he is estopped to deny the validity of such assessments. Eddy v. City of Omaha, 72 Neb. 550, 101 N.W. 25 (1904), modified on rehearing 72 Neb. 559, 102 N.W. 70 (1905), modified on rehearing, 72 Neb. 561, 103 N.W. 692 (1905).

Where amount of tax has been deducted from appraised value and purchaser takes for less than two-thirds of appraised value upon assumption that such taxes are valid, he is estopped to deny validity. Omaha Savings Bank v. City of Omaha, 4 Neb. Unof. 563, 95 N.W. 593 (1903).

Covenants in deed, excepting taxes and assessments which the grantee assumed and agreed to pay, will not estop grantee from defending against the payment of illegal and void assessments. Orr v. City of Omaha, 2 Neb. Unof. 771, 90 N.W. 301 (1902).

14-548 Special assessments; board of equalization; appeal to district court; bond; decree.

Any person who has filed a written complaint before the board pursuant to section 14-547 shall have the right to appeal to the district court of the county within which such city is located, by filing a good and sufficient bond in the sum of not less than fifty dollars and not more than double the amount of the assessment complained of, conditioned for the faithful prosecution of such appeal, and if the judgment of special assessment is sustained, to pay the amount of such judgment, interest, and costs. Such bond shall be approved and appeal taken as specified in section 14-813. The district court shall hear the appeal as in equity and without a jury and determine anew all questions raised before the city. If the court finds such assessment to be valid, it shall render a decree for the amount of the assessment, interest, and costs, and declare the same a lien upon the lots or lands so assessed. If the court finds that the tax is invalid it shall order a relevy of such assessment or enter such decree as may be just and equitable.

Source: Laws 1921, c. 116, art. IV, § 36, p. 487; C.S.1922, § 3662; C.S.1929, § 14-539; R.S.1943, § 14-548; Laws 2003, LB 235, § 1.

Appeal from order levying special assessment lies to district court of county within which metropolitan city is located. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as on appeal from a county board, and under sections 25-1901 through 25-1908, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

14-549 Special assessments; when delinquent; interest.

All special assessments except when payable in installments shall be deemed delinquent if not paid within fifty days after the passage and approval of the ordinance levying the same, and interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, payable in advance, shall be paid on all delinquent special assessments from the time the same shall become delinquent.

Source: Laws 1921, c. 116, art. IV, § 37, p. 488; C.S.1922, § 3663; C.S.1929, § 14-540; Laws 1933, c. 136, § 13, p. 524; C.S.Supp.,1941, § 14-540; R.S.1943, § 14-549; Laws 1980, LB 933, § 5; Laws 1981, LB 167, § 6.

14-550 Special assessments; collection; notice to landowners; duties of city clerk.

When any special assessment is levied it shall be the duty of the city clerk to deliver to the city treasurer a certified copy of the ordinance levying such tax, and the city clerk shall append thereto a warrant requiring the city treasurer to collect such special assessments. It shall be the duty of the city clerk to immediately give notice by mail to the owners of the property so assessed, or their agents, if the addresses of such persons can be ascertained, that such assessments will become delinquent on a certain date.

Source: Laws 1921, c. 116, art. IV, § 38, p. 488; C.S.1922, § 3664; C.S.1929, § 14-541.

A mortgagee does not meet the requirements of ownership of affected property necessary to challenge a special assessment as invalid. County of Red Willow v. City of McCook, 243 Neb. 383, 499 N.W.2d 531 (1993).

(d) CITY TREASURER

14-551 Repealed. Laws 2007, LB 206, § 5.

14-552 Repealed. Laws 2007, LB 206, § 5.

14-553 City treasurer; duties.

The city treasurer of a city of the metropolitan class shall be a member of the finance department of such city and shall give bond or evidence of equivalent insurance in an amount as required by the finance director of such city. The treasurer shall be liable for the safekeeping and proper disbursement of all funds and money of the city collected or received by him or her. He or she shall keep his or her books and accounts in such manner as to show the amount of money collected by him or her from all sources, the condition of each fund into which the same has been placed, and the items of disbursement thereof.

Source: Laws 1921, c. 116, art. IV, § 41, p. 489; C.S.1922, § 3667; C.S.1929, § 14-544; Laws 2007, LB206, § 1; Laws 2007, LB347, § 3.

14-554 Taxes and assessments; collection; compensation to county.

(1) The county in which any city of the metropolitan class is located shall receive as full compensation an amount equal to one percent of all money collected from taxation by the county for such city. Such fee shall be paid monthly out of the general funds of the city.

(2) Such county shall receive as full compensation for the collection and disbursement of all money from taxation and pursuant to section 77-3523 coming to the board of education an amount equal to one percent thereof, to be paid out of the general fund.

(3) Such county shall receive as full compensation for the collection and disbursement of the funds of the metropolitan utilities district an amount equal to one percent of all money collected by the county treasurer.

Source: Laws 1921, c. 116, art. IV, § 42, p. 490; C.S.1922, § 3668; Laws 1927, c. 115, § 1, p. 323; C.S.1929, § 14-545; R.S.1943, § 14-554; Laws 1971, LB 292, § 1; Laws 1979, LB 65, § 31; Laws 1992, LB 746, § 60; Laws 1996, LB 604, § 1; Laws 2007, LB206, § 2.

County treasurer is ex officio city treasurer of metropolitan city. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

14-555 Repealed. Laws 2007, LB 206, § 5.

14-556 City treasurer; authorized depositories; securities; conflict of interest.

(1) The city treasurer shall place all funds of the city, as the same accrue, on deposit in such banks, capital stock financial institutions, or qualifying mutual financial institutions within the city as shall agree to pay the highest rate of interest for the use of such funds so deposited. The city council is hereby directed to advertise for bids for rates for the deposit of such funds as is hereby contemplated.

(2) The banks, capital stock financial institutions, or qualifying mutual financial institutions referred to in subsection (1) of this section, so selected, shall:

(a) Give bond to the city for the safekeeping of such funds, and such city shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution giving a guaranty bond 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 or 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 the bank, capital stock financial institution, or qualifying mutual financial institution. All bonds of such banks, capital stock financial institutions, or qualifying mutual financial institutions shall be deposited with and held by the city treasurer; or

(b) Give security as provided in the Public Funds Deposit Security Act.

(3) 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 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.

(4) Section 77-2366 shall apply to deposits in capital stock financial institutions.

(5) Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1921, c. 116, art. IV, § 44, p. 491; C.S.1922, § 3670; C.S.1929, § 14-547; R.S.1943, § 14-556; Laws 1957, c. 54, § 1, p. 263; Laws 1959, c. 35, § 2, p. 193; Laws 1989, LB 33, § 9; Laws 1993, LB 157, § 1; Laws 1996, LB 1274, § 13; Laws 2001, LB 362, § 10.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

City of metropolitan class can make no deposit in bank unless the deposit is protected by bond, and while it may be implied, it is not expressly required, that the bank must pay the premium on the bond. State ex rel. Sorensen v. South Omaha State Bank, 128 Neb. 733, 260 N.W. 278 (1935).

(e) TAXATION

14-557 Taxes and assessments; lien upon real estate.

All general municipal taxes upon real estate shall be a first lien upon the real estate upon which it is levied and take priority over all other encumbrances and liens thereon. All special assessments regularly levied shall be a perpetual lien on the real estate assessed from the date of levy until paid irrespective of the county in which such real estate is situated, but shall be subject to all general taxes. The lien of all general municipal taxes levied on personal and real property shall be governed by the general revenue laws of this state.

Source: Laws 1921, c. 116, art. IV, § 45, p. 491; C.S.1922, § 3671; C.S.1929, § 14-548; R.S.1943, § 14-557; Laws 1963, c. 50, § 1, p. 227.

Levy of city and school district taxes in city of metropolitan class computed on actual valuation and assessment as returned by county assessor and as equalized for preceding year. Chicago & N.W. Ry. Co. v. Bauman, 132 Neb. 67, 271 N.W. 256 (1937).

Party buying land subject to lien for special taxes cannot ask to have such taxes set aside as invalid. Eddy v. City of Omaha, 72 Neb. 550, 101 N.W. 25 (1904), modified on rehearing 72 Neb. 559, 102 N.W. 70 (1905), modified on rehearing, 72 Neb. 561, 103 N.W. 692 (1905).

A special assessment against realty creates no personal liability; it is optional with owner whether he will pay assessment or allow land to be sold for it. City of Omaha v. State ex rel. Metzger, 69 Neb. 29, 94 N.W. 979 (1903).

Taxes are a perpetual lien upon real estate superior to all others until paid. Mutual Benefit Life Ins. Co. v. Siefken, 1 Neb. Unof. 860, 96 N.W. 603 (1901).

14-558 Taxes; collection by distress and sale; duty of city treasurer.

It shall be the duty of the city treasurer to proceed as soon as practicable after any personal tax becomes delinquent, or prior thereto whenever the treasurer shall believe that any person, firm or corporation is about to dispose of any personal property on which a tax has been levied, to collect the same by distress and sale of the personal property of such person, firm or corporation if any such property can be found within such city. No demand of taxes shall be necessary, but it shall be the duty of every person owing any municipal tax or taxes in such cities to attend at the treasurer's office and pay the same.

Source: Laws 1921, c. 116, art. IV, § 47, p. 492; C.S.1922, § 3673; C.S.1929, § 14-550.

14-559 Taxes and assessments; payment; collection; suit; powers of city treasurer.

All municipal taxes and all special assessments in such cities shall be paid in cash. The city treasurer may sue for the recovery of any tax, in his own name as treasurer, or in the name of the city, and shall have all the rights of a creditor in such suits and in the enforcement of a judgment or decree.

Source: Laws 1921, c. 116, art. IV, § 48, p. 492; C.S.1922, § 3674; C.S.1929, § 14-551.

14-560 Taxes; warrant for collection.

No warrant, other than the warrant of the county clerk issued to the county treasurer under the general revenue law, shall be necessary for the collection of the general taxes levied for such cities.

Source: Laws 1921, c. 116, art. IV, § 49, p. 492; C.S.1922, § 3675; C.S.1929, § 14-552.

Section is a part of the general scheme of municipal taxation established by 1905 act, and construction given thereto by taxing authorities as requiring levy to be computed on valuation and assessment as returned by county assessor and as equalized for preceding year, should be followed. Chicago & N.W. Ry. Co. v. Bauman, 132 Neb. 67, 271 N.W. 256 (1937).

14-561 Repealed. Laws 2007, LB 206, § 5.

14-562 Taxes; defects in levy or assessment; relevy; correction of errors.

Whenever any municipal tax or taxes levied for any former year shall remain uncollected because of any defect, error or irregularity in either the power or manner of making the levy thereof, it shall be lawful for the council of such city to again levy a tax upon the property so delinquent in lieu of such former tax or taxes, and at the same rate, and upon the same assessment as such former tax or taxes were levied, and such tax or taxes shall be inserted in the tax list, and shall be collected in the same manner as other general taxes. The city council may, at any time, correct any error or defect, or supply any omission in the assessment or listing of any property subject to municipal tax made for the purpose of taxation for the then current fiscal year, and may require any and all persons to appear and answer under oath as to their possession or control of personal property subject to municipal taxation.

Source: Laws 1921, c. 116, art. IV, § 51, p. 493; C.S.1922, § 3677; C.S.1929, § 14-554; R.S.1943, § 14-562; Laws 1972, LB 1046, § 3.

(f) INVESTMENTS; SUPPLIES; OFFICIAL NEWSPAPER

14-563 City funds; authorized investments.

Notwithstanding any provision of a home rule charter, funds of the city available for such purpose may be invested in securities of the United States, the State of Nebraska, a city of the metropolitan class, a county in which such city of the metropolitan class is located, or a school district of such city, in the securities of municipally owned and operated public utility property and plants of such city, or in the same manner as funds of the State of Nebraska are invested, except that the city treasurer may 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. 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 1921, c. 116, art. IV, § 52, p. 493; C.S.1922, § 3678; C.S.1929, § 14-555; R.S.1943, § 14-563; Laws 1987, LB 440, § 1; Laws 1989, LB 33, § 10; Laws 2001, LB 362, § 11.

Cross References

Surplus funds, investment, see section 77-2341.

14-564 City supplies; advertisement for bids; sheltered workshop; negotiation; contracts.

During the month of December of each year, the city council shall prepare, or cause to be prepared, a list of all supplies required for each office and department or board for the ensuing year. Such list shall designate clearly the quantity and quality of the articles required, but shall not specify the particular product of any manufacturer. The city council may negotiate directly with a sheltered workshop for such supplies pursuant to section 48-1503. In the event the council does not negotiate with a sheltered workshop, the city clerk shall advertise for bids on the articles in such list for at least three successive days in the official newspaper. Such advertisement shall state, in substance, that at a certain stated regular meeting of the city council, bids will be received and opened for all such supplies, and it shall be sufficient in such advertisement to describe the articles in a general way and refer to such list as being on file in the office of the city clerk. Such bids shall be received at the first regular meeting of the city council held after such advertisement has been completed, and awards shall be made at the next regular meeting thereafter. Bidders shall not be required to bid on all items included in such estimates, nor upon all items in one class. The council may accept the lowest and best bid on any item or items and may reject any and all bids. Other or additional supplies not exceeding the value of one hundred dollars for any officer or board may be purchased on the request of the mayor and comptroller.

Source: Laws 1921, c. 116, art. IV, § 53, p. 493; C.S.1922, § 3679; C.S.1929, § 14-556; R.S.1943, § 14-564; Laws 1984, LB 540, § 6.

Fiscal year for city of metropolitan class begins on January 1, and ends on December 31 of each year. Johnson v. Leidy, 86 Neb. 818, 126 N.W. 514 (1910).

City is liable for reasonable value of benefits received and retained under a contract which it was authorized to make, but which was void because irregularly executed. Cathers v. Moores, 78 Neb. 13, 110 N.W. 689 (1907).

14-565 City supplies; equipment; described.

The list described in section 14-564 shall include any and all supplies or equipment for public improvements, street cleaning or repairs, or horses, hose, engines, vehicles or implements used by the park board, fire department or police department. A list of such supplies may be made and advertised for at any time upon request of the proper board of officers, but subject to said section as to the bids and newspapers and advertisement for bids. The said list shall not include the books, documents or other papers or material purchased by the library board.

Source: Laws 1921, c. 116, art. IV, § 54, p. 494; C.S.1922, § 3680; C.S.1929, § 14-557.

14-566 Printing; official newspaper; how designated; failure to print notice.

At the beginning of the term of each council, the purchasing agent shall advertise for three days in each daily newspaper of general circulation in the city for proposals for publishing in some daily newspaper, published in the English language and otherwise meeting the requirements of a legal newspaper fixed by state law, all public advertisements, notices, ordinances, resolutions, council proceedings, and all other matter published by the city. In addition to considering the rate bid for printing, the purchasing agent may give weight to the character of circulation, quality of printing, plant, delivery service, and responsibility of the bidders in determining the lowest and best bid. He may also consider the advantage of the same plant's combining publication of ordinances and providing an ordinance publishing service to subscribers. The purchasing agent shall notify the city clerk of his selection of the official newspaper, which shall continue as such throughout the term of the council. The council may order additional publication of any of its proceedings in any other qualified newspaper or publication. If at any time, the designated official newspaper ceases regular publication or is not giving service satisfactory to the council, the purchasing agent shall recommend another qualified newspaper to the council and, upon approval of the council, it shall become the official newspaper. In case of refusal or neglect of the official newspaper to publish any required notice, the city clerk shall post it in a conspicuous place in the city hall, and he shall keep a written record of such posting witnessed by two persons. The record of such posting shall be evidence that the same was done as required and shall be sufficient to fulfill the requirement of publication. The city shall not be without an official newspaper more than thirty days at a time.

Source: Laws 1921, c. 116, art. IV, § 55, p. 494; C.S.1922, § 3681; C.S.1929, § 14-558; R.S.1943, § 14-566; Laws 1969, c. 62, § 1, p. 371.

Effect of posting notice raised but not decided. Chicago & N.W. Ry. Co. v. City of Omaha, 156 Neb. 705, 57 N.W.2d 753 (1953).

(g) PENSION BOARD

14-567 Pension board; duties; retirement plan reports.

(1) Beginning December 31, 1998, and each December 31 thereafter, the pension board of a city of the metropolitan class shall file with the Public Employees Retirement Board an annual report on each retirement plan estab-

lished by such city pursuant to section 401(a) of the Internal Revenue Code 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:

(a) The number of persons participating in the retirement plan;

(b) The contribution rates of participants in the plan;

(c) Plan assets and liabilities;

(d) The names and positions of persons administering the plan;

(e) The names and positions of persons investing plan assets;

(f) The form and nature of investments;

(g) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(h) 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 pension board 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.

(2) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the pension board of a city of the metropolitan class 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 such report. The report shall consist of a full actuarial analysis of each such retirement plan established by the city. 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 1998, LB 1191, § 5; Laws 1999, LB 795, § 3.

ARTICLE 6

POLICE DEPARTMENT

(a) GENERAL PROVISIONS

Section

(b) POLICE RELIEF AND PENSION FUND

Section
14-611. Repealed. Laws 1973, LB 420, § 1.
14-612. Repealed. Laws 1973, LB 420, § 1.
14-613. Repealed. Laws 1973, LB 420, § 1.
14-614. Repealed. Laws 1973, LB 420, § 1.
14-615. Repealed. Laws 1973, LB 420, § 1.
14-616. Repealed. Laws 1973, LB 420, § 1.
14-617. Repealed. Laws 1973, LB 420, § 1.
14-618. Repealed. Laws 1973, LB 420, § 1.
14-619. Repealed. Laws 1973, LB 420, § 1.
14-620. Repealed. Laws 1973, LB 420, § 1.

(a) GENERAL PROVISIONS

14-601 Police; appointment; powers and duties of council.

The council shall have power, and it shall be its duty to appoint a chief of police, and all other members of the police force to the extent that funds may be available to pay their salaries, and as may be necessary to protect citizens and property, and maintain peace and good order. The council may appoint and define the duties of not to exceed two police matrons.

Source: Laws 1921, c. 116, art. V, § 1, p. 496; C.S.1922, § 3682; C.S. 1929, § 14-601.

Until particular event happens upon which pension is to be paid to police officer, there is no vested right in pension payments. Lickert v. City of Omaha, 144 Neb. 75, 12 N.W.2d 644 (1944).

Provisions of this article are subject to amendment by ordinance adopted by city council and submitted to electors of city of metropolitan class operating under home rule charter. Munch v. Tusa, 140 Neb. 457, 300 N.W. 385 (1941).

Provisions relative to appointment and discharge of fireman are substantially identical with those relating to policeman. Shandy v. City of Omaha, 127 Neb. 406, 255 N.W. 477 (1934).

City is empowered to appoint police officers and require them to give bonds, and persons injured by negligent acts may recover thereon, although bond runs to the city as obligee. Curnyn v. Kinney, 119 Neb. 478, 229 N.W. 894 (1930).

A member of the police department of a metropolitan city is an officer and in the service of a governmental agency of the state. Rooney v. City of Omaha, 104 Neb. 260, 177 N.W. 166 (1920), opinion modified 105 Neb. 447, 181 N.W. 143 (1920).

When policeman of metropolitan city is assigned work outside duties of peace officer, but falling within corporate functions of municipality, he becomes servant thereof in its corporate capacity. Levin v. City of Omaha, 102 Neb. 328, 167 N.W. 214 (1918).

14-602 Chief of police; duties.

The chief of police shall have the supervision and control of the police force of the city, subject to the orders of the superintendent of police. All orders relating to the direction of the police force shall be given through the chief of police or, in his absence, the officer in charge of the police force.

Source: Laws 1921, c. 116, art. V, § 2, p. 496; C.S.1922, § 3683; C.S. 1929, § 14-602.

It is the duty of mayor and chief of police to interfere actively to prevent open violation of law, and compliance may be compelled by mandamus. Moores v. State ex rel. Dunn, 71 Neb. 522, 99 N.W. 249 (1904).

14-603 Chief of police; jurisdiction for service of process; bail.

The chief of police shall be the principal ministerial officer of the corporation. His or her jurisdiction and that of his or her officers in the service of process in all criminal cases and in cases for the violation of city ordinances shall be coextensive with the county. The chief of police or his or her officers shall take bail in all bailable cases for the appearance before the county court of persons under arrest, but such bail shall be subject to the approval of the county court.

Source: Laws 1921, c. 116, art. V, § 3, p. 496; C.S.1922, § 3684; C.S. 1929, § 14-603; R.S.1943, § 14-603; Laws 1972, LB 1032, § 97; Laws 1984, LB 13, § 2.

Jurisdiction of chief of police is restricted to county in which metropolitan city is located. Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

14-604 Chief of police; riots; subject to order of mayor; arrest powers.

The chief of police shall be subject to the orders of the mayor in the suppression of riots and tumultuous disturbances and breaches of the peace. He or she may pursue and arrest any person fleeing from justice in any part of the state and shall forthwith bring all persons by him or her arrested before the county court for trial or examination. He or she may receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places or states.

Source: Laws 1921, c. 116, art. V, § 4, p. 496; C.S.1922, § 3685; C.S. 1929, § 14-604; R.S.1943, § 14-604; Laws 1972, LB 1032, § 98; Laws 1984, LB 13, § 3.

This section does not apply to proceedings instituted by complaint for violation of state statutes. Koop v. City of Omaha, 173 Neb. 633, 114 N.W.2d 380 (1962).

It is the duty of the chief of police to interfere for the prevention of public violation of the law, and this duty may be enforced by mandamus. Moores v. State ex rel. Dunn, 71 Neb. 522, 99 N.W. 249 (1904).

14-605 Chief of police; powers.

The chief of police shall have, in the discharge of his proper duties, like powers and be subject to like responsibilities as sheriffs in similar cases.

Source: Laws 1921, c. 116, art. V, § 5, p. 497; C.S.1922, § 3686; C.S. 1929, § 14-605.

The purpose of this section is to give chief of police the same powers and responsibilities to enforce the law as that given to sheriffs; it does not make the chief of police liable for the acts of policemen. Webber v. Andersen, 187 Neb. 9, 187 N.W.2d 290 (1971).

The chief of police has same duty as sheriff to interfere for prevention of public violation of the law. Moores v. State ex rel. Dunn, 71 Neb. 522, 99 N.W. 249 (1904).

14-606 Police officer; bond; arrest powers.

Each police officer shall give a bond, shall have the same powers as sheriffs in arresting all offenders against the laws of the state, and may arrest all offenders against the ordinances of the city with or without a warrant. In discharge of their duties as police officers, they shall be subject to the immediate orders of the chief of police.

Source: Laws 1921, c. 116, art. V, § 6, p. 497; C.S.1922, § 3687; C.S. 1929, § 14-606; R.S.1943, § 14-606; Laws 1988, LB 1030, § 2.

A policeman is an officer who is required to give an official bond, and premium is payable from general funds of the city. Wheeler v. City of Omaha, 111 Neb. 494, 196 N.W. 894 (1924).

Policeman is required to give bond as a public officer. Rooney v. City of Omaha, 104 Neb. 260, 177 N.W. 166 (1920).

14-607 Police officer; reports; duties.

It shall be the duty of policemen to make a daily report to the chief of police of the time of lighting and extinguishing of all public lights and lamps upon their beats, and also any lamps that may be broken or out of repair. They shall also report to the same office any defect in any sidewalk, street, alley or other public highway or the existence of ice or dangerous obstructions on the walks or streets, or break in any sewer, or disagreeable odors emanating from inlets to sewers, or any violation of the health laws or ordinances of the city. Suitable blanks for making such reports shall be furnished to the chief of police by the

city electrician and health commissioner. Such reports shall be by the chief of police transmitted to the proper officers of the city. In case of any violation of laws or ordinances the policeman making report shall report the facts to the city prosecutor. They shall also perform such other duties as may be required by ordinance.

Source: Laws 1921, c. 116, art. V, § 7, p. 497; C.S.1922, § 3688; C.S. 1929, § 14-607.

14-608 Repealed. Laws 1965, c. 78, § 2.

14-609 Police; removal.

All members or appointees of the police department shall be subject to removal by the city council in the same manner as provided for members of the fire department.

Source: Laws 1921, c. 116, art. V, § 9, p. 499; C.S.1922, § 3690; C.S. 1929, § 14-609.

Cross References

Removal of firefighters, see section 14-704.

All members of police department are subject to removal by city council in the same manner as provided for members of fire department. State ex rel. Sutton v. Towl, 127 Neb. 848, 257 N.W. 263 (1934).

(b) POLICE RELIEF AND PENSION FUND

14-610 Repealed. Laws 1973, LB 420, § 1.

14-611 Repealed. Laws 1973, LB 420, § 1.

14-612 Repealed. Laws 1973, LB 420, § 1.

14-613 Repealed. Laws 1973, LB 420, § 1.

14-614 Repealed. Laws 1973, LB 420, § 1.

14-615 Repealed. Laws 1973, LB 420, § 1.

14-616 Repealed. Laws 1973, LB 420, § 1.

14-617 Repealed. Laws 1973, LB 420, § 1.

14-618 Repealed. Laws 1973, LB 420, § 1.

14-619 Repealed. Laws 1973, LB 420, § 1.

14-620 Repealed. Laws 1973, LB 420, § 1.

ARTICLE 7
FIRE DEPARTMENT

Section
14-701. Transferred to section 14-102.02.
14-702. Fire department; officers, employees; appointment; criminal history record information check.
14-703. Repealed. Laws 1965, c. 78, § 2.
14-704. Fire department; officers; removal; causes; procedure.
14-705. Repealed. Laws 1973, LB 420, § 1.

Section
14-706. Repealed. Laws 1973, LB 420, § 1.
14-707. Repealed. Laws 1973, LB 420, § 1.
14-708. Repealed. Laws 1973, LB 420, § 1.
14-709. Authorized arson investigator; classified as a peace officer; when; powers.

14-701 Transferred to section 14-102.02.

14-702 Fire department; officers, employees; appointment; criminal history record information check.

The city council shall employ a chief of the fire department and all other officers, firefighters, and assistants as may be proper and necessary for the effective service of the fire department to the extent and limit that the funds provided by the city council for that purpose will allow. Each fire department applicant shall, as a condition of employment, submit to the city a full set of his or her fingerprints along with written permission authorizing the city to forward the set of fingerprints to the Federal Bureau of Investigation, through either the Nebraska State Patrol or the police department, to facilitate a check of his or her criminal history record information by the Identification Division of the Federal Bureau of Investigation. The fingerprint check provided for in this section shall be solely for the purpose of confirming information provided by the fire department applicant.

Source: Laws 1921, c. 116, art. VI, § 5, p. 506; C.S.1922, § 3706; C.S.1929, § 14-706; R.S.1943, § 14-702; Laws 1994, LB 1025, § 1.

14-703 Repealed. Laws 1965, c. 78, § 2.

14-704 Fire department; officers; removal; causes; procedure.

All members or appointees of the fire department shall be subject to removal by the city council under such rules and regulations as may be adopted, and whenever the council shall consider and declare such removal necessary for the proper management or discipline, or for the more effective working or service of the fire department. No member or officer of the fire department shall be discharged for political reasons, nor shall a person be employed or taken into such department for political reasons. Before a fireman can be discharged, charges must be filed against him before the council and a hearing had thereon, and an opportunity given such member to defend against such charges, but this provision shall not be construed to prevent peremptory suspension of such member by his superiors in case of misconduct or neglect of duty or disobedience to orders. Whenever any such suspension is made, charges shall be at once filed before the council by the person ordering such suspension, and a trial had thereon. The council shall have the power to enforce the attendance of witnesses and the production of books and papers, and to administer oaths to them in the same manner and with like effect and under the same penalties as in the case of magistrates exercising civil and criminal jurisdiction under the statutes of the State of Nebraska. It shall have such other powers and perform such other duties as may be authorized or defined by ordinance.

Source: Laws 1921, c. 116, art. VI, § 6, p. 506; C.S.1922, § 3707; C.S.1929, § 14-707.

Dismissal is necessary when the employee lacks the qualifications of the position, fails in the performance of his duties, or has been shown to be an unfit or improper person to hold the position. Lewis v. City of Omaha, 153 Neb. 11, 43 N.W.2d 419 (1950).

This section makes members of fire department subject to removal by city council under conditions specified herein. State ex rel. Sutton v. Towl, 127 Neb. 848, 257 N.W. 263 (1934).

Members of police or fire department may be discharged on economic grounds without notice of hearing. State ex rel. Gieseke v. Moores, 63 Neb. 301, 88 N.W. 490 (1901); Moores v. State ex rel. Shoop, 54 Neb. 486, 74 N.W. 823 (1898).

Passage of resolution abolishing office and notification of incumbent that his services were no longer needed is sufficient to constitute discharge of officer. Moores v. State ex rel. Cox, 4 Neb. Unof. 235, 93 N.W. 986 (1903).

14-705 Repealed. Laws 1973, LB 420, § 1.

14-706 Repealed. Laws 1973, LB 420, § 1.

14-707 Repealed. Laws 1973, LB 420, § 1.

14-708 Repealed. Laws 1973, LB 420, § 1.

14-709 Authorized arson investigator; classified as a peace officer; when; powers.

Any person who is a sworn member of an organized and paid fire department of any city of the metropolitan class and who is an authorized arson investigator for such city in order to determine the cause, origin, and circumstances of fires shall be classified as a peace officer while on duty and in the course of any such investigation. Such person shall possess the same powers of arrest, search, and seizure and the securing and service of warrants as police officers of such city.

While on duty and in the course of any such investigation, such person may carry such weapons as may be necessary but only if that person has satisfactorily completed a training program offered or approved by the Nebraska Police Standards Advisory Council or equivalent training offered by such city and certified by the council. Such training need not include exposure to vehicle and traffic law, traffic control and accident investigation, or first aid.

Such person shall in addition have been an active member of an organized fire department for a minimum of six years and shall meet the minimum qualifications and training standards established by the city for all firefighters.

Any person granted the powers enumerated in this section may exercise such powers only while on duty and during the course of investigating the cause, origin, and circumstances of a fire.

Source: Laws 1981, LB 205, § 1; Laws 1994, LB 971, § 1.

ARTICLE 8

MISCELLANEOUS PROVISIONS

Section

14-801 Repealed. Laws 1969, c. 138, § 28.

14-802 Repealed. Laws 1969, c. 138, § 28.

14-803 Repealed. Laws 1969, c. 138, § 28.

14-804 Claims; allowance; procedure; appeal.

Before any claim against the city, except officers' salaries earned within twelve months or interest on the public debt is allowed, the claimant or his agent or attorney shall verify the same by his affidavit, stating that the several items therein mentioned are just and true and the services charged therein or articles furnished, as the case may be, were rendered or furnished as therein charged, and that the amount therein charged and claimed is due and unpaid, allowing all just credits. The city comptroller and his deputy shall have authority to administer oaths and affirmations in all matters required by this section. All claims against the city must be filed with the city comptroller. When the claim of any person against the city is disallowed, in whole or in part, by the city council, such person may appeal from the decision of said city council to the district court of the same county, as provided in section 14-813.

Source: Laws 1921, c. 116, art. VII, § 4, p. 509; C.S.1922, § 3712; C.S.1929, § 14-804.

1. Claims required to be filed
2. Claims not required to be filed
3. Provisions of warrant
4. Miscellaneous

1. Claims required to be filed

The filing of a claim pursuant to this section is a procedural prerequisite to the prosecution of a wage claim against a city in the district court. Hawkins v. City of Omaha, 261 Neb. 943, 627 N.W.2d 118 (2001).

Statute requiring all claims against city to be filed with city comptroller includes claims for pension and disability and is mandatory. Schmitt v. City of Omaha, 191 Neb. 608, 217 N.W.2d 86 (1974).

Claim for premiums on policemen's bond must be filed. Wheeler v. City of Omaha, 111 Neb. 494, 196 N.W. 894 (1924).

2. Claims not required to be filed

This section does not require filing of claim with city council for refund of taxes paid under protest. City of Omaha v. Hodgskins, 70 Neb. 229, 97 N.W. 346 (1903).

To collect award of damages on condemnation of property, it is not necessary to file claim with city council. City of Omaha v. Clarke, 66 Neb. 33, 92 N.W. 146 (1902).

3. Provisions of warrant

Warrant is not invalidated by unauthorized recitals. Rogers v. City of Omaha, 82 Neb. 118, 117 N.W. 119 (1908).

Warrant properly issued by the city is written acknowledgment of indebtedness and a promise to pay and arrests running of statute of limitations. Rogers v. City of Omaha, 80 Neb. 591, 114 N.W. 833 (1908).

Warrant which is a valid obligation, payable out of general fund, is not invalidated by a recital that it is payable out of a special fund which city is not authorized to create. Abrahams v. City of Omaha, 80 Neb. 271, 114 N.W. 161 (1907).

4. Miscellaneous

Application of the Wage Payment and Collection Act does not affect the need to satisfy the requisites of pursuing a claim against a city of the metropolitan class. Thompson v. City of Omaha, 235 Neb. 346, 455 N.W.2d 538 (1990).

The filing of a claim pursuant to this section is a procedural prerequisite to the prosecution of wage claims against the city. Thompson v. City of Omaha, 235 Neb. 346, 455 N.W.2d 538 (1990).

Requirements of this section must be met before a claim can be filed against the city. Litigants cannot confer subject matter jurisdiction on a judicial tribunal by either acquiescence or consent. Coffelt v. City of Omaha, 223 Neb. 108, 388 N.W.2d 467 (1986).

A condition precedent to seeking relief in district court on a claim against a city of the metropolitan class is that claimants must file a claim with the city comptroller. Halbleib v. City of Omaha, 222 Neb. 844, 388 N.W.2d 60 (1986).

Generally, before any court may acquire jurisdiction over a claim against a city of the metropolitan class, the procedures set out in this section must have been followed. Bolan v. Boyle, 222 Neb. 826, 387 N.W.2d 690 (1986).

A partial estimate by city engineer on paving contract and by him reported for approval and allowance is a claim against city and appeal will lie. Lobeck v. State ex rel. Nebraska Bitulithic Co., 72 Neb. 595, 101 N.W. 247 (1904).

14-805 Claims; disallowance; notice.

Upon the rejection or disallowance of any claim, it shall be the duty of the city clerk to notify the claimant or his agent or attorney of such fact, unless such notice is waived in writing. Such notice may be served by any person authorized by the city clerk and must be served within ten days from the rejection of such claim. The notice and return thereon must be filed with the comptroller.

Source: Laws 1921, c. 116, art. VII, § 5, p. 510; C.S.1922, § 3713; C.S.1929, § 14-805.

14-806 Claims; time limit for allowing; payment prohibited, when.

No bill or claim for labor, salary or material, or for extra service or overtime or account of any kind against the city, after it has been adversely reported on and rejected by the administration under which it has been incurred, and no bill, account or claim, not presented or claimed within eighteen months after it was incurred and payable, shall be allowed or authorized to be paid by any mayor and council except through the judgment of a court of competent jurisdiction. These provisions shall apply equally to any modification of the same account in whatever form it may be presented.

Source: Laws 1921, c. 116, art. VII, § 6, p. 510; C.S.1922, § 3714; C.S.1929, § 14-806.

This section operates as a statute of limitations for wage claims against a city of the metropolitan class. Under this section, an administration may pay a timely wage claim rejected by a prior administration if ordered to do so by a court. Thompson v. City of Omaha, 235 Neb. 346, 455 N.W.2d 538 (1990).

This section is a limitation upon the power and jurisdiction of the council itself. Redell v. City of Omaha, 80 Neb. 178, 113 N.W. 1054 (1907).

14-807 Property damage assessments; appeal; exclusive remedy; effect.

In all cases of damage arising under the provisions of this act the party or parties whose property is damaged or sought to be taken by the provisions of this act shall have the right to appeal from such assessment of damages, but such appeal shall not delay the appropriation of the property sought to be taken, or delay the improvement proposed, or retard the change of grade sought to be made. In no case shall the city be liable for the costs or interest on such appeal, unless the party appealing shall be adjudged entitled, upon the appeal, to a greater amount of damage than was awarded. The remedy by appeal herein allowed shall be deemed and held to be exclusive.

Source: Laws 1921, c. 116, art. VII, § 7, p. 510; C.S.1922, § 3715; C.S.1929, § 14-807.

Cross References

"This act", defined, see section 14-101.

Owner failing to appeal from special assessment is estopped to question same unless council without jurisdiction. Burkley v. City of Omaha, 102 Neb. 308, 167 N.W. 72 (1918).

It is necessary to the taking of an appeal that petition be filed in the district court within thirty days after the final order of the council assessing damages. Creighton University v. City of Omaha, 91 Neb. 486, 136 N.W. 829 (1912).

Damages need not be definitely fixed and ascertained before the appropriation of property, as act expressly provides that appeal shall not delay the taking, and until the appeal is determined, the amount of damages involved is a matter of conjecture. City of Omaha v. State ex rel. Metzger, 69 Neb. 29, 94 N.W. 979 (1903).

14-808 Corporate name; process; service upon city.

The corporate name of each metropolitan city shall be The City of ....., and all process or notice whatever affecting any such city shall be served in the manner provided for service of a summons in a civil action.

Source: Laws 1921, c. 116, art. VII, § 8, p. 511; C.S.1922, § 3716; C.S.1929, § 14-808; R.S.1943, § 14-808; Laws 1983, LB 447, § 3.

Notice must be in writing and be served on mayor or acting mayor or in their absence from city, upon city clerk. Gordon v. City of Omaha, 77 Neb. 556, 110 N.W. 313 (1906).

14-809 Actions; intervention; waiver of service; confession of judgment; power of city attorney.

The city attorney shall have power to intervene in any suit or proceeding when the rights of the city are involved, or where the city is a proper party. He shall also have power to waive the issuance and service of summons and may enter a voluntary appearance when in his opinion the interests of the city may require it. He shall have power to confess judgment when authorized by the city council, and not otherwise.

Source: Laws 1921, c. 116, art. VII, § 9, p. 511; C.S.1922, § 3717; C.S.1929, § 14-809.

Nebraska private citizens cannot maintain action under Clayton Act for alleged injury to municipality arising from alleged Sherman Act violations. Cosentino v. Carver-Greenfield Corp., 433 F.2d 1274 (8th Cir. 1970).

14-810 Actions; failure of city to defend; right of taxpayer; costs.

If the city shall refuse or neglect to defend any suit at law or in equity brought against it, any resident taxpayer may defend said suit on its behalf at the cost of the city, not including attorney's fees.

Source: Laws 1921, c. 116, art. VII, § 10, p. 511; C.S.1922, § 3718; C.S.1929, § 14-810.

Resident taxpayer may commence and prosecute to judgment an equitable action for enforcement of a claim on behalf of city which its officers have refused to enforce. Pedersen v. Westroads, Inc., 189 Neb. 236, 202 N.W.2d 198 (1972).

If the city neglects or refuses to defend an action, a resident taxpayer may do so on behalf of the city. Lynch v. City of Omaha, 153 Neb. 147, 43 N.W.2d 589 (1950).

Where duly constituted representatives of city refuse or neglect to defend action, resident taxpayer may defend at cost of city, not including attorney's fees. Ash v. City of Omaha, 152 Neb. 393, 41 N.W.2d 386 (1950).

Where taxpayer with notice fails to appeal, he cannot thereafter bring injunction. Morse v. City of Omaha, 67 Neb. 426, 93 N.W. 734 (1903).

14-811 Franchises; grant; modification; procedure; notice; election.

Any ordinance or resolution granting, extending, changing or modifying the terms and conditions of a franchise shall not be passed until at least four weeks shall have elapsed after its introduction or proposal, and not until such resolution or ordinance has been published daily for at least two weeks in the official newspaper of the city. It shall not become effective or binding until submitted to the electors and approved by a majority vote thereof. Submission to the electors shall be made as provided in section 14-202. A new franchise shall not hereafter be granted or any modification or extension of any existing franchise made unless an annuity or royalty be provided and reserved to the city to be based either upon a fixed reasonable amount per year or a fixed percentage of the earnings under the operation of the franchise so granted, and not then until the same has been submitted to a vote and approved by the electors at a general city election or special election called for that purpose.

Source: Laws 1921, c. 116, art. VII, § 11, p. 511; C.S.1922, § 3719; C.S.1929, § 14-811.

The power granted by section 18-2204 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 this section requiring submission of a franchise annuity or royalty to the electorate. Hall v. Cox Cable of Omaha, Inc., 212 Neb. 887, 327 N.W.2d 595 (1982).

A lease-purchase agreement relating to financing of a waste disposal plant and authorized by section 14-365.05 is not a franchise that violates this section. Cosentino v. City of Omaha, 186 Neb. 407, 183 N.W.2d 475 (1971).

Defendant's use of streets in supplying steam and chilled water for purposes of heating and air conditioning did not require granting of franchise. Dunmar Inv. Co. v. Northern Nat. Gas Co., 185 Neb. 400, 176 N.W.2d 4 (1970).

State Railway Commission may regulate operation of taxicab company in Omaha. In re Yellow Cab & Baggage Co., 126 Neb. 138, 253 N.W. 80 (1934).

A permit to operate auto buses on streets of a city is not a franchise, and need not be submitted to a vote of the people. Omaha & Council Bluffs St. Ry. Co. v. City of Omaha, 114 Neb. 483, 208 N.W. 123 (1926).

Taxpayer cannot maintain suit to enjoin city from granting franchise to telephone company unless taxation will be increased thereby. Clark v. Interstate Independent Telephone Co., 72 Neb. 883, 101 N.W. 977 (1904).

Ordinance extending time for purchase of plant of water company is an extension of a franchise and must be submitted to popular vote. Poppleton v. Moores, 62 Neb. 851, 88 N.W. 128 (1901), affirmed on rehearing, 67 Neb. 388, 93 N.W. 747 (1903).

Ordinance or resolutions for building sidewalks should be published. Ives v. Irey, 51 Neb. 136, 70 N.W. 961 (1897).

14-812 City property; exemption from taxation, execution; judgments, how paid.

Lands, houses, money, debts due the city, and property, and assets of every description belonging to any metropolitan city, shall be exempt from taxation, execution, and sale. Judgments against the said city shall be paid out of the judgment fund, or out of a special fund created for the purpose.

Source: Laws 1921, c. 116, art. VII, § 12, p. 512; C.S.1922, § 3720; C.S.1929, § 14-812.

Cross References

Constitutional provision:
For constitutional provisions, see Article VIII, section 2, Constitution of Nebraska.

Municipal waterworks of Omaha is not taxable. City of Omaha v. Douglas County, 96 Neb. 865, 148 N.W. 938 (1914).

Term "special fund" refers to a levy made for payment of specific judgments when general levy is insufficient. City of Omaha v. State ex rel. Metzger, 69 Neb. 29, 94 N.W. 979 (1903).

14-813 Awards, orders of council; appeals from; procedure.

Whenever the right of appeal is conferred by this act, the procedure, unless otherwise provided shall be substantially as follows: The claimant or appellant shall, within twenty days from the date of the order complained of, execute a bond to such city with sufficient surety to be approved by the clerk, conditioned for the faithful prosecution of such appeal, and the payment of all costs adjudged against the appellant. Such bond shall be filed in the office of the city clerk. It shall be the duty of the city clerk, on payment or tender to him of the costs of the transcript, at the rate of ten cents per hundred words, to prepare a complete transcript of the proceedings of the city relating to their decision thereon. It shall be the duty of the claimant or appellant to file a petition in the district court as in the commencement of an action within thirty days from the date of the order or award appealed from, and he shall also file such transcript before answer day. The proceedings of the district court shall thereafter be the same as on appeal from the county board. Any taxpayer may appeal from the allowance of any claim against the city by giving a bond and complying with the foregoing provisions; *Provided*, the foregoing provisions shall not be so construed as to prevent the city council from once reconsidering their action on any claim or award upon ten days' notice to the parties interested.

Source: Laws 1921, c. 116, art. VII, § 13, p. 512; C.S.1922, § 3721; C.S.1929, § 14-813.

Cross References

"This act", defined, see section 14-101.

A city council's disallowance of a claim because it accrued prior to eighteen months before the filing of the claim is not appealable. Thompson v. City of Omaha, 235 Neb. 346, 455 N.W.2d 538 (1990).

The action of the city council on claims for pension and disability is reviewable in the district court by way of petition in error or appeal. Schmitt v. City of Omaha, 191 Neb. 608, 217 N.W.2d 86 (1974).

Filing of transcript under this section is not jurisdictional. Adams v. City of Omaha, 179 Neb. 684, 139 N.W.2d 885 (1966).

Right to amend appeal bond in eminent domain proceedings is conferred. Ballantyne Co. v. City of Omaha, 173 Neb. 229, 113 N.W.2d 486 (1962).

Railroad company could enjoin illegal special assessment. Chicago & N.W. Ry. Co. v. City of Omaha, 156 Neb. 705, 57 N.W.2d 753 (1953).

Condemnees may appeal to the district court from award of appraisers. Trial in district court is no different with respect to rules of evidence than in any other condemnation proceeding. Papke v. City of Omaha, 152 Neb. 491, 41 N.W.2d 751 (1950).

Petition must be filed in district court within thirty days after final order of council assessing damage. Creighton University v. City of Omaha, 91 Neb. 486, 136 N.W. 829 (1912).

An appeal from a special assessment by a metropolitan-class city taken as specified in this section means that proceedings from a district court shall be the same as on appeal from a county board, and under sections 25-1901 through 25-1908, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

14-814 Utilities district; torts or obligations; exemption of city from liability.

A city of the metropolitan class shall not be liable for any tort or act of negligence of the metropolitan utilities district or of any other utility board or body with full and independent powers of control, or for torts or acts of negligence of any of the officers or employees of such board which may in any way result from, grow out of, or be connected with the maintenance, management, control, or operation of any water system or plant, any gas system or plant, or any other public utility system or plant which the city may acquire or own but which has been placed in the control of and is maintained and operated by any such district or board. The city shall not be liable for the debts and obligations of any such district or board incurred in connection with or in any way pertaining to the maintenance, management, control, or operation of any such plant or system by such board of control with full authority over the revenue and earnings of such system or plant.

Source: Laws 1921, c. 116, art. VII, § 14, p. 512; C.S.1922, § 3722; C.S.1929, § 14-814; R.S.1943, § 14-814; Laws 1992, LB 746, § 61.

14-815 Utilities district; powers and duties exclusive.

Nothing in sections 14-101 to 14-138, 14-201 to 14-229, 14-360 to 14-376, 14-501 to 14-556, 14-601 to 14-609, 14-702, 14-704, and 14-804 to 14-816 shall be construed so as to interfere with the powers, duties, authority, and privileges that are conferred and imposed upon the metropolitan utilities district as prescribed by law, but all matters relating to the powers, duties, authority, and privileges of such metropolitan utilities district so far as elsewhere conferred, imposed, and defined by law shall be exclusive and paramount.

Source: Laws 1921, c. 116, art. VII, § 14½, p. 513; C.S.1922, § 3723; C.S.1929, § 14-815; R.S.1943, § 14-815; Laws 1992, LB 746, § 62.

14-816 City records; inspection; reports of city officers.

All citizens of this state and other persons interested in the examination of the records kept by any officer of the city, are hereby fully empowered and authorized to examine the same free of charge during the hours the respective offices may be kept open for the ordinary transaction of business. The city council shall have power to require from any officer of the city at any time a

report in detail of the transactions in his office, or any matter connected therewith.

Source: Laws 1921, c. 116, art. VII, § 15, p. 513; C.S.1922, § 3724; C.S.1929, § 14-816.

14-817 Bond; cost, appeal, supersedeas, injunction, attachment; when not required.

No bond for cost, appeal, supersedeas, injunction or attachment shall be required of any city of the metropolitan class or of any officer, board, commission, head of any department, agent or employee of any such city in any proceeding or court action in which said city of the metropolitan class or its officer, board, commission, head of department, agent or employee is a party litigant in its or his official capacity.

Source: Laws 1961, c. 31, § 1, p. 151.

An appeal by a party described in this section operates as a supersedeas of a lower court judgment. Cummings Enterprises v. Shukert, 231 Neb. 370, 436 N.W.2d 199 (1989).

14-818 Paunch manure, rendering, or sewage plant; refuse area; establish; residential area; restriction.

After July 19, 1980, no person shall establish a paunch manure, rendering, or sewage treatment plant or facility, or an area where refuse, garbage, or rubbish is disposed of within three thousand three hundred feet of a residential area in a metropolitan-class city. For purposes of this section residential area shall mean an area designated as residential under the zoning authority of the city.

Source: Laws 1980, LB 853, § 15.

ARTICLE 9

WATER DEPARTMENT

Section

14-901 Repealed. Laws 1992, LB 746, § 79.

14-902 Repealed. Laws 1992, LB 746, § 79.

14-903 Repealed. Laws 1992, LB 746, § 79.

14-904 Repealed. Laws 1992, LB 746, § 79.

14-905 Repealed. Laws 1992, LB 746, § 79.

14-906 Repealed. Laws 1992, LB 746, § 79.

14-907 Repealed. Laws 1992, LB 746, § 79.

14-908 Repealed. Laws 1992, LB 746, § 79.

14-909 Repealed. Laws 1992, LB 746, § 79.

14-910 Repealed. Laws 1992, LB 746, § 79.

14-911 Repealed. Laws 1992, LB 746, § 79.

14-912 Repealed. Laws 1992, LB 746, § 79.

14-913 Repealed. Laws 1992, LB 746, § 79.

14-914 Repealed. Laws 1992, LB 746, § 79.

14-915 Repealed. Laws 1992, LB 746, § 79.

14-916 Repealed. Laws 1992, LB 746, § 79.

14-917 Repealed. Laws 1992, LB 746, § 79.

14-918 Repealed. Laws 1992, LB 746, § 79.

ARTICLE 10
WATER DISTRICTS

Section
14-1001. Transferred to section 14-2101.
14-1002. Transferred to section 14-2112.
14-1003. Transferred to section 14-2102.
14-1004. Transferred to section 14-2103.
14-1005. Transferred to section 14-2104.
14-1006. Transferred to section 14-2105.
14-1007. Transferred to section 14-2106.
14-1008. Transferred to section 14-2113.
14-1009. Transferred to section 14-2120.
14-1010. Transferred to section 14-2118.
14-1011. Transferred to section 14-2119.
14-1012. Transferred to section 14-2107.
14-1013. Transferred to section 14-2137.
14-1014. Repealed. Laws 1957, c. 21, § 3.
14-1015. Transferred to section 14-2114.
14-1016. Transferred to section 14-2121.
14-1017. Transferred to section 14-2148.
14-1018. Transferred to section 14-2108.
14-1019. Transferred to section 14-2149.
14-1020. Transferred to section 14-1101.01.
14-1021. Transferred to section 14-2110.
14-1022. Transferred to section 14-2111.
14-1023. Transferred to section 14-2126.
14-1024. Transferred to section 14-2127.
14-1025. Repealed. Laws 1957, c. 21, § 3.
14-1026. Transferred to section 14-2143.
14-1027. Transferred to section 14-2144.

Section
14-1028. Transferred to section 14-2140.
14-1029. Transferred to section 14-2142.
14-1030. Transferred to section 14-2152.
14-1031. Repealed. Laws 1992, LB 746, § 79.
14-1032. Transferred to section 14-2157.
14-1033. Repealed. Laws 1984, LB 975, § 14.
14-1034. Transferred to section 14-2145.
14-1035. Transferred to section 14-2146.
14-1036. Transferred to section 14-2147.
14-1037. Repealed. Laws 1992, LB 746, § 79.
14-1038. Transferred to section 14-2123.
14-1039. Transferred to section 14-2124.
14-1040. Repealed. Laws 1992, LB 746, § 79.
14-1041. Transferred to section 14-2138.
14-1042. Transferred to section 14-2139.

14-1001 Transferred to section 14-2101.

14-1002 Transferred to section 14-2112.

14-1003 Transferred to section 14-2102.

14-1004 Transferred to section 14-2103.

14-1005 Transferred to section 14-2104.

14-1006 Transferred to section 14-2105.

14-1007 Transferred to section 14-2106.

14-1008 Transferred to section 14-2113.

14-1009 Transferred to section 14-2120.

14-1010 Transferred to section 14-2118.

14-1011 Transferred to section 14-2119.

14-1012 Transferred to section 14-2107.

14-1013 Transferred to section 14-2137.

14-1014 Repealed. Laws 1957, c. 21, § 3.

14-1015 Transferred to section 14-2114.

14-1016 Transferred to section 14-2121.

14-1017 Transferred to section 14-2148.

14-1018 Transferred to section 14-2108.

14-1019 Transferred to section 14-2149.

14-1020 Transferred to section 14-1101.01.

14-1021 Transferred to section 14-2110.

14-1022 Transferred to section 14-2111.

14-1023 Transferred to section 14-2126.

14-1024 Transferred to section 14-2127.

14-1025 Repealed. Laws 1957, c. 21, § 3.

14-1026 Transferred to section 14-2143.

14-1027 Transferred to section 14-2144.

14-1028 Transferred to section 14-2140.

14-1029 Transferred to section 14-2142.

14-1030 Transferred to section 14-2152.

14-1031 Repealed. Laws 1992, LB 746, § 79.

14-1032 Transferred to section 14-2157.

14-1033 Repealed. Laws 1984, LB 975, § 14.

14-1034 Transferred to section 14-2145.

14-1035 Transferred to section 14-2146.

14-1036 Transferred to section 14-2147.

14-1037 Repealed. Laws 1992, LB 746, § 79.

14-1038 Transferred to section 14-2123.

14-1039 Transferred to section 14-2124.

14-1040 Repealed. Laws 1992, LB 746, § 79.

14-1041 Transferred to section 14-2138.

14-1042 Transferred to section 14-2139.

ARTICLE 11

METROPOLITAN UTILITIES DISTRICT

Section
14-1101. Transferred to section 14-2153.
14-1101.01. Transferred to section 14-2109.
14-1102. Transferred to section 14-2115.
14-1102.01. Transferred to section 14-2154.
14-1103. Repealed. Laws 1992, LB 746, § 79.
14-1103.01. Transferred to section 14-2122.
14-1103.02. Transferred to section 14-2116.
14-1103.03. Transferred to section 14-2125.
14-1104. Transferred to section 14-2141.
14-1105. Transferred to section 14-2133.
14-1106. Repealed. Laws 1957, c. 22, § 1.
14-1107. Repealed. Laws 1957, c. 22, § 1.
14-1108. Transferred to section 14-2134.
14-1109. Transferred to section 14-2135.
14-1110. Transferred to section 14-2136.
14-1111. Transferred to section 14-2128.
14-1111.01. Transferred to section 14-2129.
14-1111.02. Transferred to section 14-2130.
14-1112. Transferred to section 14-2131.

Section
14-1113. Transferred to section 14-2132.
14-1114. Transferred to section 14-2151.
14-1115. Transferred to section 14-2150.
14-1116. Transferred to section 14-2155.
14-1117. Transferred to section 14-2156.

14-1101 Transferred to section 14-2153.

14-1101.01 Transferred to section 14-2109.

14-1102 Transferred to section 14-2115.

14-1102.01 Transferred to section 14-2154.

14-1103 Repealed. Laws 1992, LB 746, § 79.

14-1103.01 Transferred to section 14-2122.

14-1103.02 Transferred to section 14-2116.

14-1103.03 Transferred to section 14-2125.

14-1104 Transferred to section 14-2141.

14-1105 Transferred to section 14-2133.

14-1106 Repealed. Laws 1957, c. 22, § 1.

14-1107 Repealed. Laws 1957, c. 22, § 1.

14-1108 Transferred to section 14-2134.

14-1109 Transferred to section 14-2135.

14-1110 Transferred to section 14-2136.

14-1111 Transferred to section 14-2128.

14-1111.01 Transferred to section 14-2129.

14-1111.02 Transferred to section 14-2130.

14-1112 Transferred to section 14-2131.

14-1113 Transferred to section 14-2132.

14-1114 Transferred to section 14-2151.

14-1115 Transferred to section 14-2150.

14-1116 Transferred to section 14-2155.

14-1117 Transferred to section 14-2156.

ARTICLE 12
INTERSTATE BRIDGES

Section
14-1201. Bridges; acquisition; construction; maintenance; operation; powers of city; jurisdiction; exercise of powers.

Section

14-1201 Bridges; acquisition; construction; maintenance; operation; powers of city; jurisdiction; exercise of powers.

Any city of the metropolitan class, including one governed under a home rule charter, is hereby authorized and empowered to acquire by purchase, condem-

nation, bargain and sale, lease, sublease, gift or otherwise, any bridge or viaduct, including approaches and avenues, rights-of-way or easements of access to approaches, necessary real and personal property incident thereto and franchises, special privileges, leases, and contracts in connection with such bridges or viaducts. It is also authorized and empowered to construct and contract for the construction of bridges or viaducts, including all of aforesaid appurtenances, facilities, and property. It is also authorized and empowered thereafter to repair, maintain, extend, renew, reconstruct, replace or enlarge and to mortgage or lease and to use and operate any such bridges or viaducts as toll or free bridges, either or both from time to time for public use and travel of all kinds by railroads, street railways, bus lines, vehicles, and pedestrians, and other uses, any or all as may be determined by the governing body of the city. It may use same for public utility purposes, and fix the rates of toll or the charges for the use of same, and grant nonexclusive franchises for use of same for public utility purposes upon such terms and conditions as may be prescribed by ordinance. It may exercise all such powers within the city limits and five miles outside thereof within the State of Nebraska, and any adjoining state, and across any navigable or nonnavigable stream forming the boundary between such states after having obtained authority, if any be necessary, from such states and from the United States. It may exercise such powers directly through the governing body of the city or any committee thereof or through a bridge commission created as provided in sections 14-1227 and 14-1244 to 14-1246, or part any one and part any other.

Source: Laws 1929, c. 176, § 1, p. 608; C.S.1929, § 14-1201.

Right of city of Omaha to construct bridge across Missouri River and issue revenue bonds payable from bridge tolls upheld. Kirby v. Omaha Bridge Commission, 127 Neb. 382, 255 N.W. 776 (1934).

14-1202 Bridges; powers; joint action authorized.

Any power granted by sections 14-1201 to 14-1252 to such city may be exercised by the city independently or in cooperation with or aid of similar action by any other city or any county in Nebraska, or any city or county in an adjoining state, or the State of Nebraska, or any adjoining states, or state, or the government of the United States, when such other political unit has been authorized by law to exercise the necessary powers. Such joint action may be directly by the governing body of the city through the medium of a joint bridge commission subject to the same conditions provided in said sections for independent action.

Source: Laws 1929, c. 176, § 2, p. 609; C.S.1929, § 14-1202.

14-1203 Bridges; utility franchises; power to grant.

The cities specified in section 14-1201, through the governing bodies thereof, are authorized and empowered to grant franchises for the nonexclusive use of the bridges acquired under sections 14-1201 to 14-1252 to public utilities upon such terms, conditions, and for such consideration as such cities may impose, whether incident to or part of the purchase of an existing bridge and rights of utilities in connection therewith, or otherwise, and thereafter to extend the duration or to amend the terms and conditions thereof. In the case of interstate bridges, any such grant shall be made by the governing body of such city by ordinance and no vote of the electors of the city shall be required. In no case shall such a grant be made by any bridge commission.

Source: Laws 1929, c. 176, § 3, p. 609; C.S.1929, § 14-1203.

14-1204 Bridges; conveyance to state or United States for free bridge; conditions.

In the event that the State of Nebraska, an adjoining state, the government of the United States, either, any or all of them, should agree to take over any bridge acquired by the city or in course of construction under sections 14-1201 to 14-1252 and thereafter maintain and operate same as a free bridge at its or their expense, then such city is authorized to convey such bridge on such conditions to such party or parties. Such conveyance shall not be made unless and until all outstanding bonds issued to finance the bridge have been paid and canceled.

Source: Laws 1929, c. 176, § 4, p. 609; C.S.1929, § 14-1204.

14-1205 Bridges; acquisition; construction; power may be assigned; conditions.

Any such city may grant the exclusive right to purchase an existing bridge or to construct a new bridge, and to maintain any such bridge within a distance not exceeding one mile on each side of the bridge to be so purchased or constructed, for the period necessary to reimburse cost plus not exceeding eight percent thereof for financing charges, together with interest upon said cost and charges, but in no event to exceed ten years, subject to the condition that at the termination of such period, such bridge shall become the sole property of the public and thereafter be maintained and operated by the city as a toll or free bridge as such city may determine from time to time in harmony with the other provisions of sections 14-1201 to 14-1252 and the laws of the United States. Such grant shall be made in the same manner and subject to the same conditions as may be provided in the charter of such city for the granting of franchises. Any such grant or assignment shall by operation of law be subject to the following conditions: The number of officers and employees and the salaries, wages, and compensation thereof shall be reasonable; no person shall be permitted free use of the bridge or use at discriminatory toll; tolls shall be both adequate to hasten payment for the bridge and reasonable to the public; financing costs shall be reasonable and the city may impose requirements and safeguards as to the conservation of funds and insurance of property; complete statements of operations and finances shall be filed with the city clerk on bond interest dates upon completion of the bridge and upon delivery of same to the city; and the city shall have power to require or itself perform audits and examine the books and call for any reports at any time. The city may enforce these obligations in any court of competent jurisdiction. Any such assignment shall by operation of law be subject to the conditions that the plans and specifications, the location, size, type and method of construction, the boundaries and approaches and the estimates of cost of construction and acquisition shall be first submitted to the governing body of the city and receive its approval before any construction shall be commenced or any contract for construction or for financing construction shall be entered into.

Source: Laws 1929, c. 176, § 5, p. 609; C.S.1929, § 14-1205.

14-1206 Bridges; purchase or lease; how conducted.

If any such city shall desire to purchase, lease or sublease any existing bridge and shall have received any such authority as may be necessary from the government of the United States, the governing body of such city may deter-

mine the fair value thereof, the appraised value of which shall not exceed two million dollars, including all interests of any nature therein, and may by written resolution tentatively offer the owners thereof jointly the price so determined, and if all such owners within ninety days thereafter shall file with the city clerk of such city a duly authorized and properly executed written tentative acceptance of such offer, binding themselves to accept the same and to assign such lease or sublease or convey good and complete title by warranty deed when and if the necessary funds shall be provided therefor, then upon the filing of such acceptance, the governing body of the city may submit to the electors thereof, at a special election called for that purpose or at any general election of such city or of the State of Nebraska within one hundred and twenty days after the filing of such acceptance, the question whether such purchase shall be made at the price stated on the ballot and the governing body of the city be authorized to issue bonds of the kind or kinds stated in the proposition and in any such amount as may be required to provide the necessary funds. The proposition so submitted shall be carried if the majority of the electors voting on such proposition shall vote in favor thereof; *Provided*, no election and no vote of electors shall be required upon the question of acquiring by purchase, lease or sublease any existing bridge or issuing revenue bonds, in an amount not to exceed two million dollars as authorized by section 14-1217, for the acquisition by purchase, lease or sublease of any existing bridge, if the governing body of such city shall determine by a vote of a majority of its members to dispense with such election or vote of electors as to such question. If the proposition shall be carried at the election, or if the governing body shall so determine to dispense with such election, the tentative acceptance of the owners of such bridge shall then become final and binding upon them and may be enforced in any court of competent jurisdiction. Such purchase may also be made subject to existing mortgages and the assumption of outstanding bonds. If repairs, reconditioning or reconstruction shall be necessary to place any bridge so purchased or to be purchased in safe, efficient or convenient condition, the governing body of the city shall be empowered to issue additional revenue bonds to provide funds for that purpose in an amount not to exceed fifteen percent of the purchase price of such bridge. Any proposition submitted to the electors shall be published on three consecutive days in the official newspaper of the city to be completed not less than ten days before the date of the election. If and when the governing body of any such city shall determine to dispense with such election or vote of the electors, or if a proposition shall have been submitted to a vote of the electors thereof and carried at such election, such governing body is hereby authorized and empowered to exercise all power and authority reasonably necessary and incidental to the exercise of the powers herein granted.

Source: Laws 1929, c. 176, § 6, p. 610; C.S.1929, § 14-1206; Laws 1935, c. 28, § 1, p. 123; C.S.Supp.,1941, § 14-1206.

14-1207 Bridges; right of eminent domain; procedure.

If any such city shall desire to acquire any existing bridge or lease thereof or all interests therein by the exercise of the power of eminent domain, and shall have received any such authority as may be necessary from the government of the United States, it may exercise such power in such manner as Congress may require, and if the manner is not prescribed by Congress, the procedure to

condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1929, c. 176, § 7, p. 614; C.S.1929, § 14-1207; Laws 1935, c. 28, § 2, p. 124; C.S.Supp.,1941, § 14-1207; R.S.1943, § 14-1207; Laws 1951, c. 101, § 39, p. 463.

14-1208 Repealed. Laws 1951, c. 101, § 127.

14-1209 Repealed. Laws 1951, c. 101, § 127.

14-1210 Repealed. Laws 1951, c. 101, § 127.

14-1211 Bridges; condemnation; award; submission to electors.

Within ninety days after a final condemnation award has been made the governing body of the city shall, if it elects to proceed further, introduce an ordinance providing for the submission to the electors of the city the question whether such award shall be confirmed and the property be taken and bonds of the kind or kinds determined by the governing body of the city, and stated upon the ballot, shall be issued in the amount of the award. Such proposition shall be submitted within ninety days after the ordinance becomes effective at a special election called for that purpose or at any general city or state election, and shall be carried if a majority of the electors voting thereon shall vote in favor thereof. No election and no vote of electors shall be required upon the question of acquiring by condemnation any bridge or issuing revenue bonds as authorized by section 14-1217 for the acquisition by condemnation of any existing bridge, if the governing body of such city shall determine by a vote of a majority of its members to dispense with such election or vote of electors as to such question.

Source: Laws 1929, c. 176, § 7, p. 615; C.S.1929, § 14-1207; Laws 1935, c. 28, § 2, p. 126; C.S.Supp.,1941, § 14-1207; R.S.1943, § 14-1211; Laws 1951, c. 101, § 40, p. 464.

14-1212 Bridges; condemnation; award; payment; vesting of title.

If such proposition is carried, or if the governing body shall so determine to dispense with such election, title to the property to be appropriated shall at once vest in said city, and the right to possession shall vest in said city as soon as money in the amount of said award is on deposit with the county judge.

Source: Laws 1929, c. 176, § 7, p. 616; C.S.1929, § 14-1207; Laws 1935, c. 28, § 2, p. 126; C.S.Supp.,1941, § 14-1207; R.S.1943, § 14-1212; Laws 1961, c. 370, § 1, p. 1144.

14-1213 Repealed. Laws 1951, c. 101, § 127.

14-1214 Repealed. Laws 1951, c. 101, § 127.

14-1215 Bridges; acquisition; preliminary expenses; bonds; amount.

Notwithstanding any limitation or requirement contained in the city charter or imposed by other laws upon the limit of indebtedness, the issuance of bonds, the vote of the electors or the exercise of the power of eminent domain in or by such city, the governing body thereof is authorized and empowered to issue and dispose of general obligation bonds to the amount of fifty thousand dollars, or any part thereof, in any one calendar year, to finance preliminary work,

including investigation, soundings, employment of engineers and architects, and any other useful work, or appropriate expenses in connection with the proposed acquisition or construction of any bridge, bridges or viaducts, and the preliminary financing thereof. Such bonds shall be short-term bonds not to exceed three years, redeemable at par on any semiannual interest date upon ten days' notice by publication once in the official newspaper, and may be sold at a discount of not more than two percent. The proceeds of the sale of such bonds may be advanced by the governing body of the city to a bridge commission created as provided in sections 14-1227 and 14-1244 to 14-1246, to be expended by such commission in preliminary work or for costs of operation and maintenance or interest charges as may be necessary. Whether expended by the governing body of the city or by a bridge commission, the amount so expended shall constitute a prior and first lien upon revenue derived from the operation of the bridge in connection with which such expenditures have been had, and shall be repaid as soon as possible and used by the governing body of the city to purchase or redeem said short-term bonds. The amount of such bonds shall be included as a part of the cost of the bridge and shall be repaid out of the proceeds of any bonds issued for permanent financing.

Source: Laws 1929, c. 176, § 8, p. 617; C.S.1929, § 14-1208; R.S.1943, § 14-1215; Laws 1969, c. 51, § 21, p. 286.

14-1216 Bridges; acquisition; general or revenue bonds authorized.

To finance any of the purposes or powers provided for in sections 14-1201 to 14-1252, the governing body of any such city shall in the first instance determine whether any purchase, condemnation or construction authorized by said sections shall be financed by bonds which are general obligations of the city and which may also be supported by a lien or mortgage on the bridge itself or upon the tolls to be derived therefrom, or both, or by revenue bonds as provided for in section 14-1217 and which are charged solely against the revenue to be derived from such bridge through the collection of tolls, or part one kind of bonds and part the other. It shall not have authority to purchase, condemn nor construct any bridge nor to issue any bonds, except the preliminary bonds specially authorized by section 14-1215, until first authorized by the majority vote of the electors voting on such proposition, which proposition shall indicate the method of acquiring the bridge and the kind or kinds of bonds, at a special election called for that purpose or at any general city or state election; *Provided*, no election and no vote of electors shall be required upon the question of acquiring or constructing any bridge or issuing revenue bonds as authorized by section 14-1217, for the acquisition or construction of any bridge located more than one mile from any existing bridge, other than a railroad bridge, if the governing body of such city shall determine by a vote of the majority of its members to dispense with such election or vote of electors as to such question. This grant of power to issue bonds is in addition to any other power which may now have been or hereafter may be conferred upon such city, and shall be free from the restrictions now imposed by the charter of the city upon the issuance of bonds and incurring of indebtedness, and subject only to the provisions of the Constitution of Nebraska. At such election the proposition shall be separate as to the bonds for each bridge to be acquired or constructed and the amount of bonds may be either a specific amount equal to the estimated total cost of every nature plus not to exceed twenty-five percent, or may be general and authorize the issuance of bonds in such amount as may be found necessary from time to

time to complete the acquisition, construction, and equipment of the bridge and all costs incident thereto, or may be part one and part the other. For all purposes of financing, the total cost of any improvement authorized by sections 14-1201 to 14-1252 may include every item of expense in connection with the project, and among other items shall also include the cost of acquiring every interest of every nature and of every person in any existing bridge, the cost of constructing the superstructure, roadway, and substructure of any bridge, the approaches and avenues or rights-of-way of access thereto and necessary real estate in connection therewith, toll houses and equipment thereof and of the bridge, franchises, easements, rights or damages incident to or consequent upon the complete project expenses preliminary to construction, including investigation and expenses incident thereto, and prior to and during construction the proper traffic estimates, interest upon bonds and all such other expenses as after the beginning of operation would be properly chargeable as cost of operation, maintenance, and repairs.

Source: Laws 1929, c. 176, § 9, p. 618; C.S.1929, § 14-1209; Laws 1931, c. 27, § 1, p. 107; C.S.Supp.,1941, § 14-1209.

14-1217 Bridges; acquisition; revenue bonds; power to issue.

Cities of the metropolitan class are hereby authorized to provide funds for the purposes of sections 14-1201 to 14-1252 by the issuance of revenue bonds of such cities, the principal and interest of which bonds shall be payable solely from the special funds herein provided for such payment and as to which, as shall be recited therein, the city shall incur no indebtedness of any kind or nature and to support which the city shall not pledge its credit nor its taxing power nor any part thereof. Such bonds may, at the option of the governing body of such city, be supported by mortgage or by deed of trust.

Source: Laws 1929, c. 176, § 10, p. 619; C.S.1929, § 14-1210; Laws 1931, c. 27, § 2, p. 108; C.S.Supp.,1941, § 14-1210.

14-1218 Revenue bonds; interest; maturity.

Such revenue bonds shall bear interest payable semiannually, and shall mature in not more than twenty years from their date or dates and may be made redeemable at the option of the city issuing the same at not more than the par value thereof plus a premium of five percent, under such terms and conditions as the governing body of the city may fix prior to the issuance of such bonds.

Source: Laws 1929, c. 176, § 10, p. 619; C.S.1929, § 14-1210; Laws 1931, c. 27, § 2, p. 108; C.S.Supp.,1941, § 14-1210; R.S.1943, § 14-1218; Laws 1969, c. 51, § 22, p. 287.

14-1219 Revenue bonds; form; denominations; place of payment; powers of city.

The governing body of the city shall provide the form of such bonds including coupons to be attached thereto to evidence interest payments, which bonds shall be signed by the mayor and countersigned and registered by the city comptroller, under the city's seal, and which coupons shall bear the facsimile signature of said mayor and the city clerk, and shall fix the denomination or denominations of such bonds and the place or places of payment of the principal and interest thereof which may be at the office of the city treasurer, or

any bank or trust company in the State of Nebraska or in the city of New York, State of New York. All bonds authorized by sections 14-1215 to 14-1217 and 14-1223 shall be and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the state without, however, constituting the revenue bonds herein authorized an indebtedness of the city issuing the same. The governing body of the city may provide for the registration of such bonds in the name of the owner as to the principal alone or as to both principal and interest.

Source: Laws 1929, c. 176, § 10, p. 619; C.S.1929, § 14-1210; Laws 1931, c. 27, § 2, p. 108; C.S.Supp.,1941, § 14-1210; R.S.1943, § 14-1219; Laws 1971, LB 4, § 3.

14-1220 Revenue bonds; sale; terms.

Such bonds may be sold in such manner as the governing body of the city may determine to be for the best interests of the city, taking into consideration the financial responsibility of the purchaser and the terms and conditions of the purchase and the availability of the proceeds of the bonds when required for payment of the costs; such sale to be at not less than ninety-two cents on the dollar and accrued interest.

Source: Laws 1929, c. 176, § 10, p. 620; C.S.1929, § 14-1210; Laws 1931, c. 27, § 2, p. 109; C.S.Supp.,1941, § 14-1210; R.S.1943, § 14-1220; Laws 1969, c. 51, § 23, p. 287.

14-1221 Revenue bonds; proceeds; management and use.

The proceeds of such bonds shall be deposited in the first instance with the city treasurer and thereafter with such depositories as the bridge commission shall direct and the governing body of the city shall approve, shall be secured in such manner and to such extent as the governing body of the city and the bridge commission shall require, shall be used solely for the payment of the cost of the bridges and costs incident thereto, and shall be drawn upon over the signatures of the chairman or vice-chairman of the bridge commission and the secretary and treasurer thereof, and under such further restrictions, if any, as the governing body of the city may provide. If the face amount of such bonds, less any discount on the sale thereof, shall exceed such cost, the surplus shall be paid into the fund hereinafter provided for the payment of the principal and interest of such bonds.

Source: Laws 1929, c. 176, § 10, p. 620; C.S.1929, § 14-1210; Laws 1931, c. 27, § 2, p. 109; C.S.Supp.,1941, § 14-1210.

14-1222 Revenue bonds; city may purchase for investment or retirement.

The governing body of the city shall have the right to purchase for investment of other funds, and the bridge commission and the governing body of the city shall have the right to purchase for retirement and cancellation, any of such bonds that may be outstanding, at the market price, but at not exceeding one hundred and five and accrued interest and not exceeding the price, if any, at which the same shall in the same year be redeemable, but all bonds redeemed or purchased out of funds provided by the sale of bridge bonds shall forthwith be canceled and shall not again be issued.

Source: Laws 1929, c. 176, § 10, p. 620; C.S.1929, § 14-1210; Laws 1931, c. 27, § 2, p. 109; C.S.Supp.,1941, § 14-1210.

14-1223 Revenue bonds; temporary bonds.

Prior to the preparation of definitive bonds the governing body of the city may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

Source: Laws 1929, c. 176, § 10, p. 620; C.S.1929, § 14-1210; Laws 1931, c. 27, § 2, p. 110; C.S.Supp.,1941, § 14-1210.

14-1224 Revenue bonds; trust agreements; terms; conditions.

The governing body of the city may enter into an agreement with any competent bank or trust company as trustee for the holders of such bonds, setting forth the duties of the city and the bridge commission in respect to the construction, maintenance, operation and insurance on all funds, the insurance of money on hand or on deposit and the rights and remedies of said trustee and the holders of such bonds, and restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds of corporations. Said trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the trustee and approval by the original bond purchasers of the appointment of consulting engineers and of the security given by the bridge contractors and by any bank or trust company in which the proceeds of bonds or bridge tolls or other money of the bridge commission shall be deposited, and may provide that no contract for construction shall be made without the approval of the consulting engineers. Said trust agreement may further contain provisions and covenants that all or any deposited money shall be secured, as may be therein provided, by surety company bonds or otherwise, and that investments of any or all money shall be prohibited, except as therein provided, or shall be regulated as therein provided, and that insurance upon the bridge and all property connected therewith, also use and occupancy insurance, shall be carried to the extent and under the conditions therein provided. Such trust agreement may also include a covenant that until the revenue bonds secured by such agreement and the interest thereon shall have been paid, the city will charge and collect for transit over any or all other bridges, then or thereafter owned by such city, rates of tolls which may be fixed in such covenant or may be based upon principles and premises set forth in such covenant. The tolls thereafter collected pursuant to such covenant shall be applied as provided in section 14-1226, or for the acquisition or construction or the maintenance and operation, in whole or in part, of any bridge or bridges now owned or hereafter acquired or constructed by such city or as may be otherwise provided by law.

Source: Laws 1929, c. 176, § 10, p. 620; C.S.1929, § 14-1210; Laws 1931, c. 27, § 2, p. 110; C.S.Supp.,1941, § 14-1210.

14-1225 Bridges; state and political subdivisions; competing bridges; limitations upon, for protection of bondholders.

Neither the State of Nebraska nor any political subdivision thereof shall limit or restrict the rights and powers granted in sections 14-1201 to 14-1252 to the detriment of owners of outstanding bonds nor shall such state or political subdivision authorize the construction or itself construct any competing bridge within a distance of one mile on either side of the bridge unless and until all of such bonds, together with the interest thereon, have been fully paid and

canceled, unless other adequate provisions shall have been made for the protection and guaranty thereof.

Source: Laws 1929, c. 176, § 11, p. 621; C.S.1929, § 14-1211.

14-1226 Bridges; tolls; determination and use; rights of bondholders.

The rates of tolls to be charged for the use of any bridge acquired or constructed under the provisions of sections 14-1201 to 14-1252 shall be fixed and adjusted as may be required by any law of the United States, and shall be so fixed and adjusted as to provide a fund sufficient to pay the interest and principal of any bonds issued under sections 14-1215 to 14-1217 and 14-1223 and to provide an additional fund to pay the cost of maintaining, repairing and operating such bridge. The rates may also be so fixed and adjusted as to provide a reserve fund reasonably sufficient to provide for the cost of the continued operation, supervision, maintenance, and repair of said bridge or bridges for a period not to exceed twenty-five years after the removal of toll charges. After the provision of said funds has been completed, such bridge or bridges shall thereafter be maintained and operated free of toll unless or until the charging of reasonable tolls is continued or resumed by the governing body of the city or its commission in order to finance reconstruction, extension, enlargement, replacement or renewal of that particular bridge or in aid of the acquisition, construction, reconstruction, extension, enlargement, replacement or renewal of any other bridge owned in whole or in part by said city. The owners of outstanding bonds issued to finance the bridge, or the authorized trustee therefor, shall have the right to compel the fixing of adequate tolls by application to any court of competent jurisdiction. In case the city is at the same time providing for the payment of more than one bridge through the collection of tolls, the tolls upon such bridges may be maintained and adjusted so that each bridge shall assist the financing of the other.

Source: Laws 1929, c. 176, § 12, p. 622; C.S.1929, § 14-1212.

14-1227 Bridge commission; members; term; vacancies; compensation; officers and employees; office; powers and duties.

When it has been determined by the governing body of any such city, by resolution or ordinance in the exercise of its discretion, that in the exercise of the powers conferred by sections 14-1201 to 14-1252, it is expedient to create a bridge commission, the mayor of such city, with the approval of the governing body of the city, shall appoint four persons, who, with the mayor, ex officio, shall constitute a bridge commission which shall be a public body corporate and politic under the name of (insert name of city) bridge commission. It shall have power to contract, to sue and be sued, and to adopt a seal and alter same at pleasure, but shall not have power to pledge the credit or taxing power of the city. No officer or employee of said city, except the mayor thereof, whether holding a paid or unpaid office shall be eligible to hold an appointment on said commission. Such appointees shall be originally appointed for terms of four years. Upon the expiration of such terms, appointments shall be made in like manner except that the term of the four appointees shall be for one year, two years, three years and four years, respectively. Not more than two of such appointees shall be members of the same political party. Vacancies shall be filled for any unexpired term in the same manner as the original appointment. Said commission shall elect a chairman and vice-chairman from its members,

and a secretary and treasurer who need not be a member of such commission. The members of the commission shall receive no compensation and shall give such bonds as may be required from time to time by the governing body of the city. The commission shall fix the compensation of the secretary and treasurer. The commission shall have power to establish bylaws, rules, and regulations for its own government and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers. The commission may employ engineering, architectural, and construction experts and inspectors and attorneys, and such other employees as may be necessary in its opinion, and fix their compensation, all of whom shall do such work as the commission shall direct. All salaries and compensation shall be obligations against and be paid solely from funds provided under the authority of sections 14-1201 to 14-1252. The office, records, books and accounts of the bridge commission shall always be maintained in the city which the commission represents. Such commission may be charged by the governing body of the city with the construction of new bridges or the operation, maintenance, repair, renewal, reconstruction, replacement, extension or enlargement of existing bridges, or bridges hereafter constructed.

Source: Laws 1929, c. 176, § 13, p. 622; C.S.1929, § 14-1213.

14-1228 Bridge commission; bridge plans and specifications.

The commission is hereby authorized to prepare the necessary and proper plans and specifications for the construction of such bridges as may be designated by the governing body of the city, to select the location for same, determine the size, type and method of construction thereof, to plan and fix their boundaries and approaches, to make the necessary estimates of the probable cost of construction and the acquisition of the land and rights for the sites of the abutments and approaches and avenues or easements of access to the bridges in a manner hereinafter provided, to enter into the necessary contracts to build and equip the entire bridges and the approaches and avenues or easements of access thereto, to build the superstructures and substructures and all parts thereof, to obtain and exercise such consent or authority as may be necessary from the government of the United States and the approval of the Secretary of the Army and Chief of Engineers, and to cause a survey and map to be made of all lands, structures, rights-of-way, franchises, easements or other interests in lands, including lands under water and riparian rights owned by any persons, corporation or municipality, the acquisition of which may be deemed necessary for the construction of such bridges, and to cause such map and survey to be filed in its office. The members of the commission, or its agents and employees, may enter upon such lands and structures and upon lands under water notwithstanding any interests in such lands or structures, for the purpose of making such surveys and maps; *Provided*, that the commission shall not proceed to exercise or carry out any authority or power herein given it to bind said commission beyond the extent to which money has been provided.

Source: Laws 1929, c. 176, § 14, p. 623; C.S.1929, § 14-1214; Laws 1931, c. 27, § 3, p. 111; C.S.Supp.,1941, § 14-1214; R.S.1943, § 14-1228; Laws 1972, LB 1046, § 4.

14-1229 Bridge commission; bids required; when.

No contract or agreement for the acquisition, construction, reconstruction, repair, enlargement, extension, renewal, replacement or equipment of such bridges exceeding in amount the sum of twenty-five hundred dollars shall be made without advertisement for bids, which shall be opened publicly, and an award made to the best bidder, with power in the commission to reject any or all bids.

Source: Laws 1929, c. 176, § 14, p. 624; C.S.1929, § 14-1214; Laws 1931, c. 27, § 3, p. 112; C.S.Supp.,1941, § 14-1214.

14-1230 Bridge commission; plans and specifications; submission to city council.

The plans and specifications, the location, size, type and method of construction, the boundaries and approaches, and the estimates of cost of construction and acquisition, provided for in sections 14-1228 and 14-1229, shall be first submitted to the governing body of the city and receive its approval before final adoption by the commission, which shall have no power to proceed further until such approval has been had.

Source: Laws 1929, c. 176, § 14, p. 624; C.S.1929, § 14-1214; Laws 1931, c. 27, § 3, p. 112; C.S.Supp.,1941, § 14-1214.

14-1231 Bridge commission; contracts; authorization of bonds required.

No contract for acquisition, construction, or incidents thereto, and no liabilities in connection therewith shall be entered into or incurred until bonds to finance the project have been authorized by the electors of the city in the method provided in section 14-1251, or until revenue bonds, as authorized by section 14-1217, have been issued and disposed of by the governing body of the city.

Source: Laws 1929, c. 176, § 14, p. 625; C.S.1929, § 14-1214; Laws 1931, c. 27, § 3, p. 112; C.S.Supp.,1941, § 14-1214.

14-1232 Bridge commission; bridges; control and management.

The commission shall operate, manage, and control the bridges under its charge in their entirety, fix the rate of tolls, establish bylaws and rules and regulations for the use and operation of such bridges, provide for the lighting and policing thereof, and select such employees as it deems necessary and fix their compensation, and if and when authorized by the governing body of the city shall have power to renew, replace, reconstruct, extend and enlarge bridges, but shall not have power to create liens upon or to mortgage any property unless first authorized by the governing body of the city.

Source: Laws 1929, c. 176, § 14, p. 625; C.S.1929, § 14-1214; Laws 1931, c. 27, § 3, p. 113; C.S.Supp.,1941, § 14-1214.

14-1233 Bridge commission; records; reports; city council; examinations.

The bridge commission shall keep an accurate record of all its acts, the property entrusted to it, the cost of the bridge or bridges, and incidents thereto, the expenditures for maintaining, repairing and operating same, and the daily tolls collected, which records shall be public records and the property of the city. A semiannual statement shall be published on each bond interest date in the official newspaper of the city. The governing body of the city shall have

power to examine the accounts at any time, to call for any reports at any time in its discretion, and to require the commission and its employees to appear before it to report or testify at any time.

Source: Laws 1929, c. 176, § 15, p. 625; C.S.1929, § 14-1215.

14-1234 Bridge commission; members; employees; removal.

The governing body of the city after reasonable notice and hearing may at any time remove any member of the commission or discharge any employee for good cause shown, but not arbitrarily nor for political reasons.

Source: Laws 1929, c. 176, § 15, p. 625; C.S.1929, § 14-1215.

14-1235 Bridge commission; accounts; audits.

The accounts and statements of the commission shall be audited by or under the direction of the city comptroller semiannually and finally upon the completion of the work of the commission and at such other times as may be directed by the governing body of the city, the cost thereof to be charged against the funds provided for in sections 14-1201 to 14-1252.

Source: Laws 1929, c. 176, § 15, p. 625; C.S.1929, § 14-1215.

14-1236 Bridge commission; bonds of officers, depositories; insurance.

The governing body of the city, and in the absence of action by it, the bridge commission shall have power to require bonds of officers and employees to require guarantees of deposited money, and to insure the bridges and all property connected therewith against every manner of loss or injury.

Source: Laws 1929, c. 176, § 15, p. 625; C.S.1929, § 14-1215.

14-1237 Bridge commission; funds; investment.

Funds under control of the commission may be invested in certificates of deposit in national banks, capital stock financial institutions, or qualifying mutual financial institutions or in bonds or other evidences of indebtedness which are general obligations of the United States, the State of Nebraska or other states, or the city or the cities cooperating as provided in section 14-1202, but only in such a manner as to be immediately available for recapture when needed for the purposes authorized in sections 14-1201 to 14-1252. 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 1929, c. 176, § 15, p. 626; C.S.1929, § 14-1215; R.S.1943, § 14-1237; Laws 1989, LB 33, § 11; Laws 2001, LB 362, § 12.

14-1238 Bridge commission; property; purchase authorized.

The commission is hereby authorized to purchase in the State of Nebraska and in any adjoining state when authorized by such state or the government of the United States, if such authority be necessary, solely from funds provided under the authority of sections 14-1201 to 14-1252, such lands, structures, rights-of-way, franchises, easements or other interests in lands, including lands under water and riparian rights of any person, railroad, or other public or private corporation, necessary or convenient for the acquisition, construction, extension or enlargement of said bridges and approaches thereto, upon such terms, prices or consideration as may be considered by it to be reasonable and

can be agreed upon between it and the owner or owners, title thereto to be taken in the name of and to vest in the city.

Source: Laws 1929, c. 176, § 16, p. 626; C.S.1929, § 14-1216.

14-1239 Bridge commission; property; condemnation; procedure.

Whenever it shall be necessary to condemn property in the State of Nebraska for the purpose of constructing, extending, or enlarging any portion of the bridges or the approaches thereto, or securing avenues of access or rights-of-way leading to the approaches, the commission may condemn any interests, franchises, easements, rights or privileges, land or improvements which may, in its opinion, be necessary for the purpose of constructing the bridges or approaches thereto, or necessary for rights-of-way or avenues of access leading to the approaches. Condemnation shall be certified to the governing body of the city for its action. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The commission is further empowered to exercise in any adjoining state such powers of eminent domain as may be conferred upon the commission by any act of Congress of the United States or as may be authorized by the law of that state. No payments of award in any condemnation proceeds or for the costs of such proceedings or the expense thereof, shall be made except from funds provided under the authority of sections 14-1201 to 14-1252. Title to property condemned shall be taken in the name of and vest in the city.

Source: Laws 1929, c. 176, § 17, p. 626; C.S.1929, § 14-1217; R.S.1943, § 14-1239; Laws 1951, c. 101, § 41, p. 464.

14-1240 Bridges; obstructions to construction; removal; damages; payment.

All individuals or corporations having buildings, structures, works, conduits, mains, sewers, wires, tracks, or other obstructions in, over, upon, or adjacent to the public streets, lanes, alleys, or highways or in, under, over or adjacent to the river over which the bridges are to be constructed, and which shall interfere with or impede the progress of the bridges and approaches when in process of construction and establishment, shall upon reasonable notice from the commission temporarily so shift, adjust, accommodate, or remove the same, as fully to meet the exigencies occasioning such action. Upon completion of such construction, the actual cost thereof, if reasonable, otherwise the reasonable cost thereof, and other incidental damages, shall be promptly paid to such person by the commission. In case of disagreement as to reasonable cost, the damages sustained shall be ascertained and determined as provided in sections 76-704 to 76-724 and shall be paid at once by the commission out of funds provided for in sections 14-1201 to 14-1252. Similar powers may be exercised in an adjoining state if and in the manner authorized by an act of Congress or the law of that state.

Source: Laws 1929, c. 176, § 18, p. 627; C.S.1929, § 14-1218; R.S.1943, § 14-1240; Laws 1951, c. 101, § 42, p. 465.

14-1241 Bridges; damage to property; payment; how ascertained.

The governing body of the city shall cause to be assessed the damages to property by reason of the construction and operation of the complete bridge property and appurtenances and to pay same out of funds provided for in sections 14-1201 to 14-1252. The damages sustained shall be ascertained and

determined as provided in sections 76-704 to 76-724. Similar powers may be exercised in an adjoining state if and in the manner authorized by an act of Congress or the law of that state.

Source: Laws 1929, c. 176, § 19, p. 627; C.S.1929, § 14-1219; R.S.1943, § 14-1241; Laws 1951, c. 101, § 43, p. 466.

14-1242 Bridges; injury to public ways, works, or utilities; repair.

Any public ways or public works, including those of the metropolitan utilities district, damaged or destroyed by reason of the building of such bridges or approaches shall be restored or repaired by or at the expense of the commission and placed in their original condition as near as practicable, or at the option of the owners of such property, the same may be repaired or restored by the owner and the commission shall reimburse the owner for the reasonable cost thereof.

Source: Laws 1929, c. 176, § 20, p. 628; C.S.1929, § 14-1220.

14-1243 Bridge commission; dissolution.

Any local commission provided for in sections 14-1227 and 14-1244 may be dissolved by the governing body of the city at any time after the acquisition, construction, and equipment of the complete bridge or bridges within its care have been completed and all the costs thereof have been paid from the funds provided by the bond issues provided for in sections 14-1215 to 14-1217 and 14-1223. Thereupon the governing body of the city shall assume the further duties in connection with such bridge, including the operation, maintenance and repair thereof, the administration of funds, the collection of tolls, and all other necessary or proper acts. At any time thereafter it may create a new bridge commission to effect any of the purposes or objects authorized by sections 14-1201 to 14-1252.

Source: Laws 1929, c. 176, § 21, p. 628; C.S.1929, § 14-1221.

14-1244 Joint bridge commission; organization; powers and duties.

In case the governing body of any city designated in section 14-1201, having been authorized by the electors as required in section 14-1251, shall at any stage of the proceedings determine to cooperate with any such properly authorized political subdivision in this or an adjoining state in the joint acquisition and operation of a bridge or bridges, a joint commission shall be created. Such joint commission shall be created and the members selected by the action of each political unit cooperating, in the same manner provided for the creation of a local commission by the statutes applicable to each political unit, and upon which representation may be proportioned to the respective contribution of funds by the political units cooperating for the purpose of such acquisition; *Provided*, that the total membership shall not exceed ten. The commission shall select a chairman and a vice-chairman to represent each political subdivision cooperating in the enterprise and shall maintain a single office at the place selected by the commission but for legal purposes shall be domiciled within the jurisdiction of each political unit cooperating and shall have the power to sue and be sued. This commission shall constitute a public body corporate and politic, shall select and adopt its own name, and shall be vested with such powers and subject to such conditions as may be conferred and imposed by the government of the United States and such powers and

conditions in the State of Nebraska as are conferred and imposed in sections 14-1201 to 14-1252 upon a local bridge commission, and such powers and subject to such conditions in an adjoining state as may be conferred and imposed by the laws of such state. The plans and specifications, the location, size, type and method of construction, the boundaries and approaches, and the estimates of the costs of construction, acquisition of property, and financing, shall be first submitted to the governing bodies of the political units cooperating and receive their approval by resolution before final adoption by the commission, which shall not enter into contracts and shall have no power to proceed further unless and until such approval has been had. If such joint commission is created after any work has been done, any funds provided or any liabilities incurred by the governing body of the city or by a local commission, such joint commission shall take over, succeed to, assume and be liable therefor.

Source: Laws 1929, c. 176, § 22, p. 628; C.S.1929, § 14-1222.

14-1245 Joint bridge commission; bonds; sale; proceeds; how expended.

The cities specified in section 14-1201 are authorized and empowered to authorize or require said joint commission to conduct and to complete the sale of bonds provided for in sections 14-1215 to 14-1217 and 14-1223 at the same time and to the same purchaser under the best conditions obtainable, together with the bonds of the political subdivision with which it is cooperating so that the benefits of a joint offering and sale may be obtained. The funds derived from the sale of the bonds of all political subdivisions cooperating may be mingled and shall be administered and expended by the joint commission as one common fund. As nearly as may be, and subject to any rules and regulations which may be adopted by the commission for that purpose, the fund shall be deposited and maintained in equitable proportions within the territory of each political subdivision, and applied to the purchase or redemption of the separate bond issues in an equitable manner. All contracts, evidences of indebtedness and payment vouchers shall be signed by the treasurer and countersigned by each vice-chairman.

Source: Laws 1929, c. 176, § 22, p. 629; C.S.1929, § 14-1222.

14-1246 Joint bridge commission; property; title; in whom vested; disagreements; arbitration.

Title to all real and personal property and to the completed bridge and all its appurtenances and incidents shall vest in the political subdivisions cooperating as tenants in common in the same proportion as the contributions made to the joint fund. In the event of the inability of the governing bodies of the political subdivisions cooperating or their joint commission to agree, the specific controversy may be submitted to arbitration in such manner as may be agreed upon.

Source: Laws 1929, c. 176, § 22, p. 630; C.S.1929, § 14-1222.

14-1247 Bridges; joint purchase.

Any city specified in section 14-1201 desiring to exercise the power as granted in section 14-1202 to jointly purchase by bargain and sale any existing bridge may do so either when the electors have authorized such joint purchase or have authorized any independent purchase of such bridge. The governing body of the city is authorized to enter into joint contract with the other political unit as to all the conditions of purchase and the conditions of subsequent

reconditioning, operation, toll charges, repair, maintenance, renewal, replacement, enlargement and extension of such bridge. Title to the bridge shall vest in the political units cooperating as tenants in common and operation shall be by the joint commission provided for in section 14-1244 and subject to the conditions provided with reference to such commission.

Source: Laws 1929, c. 176, § 23, p. 630; C.S.1929, § 14-1223.

14-1248 Bridges; joint condemnation; procedure.

Any city specified in section 14-1201 may acquire an existing bridge by entering into joint condemnation proceedings with other political units, as authorized in section 14-1202. Where the property to be condemned is situated within the jurisdiction of more than one political unit or partly in the State of Nebraska and partly in an adjoining state, the political units cooperating shall first enter into contract electing in what jurisdiction and in which state a single joint proceeding to condemn the property as an entirety shall be instituted and the proceedings shall be conducted subject to the law of and in the manner provided for that jurisdiction, or such proceedings may be conducted subject to the law and in the manner provided by an act of Congress conferring the power of condemnation where the property to be acquired is situated in more than one state. For this purpose, cities in this state and specified in section 14-1201 are authorized to become parties to a single proceeding in an adjoining state and to subject themselves to the law of that state governing such proceedings. In the event of such joint proceedings in this state, the procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The contract in this section provided for shall be similar to the contract provided for in section 14-1247 and shall also fix the proportionate contribution to be made by each political unit cooperating and shall also provide for the creation of a joint commission to take over the operation of the property in the event of its acquisition, subject to the conditions provided in sections 14-1244 to 14-1250 with reference to such joint commission. Title to the property condemned shall vest in the political units cooperating as tenants in common when, as, and if the approval of the electors has been had as provided in section 14-1251.

Source: Laws 1929, c. 176, § 24, p. 630; C.S.1929, § 14-1224; R.S.1943, § 14-1248; Laws 1951, c. 101, § 44, p. 466.

14-1249 Bridges; joint construction; joint management and control.

Whenever the electors of any metropolitan city shall have authorized the construction of a bridge as provided in section 14-1201, the governing body of the city shall have power to construct such bridge independently or jointly with any state or political unit as authorized in section 14-1202. Such cities are authorized to enter into any contract which may be necessary to effectuate this purpose. The title to all property acquired shall vest in the political units cooperating as tenants in common. The actual control of all construction and subsequent operation, including all property necessary to the completed bridge, and all maintenance and repair thereof, and all funds and the collection and custody of tolls shall vest in a joint bridge commission as provided in section 14-1244, which commission and its control shall not be terminated until such tenancy in common shall be terminated.

Source: Laws 1929, c. 176, § 25, p. 631; C.S.1929, § 14-1225.

14-1250 Bridges; rights of cities in adjoining states.

Any city in an adjoining state which has been properly authorized by the laws of that state or the United States, may exercise in the State of Nebraska any and all the powers granted in sections 14-1201 to 14-1252 to cities in Nebraska, subject to the conditions and requirements of said sections.

Source: Laws 1929, c. 176, § 26, p. 632; C.S.1929, § 14-1226.

14-1251 Bridges; acquisition; elections; rules governing.

Elections on propositions arising in connection with the exercise of any of the powers granted by sections 14-1201 to 14-1252 may be submitted by the governing body of the city to the electors thereof at any general, city or state election or at any special election called for that purpose, and any proposition shall be carried if a majority of the electors voting thereon vote in favor thereof. No bridge shall be finally or irrevocably acquired whether by purchase or by condemnation, or by construction, until such action and the necessary financing shall have been approved by a majority of the electors voting on the proposition at a general city or state election or at a special election called for that purpose, or shall have been approved by the governing body of the city, as authorized by said sections. Two or more propositions or questions may be submitted at the same election and on the same ballot provided each is so presented that the electors may vote separately upon each proposition. A vote of the electors authorizing independent action shall be held to also authorize joint action for the purpose so authorized but a vote on a proposition of joint action shall not be held to authorize independent action. The governing body of the city is hereby authorized to determine what shall be included in the proposition to be stated in notices of election and upon the ballots in its full discretion except that any proposition must indicate whether the bridge shall be acquired by the purchase or by the condemnation of an existing bridge or by the construction of a new bridge, and the kind of bonds to be issued to finance the same and the amount of such bonds may be set forth in any manner authorized in said sections.

Source: Laws 1929, c. 176, § 27, p. 632; C.S.1929, § 14-1227; Laws 1931, c. 27, § 4, p. 113; C.S.Supp.,1941, § 14-1227.

14-1252 Bridges; cities with home rule charter; powers.

If any such city shall have adopted a home rule charter it may exercise any powers granted in sections 14-1201 to 14-1251 in the method herein provided or in such other method, in whole or in part, as may from time to time be provided in whole or in part by said home rule charter. The powers hereby conferred are to be exercised without any restriction or limitation under the city charter or laws of the state except the provisions of the Constitution of the state, and are supplementary and additional to powers which have been or may hereafter be conferred upon the city by the laws of the state or charter of the city. All powers granted or provided to be conferred upon the bridge commissions authorized by said sections are likewise granted to and conferred upon and may be exercised by the governing body of the city and the governing body of the city may delegate to any bridge commission created for such city under said sections, in the discretion of such governing body, any or all of the powers,

privileges and rights of approval and restraint conferred upon it by said sections.

Source: Laws 1929, c. 176, § 28, p. 633; C.S.1929, § 14-1228; Laws 1931, c. 27, § 5, p. 114; C.S.Supp.,1941, § 14-1228.

ARTICLE 13

MUNICIPAL UNIVERSITY

Section
14-1301. Repealed. Laws 1978, LB 756, § 59.
14-1302. Repealed. Laws 1978, LB 756, § 59.
14-1303. Repealed. Laws 1978, LB 756, § 59.
14-1304. Repealed. Laws 1978, LB 756, § 59.
14-1305. Repealed. Laws 1978, LB 756, § 59.
14-1306. Repealed. Laws 1978, LB 756, § 59.
14-1307. Repealed. Laws 1978, LB 756, § 59.
14-1308. Repealed. Laws 1978, LB 756, § 59.
14-1309. Repealed. Laws 1978, LB 756, § 59.
14-1310. Repealed. Laws 1978, LB 756, § 59.
14-1311. Repealed. Laws 1978, LB 756, § 59.
14-1312. Repealed. Laws 1978, LB 756, § 59.
14-1313. Repealed. Laws 1978, LB 756, § 59.
14-1314. Repealed. Laws 1978, LB 756, § 59.
14-1315. Repealed. Laws 1978, LB 756, § 59.
14-1316. Repealed. Laws 1978, LB 756, § 59.
14-1317. Repealed. Laws 1978, LB 756, § 59.
14-1318. Repealed. Laws 1978, LB 756, § 59.
14-1319. Repealed. Laws 1978, LB 756, § 59.
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14-1322. Repealed. Laws 1978, LB 756, § 59.
14-1323. Repealed. Laws 1978, LB 756, § 59.
14-1324. Repealed. Laws 1978, LB 756, § 59.
14-1325. Repealed. Laws 1978, LB 756, § 59.
14-1326. Repealed. Laws 1978, LB 756, § 59.
14-1327. Repealed. Laws 1978, LB 756, § 59.
14-1328. Repealed. Laws 1978, LB 756, § 59.
14-1329. Repealed. Laws 1978, LB 756, § 59.
14-1330. Repealed. Laws 1978, LB 756, § 59.
14-1331. Repealed. Laws 1978, LB 756, § 59.

14-1301 Repealed. Laws 1978, LB 756, § 59.

14-1302 Repealed. Laws 1978, LB 756, § 59.

14-1303 Repealed. Laws 1978, LB 756, § 59.

14-1304 Repealed. Laws 1978, LB 756, § 59.

14-1305 Repealed. Laws 1978, LB 756, § 59.

14-1306 Repealed. Laws 1978, LB 756, § 59.

14-1307 Repealed. Laws 1978, LB 756, § 59.

14-1308 Repealed. Laws 1978, LB 756, § 59.

14-1309 Repealed. Laws 1978, LB 756, § 59.

14-1310 Repealed. Laws 1978, LB 756, § 59.

14-1311 Repealed. Laws 1978, LB 756, § 59.

14-1312 Repealed. Laws 1978, LB 756, § 59.

14-1313 Repealed. Laws 1978, LB 756, § 59.

14-1314 Repealed. Laws 1978, LB 756, § 59.

14-1315 Repealed. Laws 1978, LB 756, § 59.

14-1316 Repealed. Laws 1978, LB 756, § 59.

14-1317 Repealed. Laws 1978, LB 756, § 59.

14-1318 Repealed. Laws 1978, LB 756, § 59.

14-1319 Repealed. Laws 1978, LB 756, § 59.

14-1320 Repealed. Laws 1978, LB 756, § 59.

14-1321 Repealed. Laws 1978, LB 756, § 59.

14-1322 Repealed. Laws 1978, LB 756, § 59.

14-1323 Repealed. Laws 1978, LB 756, § 59.

14-1324 Repealed. Laws 1978, LB 756, § 59.

14-1325 Repealed. Laws 1978, LB 756, § 59.

14-1326 Repealed. Laws 1978, LB 756, § 59.

14-1327 Repealed. Laws 1978, LB 756, § 59.

14-1328 Repealed. Laws 1978, LB 756, § 59.

14-1329 Repealed. Laws 1978, LB 756, § 59.

14-1330 Repealed. Laws 1978, LB 756, § 59.

14-1331 Repealed. Laws 1978, LB 756, § 59.

ARTICLE 14
HOUSING AUTHORITY

Section

Section
14-1416. Repealed. Laws 1969, c. 552, § 40.
14-1417. Repealed. Laws 1969, c. 552, § 40.
14-1418. Repealed. Laws 1969, c. 552, § 40.
14-1419. Repealed. Laws 1969, c. 552, § 40.
14-1420. Repealed. Laws 1969, c. 552, § 40.
14-1421. Repealed. Laws 1969, c. 552, § 40.
14-1422. Repealed. Laws 1969, c. 552, § 40.
14-1423. Repealed. Laws 1969, c. 552, § 40.
14-1424. Repealed. Laws 1969, c. 552, § 40.
14-1425. Repealed. Laws 1969, c. 552, § 40.
14-1426. Repealed. Laws 1969, c. 552, § 40.
14-1427. Repealed. Laws 1969, c. 552, § 40.
14-1428. Repealed. Laws 1969, c. 552, § 40.
14-1429. Repealed. Laws 1969, c. 552, § 40.
14-1430. Repealed. Laws 1969, c. 552, § 40.

14-1401 Repealed. Laws 1969, c. 552, § 40.

14-1402 Repealed. Laws 1969, c. 552, § 40.

14-1403 Repealed. Laws 1969, c. 552, § 40.

14-1404 Repealed. Laws 1969, c. 552, § 40.

14-1405 Repealed. Laws 1969, c. 552, § 40.

14-1406 Repealed. Laws 1969, c. 552, § 40.

14-1407 Repealed. Laws 1969, c. 552, § 40.

14-1408 Repealed. Laws 1969, c. 552, § 40.

14-1409 Repealed. Laws 1969, c. 552, § 40.

14-1410 Repealed. Laws 1969, c. 552, § 40.

14-1411 Repealed. Laws 1969, c. 552, § 40.

14-1412 Repealed. Laws 1969, c. 552, § 40.

14-1413 Repealed. Laws 1969, c. 552, § 40.

14-1414 Repealed. Laws 1969, c. 552, § 40.

14-1415 Repealed. Laws 1969, c. 552, § 40.

14-1416 Repealed. Laws 1969, c. 552, § 40.

14-1417 Repealed. Laws 1969, c. 552, § 40.

14-1418 Repealed. Laws 1969, c. 552, § 40.

14-1419 Repealed. Laws 1969, c. 552, § 40.

14-1420 Repealed. Laws 1969, c. 552, § 40.

14-1421 Repealed. Laws 1969, c. 552, § 40.

14-1422 Repealed. Laws 1969, c. 552, § 40.

14-1423 Repealed. Laws 1969, c. 552, § 40.

14-1424 Repealed. Laws 1969, c. 552, § 40.

14-1425 Repealed. Laws 1969, c. 552, § 40.

14-1426 Repealed. Laws 1969, c. 552, § 40.

14-1427 Repealed. Laws 1969, c. 552, § 40.

14-1428 Repealed. Laws 1969, c. 552, § 40.

14-1429 Repealed. Laws 1969, c. 552, § 40.

14-1430 Repealed. Laws 1969, c. 552, § 40.

ARTICLE 15

PEOPLES POWER COMMISSION LAW

Section
14-1501. Repealed. Laws 1945, c. 159, § 1.
14-1502. Repealed. Laws 1945, c. 159, § 1.
14-1503. Repealed. Laws 1945, c. 159, § 1.
14-1504. Repealed. Laws 1945, c. 159, § 1.
14-1505. Repealed. Laws 1945, c. 159, § 1.
14-1506. Repealed. Laws 1945, c. 159, § 1.
14-1507. Repealed. Laws 1945, c. 159, § 1.
14-1508. Repealed. Laws 1945, c. 159, § 1.
14-1509. Repealed. Laws 1945, c. 159, § 1.
14-1510. Repealed. Laws 1945, c. 159, § 1.
14-1511. Repealed. Laws 1945, c. 159, § 1.
14-1512. Repealed. Laws 1945, c. 159, § 1.
14-1513. Repealed. Laws 1945, c. 159, § 1.
14-1514. Repealed. Laws 1945, c. 159, § 1.
14-1515. Repealed. Laws 1945, c. 159, § 1.
14-1516. Repealed. Laws 1945, c. 159, § 1.
14-1517. Repealed. Laws 1945, c. 159, § 1.
14-1518. Repealed. Laws 1945, c. 159, § 1.
14-1519. Repealed. Laws 1945, c. 159, § 1.
14-1520. Repealed. Laws 1945, c. 159, § 1.
14-1521. Repealed. Laws 1945, c. 159, § 1.
14-1522. Repealed. Laws 1945, c. 159, § 1.
14-1523. Repealed. Laws 1945, c. 159, § 1.

14-1501 Repealed. Laws 1945, c. 159, § 1.

14-1502 Repealed. Laws 1945, c. 159, § 1.

14-1503 Repealed. Laws 1945, c. 159, § 1.

14-1504 Repealed. Laws 1945, c. 159, § 1.

14-1505 Repealed. Laws 1945, c. 159, § 1.

14-1506 Repealed. Laws 1945, c. 159, § 1.

14-1507 Repealed. Laws 1945, c. 159, § 1.

14-1508 Repealed. Laws 1945, c. 159, § 1.

14-1509 Repealed. Laws 1945, c. 159, § 1.

14-1510 Repealed. Laws 1945, c. 159, § 1.

14-1511 Repealed. Laws 1945, c. 159, § 1.

14-1512 Repealed. Laws 1945, c. 159, § 1.

14-1513 Repealed. Laws 1945, c. 159, § 1.

14-1514 Repealed. Laws 1945, c. 159, § 1.

14-1515 Repealed. Laws 1945, c. 159, § 1.

14-1516 Repealed. Laws 1945, c. 159, § 1.

14-1517 Repealed. Laws 1945, c. 159, § 1.

14-1518 Repealed. Laws 1945, c. 159, § 1.

14-1519 Repealed. Laws 1945, c. 159, § 1.

14-1520 Repealed. Laws 1945, c. 159, § 1.

14-1521 Repealed. Laws 1945, c. 159, § 1.

14-1522 Repealed. Laws 1945, c. 159, § 1.

14-1523 Repealed. Laws 1945, c. 159, § 1.

ARTICLE 16
SLUM CLEARANCE

Section
14-1601. Transferred to section 18-2101.
14-1602. Transferred to section 18-2102.
14-1603. Transferred to section 18-2103.
14-1604. Transferred to section 18-2104.
14-1605. Transferred to section 18-2105.
14-1606. Transferred to section 18-2106.
14-1607. Transferred to section 18-2107.
14-1608. Transferred to section 18-2108.
14-1609. Transferred to section 18-2109.
14-1610. Transferred to section 18-2110.
14-1611. Transferred to section 18-2111.
14-1612. Transferred to section 18-2112.
14-1613. Transferred to section 18-2113.
14-1614. Transferred to section 18-2114.
14-1615. Transferred to section 18-2115.
14-1616. Transferred to section 18-2116.
14-1617. Transferred to section 18-2117.
14-1618. Transferred to section 18-2118.
14-1619. Transferred to section 18-2119.
14-1620. Transferred to section 18-2120.
14-1621. Transferred to section 18-2121.
14-1622. Transferred to section 18-2122.
14-1623. Transferred to section 18-2123.
14-1624. Transferred to section 18-2124.
14-1625. Transferred to section 18-2125.
14-1626. Transferred to section 18-2126.
14-1627. Transferred to section 18-2127.
14-1628. Transferred to section 18-2128.
14-1629. Transferred to section 18-2129.
14-1630. Transferred to section 18-2130.
14-1631. Transferred to section 18-2131.

Section
14-1632. Transferred to section 18-2132.
14-1633. Transferred to section 18-2133.
14-1634. Transferred to section 18-2134.
14-1635. Transferred to section 18-2135.
14-1636. Transferred to section 18-2136.
14-1637. Transferred to section 18-2137.
14-1638. Transferred to section 18-2138.
14-1639. Transferred to section 18-2139.
14-1640. Transferred to section 18-2140.
14-1641. Transferred to section 18-2141.
14-1642. Transferred to section 18-2142.
14-1643. Transferred to section 18-2143.
14-1644. Transferred to section 18-2144.

14-1601 Transferred to section 18-2101.

14-1602 Transferred to section 18-2102.

14-1603 Transferred to section 18-2103.

14-1604 Transferred to section 18-2104.

14-1605 Transferred to section 18-2105.

14-1606 Transferred to section 18-2106.

14-1607 Transferred to section 18-2107.

14-1608 Transferred to section 18-2108.

14-1609 Transferred to section 18-2109.

14-1610 Transferred to section 18-2110.

14-1611 Transferred to section 18-2111.

14-1612 Transferred to section 18-2112.

14-1613 Transferred to section 18-2113.

14-1614 Transferred to section 18-2114.

14-1615 Transferred to section 18-2115.

14-1616 Transferred to section 18-2116.

14-1617 Transferred to section 18-2117.

14-1618 Transferred to section 18-2118.

14-1619 Transferred to section 18-2119.

14-1620 Transferred to section 18-2120.

14-1621 Transferred to section 18-2121.

14-1622 Transferred to section 18-2122.

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14-1640 Transferred to section 18-2140.

14-1641 Transferred to section 18-2141.

14-1642 Transferred to section 18-2142.

14-1643 Transferred to section 18-2143.

14-1644 Transferred to section 18-2144.

ARTICLE 17
PARKING FACILITIES

(a) PARKING AUTHORITY LAW OF 1955

Section

(a) PARKING AUTHORITY LAW OF 1955

14-1701 Act, how cited.

Sections 14-1701 to 14-1725 shall be known and may be cited as the Parking Authority Law.

Source: Laws 1955, c. 22, § 1, p. 101.

Parking Authority Law sustained as constitutional. Omaha Parking Authority v. City of Omaha, 163 Neb. 97, 77 N.W.2d 862 (1956).

14-1702 Parking Authority Law; policy.

It is hereby determined and declared as a matter of legislative finding and policy:

(1) That the traffic in the streets of the business section of metropolitan cities has become congested by the great number of motor vehicles entering and traversing such streets, and the trend is for an ever-increasing number of vehicles on such streets and that, unless appropriate action is taken, the congestion will become worse and constitute a public nuisance;

(2) That (a) the traffic congestion has created a hazard to life, limb, and property of those using such streets, (b) the free circulation of traffic of all kinds

is necessary to the health, safety, and general welfare of the public, and (c) any impeding of the free flow of traffic might seriously affect the rapid and effective fighting of fires and the disposition of the police force and emergency vehicles;

(3) That there is insufficient space, on the streets or places adjacent thereto, to provide the required parking and that convenient offstreet parking would facilitate the free flow of traffic. The space below the surface of property, owned by the county for courthouse sites or other public uses, and the space below the surface of the streets could properly and beneficially be used for parking areas and such use would promote public safety, convenience, and welfare; and

(4) That providing for the relieving of traffic congestion is a matter of public welfare, of general public interest, statewide concern, and within the powers reserved to the state.

Source: Laws 1955, c. 22, § 2, p. 101.

14-1703 Terms, defined.

As used in sections 14-1701 to 14-1725, unless the context otherwise requires:

(1) Authority shall mean the body politic and corporate created pursuant to sections 14-1701 to 14-1725;

(2) Facilities shall mean the entire subsurface parking area and all improvements therein or appurtenances used in connection therewith, including entrances and exits, and all equipment, machinery, and accessories necessary or convenient for the parking of vehicles;

(3) City shall mean the city of the metropolitan class which requested the Governor to establish a parking authority within the city;

(4) County shall mean the county in Nebraska where the authority is located;

(5) The authority shall be deemed located in the county where the city requesting the establishment of the authority is located; and

(6) Board shall mean the governing body of such authority, constituted as is provided by section 14-1705.

Source: Laws 1955, c. 22, § 3, p. 102.

14-1704 Parking authority; Governor; establish; when; proclamation; copy filed with Secretary of State; effect.

The Governor shall establish a parking authority whenever requested by the governing body of a city of the metropolitan class in which the county seat is located. The authority shall be established by the Governor issuing a proclamation declaring the existence of such an authority and filing a copy thereof with the Secretary of State. The authority shall be a body corporate and politic to be known as ..... Parking Authority, therein inserting the name of the city requesting the authority. Such an authority shall be a governmental subdivision of the State of Nebraska with the powers and authority provided by sections 14-1701 to 14-1725. Such authority is declared to be an instrumentality of the state exercising public and essential governmental functions in the performance of the powers conferred upon it by sections 14-1701 to 14-1725.

Source: Laws 1955, c. 22, § 4, p. 103.

14-1705 Parking authority; members; qualifications; term; vacancy; oath; bond.

The governing body of the authority shall be a board consisting of seven members, two of whom shall, ex officio, be the mayor of the city requesting the establishment of the authority and the chairman of the board of county commissioners wherein the authority is located. Each of these ex officio members shall serve without bond during their respective terms as mayor and chairman. The remaining five members shall be residents of the county in which the authority is located. Two of these members shall be originally appointed for a term of two years and three for a term of four years from the date of their appointment, and thereafter the members shall hold office for a term of four years and until their successors are appointed and have qualified. The Governor, in making the original appointments, shall designate the term of each appointee. Any vacancy, in the appointed members of the board for any reason, shall be filled for the unexpired term by an appointment by the Governor. No appointive member shall hold office for more than three successive full terms. Each appointive member, before entering upon the duties of his office, shall file with the Secretary of State an oath that he will duly and faithfully perform to the best of his ability all duties of his office, as provided in sections 14-1701 to 14-1725, and a bond in the penal sum of five thousand dollars executed by one or more qualified sureties for the faithful performance of all his duties as a member of the board of such authority. If any appointive member fails to file such oath and bond with the Secretary of State within thirty days after written notice of such appointment, the office shall be deemed to be vacant and a new appointment made.

Source: Laws 1955, c. 22, § 5, p. 103.

14-1706 Parking authority; organization; quorum; secretary, treasurer; bond; compensation.

The authority shall annually elect a chairperson and vice-chairperson from its members and a secretary and treasurer who shall not be a member of the authority. A quorum for the transaction of business shall consist of four members of the authority. The affirmative vote of four members shall be necessary for any action taken by the authority. No vacancy in the membership shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority. The members of the authority shall receive no compensation for services rendered, but shall be reimbursed for all expenses incurred by them in the exercise of their duties in the same manner as provided in section 23-1112 for county officers and employees and for the cost of their bonds. The secretary and treasurer may be compensated in such amounts as the authority from time to time shall fix, and he or she may be required to give bond, in the amount prescribed by the authority, before entering upon his or her duties as such secretary and treasurer. The premium of such bond shall be paid for by the authority.

Source: Laws 1955, c. 22, § 6, p. 104; Laws 1981, LB 204, § 16.

14-1707 Parking authority; powers and duties.

For the purpose of accomplishing the object and purpose of sections 14-1701 to 14-1725, the authority shall possess all the necessary powers of a public body corporate and governmental subdivision of the State of Nebraska, including the

following powers which shall not be construed as a limitation on the general powers herein conferred:

(1) To adopt bylaws for the regulation of its affairs and for the conduct of its business;

(2) To adopt the official seal of the authority and to alter the same at pleasure;

(3) To maintain an office within the county where the authority is located;

(4) To sue and be sued in its own name;

(5) To make and enter into any and all contracts and agreements with any individual, public or private corporation, or agency of this state or the United States, as may be necessary or incidental to the performance of its duties and the execution of its powers under the provisions of sections 14-1701 to 14-1725;

(6) To acquire, lease, and hold such real or personal property or any rights, interest, or easements therein as may be necessary or convenient for the purpose of the authority and to sell, assign, and convey the same;

(7) To (a) employ a general manager, engineers, accountants, attorneys, financial experts, and such other employees and agents as it may deem to be necessary, (b) fix their compensation, and (c) discharge the same;

(8) To borrow money and issue and sell negotiable bonds, notes, or other evidence of indebtedness, to provide for the rights of the holders thereof, and to pledge all or any part of the income of the authority received, as provided in sections 14-1701 to 14-1725, to secure the payment thereof; *Provided*, the authority shall not have the power to pledge the credit or taxing power of the state or any political subdivision thereof or to place any lien or encumbrance on property owned by the state, county, or city used by the authority;

(9) To receive and accept from the federal government, or any agency thereof, the State of Nebraska, or any subdivision thereof, or from any person or corporation, donations or grants for or in aid of the construction of the parking facilities, and to hold, use, and apply the same for the purpose for which such grants or donations may have been made;

(10) To have and exercise all powers usually granted to the board of directors of corporations which are necessary or convenient to carry out the powers given the authority under the provisions of sections 14-1701 to 14-1725;

(11) The authority shall operate only in the county in which it is located; and

(12) The authority shall have no rights of eminent domain.

Source: Laws 1955, c. 22, § 7, p. 104.

14-1708 Parking authority; use of ground below courthouse site and streets; grants by county and city; adjoining property; acquire by lease, purchase, gift, grant.

Upon establishing the authority, the county, wherein the authority is located, shall grant to the authority the right to use any space below the plot of ground used as a courthouse site and such portion of the surface of said plot not then used by the county for a courthouse located thereon. The city shall likewise grant to the authority the right to use the space below the surface of the streets abutting on said courthouse site including the street intersections connecting said streets. The governing bodies of the county and city shall have authority to execute the required grants without a vote of the electorate or any authoriza-

tion other than that contained in sections 14-1701 to 14-1725. All such grants shall be for a period of fifty years. The authority may also acquire by lease, purchase, gift, grant, or any lawful manner, such adjoining privately owned property as may be necessary or convenient for the exercise of its powers for the construction of entrances to or exits from its parking facilities.

Source: Laws 1955, c. 22, § 8, p. 106.

14-1709 Parking authority; construction and maintenance; duties; city and county cooperate.

The authority shall construct and maintain subsurface parking facilities at the location acquired under section 14-1708, with all necessary entrances, exits, air vents, and other appurtenances required for an efficient subsurface parking facility. In constructing and maintaining the parking facilities the surface above the facility shall not be disturbed more than shall be necessary. Any portion thereof not required by the facility shall, on completion of the facility, be restored to a good usable condition. If it is necessary to relocate or do other work to protect any sewer line or utility, the authority shall do the necessary work or bear the expense thereof and the authority shall reimburse the county and city for any expense or liability incurred as a result of the construction or maintenance of the facility. The authority shall also protect the owners of private property abutting the facility against loss of lateral support for improvements erected on their property at the time of the construction of the facilities or reimburse them for expenses incurred as a result of the removal of said support, but neither the state, county, city, nor authority shall be otherwise liable to such owners. The county and city shall cooperate with the authority and make available to the authority without cost any information it has that would be useful to the authority in the construction of the facilities. The parking authority shall not construct any private entrances or grant the right to others to construct private entrances to its parking facilities.

Source: Laws 1955, c. 22, § 9, p. 106.

14-1710 Parking authority; purchases, construction, maintenance, improvement or extension; contract; bids.

All purchases and all contracts relating to the construction, maintenance, improvement, or extension of the facilities, other than contracts relating to the acquiring of real property or some interest therein or contracts of employment or some specialized service, involving the expenditure of two thousand dollars or more, shall be let to the lowest responsible bidder after not less than twenty days' public notice of request for bids.

Source: Laws 1955, c. 22, § 10, p. 107.

14-1711 Parking authority; concessions; competitive bidding.

The authority shall lease or grant concessions for the use of the facilities or various portions thereof to one or more operators to provide for the efficient operation of the facilities. All leases or concessions shall be let on a competitive basis and no lease or concession shall run for a period in excess of thirty years. In granting any lease or concession, the authority shall retain such control of the facilities as may be necessary to insure that the facilities will be properly operated in the public interest and that the prices charged are reasonable.

Source: Laws 1955, c. 22, § 11, p. 107.

Adequate controls are provided to insure that parking facilities are operated in the public interest. Omaha Parking Authority v. City of Omaha, 163 Neb. 97, 77 N.W.2d 862 (1956).

14-1712 Parking authority; bonds; form; issuance.

The authority may from time to time borrow such money, as authorized in this section or subdivision (8) of section 14-1707, as it may require in the exercise of its powers and duties, and to evidence such borrowings and to fund or refund any bonds or interest thereon or other indebtedness it may have outstanding, issue its negotiable bonds as herein provided:

(1) The principal and interest of the bonds shall be payable only out of the revenue, income, and money of the authority, and shall not constitute a debt or liability of the state or any political subdivision thereof, other than this authority, and neither the credit nor the taxing power of the state or any political subdivision thereof, other than this authority, shall be pledged for the payment of said bonds, and all bonds shall bear on their face a statement to that effect. The bonds shall mature at such time or times, not exceeding twenty-five years from their date, as may be determined by the authority. Such bonds may be redeemable before maturity at the option of the authority at such price or prices, and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds and fix the denominations and place of payment, which may be at any bank or trust company within or without the state. The bonds shall be signed by the chairman of the authority, or bear his facsimile signature. The seal of the authority shall be impressed thereon, attested by the secretary and treasurer of the authority. Any coupons attached thereto shall bear the facsimile signature of the chairman of the authority. In case any officer, whose facsimile signature or signature shall appear on any bond or coupon, shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery;

(2) The bonds issued under the provisions of sections 14-1701 to 14-1725 in negotiable form shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the state. The bonds may be issued in coupon or in registered form, or both. The authority may sell such bonds in such a manner and for such price as it may determine to be for the best interests of the authority; and

(3) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Source: Laws 1955, c. 22, § 12, p. 107; Laws 1971, LB 4, § 4.

14-1713 Bonds; pledging of income; trust agreement; limitations.

In the discretion of the authority, any bonds issued under the provisions of sections 14-1701 to 14-1725 may be secured by trust agreement by and between the authority and a corporate trustee which may be any trust company or bank having the powers of a trust company within or without the state. Such trust

agreement may contain provisions which shall be deemed to be for the benefit of the trustee or holders of the bonds as to:

(1) The pledging of all or any part of the income, receipts, and revenue of the authority to secure the payment of the bonds or any issue of bonds, subject to such agreement with bondholders as may then exist;

(2) Provisions for protecting and enforcing the rights and remedies of the bondholders, including the establishment of reasonable charges, construction, improvement, maintenance, and operation of the facilities and insurance upon its properties;

(3) The appointment of a trustee, fiduciary, or depositary for the collection, deposit, and disbursement of the funds of the authority;

(4) Limitations on the issuance of additional bonds and the terms upon which additional bonds may be issued and secured and the issuance of refunding bonds;

(5) The procedure by which any contract with the bondholders may be amended or modified;

(6) The keeping of records and making reports to the trustee or bondholders;

(7) The rights and remedies of the trustee and the bondholders and restrictions on individual actions by the bondholders; and

(8) Any additional provisions which may be reasonable and proper for the security of the bondholders.

Source: Laws 1955, c. 22, § 13, p. 109.

14-1714 Bonds; pledging of income; lien.

Any pledge of revenue or other money of the authority made by the authority, in accordance with the provisions of sections 14-1701 to 14-1725, shall be valid and binding from the time when the pledge is made; the revenue or other money so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind, sort, contract, or otherwise against the authority, irrespective of whether or not such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

Source: Laws 1955, c. 22, § 14, p. 110.

14-1715 Bonds; performance of agreement; cause of action; execution, when.

The holder of any bonds or coupons appertaining thereto, unless the trust agreement vests the right of action solely in the trustee, then the trustee, may by civil action or proceedings, protect and enforce any and all rights under the trust agreement covering the issuance of said bonds, and may enforce and compel the performance of all duties required by sections 14-1701 to 14-1725 or trust agreement to be performed by the authority or any officer thereof and the court having jurisdiction of the proceedings may, if necessary for the protection of the bondholders, appoint a receiver or other administrator to operate the facilities until such time as the obligations to the bondholders have been paid in full. No execution shall be levied upon, or sale had, of any

properties belonging to the authority which are necessary for the operation of the facilities.

Source: Laws 1955, c. 22, § 15, p. 110.

14-1716 Parking authority; alienating or encumbering property; pledging credit; levy of tax; prohibited; when.

Nothing in sections 14-1701 to 14-1725 shall be construed (1) as granting to the authority any power to alienate or encumber any real property belonging to the state or any of its political subdivisions, (2) to grant to the authority any right or power to pledge the credit of the State of Nebraska, or any of its subdivisions, or (3) to give the authority any power to levy or assess taxes.

Source: Laws 1955, c. 22, § 16, p. 111.

14-1717 Parking authority; prepare statement.

Before delivering any bonds, the authority shall prepare a written statement under oath setting forth its proceedings authorizing the issuance of the bonds and a copy of the trust or other bond agreement executed in connection therewith.

Source: Laws 1955, c. 22, § 17, p. 111; Laws 2001, LB 420, § 16.

14-1718 Bonds; legal investment; considered securities.

Bonds issued by the authority under the provisions of sections 14-1701 to 14-1725 are hereby made securities in which the state and all political subdivisions of the state, their officers, boards, commissions, departments, or other agencies, all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control. Such bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officers or agency of the state for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

Source: Laws 1955, c. 22, § 18, p. 111.

14-1719 Funds received; deposits authorized.

All money received by the authority from whatever source, including sale of its bonds, shall be deemed to be public trust funds to be held and applied in the manner provided in the Parking Authority Law and under such restrictions, if any, as the authority may provide in any resolution authorizing the issuance of bonds or bond agreement executed by it. The money shall be deposited in such banks, capital stock financial institutions, qualifying mutual financial institutions, or trust companies as may be selected by the authority from time to time. 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 1955, c. 22, § 19, p. 112; Laws 1989, LB 33, § 12; Laws 2001, LB 362, § 13.

14-1720 Bonds and obligations; paid in full; net income; distribution.

After all bonds or other evidence of indebtedness issued by the authority have been paid in full, and after the authority has set aside a reasonable reserve for working capital, maintenance, and necessary improvements of its facilities, the authority shall annually distribute all of its net income between the city and county in proportion to the area contributed by the city and county respectively for the use of the authority.

Source: Laws 1955, c. 22, § 20, p. 112.

14-1721 Property; bonds; exempt from taxation; when.

The authority shall not be required to pay any taxes or assessments upon its facilities or properties acquired by it and used for a public purpose. Bonds issued under the Parking Authority Law, their transfer and income therefrom, including any profits made from the sale thereof, shall be exempt from taxation.

Source: Laws 1955, c. 22, § 21, p. 112; Laws 2001, LB 173, § 13.

14-1722 Parking authority; records; audit; expense.

The authority shall keep a full set of books and records showing all of its transactions according to the best business practices. The Auditor of Public Accounts shall cause the books of the account to be examined and audited annually by a certified public accountant under his direction. The reports of all audits made by the Auditor of Public Accounts shall be made and remain a part of the public records in his office. The expense of such audits shall be paid out of the funds of the authority. The auditor shall be given access to all books, papers, contracts, documents, and memoranda of every kind and character and be furnished all additional information that may be essential to the making of a comprehensive and correct audit.

Source: Laws 1955, c. 22, § 22, p. 112.

14-1723 Parking authority; termination; improvements; funds.

The authority shall not be terminated by any act of the state prior to the payment in full of all obligations incurred by the authority. Unless terminated prior thereto, the authority shall terminate at the end of fifty years from the date of its establishment and it shall forthwith liquidate its affairs and convey to the city and county respectively any improvements on the property contributed by them. Any surplus funds shall be distributed to the county and city in the manner provided by section 14-1720 and thereupon the authority shall cease to exist.

Source: Laws 1955, c. 22, § 23, p. 113.

14-1724 Parking authority; termination; effect.

In the event the authority fails to commence the construction of the parking facilities within three years from the date of the proclamation issued by the

Governor, as provided for by section 14-1704, establishing the authority, the authority shall terminate and any leases, grants, or rights obtained from the city or county shall forthwith terminate and revert to the city and county respectively.

Source: Laws 1955, c. 22, § 24, p. 113.

14-1725 Act; supplementary to existing law; severability.

The provisions of sections 14-1701 to 14-1725 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. If any provision of sections 14-1701 to 14-1725 is held unconstitutional or invalid, it shall not affect the other provisions of sections 14-1701 to 14-1725.

Source: Laws 1955, c. 22, § 25, p. 113.

(b) PARKING FACILITIES

14-1726 Parking facilities; policy.

It is hereby determined and declared as a matter of legislative finding and policy:

(1) That the traffic in the streets of the business section of metropolitan cities has become congested by the great number of motor vehicles entering and traversing such streets, and the trend is for an ever-increasing number of vehicles on such streets and that, unless appropriate action is taken, the congestion will become worse and constitute a public nuisance;

(2) That (a) the traffic congestion has created a hazard to life, limb, and property of those using such streets, (b) the free circulation of traffic of all kinds is necessary to the health, safety, and general welfare of the public, and (c) any impeding of the free flow of traffic might seriously affect the rapid and effective fighting of fires and the disposition of the police force and emergency vehicles;

(3) That there is insufficient space, on the streets or places adjacent thereto, to provide the required parking and that convenient offstreet parking would facilitate the free flow of traffic. The space below the surface of property, owned by the county for courthouse sites or other public uses, the space below the surface of the streets, and the space above and below the surface of an area adjacent to public buildings within the civic center of such city could properly and beneficially be used for parking areas and such use would promote public safety, convenience, and welfare; and

(4) That providing for the relieving of traffic congestion is a matter of public welfare, or general public interest, statewide concern, and within the powers reserved to the state.

Source: Laws 1969, c. 57, § 1, p. 359.

14-1727 Terms, defined.

As used in sections 14-1726 to 14-1730, unless the context otherwise requires:

(1) Parking facilities shall mean the entire surface or subsurface parking area and all improvements therein or appurtenances used in connection therewith,

including entrances and exits, and all equipment, machinery, and accessories necessary or convenient for the parking of vehicles; and

(2) Civic center shall mean the area designated by the city council in the master plan of the city as the site for city and county administrative, legislative, and judicial headquarters, together with such other governmental functions and subdivisions as may be deemed appropriate.

Source: Laws 1969, c. 57, § 2, p. 360.

14-1728 Parking facilities; leased for operation; limitation.

Any city of the metropolitan class, any county in which such city is located, or such city and county jointly may construct parking facilities in conjunction with a civic center. When constructed, such parking facilities shall be leased for operation, in which case the lease shall be granted to the highest and best bidder, after publication and notice of such offering for lease in the same manner as required by law for other contracts awarded by the city or county, or city and county. Such facilities shall not be operated by the city or county, or city and county.

Source: Laws 1969, c. 57, § 3, p. 360.

14-1729 Revenue bonds; issuance.

For the purpose of constructing such parking facilities, the city and county may jointly issue revenue bonds. The principal and interest of such bonds shall be payable only out of the revenue and income of such parking facilities.

Source: Laws 1969, c. 57, § 4, p. 360.

14-1730 City; air space; leases.

Each city of the metropolitan class shall have the power to lease, upon such terms as it shall deem appropriate for a term not to exceed ninety-nine years, air space above any street, alley, major traffic street, connecting link, controlled-access facility, main thoroughfare, boulevard, or other property owned by such city, to one or more of the owners of the fee title adjoining such air space on either or both sides of such street, alley, major traffic street, connecting link, controlled-access facility, main thoroughfare, boulevard or other city property, but only if the air space to be so leased is not needed for and does not materially interfere with the use of such street, alley, major traffic street, connecting link, controlled-access facility, main thoroughfare, boulevard or other city property.

All leases of such air space shall provide the minimum clearances to be maintained at various points over the street, alley, major traffic street, connecting link, controlled-access facility, main thoroughfare, boulevard, or other city property; the area of the air space to be leased; the location of supports, columns, pillars, foundations or other similar or supporting structures within or on such street, alley, major traffic street, connecting link, controlled-access facility, main thoroughfare, boulevard, or other city property; and that such supporting structures shall be so located as not to materially interfere with the use of the street, alley, major traffic street, connecting link, controlled-access facility, main thoroughfare, boulevard, or other city property. Such leases may contain such other terms and conditions as shall be deemed appropriate by the city.

In determining rental under any such lease, the city may take into account the public purpose or use, if any, to be served by the lessee.

Source: Laws 1969, c. 57, § 5, p. 361.

(c) OFFSTREET PARKING

14-1731 Offstreet parking; purpose of sections.

State recognition is hereby given to the hazard created in the streets of cities of the metropolitan class by the great increase in the number of motor vehicles, buses, and trucks. In order to remove or reduce the hazards of 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 to own offstreet vehicle parking facilities exclusively for the parking of motor vehicles.

Source: Laws 1971, LB 238, § 1.

14-1732 Offstreet parking; location; powers; limitation.

Any city of the metropolitan class is hereby authorized to own, purchase, construct, equip, lease, or operate within such city offstreet motor vehicle parking facilities on property located beneath any elevated segment of the National System of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 7, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities, or on property situated so as to serve business in the central business district, or business in long-established outlying neighborhood business districts for the use of the general public. The grant of power in this section 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, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct such facilities, necessary or convenient in the carrying out of this grant of power.

Source: Laws 1971, LB 238, § 2; Laws 1977, LB 238, § 1.

14-1733 Offstreet parking; cost; revenue bonds; parking district assessments; gifts, leases, devises, grants, funds, agreements; conditions; procedure.

In order to pay the cost required by any purchase, construction, or lease, of property and equipping of such facilities, or the enlargement of presently owned facilities, the city may: (1) Issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall be a lien only upon the revenue and earnings of parking facilities and onstreet parking meters. Such revenue bonds shall mature in not to exceed forty years and shall be sold at public or private sale. 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 metropolitan 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. The city may pledge the revenue from any facility or parking meters as security for the bonds; (2) upon an initiative petition of the majority of the record owners of

taxable property included in a proposed parking district, the city council may create, by ordinance, parking districts and delineate the boundaries thereof, and if the city council shall find that there are common benefits enjoyed by the public at large without reference to the ownership of property, or that there is a common benefit to the property encompassed within a parking district or districts, the city may assess the costs of such improvement or improvements against all the property included in such district or districts, according to such rules as the city council, sitting as a board of equalization, shall adopt for the distribution or adjustment of the costs of such improvement or improvements. All such assessments shall be equalized, levied, and collected as provided by law for the equalization, levying, and collection of special assessments. Special assessments levied pursuant to this section shall be due, payable, and bear interest as the city council shall determine by ordinance. Installment payments shall not be allowed for any period in excess of twenty years; or (3) use, independently or together with revenue derived pursuant to subdivision (1) or (2) of this section, gifts, leases, devises, grants, federal or state funds, or agreements with other public entities. No real property shall be included in any parking district created pursuant to this section when the zoning district in which such property is located is a residential zoning district or a district where the predominant type of land use authorized is residential in nature.

Source: Laws 1971, LB 238, § 3; Laws 1977, LB 238, § 2; Laws 1979, LB 181, § 1; Laws 1980, LB 703, § 1.

14-1734 Revenue bonds; plans and specifications; prepare.

Before the issuance of any revenue bonds the city of the metropolitan 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 department so as to coordinate the program with the program for the control of traffic within such city.

Source: Laws 1971, LB 238, § 4.

14-1735 Rules and regulations; contracts; operation.

The governing body of any such city of the metropolitan class shall make all necessary rules and regulations governing the use, operation, and control of the facilities authorized by sections 14-1731 to 14-1740. In the exercise of the grant of power set forth in sections 14-1731 to 14-1740, the city of the metropolitan class shall make contracts with others, if such contracts are necessary and needed for the payment of the revenue bonds authorized in sections 14-1731 to 14-1740 and for the successful operation of the parking facilities. If the city is unable to secure a reasonable lease with another party for operation of the facility, the city may operate the facility itself. 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 of the provisions of sections 14-1731 to 14-1740.

Source: Laws 1971, LB 238, § 5; Laws 1979, LB 181, § 2.

14-1736 Repealed. Laws 1977, LB 238, § 5.

14-1737 Facility; lease; restrictions.

On the creation of such motor vehicle parking facility for the use of the general public, the city shall 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 four years; *Provided*, that leases of facilities in conjunction with office buildings, shopping centers, public facilities, or redevelopment areas may be for any period not to exceed twenty 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. If the city is unable to secure a reasonable lease with another party for operation of the facility, the city may operate the facility itself. The provisions of sections 14-1731 to 14-1740 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 14-1732.

Source: Laws 1971, LB 238, § 7; Laws 1977, LB 238, § 3; Laws 1979, LB 181, § 3.

14-1738 Multilevel parking facility; not subject to eminent domain; when.

Multilevel parking structures now used or hereafter acquired for offstreet motor vehicle parking by a private operator shall not be subject to eminent domain for the purpose of creating a parking facility pursuant to sections 14-1733, 14-1735, 14-1737, and 14-1738 when such multilevel structure has a capacity of more than two hundred automobiles.

Source: Laws 1971, LB 238, § 8; Laws 1977, LB 238, § 4; Laws 1979, LB 181, § 4.

14-1739 Revenue bonds; contract with holder; conditions.

The provisions of sections 14-1731 to 14-1740 and of any ordinance authorizing the issuance of bonds under the provisions of sections 14-1731 to 14-1740 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 14-1731 to 14-1740, 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 14-1731 to 14-1740 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 1971, LB 238, § 9.

14-1740 Sections; supplementary to existing law.

Sections 14-1731 to 14-1740 are supplementary to existing statutes relating to cities of the metropolitan class and confer upon such cities powers not heretofore granted.

Source: Laws 1971, LB 238, § 10.

ARTICLE 18

METROPOLITAN TRANSIT AUTHORITY

Section
14-1801. Metropolitan transit authority; declaration of policy.

Section

14-1801 Metropolitan transit authority; declaration of policy.

It is hereby determined and declared as a matter of legislative finding and policy:

(1) That traffic, passenger, truck, and pedestrian, in the streets of cities of the metropolitan class, a county in which such a city is located, adjacent counties, and cities and villages located in such counties, has become severely congested by the great number of motor vehicles operating therein; that such conditions have been accentuating for a period of years, and all signs and indications are that such congestion will continue to increase; that such conditions constitute a hazard and a handicap to the use of streets within such counties, cities, and villages and constitute a continuing detriment to the operation of all characters of business in such counties, cities, and villages; all of which is a matter of statewide concern, and, unless legislative action is taken, will constitute a public nuisance; and these conditions can and should be relieved by mass transportation of passengers, which an authority, as herein created, could provide.

(2) That such street traffic congestion has created a dangerous hazard to the lives and property of pedestrians and those traveling in private and public vehicles.

(3) That uncongested and unobstructed traffic, both of pedestrians and those riding in or transporting merchandise in vehicles, is necessary to the public health, safety, security, prosperity, well-being, and welfare of all the people.

(4) That such existing congestion of the streets in such counties, cities, and villages handicaps and obstructs the administration of firefighting forces and police protection forces.

(5) That the relieving of congestion in the streets of such counties, cities, and villages and the providing of a comprehensive passenger transportation system in such counties, cities, and villages is a matter of public interest and statewide concern and within the powers and authority inhering in and reserved to the state.

Source: Laws 1957, c. 23, § 1, p. 157; Laws 1972, LB 1275, § 1; Laws 2003, LB 720, § 1.

14-1802 Terms, defined.

As used in the Transit Authority Law, unless the context otherwise requires:

(1) Authority means any transit authority created under the Transit Authority Law;

(2) Board means the board of directors of any transit authority created under the Transit Authority Law;

(3) City of the metropolitan class means all cities in the State of Nebraska defined to be cities of the metropolitan class by section 14-101;

(4) Municipality and municipal means any city of the metropolitan class in the State of Nebraska; and

(5) Bonds means revenue bonds of any transit authority established under the Transit Authority Law.

Source: Laws 1957, c. 23, § 2, p. 158; Laws 1972, LB 1275, § 2; Laws 1998, LB 1191, § 6.

14-1803 Metropolitan transit authority; creation; members; appointment; jurisdiction; compensation; expenses; delegation of powers and duties.

(1) Whenever in this state a city of the metropolitan class, a county in which such city is located, one or more adjacent counties, and any city or village located in such counties are served in whole or in part by a common transit system, owned and controlled by a city of the metropolitan class as provided for in the Transit Authority Law, then the territory within the limits of the city of the metropolitan class and such counties, cities, or villages, including any counties, cities, and villages that may be now or hereafter served in whole or in part by the common transit system, shall form and constitute a transit authority. No county, city, or village shall become a part of the transit authority except upon approval of the governing body of the county, city, or village and formal approval and proclamation by the board of directors of the transit authority.

(2) Any city of the metropolitan class may create by ordinance a transit authority to be managed and controlled by a board of five members which shall be appointed as provided in section 14-1813 and shall have full and exclusive jurisdiction and control over all facilities owned or acquired by such city for a public passenger transportation system. The governing body of such city, in the exercise of its discretion, shall find and determine in the ordinance creating

such transit authority that its creation is expedient and necessary. The chairperson of such transit authority shall be paid as compensation for his or her services not more than six hundred dollars per month. Each other member of such transit authority shall be paid as compensation for his or her services not more than five hundred dollars per month. All salaries and compensation shall be obligations against and paid solely from the revenue of such transit authority. Members of such transit authority shall also be entitled to reimbursement for expenses paid or incurred in the performance of the duties imposed upon them by the Transit Authority Law with reimbursement for mileage to be made at the rate provided in section 81-1176. The board may delegate to one or more of the members or to officers, agents, and employees of the authority such powers and duties as it may deem proper. Any transit authority created pursuant to such law shall have and retain full and exclusive jurisdiction and control over all public passenger transportation systems in such city, county in which such city is located, adjacent county, or city or village located in such counties served by the authority, excluding taxicabs and railroad systems, with the right and duty to charge and collect revenue for the operation and maintenance of such systems and for the benefit of the holders of any of its bonds or other liabilities. If such authority ceases to exist, its rights and properties shall pass to and vest in such city.

Source: Laws 1957, c. 23, § 3, p. 159; Laws 1972, LB 1275, § 3; Laws 1973, LB 69, § 1; Laws 1981, LB 204, § 17; Laws 1989, LB 309, § 1; Laws 1996, LB 1011, § 5; Laws 2003, LB 720, § 2.

The jurisdiction and powers herein given a transit authority is for local control and does not affect the general control vested in the Public Service Commission by the Constitution. Ritums v. Howell, 190 Neb. 503, 209 N.W.2d 160 (1973).

14-1804 Metropolitan transit authority; establishment; body corporate.

The authority shall be a body corporate and politic and shall be known as Transit Authority of ..... (filling out the blank with the name of the city), and shall be a governmental subdivision of the State of Nebraska with the powers and authority provided by the Transit Authority Law. The authority is declared to be an instrumentality of the state exercising public and essential governmental functions in the exercise of the powers conferred upon it by the Transit Authority Law.

Source: Laws 1957, c. 23, § 4, p. 160; Laws 1972, LB 1275, § 4; Laws 1998, LB 1191, § 7.

14-1805 Metropolitan transit authority; general powers.

For the purpose of accomplishing the object and purpose of the Transit Authority Law, the authority shall possess all the necessary powers of a public body corporate and governmental subdivision of the State of Nebraska, including, but not limited to, the following powers:

(1) To maintain a principal office in the city of the metropolitan class in which created;

(2) To adopt the official seal of the authority and to alter the same at its pleasure;

(3) To employ a general manager, engineers, accountants, attorneys, financial experts, and such other employees and agents as may be necessary in its judgment, to fix the compensation of and to discharge the same, to negotiate with employees and enter into contracts of employment, to employ persons

singularly or collectively, and, with the consent of such city, to use the services of agents, employees, and facilities of such city, including the city attorney as legal advisor to such authority, for which such authority shall reimburse such city a proper proportion of the compensation or cost thereof;

(4) To adopt bylaws and adopt and promulgate rules and regulations for the regulation of its affairs and for the conduct of its business;

(5) To acquire, lease, own, maintain, and operate for public service a public passenger transportation system, excluding taxicabs and railroad systems, within or without a city of the metropolitan class;

(6) To sue and be sued in its own name, but execution shall not, in any case, issue against any of its property, except that the lessor, vendor, or trustee under any agreement, lease, conditional sales contract, conditional lease contract, or equipment trust certificate, as provided for in subdivision (15) of this section, may repossess the equipment described therein upon default;

(7) To acquire, lease, and hold such real or personal property and any rights, interests, or easements therein as may be necessary or convenient for the purposes of the authority and to sell, assign, and convey the same;

(8) To make and enter into any and all contracts and agreements with any individual, public or private corporation or agency of the State of Nebraska, public or private corporation or agency of any state of the United States adjacent to the city of the metropolitan class, and the United States of America as may be necessary or incidental to the performance of its duties and the execution of its powers under the Transit Authority Law and to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act;

(9) To contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems of such authority;

(10) To acquire and hold capital stock in any passenger transportation system, excluding taxicabs and railroad systems, solely for the purpose of lawfully acquiring the physical property of such corporation for public use;

(11) To borrow money and issue and sell negotiable bonds, notes, or other evidence of indebtedness, to provide for the rights of the holders thereof, and to pledge all or any part of the income of the authority received as herein provided to secure the payment thereof. 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 herein, or to place any lien or encumbrance on any property owned by the state, county, or city used by the authority;

(12) To receive and accept from the government of the United States of America or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation, donations or loans or grants for or in aid of the acquisition or operation of passenger transportation facilities, and to administer, hold, use, and apply the same for the purposes for which such grants or donations may have been made;

(13) To exercise the right of eminent domain under and pursuant to the Constitution, statutes, and laws of the State of Nebraska to acquire private property, including any existing private passenger transportation system, but excluding any taxicabs, railroad, and air passenger transportation systems,

which is necessary for the passenger transportation purposes of the authority and including the right to acquire rights and easements across, under, or over the right-of-way of any railroad. Exercise of the right of eminent domain shall be pursuant to sections 76-704 to 76-724;

(14) Subject to the continuing rights of the public to the use thereof, to use any public road, street, or other public way in any city of the metropolitan class, county in which such city is located, adjacent county, or city or village located in such counties served by the authority for transportation of passengers;

(15) To purchase and dispose of equipment, including motor buses, and to execute any agreement, lease, conditional sales contract, conditional lease contract, and equipment trust note or certificate to effect such purpose;

(16) To pay for any equipment and rentals therefor in installments and to give evidence by equipment trust notes or certificates of any deferred installments, and title to such equipment need not vest in the authority until the equipment trust notes or certificates are paid;

(17) To certify annually to the local lawmaking body of the city of the metropolitan class, county in which such city is located, adjacent county, or city or village located in such counties served by the authority such tax request for the fiscal year commencing on the first day of the following January as, in its discretion and judgment, the authority determines to be necessary, pursuant to section 14-1821. The local lawmaking body of such county, city, or village is authorized to levy and collect such taxes in the same manner as other taxes in such county, city, or village subject to section 77-3443;

(18) To apply for and accept grants and loans from the government of the United States of America, or any agency or instrumentality thereof, to be used for any of the authorized purposes of the authority, and to enter into any agreement with the government of the United States of America, or any agency or instrumentality thereof, in relation to such grants or loans, subject to the provisions hereof;

(19) To determine routes and to change the same subject to the provisions hereof;

(20) To fix rates, fares, and charges for transportation. The revenue derived from rates, from the taxation herein provided, and from any grants or loans herein authorized shall at all times be sufficient in the aggregate to provide for the payment of: (a) All operating costs of the transit authority, (b) interest on and principal of all revenue bonds, revenue certificates, equipment trust notes or certificates, and other obligations of the authority, and to meet all other charges upon such revenue as may be provided by any trust agreement executed by such authority in connection with the issuance of revenue bonds or certificates under the Transit Authority Law, and (c) any other costs and charges, acquisition, installation, replacement, or reconstruction of equipment, structures, or rights-of-way not financed through the issuance of revenue bonds or certificates;

(21) To provide free transportation for firefighters and police officers in uniform in the city of the metropolitan class, county in which such city is located, adjacent county, or city or village located in such counties served by the authority in which they are employed and for employees of such authority when in uniform or upon presentation of proper identification;

(22) To enter into agreements with the Post Office Department of the United States of America or its successors for the transportation of mail and letter carriers and the payment therefor;

(23) To exercise all powers usually granted to corporations, public and private, necessary or convenient to carry out the powers granted by the Transit Authority Law; and

(24) To establish pension and retirement plans for officers and employees and to adopt any existing pension and retirement plans and any existing pension and retirement contracts for officers and employees of any passenger transportation system purchased or otherwise acquired pursuant to the Transit Authority Law.

Source: Laws 1957, c. 23, § 5, p. 160; Laws 1972, LB 1275, § 5; Laws 1973, LB 69, § 2; Laws 1979, LB 187, § 34; Laws 1986, LB 1012, § 1; Laws 1987, LB 471, § 1; Laws 1997, LB 269, § 17; Laws 1999, LB 87, § 60; Laws 2003, LB 720, § 3.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

The jurisdiction and powers herein given a transit authority is for local control and does not affect the general control vested in the Public Service Commission by the Constitution. Ritums v. Howell, 190 Neb. 503, 209 N.W.2d 160 (1973).

14-1805.01 Metropolitan transit authority; retirement plan reports; duties.

(1) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to section 14-1805 and section 401(a) of the Internal Revenue Code 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:

(a) The number of persons participating in the retirement plan;

(b) The contribution rates of participants in the plan;

(c) Plan assets and liabilities;

(d) The names and positions of persons administering the plan;

(e) The names and positions of persons investing plan assets;

(f) The form and nature of investments;

(g) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(h) 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.

(2) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the authority 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 section 14-1805. 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 1998, LB 1191, § 8; Laws 1999, LB 795, § 4.

14-1806 Metropolitan transit authority; revenue bonds and certificates; issuance; terms and conditions; trust agreements.

The authority shall have the continuing power to borrow money for the purpose of acquiring any transportation system and necessary cash working funds, or for reconstructing, extending, or improving its transportation system or any part thereof, and for acquiring any property and equipment useful for the reconstruction, extension, improvement, and operation of its transportation system or any part thereof. For the purpose of evidencing the obligation of the authority to repay any money borrowed as aforesaid, the authority may pursuant to resolution adopted by the board from time to time issue and dispose of its interest-bearing revenue bonds or certificates. It may also from time to time issue and dispose of its interest-bearing revenue bonds or certificates to refund any bonds or certificates at maturity, or pursuant to redemption provisions, or at any time before maturity with the consent of the holders thereof. All such bonds and certificates shall be payable solely from the revenue or income to be derived from the transportation system, from such tax receipts as may be herein authorized, and from such grants and loans as may be received. Such bonds and certificates may bear such date or dates, may mature at such time or times as may be fixed by the board, may bear interest at such rate or rates as may be fixed by the board, payable semiannually, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be made subject to redemption in such manner and upon such terms with or without premium as is stated on the face thereof, may be authenticated in such manner, and may contain such terms and covenants as may be provided in such resolution. Notwithstanding the form or tenor thereof and in the absence of an express recital on the face thereof that they are nonnegotiable, all such bonds and certificates shall be negotiable instruments. Pending the preparation and execution of any such bonds or certificates, temporary bonds or certificates may be issued with or without interest coupons as may be provided by resolution of the board. To secure the payment of any or all of such bonds or certificates, and for the purpose of setting forth the covenants and undertakings of the authority in connection with the issuance thereof, and the issuance of any additional bonds or certificates, as well as the use and application of the revenue or income to be derived from the transportation system, and from such tax receipts as may be herein authorized, and from any grants or loans, as provided in the Transit Authority Law, the authority may execute and deliver a trust agreement or agreements. No lien upon any physical property of the authority shall be created by such trust agreement or agreements. A remedy for any breach or default of the terms of

any such trust agreement by the authority may be by mandamus or other appropriate proceedings in any court of competent jurisdiction to compel performance and compliance therewith. The trust agreement may prescribe by whom or on whose behalf such action may be instituted.

Source: Laws 1957, c. 23, § 6, p. 165; Laws 1972, LB 1275, § 6; Laws 1998, LB 1191, § 9; Laws 2001, LB 420, § 17.

14-1807 Metropolitan transit authority; revenue bonds and certificates; extent of obligation.

Under no circumstances shall any bonds or certificates issued by the authority or any other obligation of the authority be or become an indebtedness or obligation of the State of Nebraska, or of any other political subdivision or body corporate and politic or of any municipality within the state, nor shall any such bond, certificate, or obligation be or become an indebtedness of the authority within the purview of any constitutional limitation or provision, and it shall be plainly stated on the face of each bond and certificate that it does not constitute such an indebtedness or obligation but is payable solely from revenue and income as aforesaid, including such tax revenue as may be received, as herein provided.

Source: Laws 1957, c. 23, § 7, p. 166; Laws 1972, LB 1275, § 7.

14-1808 Metropolitan transit authority; revenue bonds and certificates; sale; advertisement; bids.

Before any such bonds or certificates (excepting refunding bonds or certificates) are sold the entire authorized issue, or any part thereof, shall be offered for sale as a unit after advertising for bids at least three times in a daily newspaper of general circulation published in the city of the metropolitan class, the last publication to be at least ten days before bids are required to be filed. Copies of such advertisement may also be published in any newspaper or financial publication in the United States. All bids shall be sealed, filed, and opened as provided by resolution adopted by the authority, and the bonds or certificates shall be awarded to the highest and best bidder or bidders therefor. The authority shall have the right to reject all bids and readvertise for bids in the manner provided for in the initial advertisement. If no bids are received such bonds or certificates may be sold at the best possible price according to the discretion of the board, without further advertising, within thirty days after the bids are required to be filed pursuant to any advertisement.

Source: Laws 1957, c. 23, § 8, p. 166; Laws 1972, LB 1275, § 8.

14-1809 Metropolitan transit authority; revenue bonds and certificates; legal investment; considered securities.

Bonds issued by the authority under the Transit Authority Law are hereby made securities in which the state and all political subdivisions of the state, their officers, boards, commissions, departments, or other agencies, all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or

within their control. Such bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officers or agency of the state for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

Source: Laws 1957, c. 23, § 9, p. 167; Laws 1972, LB 1275, § 9; Laws 1998, LB 1191, § 10.

14-1810 Metropolitan transit authority; property; exempt from taxation.

An authority created pursuant to the Transit Authority Law being a governmental subdivision of the State of Nebraska to exercise public and essential governmental functions, all property thereof, all operations thereof, and all rights to operate, of whatsoever character, and all bonds and equipment trust notes or certificates issued by it, shall be exempt from any and all forms of assessment and taxation, and from all other governmental and municipal licenses, excises, and charges.

Source: Laws 1957, c. 23, § 10, p. 167; Laws 1972, LB 1275, § 10; Laws 1998, LB 1191, § 11.

14-1811 Metropolitan transit authority; equipment; purchase; securities.

(1) The authority shall have power to purchase equipment, including motor buses, and may execute agreements, leases, conditional sales contracts, conditional lease contracts, and equipment trust notes or certificates in the form customarily used in such cases appropriate to effect such purchase, and may dispose of such equipment trust notes or certificates. All money required to be paid by the authority under the provisions of such agreements, leases, and equipment notes or trust certificates shall be payable solely from the revenue or income to be derived from the transportation systems, and from such tax receipts as may be herein authorized and from grants and loans received, as provided in the Transit Authority Law. Payment for such equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust notes or certificates payable solely from such sources of income, and title to such equipment need not vest in the authority until the equipment trust notes or certificates are paid, but when payment is accomplished the equipment title shall vest in the authority.

(2) The agreement to purchase may direct the vendor to sell and assign the equipment to a bank or trust company, duly authorized to transact business in the State of Nebraska, as trustee, for the benefit and security of the equipment trust notes or certificates, and may direct the trustee to deliver the equipment to one or more designated officers of the authority, and may authorize the trustee simultaneously therewith to execute and deliver a lease of the equipment to the authority.

(3) The agreements, leases, contracts, or equipment trust certificates shall be duly acknowledged before some person authorized by law to take acknowledgments of deeds, and in the form required for acknowledgment of deeds, and such agreements, leases, and equipment trust notes or certificates shall be authorized by resolution of the board, and shall contain such covenants, conditions, and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust notes or certificates from the revenue and income of the authority.

(4) The covenants, conditions, and provisions of the agreements, leases, contracts, and equipment trust notes or certificates shall not conflict with any of the provisions of any trust agreement securing the payment of revenue bonds or certificates of the authority.

Source: Laws 1957, c. 23, § 11, p. 168; Laws 1972, LB 1275, § 11; Laws 1998, LB 1191, § 12.

14-1812 Metropolitan transit authority; board; name.

The governing body of the authority shall be a board to be known as The Transit Authority of ....., filling out the blank with the name of the city, which shall consist of five members, to be appointed as provided in section 14-1813.

Source: Laws 1957, c. 23, § 12, p. 169; Laws 1972, LB 1275, § 12; Laws 1973, LB 69, § 3.

14-1813 Metropolitan transit authority; board; appointment; term; vacancy; oath; bond; removal from office.

(1) Except as provided in subsection (2) of this section, whenever any city of the metropolitan class creates an authority, the board shall consist of five members to be selected as follows: (a) The mayor, with the approval of the city council and the county board of the county in which the city is located, shall appoint one member who shall serve for one year, one member who shall serve for two years, one member who shall serve for three years, one member who shall serve for four years, and one member who shall serve for five years; and (b) upon the expiration of the term of each appointed officer, the mayor, with the approval of the city council and the county board of the county in which the city is located, shall appoint a member who shall serve for a term of five years. Members of such board shall be residents of the transit authority territory described in section 14-1803 and one member of the board shall be nominated and selected as provided in subsection (2) of this section. In cities of the metropolitan class where a board has been heretofore appointed, the mayor, with the approval of the city council and the county board of the county in which the city is located, shall by resolution redesignate the terms of the members of such board in accordance with the provisions of sections 14-1803, 14-1805, 14-1812, and 14-1813, except that until such redesignation is made the terms shall stand as provided for in the original appointment.

(2) Notwithstanding any provisions of the city charter of the city of the metropolitan class to the contrary, when the next vacancy will occur on the board after August 31, 2003, resulting from the expiration of the term of office of a member of the board, notice of such vacancy shall be communicated to the clerk of each county, city, or village which is part of the transit authority territory. Such notice shall be provided at least forty-five days prior to the expiration of the term of office of the member. Each county, city, and village, other than the city of the metropolitan class, may, by majority vote of their governing bodies, recommend the appointment of one or more residents of their respective jurisdictions to fill the board position. Such nominations shall be filed with the mayor of the city of the metropolitan class not later than the thirtieth day following the date of receipt of notice of the vacancy. The mayor shall make the appointment to fill the board position from such nominations. The individual appointed by the mayor, upon approval by the city council of the

city of the metropolitan class, shall become a member of the board. Thereafter, any successor to such board member, either by reason of vacancy or the expiration of such board member's term, shall possess the residence qualifications provided for in this subsection, and such board position shall be filled in the manner provided for in this subsection.

(3) Except as provided in subsection (2) of this section, any vacancy on such board, resulting other than from expiration of a term of office, shall be filled by the mayor of the city of the metropolitan class, with the approval of the city council and the county board of the county in which the city is located, and such appointee shall possess the same residence qualifications as the member whose office he or she is to fill and shall serve the unexpired portion, if any, of the term of the member whose office was vacated.

(4) Each member, before entering upon the duties of the office, shall file with the city clerk of the city of the metropolitan class an oath that he or she will duly and faithfully perform all the duties of the office to the best of his or her ability, and a bond in the penal sum of five thousand dollars executed by one or more qualified sureties for the faithful performance of his or her duties. If any member shall fail to file such oath and bond on or before the first day of the term for which he or she was appointed or elected, his or her office shall be deemed to be vacant.

(5) A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for the removal of such officer may be brought, upon resolution of the city council of the city of the metropolitan class or the county board of the county in which the city is located, in the district court of the county in which such city is located.

Source: Laws 1957, c. 23, § 13, p. 169; Laws 1972, LB 1275, § 13; Laws 1973, LB 69, § 4; Laws 1997, LB 269, § 18; Laws 2003, LB 720, § 4.

14-1814 Metropolitan transit authority; board; organization; officers; quorum; meetings; resolutions; public records.

Not later than seven days after the qualification of the members, the board shall organize for the transaction of business, shall select a chairperson and vice-chairperson from among its members, and shall adopt bylaws, rules, and regulations to govern its proceedings. The chairperson and vice-chairperson and their successors shall be elected annually by the board and shall serve for a term of one year. Any vacancy in the offices of chairperson and vice-chairperson shall be filled by election by the board. A quorum for the transaction of business shall consist of three members of the board. Regular meetings of the board shall be held at least once in each calendar month at the time and place to be fixed by the board. All actions of the board shall be by resolution, except as may otherwise be provided in the Transit Authority Law, and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. Any such resolution shall be approved by the chairperson of the board, or in his or her absence by the vice-chairperson of the board, before taking effect. If he or she shall approve thereof he or she shall sign the same. If he or she shall not approve thereof, he or she shall return the resolution to the board with his or her objections thereto in writing at the next regular meeting of the board occurring after the passage thereof. If the chairperson shall fail to return any resolution with his or her written objections to the board within the

time aforesaid, he or she shall be deemed to have approved the same and it shall take effect; any resolution not approved by the chairperson may be passed by the affirmative vote of at least four members of the board. The board shall cause to be kept accurate minutes of all of its proceedings. All resolutions and all proceedings of the authority and all official documents and records of the authority shall be public records and open to public inspection, except such documents and records as shall be prepared and kept for use in negotiations, actions, or proceedings, to which the authority is a party.

Source: Laws 1957, c. 23, § 14, p. 170; Laws 1972, LB 1275, § 14; Laws 1998, LB 1191, § 13.

14-1815 Repealed. Laws 1972, LB 1275, § 21.

14-1816 Metropolitan transit authority; board; employees; private interest; prohibited.

No member of the board and no officer or employee of the authority shall have any private financial interest, profit, or benefit in any contract, work, or business of the authority and in the sale or lease of any property to or from the authority.

Source: Laws 1957, c. 23, § 16, p. 171.

14-1817 Repealed. Laws 1972, LB 1275, § 21.

14-1818 Metropolitan transit authority; receipts; disbursements; books of account.

The board shall provide by resolution for the manner of handling all receipts, the depositing of same in banks, and the investment of same when practicable, and of all disbursements, and shall provide for the keeping of accurate books of account of all of same.

Source: Laws 1957, c. 23, § 18, p. 172; Laws 1972, LB 1275, § 15.

14-1819 Metropolitan transit authority; fiscal year; budget.

The board shall establish a fiscal operating year at least thirty days prior to the beginning of the first full fiscal year after the creation of the authority, and annually thereafter the board shall cause to be prepared a tentative budget which shall include all operation and maintenance expense for the ensuing fiscal year. The tentative budget shall be considered by the board, and, subject to any revision and amendments as may be determined, shall be adopted prior to the first day of the ensuing fiscal year as the budget for that year. No expenditure for operations and maintenance in excess of the budget shall be made during any fiscal year except by the affirmative vote of at least four members of the board. It shall not be necessary to include in the annual budget any statement of interest or principal payments on bonds or certificates, or for capital outlays, but it shall be the duty of the board to make provision for payment of same from appropriate funds.

Source: Laws 1957, c. 23, § 19, p. 172.

14-1820 Metropolitan transit authority; financial statement; publication; filing.

As soon after the end of each fiscal year as may be expedient, the board shall cause to be prepared and printed a complete and detailed report and financial statement of its operations and of its assets and liabilities. A reasonably sufficient number of copies of such report shall be printed for distribution to persons interested, upon request, eight copies shall be filed with the Nebraska Publications Clearinghouse, and a copy thereof shall be mailed to the mayor and members of the city council and the governing board of any county in which such city is located, adjacent county, or city or village located within such counties served by the authority, and filed with the clerk of such county, city, or village.

Source: Laws 1957, c. 23, § 20, p. 172; Laws 1972, LB 1275, § 16; Laws 1972, LB 1284, § 12; Laws 2003, LB 720, § 5.

14-1821 Metropolitan transit authority; tax request; certification; levy; collection.

To assist in the defraying of all character of expense of the authority and to such extent as in its discretion and judgment may be necessary, the board shall annually certify a tax request for the fiscal year commencing on the following January 1. Such tax request shall not exceed in any one year ten cents on each one hundred dollars on the taxable value of the taxable property in the city of the metropolitan class or taxable property in any county in which such city is located, adjacent county, or city or village located within such counties served by the authority. The board shall by resolution, on or before September 20 of each year, certify such tax request to the city council of such city and the governing board of any county in which such city is located, adjacent county, or city or village located within such counties served by the authority. Such county, city, or village is hereby authorized to cause such tax to be levied and to be collected as are other taxes by the treasurer of such city or village or county treasurer and paid over by him or her to the treasurer of such board subject to the order of such board and subject to section 77-3443. If in any year the full amount so certified and collected is not needed for the current purposes of such authority, the balance shall be credited to reserves of such authority to be used for acquisition of necessary property and equipment.

Source: Laws 1957, c. 23, § 21, p. 173; Laws 1972, LB 1275, § 17; Laws 1974, LB 875, § 1; Laws 1979, LB 187, § 35; Laws 1986, LB 1012, § 2; Laws 1987, LB 471, § 2; Laws 1992, LB 1063, § 6; Laws 1992, Second Spec. Sess., LB 1, § 6; Laws 1993, LB 734, § 23; Laws 1995, LB 452, § 4; Laws 1997, LB 269, § 19; Laws 2003, LB 720, § 6; Laws 2007, LB206, § 3.

14-1822 Metropolitan transit authority; transportation system; operation; rates and fares; adequate revenue.

The board shall make all rules and regulations, according to its discretion, governing the operation of the transportation system, and shall determine all routings and change the same whenever deemed advisable by the board. The board shall fix rates, fares, and charges for transportation, except that such revenue, together with revenue made available through taxation and revenue from any grants or loans received as provided in the Transit Authority Law, shall be at all times sufficient in the aggregate to provide revenue: (1) For the payment of the interest on and principal of all revenue bonds or certificates and

equipment trust notes or certificates and other obligations of the authority, and to meet all other charges upon such revenue as provided by any trust agreement executed by the authority in connection with the issuance of revenue bonds or certificates under the Transit Authority Law; (2) for the payment of all operating costs of whatsoever character incidental to the operation of the transportation system; and (3) for the payment of any other costs and charges for the acquisition, installation, replacement, or reconstruction of equipment, structures, or rights-of-way not financed through issuance of revenue bonds or certificates.

Source: Laws 1957, c. 23, § 22, p. 173; Laws 1972, LB 1275, § 18; Laws 1998, LB 1191, § 14.

The jurisdiction and powers herein given a transit authority is for local control and does not affect the general control vested in the Public Service Commission by the Constitution. Ritums v. Howell, 190 Neb. 503, 209 N.W.2d 160 (1973).

14-1822.01 Expired.

14-1823 Metropolitan transit authority; transportation system; modernization; depreciation policy.

It shall be the duty of the board, as promptly as possible, to rehabilitate, reconstruct, and modernize all portions of any transportation system acquired, and to maintain at all times an adequate and modern transportation system suitable and adapted to the needs of the county, city, or village served by the authority, and for safe, comfortable, convenient, and expeditious service. To assure modern, attractive transportation service the board may establish a depreciation policy which makes provision for the continuous and prompt replacement of worn out and obsolete property and the board may make provision for such depreciation of the property of the authority as is not offset by current expenditures for maintenance, repairs, and replacements, under such rules and regulations as may be prescribed by the board.

Source: Laws 1957, c. 23, § 23, p. 174; Laws 1972, LB 1275, § 19; Laws 2003, LB 720, § 7.

14-1824 Repealed. Laws 1972, LB 1275, § 21.

14-1825 Metropolitan transit authority; labor contracts; collective bargaining.

The board may deal with and enter into written contracts with the employees of the authority through accredited representatives of such employees or representatives of any labor organization authorized to act for such employees, concerning wages, salaries, hours, and general working conditions. All employees of all classes serving any passenger transportation company at the time of its acquisition by the authority shall continue in their respective positions and at their respective compensations for three months after any such acquisition. Thereafter, the board shall exercise its discretion as to retention of and compensation of employees of all classes; *Provided*, the terms and conditions of any existing collective-bargaining agreement between any passenger transportation company, acquired by the authority, and its employees shall be recognized and accepted by the board.

Source: Laws 1957, c. 23, § 25, p. 175.

14-1826 Act, how cited.

Sections 14-1801 to 14-1826 shall be known and may be cited as the Transit Authority Law.

Source: Laws 1957, c. 23, § 28, p. 176; Laws 1972, LB 1275, § 20; Laws 1998, LB 1191, § 15.

ARTICLE 19
URBAN RENEWAL

Section
14-1901. Repealed. Laws 1973, LB 225, § 1.

14-1901 Repealed. Laws 1973, LB 225, § 1.

ARTICLE 20
LANDMARK HERITAGE PRESERVATION DISTRICTS

Section
14-2001. Landmark heritage preservation district; commission; creation; purpose.
14-2002. Landmark heritage preservation commission; powers and duties; limitation.
14-2003. City of the metropolitan class; eminent domain; when; procedure.
14-2004. Landmark heritage preservation commission; membership; qualifications; appointed by mayor; terms; officers.

14-2001 Landmark heritage preservation district; commission; creation; purpose.

Any city of the metropolitan class may by ordinance provide for the creation and establishment of landmark heritage preservation districts and a landmark heritage preservation commission for the purpose of preserving buildings, lands, areas, or districts within any such city which are determined by the commission to possess particular historical, architectural, cultural, or educational value.

Source: Laws 1976, LB 711, § 1.

14-2002 Landmark heritage preservation commission; powers and duties; limitation.

(1) The powers and duties of any landmark heritage preservation commission created pursuant to sections 14-2001 to 14-2004 shall be such as are delegated or assigned by the ordinance establishing such commission. The city council shall specifically state in such ordinance which powers the commission shall be allowed to exercise.

(2) The powers of a landmark heritage preservation commission shall not be repugnant to any other provision of law and shall be exercised only in the manner prescribed by the ordinance. No action of the commission shall contravene any provision of a municipal zoning or planning ordinance unless such action is expressly authorized by the city council.

Source: Laws 1976, LB 711, § 2.

14-2003 City of the metropolitan class; eminent domain; when; procedure.

(1) Each city of the metropolitan class may exercise its power of eminent domain to maintain or preserve buildings, lands, areas, or districts which have

been determined by the landmark heritage preservation commission to be of historical, architectural, cultural, or educational value.

(2) Within a landmark heritage preservation district a city of the metropolitan class shall not exercise its power of eminent domain to acquire property for the purpose of demolition and reconveyance for private use. This subsection shall not be applicable to any eminent domain action filed by such city prior to September 6, 1991.

(3) Whenever it becomes necessary to take control of property pursuant to and for the purposes stated in this section, the purpose and necessity for such control shall be declared by ordinance. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1976, LB 711, § 3; Laws 1991, LB 247, § 1.

14-2004 Landmark heritage preservation commission; membership; qualifications; appointed by mayor; terms; officers.

(1) A landmark heritage preservation commission created pursuant to sections 14-2001 to 14-2004 shall have nine members. If available, one of the members shall be an architect, one shall be a curator or director of an art or other museum, one shall be a professional artist or historian, three shall be interested and qualified persons chosen, as far as possible, from any existing historical society, preservation group, architectural, landscape architectural, interior design, or planning association, or cultural organization, two shall be laypersons, and one shall be an owner or operator of a business or property within a landmark heritage preservation district, which business or property may be owned or operated by a corporation of which such member is an officer, by a partnership in which such member is a partner, or by a limited liability company in which such member is a member.

(2) Members shall be appointed by the mayor and approved by the city council and shall serve for terms of three years. Members shall serve until their successors are appointed and qualified. Members may be appointed to successive terms.

(3) The commission shall select one of its members as chairperson. The director of the planning department of the city shall act as the executive director of such commission, and staff assistance for the commission shall be provided by the planning department of such city.

Source: Laws 1976, LB 711, § 4; Laws 1991, LB 247, § 2; Laws 1993, LB 121, § 129.

ARTICLE 21

PUBLIC UTILITIES

Section

Section

Section
14-2156. Utilities district; public offstreet motor vehicle parking facilities; bonds; powers.
14-2157. Utilities district; termination; petition; election.

14-2101 Public utilities district; what shall constitute.

Whenever in this state a city of the metropolitan class and one or more adjacent municipalities, sanitary and improvement districts, or unincorporated areas are served in whole or in part by a common public utilities system, owned and controlled by a single corporate public entity as provided for in sections 14-2101 to 14-2157, then the territory within the limits of the city of the metropolitan class and such adjacent municipalities, sanitary and improvement districts, or unincorporated areas, including any sanitary and improvement district or unincorporated area without the city of the metropolitan class or adjacent municipalities that may be now or hereafter served in whole or in part by the common public utilities system, shall form and constitute a public utilities district, except as provided in this section, to be known as the Metropolitan Utilities District of ..... (inserting the name of the city of the metropolitan class). A municipality, not of the metropolitan class, now actually operating a general waterworks system of its own, shall not be included in the utilities district so long as it continues to operate its own water plant. No sanitary and improvement district or unincorporated area without the adjacent municipalities shall become a part of the utilities district except upon formal approval and proclamation by the board of directors.

Source: Laws 1913, c. 143, § 1, p. 349; R.S.1913, § 4243; C.S.1922, § 3745; C.S.1929, § 14-1001; R.S.1943, § 14-1001; R.S.1943, (1991), § 14-1001; Laws 1992, LB 746, § 1.

Sole management and control of all waterworks systems in Omaha have been exercised by district since adoption of this section. Evans v. Metropolitan Utilities Dist., 187 Neb. 261, 188 N.W.2d 851 (1971).

14-2102 Board of directors; qualifications; election; outside member.

In each metropolitan utilities district service area, there shall be a board of directors consisting of seven members. The members shall be elected as provided in section 32-540.

Registered voters within the boundaries of the district shall be registered voters of such district and shall be eligible for the office of director subject to the special qualification of residence for the outside member. The outside member specified in section 32-540 shall be a registered voter residing within the district but outside the corporate limits of the city of the metropolitan class for which the district was created.

Source: Laws 1913, c. 143, § 3, p. 350; R.S.1913, § 4245; C.S.1922, § 3747; C.S.1929, § 14-1003; R.S.1943, § 14-1003; Laws 1945, c. 17, § 1, p. 121; Laws 1953, c. 22, § 1, p. 93; Laws 1961, c. 32, § 1, p. 152; Laws 1976, LB 665, § 1; Laws 1977, LB 201, § 3; R.S.1943, (1991), § 14-1003; Laws 1992, LB 746, § 2; Laws 1994, LB 76, § 477.

14-2103 Board of directors; territory outside city; participation in election; filings; where made.

Whenever a metropolitan utilities district is extended to include sanitary and improvement districts, unincorporated area, towns, villages, or territory lying

outside the corporate limits of cities of the metropolitan class or so extended as to include sanitary and improvement districts, unincorporated area, towns, or villages in an adjoining county or counties, then such sanitary and improvement districts, unincorporated area, towns, or villages shall have a right to participate in the nomination and in the election of members of the board of directors of the metropolitan utilities district. The election commissioner or county clerk of each of the counties in which ballots are cast pursuant to this section shall within seven days after the election transmit, by mail or otherwise, to the election commissioner of the county in which the city of the metropolitan class is located, a copy of the abstract of the votes cast for members of the board of directors. The election commissioner shall in due course deliver to the candidate receiving the highest number of votes a certificate of election as a member of the board of directors. Any and all filings for such office shall be made with the election commissioner notwithstanding that the person wishing to file lives in a county adjoining the one in which the city of the metropolitan class is located.

Source: Laws 1921, c. 109, § 1, p. 385; C.S.1922, § 3748; C.S.1929, § 14-1004; R.S.1943, § 14-1004; Laws 1961, c. 32, § 2, p. 152; R.S.1943, (1991), § 14-1004; Laws 1992, LB 746, § 3; Laws 1994, LB 76, § 478.

Election commissioner of Douglas County receives abstract of votes from clerks of adjoining counties as to officers of Metropolitan Utilities District Barton v. City of Omaha, 180 Neb. 752, 145 N.W.2d 444 (1966).

14-2104 Board of directors; vacancy; compensation; benefits; expenses.

(1) Any vacancy occurring in the board of directors shall be filled for the unexpired term by the remaining members thereof within thirty days after the vacancy occurs. It is the intent and purpose to render the board of directors nonpartisan in character.

(2) The chairperson of the board of directors of a metropolitan utilities district shall be paid, as compensation for his or her services, not to exceed the sum of one thousand two hundred sixty dollars per month. Each of the other members of the board of directors shall be paid, as compensation for his or her services, not to exceed the sum of one thousand one hundred twenty dollars per month. Any adjustments in compensation shall be made only at regular meetings of the board of directors, and the salaries of the chairperson and other members of such board shall not be increased more often than once in any calendar year.

(3) Members of the board of directors may be considered employees of the district for purposes of participation in medical and dental plans of insurance offered to regular employees. The dollar amount of any health insurance premiums paid from the funds of the district for the benefit of a member of the board of directors may be in addition to the amount of compensation authorized to be paid to such director pursuant to this section.

(4) The chairperson and other members of such board of directors shall also be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

Source: Laws 1913, c. 143, § 4, p. 351; R.S.1913, § 4246; Laws 1919, c. 33, § 1, p. 107; C.S.1922, § 3749; C.S.1929, § 14-1005; R.S.1943, § 14-1005; Laws 1947, c. 20, § 2, p. 108; Laws 1953, c. 22, § 2,

p. 94; Laws 1967, c. 45, § 1, p. 176; Laws 1981, LB 311, § 1; Laws 1985, LB 2, § 1; Laws 1990, LB 730, § 1; R.S.1943, (1991), § 14-1005; Laws 1992, LB 746, § 4; Laws 2001, LB 101, § 1.

14-2105 Board of directors; meetings.

Regular meetings of the board of directors shall be held on the first Wednesday of each calendar month at such hour as the board may designate and at such other stated times as shall be fixed in the bylaws. Special meetings of the board may be held at any time at the call of the chairperson or at the request of any two members filed in writing with the secretary. All meetings of the board, any of its committees, or committees of its employees shall be public.

Source: Laws 1913, c. 143, § 5, p. 351; R.S.1913, § 4247; C.S.1922, § 3750; C.S.1929, § 14-1006; R.S.1943, § 14-1006; R.S.1943, (1991), § 14-1006; Laws 1992, LB 746, § 5.

14-2106 Board of directors; officers; bylaws; quorum.

Upon organization such board of directors shall elect one of its members chairperson and one vice-chairperson, both of whom shall serve for one year, and shall appoint a secretary as provided in section 14-2109. The board shall make such rules governing its procedure and adopt such bylaws governing its business as it may deem proper. A majority of the board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time until a quorum is secured.

Source: Laws 1913, c. 143, § 6, p. 352; R.S.1913, § 4248; C.S.1922, § 3751; C.S.1929, § 14-1007; R.S.1943, § 14-1007; R.S.1943, (1991), § 14-1007; Laws 1992, LB 746, § 6.

14-2107 Board of directors; investigatory powers.

The board of directors of the metropolitan utilities district or any committee of the members of the board shall have power to compel the attendance of witnesses for investigation of any matters that may come before the board, and the presiding officer of the board, or the chairperson of the committee for the time being, may administer the requisite oaths, and the board or committee thereof shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

Source: Laws 1913, c. 143, § 7, p. 353; R.S.1913, § 4249; C.S.1922, § 3752; C.S.1929, § 14-1008; R.S.1943, § 14-1012; R.S.1943, (1991), § 14-1012; Laws 1992, LB 746, § 7.

The word may in this section makes the administration of oaths a discretionary matter for the board. Flood v. Keller, 214 Neb. 797, 336 N.W.2d 549 (1983).

14-2108 Directors and employees; interest in contracts prohibited.

It shall be unlawful for any member of the board of directors or any employee thereof to have any pecuniary interest, either directly or indirectly, in any contract in connection with the construction or maintenance of water or natural gas utilities of such metropolitan utilities district or be in any way connected with the furnishing of supplies required by the district.

Source: Laws 1913, c. 143, § 11, p. 355; R.S.1913, § 4253; C.S.1922, § 3756; C.S.1929, § 14-1012; R.S.1943, § 14-1018; R.S.1943, (1991), § 14-1018; Laws 1992, LB 746, § 8.

14-2109 Utilities district; personnel; duties; bond; salary.

The board of directors of a metropolitan utilities district shall at its first regular meeting appoint an individual with an official title designated by the board who shall (1) act as secretary of such board, (2) have general supervision of the management, construction, operation, and maintenance of the utility plants and property under the jurisdiction of or owned by such metropolitan utilities district, subject to the direction of the board, (3) hold office at the pleasure of the board, (4) possess business training, executive experience, and knowledge of the development and operation of public utilities, (5) give bond for the faithful performance of his or her duties in the sum of not less than ten thousand dollars to be filed with and approved by the board of directors, (6) receive such compensation as the board may determine, which compensation shall not be decreased during the incumbency of any appointee, and (7) devote his or her exclusive time to the duties of the office. The board of directors may employ or authorize the employment of such other employees and assistants as may be deemed necessary for the operation and maintenance of the utility plants under its jurisdiction and of the conduct of the affairs of the board and provide for their compensation. The compensation of the appointed individual and such employees shall be paid from funds under control of the board. In no event shall the compensation, as a salary or otherwise, of any employee or officer exceed ten thousand dollars per annum unless approved by a vote of two-thirds or more of the members of the board of directors. The record of such vote of approval, together with the names of the directors so voting, shall be made a part of the permanent records of the board.

Source: Laws 1913, c. 143, § 13, p. 356; R.S.1913, § 4255; Laws 1919, c. 33, § 2, p. 108; C.S.1922, § 3758; Laws 1923, c. 134, § 1, p. 329; C.S.1929, § 14-1014; R.S.1943, § 14-1020; Laws 1947, c. 20, § 3, p. 108; R.S.1943, (1983), § 14-1020; R.S.1943, (1991), § 14-1101.01; Laws 1992, LB 746, § 9; Laws 2001, LB 177, § 2; Laws 2007, LB207, § 1.

14-2110 Utilities district; employees; removal.

No regular appointee or employee of the metropolitan utilities district, except the individual appointed in section 14-2109, who has been in its service consecutively for more than one year and whose name has been placed, by a unanimous vote of the full board of directors, upon the permanent employees list provided for in the rules adopted by the board shall be subject to removal except upon a two-thirds vote of the full board and then only for cause which shall be stated in writing and filed with the secretary of the board at least ten days prior to a hearing preceding such removal.

Source: Laws 1913, c. 143, § 14, p. 356; R.S.1913, § 4256; Laws 1919, c. 33, § 3, p. 108; C.S.1922, § 3759; C.S.1929, § 14-1015; Laws 1941, c. 20, § 1, p. 110; C.S.Supp.,1941, § 14-1015; Laws 1943, c. 38, § 1(1), p. 180; R.S.1943, § 14-1021; R.S.1943, (1991), § 14-1021; Laws 1992, LB 746, § 10; Laws 2007, LB207, § 2.

14-2111 Utilities district; employees; retirement and other benefits; terms and conditions; reports.

(1) The board of directors of any metropolitan utilities district may also provide benefits for, insurance of, and annuities for the present and future

employees and appointees of the district covering accident, disease, death, total and permanent disability, and retirement, all or any of them, under such terms and conditions as the board may deem proper and expedient from time to time. Any retirement plan adopted by the board of directors shall be upon some contributory basis requiring contributions by both the district and the employee or appointee, except that the district may pay the entire cost of the fund necessary to cover service rendered prior to the adoption of any new retirement plan. Any retirement plan shall take into consideration the benefits provided for employees and appointees of metropolitan utilities districts under the Social Security Act, and any benefits provided under a contributory retirement plan shall be supplemental to the benefits provided under the Social Security Act as defined in section 68-602 if the employees entitled to vote in a referendum vote in favor of old age and survivors' insurance coverage. To effectuate any plan adopted pursuant to this authority, the board of directors of the district is empowered to establish and maintain reserves and funds, provide for insurance premiums and costs, and make such delegation as may be necessary to carry into execution the general powers granted by this section. Payments made to employees and appointees, under the authority in this section, shall be exempt from attachment or other legal process and shall not be assignable.

(2) Any retirement plan adopted by the board of directors of any metropolitan utilities district may allow the district to pick up the employee contribution required by this section for all compensation paid on or after January 1, 1986, 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 employer 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 employer shall pay the employee contributions from the same source of funds which is used in paying earnings to the employees. The employer 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.

(3)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code 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 board of directors of any metropolitan utilities district 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 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 1919, c. 33, § 3, p. 108; C.S.1922, § 3759; C.S.1929, § 14-1015; Laws 1941, c. 20, § 1, p. 110; C.S.Supp.,1941, § 14-1015; Laws 1943, c. 38, § 1(2), p. 181; R.S.1943, § 14-1022; Laws 1951, c. 31, § 1, p. 129; Laws 1955, c. 25, § 1, p. 118; Laws 1985, LB 353, § 1; R.S.1943, (1991), § 14-1022; Laws 1992, LB 746, § 11; Laws 1995, LB 574, § 16; Laws 1998, LB 1191, § 16; Laws 1999, LB 795, § 5.

14-2112 Utilities district; general powers.

A metropolitan utilities district shall be a body corporate and possess all the usual powers of a corporation for public purposes and in its name may sue and be sued and purchase, hold, and sell personal property and real estate. It shall have the sole management and control of its assets, including all utility rents, revenue, and income authorized by law, all utility property, real and personal, now or hereafter owned by the metropolitan utilities district or which may become a part of the common utilities system. It may exercise any and all the powers that are now or may be granted to cities and villages by the general statutes of this state for the construction or extension of utilities.

Source: Laws 1913, c. 143, § 2, p. 350; R.S.1913, § 4244; Laws 1917, c. 90, § 1, p. 242; C.S.1922, § 3746; C.S.1929, § 14-1002; R.S.1943, § 14-1002; R.S.1943, (1991), § 14-1002; Laws 1992, LB 746, § 12.

The Legislature had right to transfer powers hereunder to the metropolitan utilities district. Lynch v. Metropolitan Utilities Dist., 192 Neb. 17, 218 N.W.2d 546 (1974).

A metropolitan water district is a body corporate. Erickson v. Metropolitan Utilities Dist., 171 Neb. 654, 107 N.W.2d 324 (1961).

Operation and maintenance of water and gas plants is not exercise of governmental functions but a private enterprise. Metropolitan Utilities District v. City of Omaha, 112 Neb. 93, 198 N.W. 858 (1924).

14-2113 Board of directors; natural gas and water supply; powers; jurisdiction; relocation of facilities.

The board of directors of the metropolitan utilities district shall have general charge, supervision, and control of all matters pertaining to the natural gas supply and the water supply of the district for domestic, mechanical, public, and fire purposes. This shall include the general charge, supervision, and control of the design, construction, operation, maintenance, and extension or improvement of the necessary plant to supply natural gas, to develop power, and to pump water. It shall have the authority to enter upon and utilize streets, alleys, and public grounds therefor upon due notice to the proper authorities controlling same, subject to the provisions of sections 39-1361 and 39-1362, except that while any permit hereafter granted by the Department of Roads under such provisions shall not be construed to be a contract as referred to within the provisions of section 39-1304.02, such parties may separately contract in relation to relocation of facilities and reimbursement therefor. The board shall also have the power to appropriate private property required by the district for natural gas and water service, to purchase and contract for necessary materials, labor, and supplies, and to supply water and natural gas without the district upon such terms and conditions as it may deem proper. The authority and power conferred in this section upon the board of directors shall extend as far beyond the corporate limits of the metropolitan utilities district as the board may deem necessary.

Source: Laws 1913, c. 143, § 7, p. 352; R.S.1913, § 4249; C.S.1922, § 3752; C.S.1929, § 14-1008; R.S.1943, § 14-1008; Laws 1957, c. 20, § 2, p. 153; Laws 1959, c. 35, § 3, p. 193; R.S.1943, (1991), § 14-1008; Laws 1992, LB 746, § 13.

This and related sections designed to give metropolitan water district exclusive control of water supply within district. Dunmar Inv. Co. v. Northern Nat. Gas Co., 185 Neb. 400, 176 N.W.2d 4 (1970).

14-2114 Utility service; rates; suspension and resumption of service; powers of board of directors.

The board of directors of the metropolitan utilities district shall have power and authority to determine and fix all water and natural gas rates and to determine what shall be a reasonable rate for any particular service, the conditions and methods of service, and the collection of all charges for service or the sale of water or natural gas. The board of directors shall also have authority to make such rules and regulations for the conduct of the utilities controlled and operated by the metropolitan utilities district and the use and measurement of water or natural gas supplied by the district as it may deem proper, including the authority to cut off any natural gas or water service for nonpayment, for nonmaintenance of the pipes and plumbing connected with the supply main, or for noncompliance on the part of any natural gas or water user with the rules and regulations adopted by the board for the conduct of its business and affairs. The board may authorize its employees to require payments, in addition to the regular rates charged for water or natural gas, before turning on any service that has been turned off because of such nonpayment or noncompliance with the provisions of this section and the rules and regulations adopted by the board.

Source: Laws 1913, c. 143, § 8, p. 354; R.S.1913, § 4250; C.S.1922, § 3753; C.S.1929, § 14-1009; R.S.1943, § 14-1015; Laws 1969, c. 63, § 1, p. 373; R.S.1943, (1991), § 14-1015; Laws 1992, LB 746, § 14; Laws 2001, LB 177, § 3.

Power and authority to determine what shall be a reasonable water rate is not without restrictions. Erickson v. Metropolitan Utilities Dist., 171 Neb. 654, 107 N.W.2d 324 (1961).

Officials of M.U.D. in complying with statute providing for shutting off services for nonpayment did not violate civil rights statute. Morgan v. Kennedy, 331 F.Supp 861 (D. Neb. 1971).

14-2115 Utilities district; general powers and duties; operation of utilities separately; actions prohibited.

(1) A metropolitan utilities district shall operate and account for each of its several utilities separately and, as to each separate utility, shall possess all powers granted on behalf of that utility or on behalf of any other utility being operated by such district, or granted generally to such district, and all such powers are hereby declared to be cumulative, though separate, as to each utility, except that limitations or restrictions which by their nature or intent are applicable only to a utility of one type shall not apply to other different utilities. The financial obligations of each utility shall be separate and independent from the financial obligations of any other utility.

(2) A metropolitan utilities district shall keep all funds, accounts, and obligations relating to any one utility under its management separate and independent from the funds and accounts of each other utility under its management. The cost of any consolidated operation shall be allocated to the various utilities upon some reasonable basis which is open to investigation, comment, or protest by members of the public. Such allocation methodologies shall be determined by the board of directors and shall provide for the allocation of costs and expenses in a manner that accurately reflects the actual cost of service for each utility under the management of the board, except that for purposes of this section, the collection of sewer use fees for cities of the metropolitan class shall not be considered as a utility. The district shall have separate power to provide for the cost of operation, maintenance, depreciation, extension, construction, and improvement of any utility under its management, applying thereto standard accounting principles.

(3) A metropolitan utilities district shall not discount its water rates or connection fees to any customer in order to obtain an agreement to provide natural gas service to any customer.

(4) A metropolitan utilities district shall not delay or condition in any manner the installation of water service or other agreements related to water service to the purchase of natural gas service from the district.

(5) The Auditor of Public Accounts shall have the authority to initiate an audit or to take any action necessary to ensure compliance with this section.

Source: Laws 1921, c. 111, § 2, p. 391; C.S.1922, § 3776; C.S.1929, § 14-1102; R.S.1943, § 14-1102; Laws 1947, c. 20, § 1, p. 107; R.S.1943, (1991), § 14-1102; Laws 1992, LB 746, § 15; Laws 1999, LB 78, § 1.

Power to convey property of metropolitan water district has been transferred to the metropolitan utilities district. Lynch v. Metropolitan Utilities Dist., 192 Neb. 17, 218 N.W.2d 546 (1974).

14-2116 Utilities district; power of eminent domain; exercise.

(1) In addition to any other rights and powers conferred upon metropolitan utilities districts under sections 14-2101 to 14-2157, such districts shall have and may exercise the power of eminent domain for the purpose of erecting, constructing, locating, maintaining, or supplying such waterworks, gas works, or mains or the extension of any system of waterworks, water supply, gas

works, or gas supply, and any such district may go beyond its territorial limits and may take, hold, or acquire rights, property, and real estate, or either or any of the same, by purchase or otherwise. Such a district may for such purposes take, hold, and condemn any and all necessary property.

(2) Any metropolitan utilities district shall have the power to condemn or to exercise the power of eminent domain to acquire parts of an existing utility's facilities only when such facilities are within, annexed to, or otherwise consolidated within the corporate boundary limits of a city of the metropolitan class. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. Within a municipal county, the power to condemn or to exercise the power of eminent domain for purposes of this subsection may be exercised by a metropolitan utilities district to the extent and in the manner provided by the Legislature as required by section 13-2802.

Source: Laws 1957, c. 21, § 1, p. 154; R.S.1943, (1991), § 14-1103.02; Laws 1992, LB 746, § 16; Laws 2001, LB 142, § 30.

14-2117 Utilities district; extend or enlarge service area; when prohibited; filings required.

No metropolitan utilities district may extend or enlarge its service area unless it is economically feasible to do so. In determining whether or not to extend or enlarge its service area, the district shall take into account the cost of such extension or enlargement to its existing ratepayers.

All books, records, vouchers, papers, contracts, or other data indicating the economic feasibility of such extension or enlargement shall be filed with the secretary of the board of directors of the district and shall be open to public inspection.

Source: Laws 1992, LB 746, § 17.

14-2118 Utilities district; use of streets, alleys, or public grounds; duty to repair.

After entering the streets, alleys, or public grounds of the district in connection with the operation, construction, and maintenance of the utility facilities, it shall be the duty of the metropolitan utilities district and the board of directors, upon the completion of any such work, to resurface and repave the streets, alleys, or public grounds and leave the streets, alleys, or public grounds in the same condition as they were before the same were utilized by the district and the board of directors for such purpose.

Source: Laws 1913, c. 143, § 7, p. 353; R.S.1913, § 4249; C.S.1922, § 3752; C.S.1929, § 14-1008; R.S.1943, § 14-1010; R.S.1943, (1991), § 14-1010; Laws 1992, LB 746, § 18.

14-2119 Board of directors; water or natural gas; powers over supplier.

In case any portion of the metropolitan utilities district is supplied with natural gas or water for domestic, mechanical, public, or fire purposes by any individual, partnership, limited liability company, or corporation, then the board shall have the power and authority to fix rates and regulate the conditions of service and the conduct of the utility affording such supply.

Source: Laws 1913, c. 143, § 7, p. 353; R.S.1913, § 4249; C.S.1922, § 3752; C.S.1929, § 14-1008; R.S.1943, § 14-1011; R.S.1943, (1991), § 14-1011; Laws 1992, LB 746, § 19; Laws 1993, LB 121, § 130.

Section not applicable to defendant supplying steam and chilled water for purposes of heating and air conditioning. Dunmar Inv. Co. v. Northern Nat. Gas Co., 185 Neb. 400, 176 N.W.2d 4 (1970).

14-2120 Board of directors; franchise; power to grant; election required.

No franchise or permit for the use of streets, alleys, or other public property within the metropolitan utilities district for the laying of pipes in connection with a water or natural gas utility designed for public or private service shall be granted except by the board of directors, but no such franchise or permit shall be valid until approved by a majority vote of the registered voters of the metropolitan utilities district at a regular election, or a special election called for such purpose, and of which due notice is given in the case of the submission of a proposal to vote bonds. If the board of directors refuses upon request to grant and submit to a vote of the registered voters of the district such a franchise or permit, then upon the filing of a petition with the board of ten percent or more of the registered voters of the district requesting that the franchise or permit be submitted, it shall be the duty of the board to submit such proposition at a general election or a special election held for that purpose within sixty days of the date of filing the petition, and if a majority of the votes cast upon such proposition are in favor of granting such franchise or permit, the franchise or permit shall be deemed to be granted.

Source: Laws 1913, c. 143, § 7, p. 352; R.S.1913, § 4249; C.S.1922, § 3752; C.S.1929, § 14-1008; R.S.1943, § 14-1009; R.S.1943, (1991), § 14-1009; Laws 1992, LB 746, § 20.

Defendant's use of streets in supplying steam and chilled water for purposes of heating and air conditioning did not require granting of franchise. Dunmar Inv. Co. v. Northern Nat. Gas Co., 185 Neb. 400, 176 N.W.2d 4 (1970).

14-2121 Utilities district; contracts; bids; powers of board of directors.

The board of directors shall have authority to receive bids for all work which it may desire to have done by contract or for material and supplies to be used in connection with such work, which bids shall be received after reasonable advertisement therefor and when opened shall be read in public session. The board of directors may award contracts based upon the bids to the lowest responsible bidders, except that the board of directors may, for such reasons as appear to it good and substantial, reject all bids. The board of directors shall have power and authority to do all of such work and to purchase materials and supplies without advertising for bids and without entering into contract with any other persons or companies in relation thereto.

Source: Laws 1913, c. 143, § 9, p. 354; R.S.1913, § 4251; C.S.1922, § 3754; C.S.1929, § 14-1010; R.S.1943, § 14-1016; R.S.1943, (1991), § 14-1016; Laws 1992, LB 746, § 21.

14-2122 Utilities district; gas mains and service lines; extension.

In addition to any other rights and powers conferred upon metropolitan utilities districts under sections 14-2101 to 14-2157 and Chapter 18, article 4, for the purpose of extending gas mains and service pipes, such districts shall have the power and authority to extend or enlarge gas mains and service pipes whenever it is deemed proper and economically feasible to do so in such nondiscriminatory manner as may be determined from time to time by the board of directors of such districts.

Source: Laws 1957, c. 20, § 1, p. 152; R.S.1943, (1991), § 14-1103.01; Laws 1992, LB 746, § 22.

14-2123 Board of directors; power to adopt rules and regulations; fix prices.

The board of directors of a metropolitan utilities district is hereby empowered to (1) adopt all necessary rules and regulations for the operation and conducting of the business and affairs of its natural gas and water utilities for the purpose of supplying gas for heat and power purposes for public and private use and for the purpose of supplying water for domestic, mechanical, public, and fire purposes and (2) fix the prices to be charged therefor.

Source: Laws 1919, c. 187, § 2, p. 421; C.S.1922, § 3772; C.S.1929, § 14-1028; Laws 1939, c. 9, § 1, p. 74; C.S.Supp.,1941, § 14-1028; Laws 1943, c. 36, § 21, p. 176; R.S.1943, § 14-1038; Laws 1945, c. 19, § 2, p. 124; Laws 1967, c. 46, § 2, p. 177; R.S.1943, (1991), § 14-1038; Laws 1992, LB 746, § 23.

14-2124 Utilities district; gas utility; rules and regulations.

In addition to all other proper subjects for rules and regulations, the board of directors of a metropolitan utilities district may adopt rules and regulations, in the interest of public health and safety and the conservation of gas, relating to the use, installation, and maintenance of piping, equipment, and appliances for gas on the premises of consumers. Such district may adopt and promulgate rules and regulations to establish priorities for the use of gas, including the curtailment and denial of its use. All rules and regulations shall be published once in the official paper of the particular city within such district and be kept posted at the main office of the district for public inspection. When such rules and regulations are so adopted, published, and posted, they shall have the same legal force and effect as a city ordinance and be binding upon the consumers of the district as one of the conditions to their service. Nothing in this section shall be construed to prevent any qualified person or persons from installing or maintaining appliances in connection with any of the public utilities mentioned in this section.

Source: Laws 1939, c. 9, § 1, p. 75; C.S.Supp.,1941, § 14-1028; Laws 1943, c. 36, § 21, p. 176; R.S.1943, § 14-1039; Laws 1945, c. 19, § 3, p. 125; Laws 1974, LB 599, § 1; R.S.1943, (1991), § 14-1039; Laws 1992, LB 746, § 24.

14-2125 Utilities district; utilization of gas or propane supplies; pipeline for transportation of gas; agreements; purpose.

(1) A metropolitan utilities district may enter into agreements with other companies or municipalities operating gas distribution systems and with gas pipeline companies, whether within or outside the state, for the transportation, purchase, sale, or exchange of available gas supplies or propane supplies held for peak-shaving purposes, so as to realize full utilization of available gas supplies and for the mutual benefit of the contracting parties.

(2) A metropolitan utilities district may own, construct, maintain, and operate an interstate or intrastate pipeline, whether within or outside of the district's boundaries, for purposes of securing and transporting natural gas supplies for itself or others and may enter into contractual agreements with other pipeline companies, gas distribution companies, municipalities, or political subdivisions or any other legal entity whatsoever for such purposes.

Source: Laws 1977, LB 499, § 1; Laws 1987, LB 177, § 1; R.S.1943, (1991), § 14-1103.03; Laws 1992, LB 746, § 25.

14-2126 Utilities district; hydrants; location.

The metropolitan utilities districts shall maintain free of charge the number of hydrants heretofore established for fire protection in the streets of the municipalities constituting such districts and, in addition thereto, maintain regular fire hydrants approximately four hundred feet apart on service mains in the streets of the municipalities not now equipped therewith and also upon service mains that may hereafter be installed in such municipalities. Intermediate hydrants or fire hydrants placed between regular hydrants shall be installed by the district at such points as may be designated and ordered by any one of the municipalities. One-half of the cost of such intermediate hydrants, connections, and installation shall be borne by the municipality ordering the same. The district shall also lower water mains and reset hydrants at their original locations whenever necessary.

Source: Laws 1913, c. 143, § 15, p. 357; R.S.1913, § 4257; Laws 1919, c. 33, § 4, p. 109; C.S.1922, § 3760; C.S.1929, § 14-1016; Laws 1943, c. 42, § 1, p. 186; R.S.1943, § 14-1023; R.S.1943, (1991), § 14-1023; Laws 1992, LB 746, § 26.

Cited but not discussed. R-R Realty Co. v. Metropolitan Utilities Dist., 184 Neb. 237, 166 N.W.2d 746 (1969).

Promise of water company, assumed by city purchasing waterworks, is matured by above statute, though conditions not fulfilled. Creighton Real Estate Co. v. City of Omaha, 112 Neb. 802, 204 N.W. 66 (1925).

Part of section requiring cities to pay the cost of lowering of gas and water mains is unconstitutional. Metropolitan Utilities District v. City of Omaha, 112 Neb. 93, 198 N.W. 858 (1924).

14-2127 Utilities district; water for public use by municipalities and schools; duty to provide.

The metropolitan utilities district may, in its discretion, also afford, free of charge, water required for public use by each of the municipalities and schools within the limits of such municipalities. It shall be the duty of each of the municipalities and schools to reasonably conserve such water and to install and maintain all plumbing and services required in connection with such use in good condition and free from leaks, subject to the rules and bylaws governing water service in such district. If any flush tank maintained in connection with the sewage system of any such municipality uses more than fifty thousand gallons of water per month, as determined by meter measurement, the board of directors of the district may collect for the excess water used at the established rates maintained by the board.

Source: Laws 1913, c. 143, § 15, p. 357; R.S.1913, § 4257; Laws 1919, c. 33, § 4, p. 109; C.S.1922, § 3760; C.S.1929, § 14-1016; Laws 1943, c. 42, § 1, p. 187; R.S.1943, § 14-1024; Laws 1945, c. 18, § 1, p. 122; R.S.1943, (1991), § 14-1024; Laws 1992, LB 746, § 27.

Cited but not discussed. R-R Realty Co. v. Metropolitan Utilities Dist., 184 Neb. 237, 166 N.W.2d 746 (1969).

14-2128 Utilities district; water; sale; cities and villages; authorized.

In addition to any and all powers heretofore granted to metropolitan utilities districts, any such district may, in its discretion, by authorization of its board of directors, contract to sell water for use by a waterworks and water distribution system owned and operated by a city of any class or village except a city of the metropolitan class. The water so sold shall be used for the same domestic,

mechanical, public, and fire purposes as water which a metropolitan utilities district supplies the consumers served water directly by it. The rates for water so sold shall be fixed by the metropolitan utilities district, including therein a demand or capacity charge in addition to a charge for the volume of water delivered. All water so delivered shall be metered at its point of delivery. The cost of any main extensions necessary to deliver the water to the city or village contracting for such supply shall be paid by it and set forth in the contract. The term of such contract shall not exceed twenty-five years.

Source: Laws 1965, c. 79, § 1, p. 314; R.S.1943, (1991), § 14-1111; Laws 1992, LB 746, § 28.

14-2129 Utilities district; water; sale; cities, villages, and sanitary and improvement districts; sewer use; charges; contract; fees.

If a metropolitan utilities district supplies water at retail to residents of a city or village other than a city of the metropolitan class or residents of a sanitary and improvement district, whether or not such city, village, or sanitary and improvement district is within the district boundaries, such city, village, or sanitary and improvement district and metropolitan utilities district shall have power and authority to enter into a contract to obtain the use of facilities and services of the water utility of such district in order to collect from the residents supplied water by the district sewer use or rental fees or charges for other utility services for such city, village, or sanitary and improvement district in the same manner and to the same extent as is provided for such services to cities of the metropolitan class by sections 14-2134 to 14-2136. No utility service under this section shall be discontinued for nonpayment of charges for unrelated services.

Source: Laws 1972, LB 1188, § 1; R.S.1943, (1991), § 14-1111.01; Laws 1992, LB 746, § 29.

14-2130 Utilities district; water; sale; natural resources district; contract; uses.

(1) A metropolitan utilities district may contract to sell water to a natural resources district at such rates, for such charges, and upon such other terms and conditions as may be agreed upon in the contract.

(2) Such water shall be used by the natural resources district in a special improvement project supplying water for any beneficial use. With the consent of the metropolitan utilities district, such water may be used by the natural resources district in a special improvement project to supply the municipal waterworks and distribution system of a city of any class or village outside the boundaries of the metropolitan utilities district.

(3) Such municipalities are hereby empowered to contract with a natural resources district to purchase water at such rates, for such charges, and upon such terms and conditions as may be agreed upon in the contract.

Source: Laws 1975, LB 245, § 1; R.S.1943, (1991), § 14-1111.02; Laws 1992, LB 746, § 30.

14-2131 Utilities district; water; sale; cities and villages; contract; charges; resolution by governing body.

To accomplish the purposes of section 14-2128, cities of all classes and villages, except cities of the metropolitan class, shall have the power to contract with a metropolitan utilities district and pay the charges and costs in the manner provided in the contract for the purpose of maintaining an adequate supply of water for the waterworks and distribution system serving such municipality, such contract to be approved by resolution of the governing body of such municipality.

Source: Laws 1965, c. 79, § 2, p. 315; R.S.1943, (1991), § 14-1112; Laws 1992, LB 746, § 31.

14-2132 Utilities district; water; sale; cities and villages; sections; effect.

Notwithstanding any provisions of law applicable to cities, villages, and metropolitan utilities districts to the contrary, sections 14-2128 to 14-2132 shall be deemed to be an act complete within itself, to cover the entire subject to which it relates, and to be an independent act.

Source: Laws 1965, c. 79, § 3, p. 315; R.S.1943, (1991), § 14-1113; Laws 1992, LB 746, § 32.

14-2133 Utilities district; bills; how rendered.

Metropolitan utilities districts in rendering bills and statements may set forth therein the net amount that shall be due without setting forth the amount of the discount, if any. When bills are so rendered, the metropolitan utilities district may collect an additional charge of not more than ten percent when bills or statements rendered are not paid at maturity, it being understood that the additional charge is not added by way of penalty but as a means of economizing in bookkeeping and in rendering bills and statements by which the items of discount are omitted therefrom.

Source: Laws 1921, c. 111, § 5, p. 391; C.S.1922, § 3779; C.S.1929, § 14-1105; R.S.1943, § 14-1005; R.S.1943, (1991), § 14-1105; Laws 1992, LB 746, § 33.

14-2134 Utilities district; collection of other fees for city authorized; contracts authorized.

In addition to any and all powers granted to cities of the metropolitan class and metropolitan utilities districts within and serving such cities, a city of the metropolitan class may enter into a contract with the metropolitan utilities district within its area in order to obtain the use of facilities and services of the water utility of such a district and in order to collect all or any part of a sewer use or rental fee or all or any part of a garbage and refuse removal, disposal, or recycling fee which such city may lawfully be entitled to charge and collect.

Source: Laws 1959, c. 32, § 1, p. 187; R.S.1943, (1991), § 14-1108; Laws 1992, LB 746, § 34; Laws 1992, LB 1257, § 64.

This section and two succeeding sections upheld as constitutional. Metropolitan Utilities Dist. v. City of Omaha, 171 Neb. 609, 107 N.W.2d 397 (1961).

14-2135 Utilities district; collection of sewer use fee for city; payment; discontinuance of service.

To accomplish the purposes of section 14-2134, a city of the metropolitan class is empowered to pay such metropolitan utilities district the charges for

such services as set forth in the contract, and such district may discontinue water service to its customers for failure to pay the sewer rental or use fee.

Source: Laws 1959, c. 32, § 2, p. 187; R.S.1943, (1991), § 14-1109; Laws 1992, LB 746, § 35.

Officials of M.U.D. in complying with statute providing for shutting off services for nonpayment did not violate civil rights statute. Morgan v. Kennedy, 331 F.Supp. 861 (D. Neb. 1971).

14-2136 Utilities district; collection of sewer use fee for city; powers cumulative.

The powers granted in sections 14-2134 and 14-2135 to cities of the metropolitan class and metropolitan utilities districts are cumulative and not in derogation or amendment of the existing powers of each.

Source: Laws 1959, c. 32, § 3, p. 187; R.S.1943, (1991), § 14-1110; Laws 1992, LB 746, § 36.

14-2137 Accounts of district; audit and approval; expenditures; records; public inspection.

All accounts of the metropolitan utilities district shall be audited by the secretary and approved by a committee of the board to be styled the committee on accounts and expenditures. No money shall be appropriated out of any fund except on the recorded affirmative vote of a majority of all the members of the board. The records of the metropolitan utilities district shall be at all times subject to inspection and examination by the public during business hours.

Source: Laws 1913, c. 143, § 7, p. 353; R.S.1913, § 4249; C.S.1922, § 3752; C.S.1929, § 14-1008; R.S.1943, § 14-1013; R.S.1943, (1991), § 14-1013; Laws 1992, LB 746, § 37.

14-2138 Utilities district; payment to city of the metropolitan class; allocation.

The metropolitan utilities district shall pay to the city of the metropolitan class a sum equivalent to two percent of the annual gross revenue derived from all retail sales of water and gas sold by such district within such city. Such sum shall be paid on a quarterly basis, the last quarterly payment to be made not later than the thirtieth day of January of the next succeeding year, except that annual payments to such city shall not be less than five hundred thousand dollars. Such city shall not levy or collect any license, occupation, or excise tax upon or from such district. All payments provided by this section shall be allocated by the district among the several utilities operated by it upon such basis as the district shall determine.

Source: Laws 1919, c. 187, § 4, p. 421; C.S.1922, § 3774; C.S.1929, § 14-1030; Laws 1943, c. 36, § 23, p. 177; R.S.1943, § 14-1041; Laws 1945, c. 19, § 5, p. 125; Laws 1947, c. 21, § 2, p. 112; Laws 1961, c. 33, § 1, p. 153; Laws 1967, c. 47, § 1, p. 179; R.S.1943, (1991), § 14-1041; Laws 1992, LB 746, § 38.

Revenue from sale of water and gas by metropolitan utilities district are not taxes and section as amended by L.B. 425 (Laws 1967) is constitutional. Evans v. Metropolitan Utilities Dist., 187 Neb. 261, 188 N.W.2d 851 (1971).

Class action could not be used to test constitutionality of section. Evans v. Metropolitan Utilities Dist., 185 Neb. 464, 176 N.W.2d 679 (1970).

Cited but not discussed. Evans v. Metropolitan Utilities Dist., 184 Neb. 172, 166 N.W.2d 411 (1969).

Allocation of cost of various utilities must be on a reasonable basis. Metropolitan Utilities Dist. v. City of Omaha, 171 Neb. 609, 107 N.W.2d 397 (1961).

14-2139 Utilities district; payment to cities or villages; allocation.

A metropolitan utilities district shall pay to every city or village of any class, other than metropolitan, in which such district sells water or gas, or both, at retail, a sum equivalent to two percent of the annual gross revenue derived from all retail sales of water or gas, or both, sold by such district within the city or village. Such sums shall be paid not later than the thirtieth day of January of the next succeeding year. Such cities or villages shall not levy or collect any license, occupation, or excise tax upon or from such district. All payments provided by this section shall be allocated by the district among the several utilities operated by it upon such basis as the district shall determine.

Source: Laws 1967, c. 47, § 2, p. 179; R.S.1943, (1991), § 14-1042; Laws 1992, LB 746, § 39.

Revenue from sale of water and gas by metropolitan utilities district are not taxes and section created by L.B. 425 (Laws 1967) is constitutional. Evans v. Metropolitan Utilities Dist., 187 Neb. 261, 188 N.W.2d 851 (1971).

Cited but not discussed. Evans v. Metropolitan Utilities Dist., 184 Neb. 172, 166 N.W.2d 411 (1969).

14-2140 Repealed. Laws 2001, LB 177, § 11.

14-2141 Utilities district; funds; management and control; power to borrow.

Metropolitan utilities districts may, when deemed necessary by a resolution of the board of directors, temporarily lend the funds of one utility to the fund of another utility under its control, at the current market rate of interest as determined by the board of directors. In the case of emergency, or for the purpose of short-term financing of extensions, improvements, additions, and capital investments, the district may, by resolution of its board of directors, borrow money, for a term not to exceed five years, but the amount so borrowed shall not exceed ten percent of the depreciated plant value of the utility for which such money is borrowed.

Source: Laws 1921, c. 111, § 4, p. 391; C.S.1922, § 3778; C.S.1929, § 14-1104; Laws 1939, c. 9, § 3, p. 76; Laws 1941, c. 19, § 1, p. 108; C.S.Supp.,1941, § 14-1104; R.S.1943, § 14-1104; Laws 1953, c. 23, § 2, p. 97; Laws 1967, c. 48, § 1, p. 180; R.S.1943, (1991), § 14-1104; Laws 1992, LB 746, § 41.

14-2142 Utilities district; bonds; issuance; sale; election required; when; obligations without election; when authorized; powers of board of directors.

(1) In case the board of directors deems it necessary and expedient for such metropolitan utilities district to vote mortgage or revenue bonds for the construction, extension, or improvement of a water plant or any other public utility under its control or for any other purpose, to the end of supplying the district with water or other service for domestic, mechanical, public, or other purposes, the board may determine the amount of such bonds, when principal and interest is payable, and the rate of interest and may issue the bonds when voted. The board of directors shall submit a proposition to vote such bonds to the registered voters of the metropolitan utilities district at an election called by the board for such purpose, or at any regular election, notice of which has been given for at least ten days in one or more daily papers published in the district.

If a majority of the votes cast upon such proposition is in favor of the issuance of such bonds, the board of directors may issue and sell such bonds in the manner as the board shall determine.

(2) In addition to the power provided in subsection (1) of this section as to issuance of bonds, and notwithstanding such provisions requiring a vote of the registered voters, and in addition to the limited power to borrow heretofore vested in any such district, the board of directors of such district without a vote of the registered voters and at their own discretion (a) may borrow, to be used solely for the purpose of extensions, improvements, additions, and capital investments, such sum as the board of directors by resolution determines to be needed for such purposes and (b) in the exercise of such additional power may issue warrants, notes, debentures, revenue bonds, or refunding obligations of the same classes, each of which shall be payable solely from the revenue of the district. The obligations issued by the district without a vote of the registered voters are hereby declared to be negotiable instruments, and such instruments and the interest paid thereon shall be exempt from any and all forms of taxation.

(3) The district may (a) refund all or any part of the obligations issued by the district without a vote of the registered voters by exchange or other means through the issuance of any of such forms of obligation at any time and in an amount equal to or exceeding the original amount, (b) invest the proceeds of refunding obligations for a temporary period until they are needed for the purpose of retirement of other obligations, (c) covenant as to rates, (d) create and provide for reserves or amortization funds, and (e) covenant as to the limitation of the creation of further indebtedness. All such evidences of indebtedness issued by the district without a vote of the registered voters shall be offered upon such terms and in such manner as the board determines. The same power to covenant and to provide funds shall also exist in the case of obligations authorized by the registered voters. The board of directors of any such district in the exercise of any of the borrowing powers, with or without a vote of the registered voters provided for in this section, may appoint as agents of such district corporations doing business within or without the State of Nebraska to act for it in receiving, redeeming, and paying for any of the securities so issued.

Source: Laws 1913, c. 143, § 18, p. 359; R.S.1913, § 4260; Laws 1921, c. 112, § 1, p. 392; C.S.1922, § 3763; C.S.1929, § 14-1019; R.S. 1943, § 14-1029; Laws 1947, c. 20, § 4, p. 109; Laws 1953, c. 23, § 1, p. 95; Laws 1969, c. 64, § 1, p. 374; Laws 1969, c. 51, § 20, p. 284; R.S.1943, (1991), § 14-1029; Laws 1992, LB 746, § 42.

14-2143 Water fund; sources; purposes; tax; how levied.

The water fund shall consist of all money received on account of the water plant owned and operated by the metropolitan utilities district for water service or otherwise, including a water tax for public fire protection purposes levied by the municipal authorities of each municipality forming such metropolitan utilities district or, in the case of a sanitary and improvement district or unincorporated area forming a part of the metropolitan utilities district but outside the limits of a municipality, by the board of county commissioners of the county in which the sanitary and improvement district or unincorporated area is located. Such tax shall be levied at the same time and in the same

manner as other funds provided for municipal purposes or county purposes under the provisions of the charter of such municipality or municipalities or of the general laws in the case of a county or a sanitary and improvement district. The amount of the tax shall be certified to the municipal authorities or the county commissioners, as the case may be, by the board of directors of the metropolitan utilities district in time for the annual levy of taxes in each year. The gross amount of such tax shall not exceed the sum of five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such utilities district, and it shall be mandatory upon such municipal authorities or county commissioners to levy same as provided in this section.

Source: Laws 1913, c. 143, § 16, p. 358; R.S.1913, § 4258; Laws 1919, c. 33, § 5, p. 110; C.S.1922, § 3761; C.S.1929, § 14-1017; R.S.1943, § 14-1026; Laws 1947, c. 21, § 1, p. 112; Laws 1953, c. 287, § 4, p. 930; Laws 1972, LB 1272, § 1; Laws 1979, LB 187, § 33; R.S.1943, (1991), § 14-1026; Laws 1992, LB 746, § 43; Laws 1992, LB 719A, § 39.

Levy imposed pursuant to this section is not a state levy for state purposes, therefore constitutional prohibition on property taxes for state purposes not violated. R-R Realty Co. v. Metropolitan Utilities Dist., 184 Neb. 237, 166 N.W.2d 746 (1969).

Law requiring cities to levy tax to pay hydrant rentals is constitutional. State ex rel. Metropolitan Utilities Dist. v. City of Omaha, 112 Neb. 694, 200 N.W. 871 (1924).

14-2144 Funds of district; authorized investments.

The funds of the metropolitan utilities district may be invested at the discretion of the board of directors in the warrants and bonds of the district and the municipalities constituting the district, including the warrants and bonds of the improvement districts thereof. In addition to such securities, the funds also may be invested in any securities that are legal investments for the school funds of this state.

Source: Laws 1913, c. 143, § 16, p. 359; R.S.1913, § 4258; Laws 1919, c. 33, § 5, p. 111; C.S.1922, § 3761; C.S.1929, § 14-1017; R.S.1943, § 14-1027; R.S.1943, (1991), § 14-1027; Laws 1992, LB 746, § 44.

14-2145 Utilities district; annual audit; filing.

In each metropolitan utilities district in the State of Nebraska, the board of directors shall cause the accounts of the district to be examined and audited annually. Such examination shall show (1) the gross income from all sources of the district for the previous year, (2) the gross amount of water and gas supplied in the district, (3) the amount expended during the previous year for repairs, (4) the amount expended during the previous year for new machinery, (5) the amount expended in the previous year for property purchased, (6) the amount of depreciation of the plant during the previous year, (7) the cost per thousand gallons of supplying water and per thousand cubic feet for supplying natural gas, (8) the amount collected from the sale and rent of meters, (9) the total assessment made against property for the extension of mains, (10) a detailed statement of all items of expense, (11) the number of employees, (12) the salaries paid employees, (13) the total amount of direct taxes levied by such metropolitan utilities district upon the property within the district, and (14) all other facts necessary to give an accurate and comprehensive view of the cost of maintaining and operating the plant. The audit report shall be filed with the

Auditor of Public Accounts within six months after the end of the district's fiscal year.

Source: Laws 1915, c. 211, § 1, p. 470; C.S.1922, § 3768; C.S.1929, § 14-1024; R.S.1943, § 14-1034; R.S.1943, (1991), § 14-1034; Laws 1992, LB 746, § 45; Laws 2000, LB 692, § 3.

14-2146 Utilities district; annual audit; information; access.

The Auditor of Public Accounts and the person making the examination and audit pursuant to section 14-2145 shall have access to all books, records, vouchers, papers, contracts, or other data containing information on the subject in the office of the board of such metropolitan utilities district, in the office of the individual appointed in section 14-2109, or in the possession or under the control of any of the agents or employees of the district. It is hereby made the duty of all officers, agents, and employees of the district to furnish to the auditor and his or her agents and employees such information regarding the auditing of the metropolitan utilities district as may be demanded.

Source: Laws 1915, c. 211, § 2, p. 470; C.S.1922, § 3769; C.S.1929, § 14-1025; R.S.1943, § 14-1035; R.S.1943, (1991), § 14-1035; Laws 1992, LB 746, § 46; Laws 2000, LB 692, § 4; Laws 2007, LB207, § 3.

14-2147 Utilities district; annual audit; reports; filing; expenses.

Upon the completion of such examination and audit, the person making the same shall file and furnish to the village or city clerk of each village or city within the district one copy of his or her report. Another copy shall be furnished to the county board of the counties in which the metropolitan utilities district is located. A copy shall also be placed on file with the individual appointed in section 14-2109. The original copy shall be filed in the office of the Auditor of Public Accounts. The cost and expense of making such audit shall be paid by the metropolitan utilities district in which such audit and examination have been made. The auditor shall make out and certify a bill for the expense of making such an audit. Upon presentation of the bill to the secretary of the board of the metropolitan utilities district, it shall be the duty of the board to allow and pay the claim. The amount thereof shall be paid to the State Treasurer.

Source: Laws 1915, c. 211, § 3, p. 471; C.S.1922, § 3770; C.S.1929, § 14-1026; R.S.1943, § 14-1036; Laws 1957, c. 21, § 2, p. 154; R.S.1943, (1991), § 14-1036; Laws 1992, LB 746, § 47; Laws 2007, LB207, § 4.

14-2148 Utilities district; entry upon private property; when authorized.

Whenever it may be deemed necessary, the board of directors of the metropolitan utilities district or its employees shall have the authority, in the discharge of their duties, to enter upon any lands or premises for the examination or survey thereof, for the purpose of repairing any water or natural gas pipe, for the purpose of inspecting any water or natural gas service or the plumbing connected with any such service, for the purpose of removing or connecting any apparatus required in connection with such service and plumbing under the rules and regulations of the board, for the purpose of reading any

meter or meters attached to the service, or for any other purpose whatsoever in connection with or relating to the water or natural gas service.

Source: Laws 1913, c. 143, § 10, p. 355; R.S.1913, § 4252; C.S.1922, § 3755; C.S.1929, § 14-1011; R.S.1943, § 14-1017; R.S.1943, (1991), § 14-1017; Laws 1992, LB 746, § 48.

14-2149 Prohibited acts; penalty.

Any person who willfully interferes with or obstructs any employee of the metropolitan utilities district in the discharge of his or her duties, who willfully tampers with or injures such water or natural gas facilities or the pipes, apparatus, or any service connected therewith, or who changes or alters the plumbing or connection between the water or gas meter and service main affording the water or natural gas supply without securing a permit as required by the rules and regulations of the board of directors shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1913, c. 143, § 12, p. 355; R.S.1913, § 4254; C.S.1922, § 3757; C.S.1929, § 14-1013; R.S.1943, § 14-1019; R.S.1943, (1991), § 14-1019; Laws 1992, LB 746, § 49.

14-2150 Surplus property; sale proceeds; disposition.

Whenever any of the property of a utility under the control of a metropolitan utilities district, whether real property or personal property, is no longer required for the operation of such utility, the district may sell and convey such surplus property, whether the property was acquired directly by the district or as a part of the utility plant or system acquired by the city of the metropolitan class or any municipality or other political subdivision constituting a part of the district. Proceeds of the sale of such surplus property shall be credited to the utility of which the property was a part, or when funds of more than one utility have been invested in property involved in a consolidated operation of the district, proceeds of such sale shall be apportioned among the utilities involved in such consolidated operation upon some reasonable basis determined by the board of directors of the district.

Source: Laws 1972, LB 1250, § 1; R.S.1943, (1991), § 14-1115; Laws 1992, LB 746, § 50.

This section removed from metropolitan city any right to sell and convey utility property, gave that right to the metropolitan utilities district, and determined manner of disposition of proceeds of sale. Lynch v. Metropolitan Utilities Dist., 192 Neb. 17, 218 N.W.2d 546 (1974).

14-2151 Utilities district; bonds; when not required.

No bond for costs, appeal, supersedeas, injunction, or attachment shall be required of any metropolitan utilities district or of any officer, board, head of any department, agent, or employee of any such district in any proceeding or court action in which the metropolitan utilities district or any officer, board, head of department, agent, or employee is a party litigant in its, his, or her official capacity.

Source: Laws 1965, c. 34, § 1, p. 225; R.S.1943, (1991), § 14-1114; Laws 1992, LB 746, § 51.

14-2152 Utilities district; elections; procedure.

The elections provided for in sections 14-2102, 14-2120, 14-2142, and 14-2157 shall be held according to the Election Act.

Source: Laws 1913, c. 143, § 19, p. 360; R.S.1913, § 4261; C.S.1922, § 3764; C.S.1929, § 14-1020; R.S.1943, § 14-1030; R.S.1943, (1991), § 14-1030; Laws 1992, LB 746, § 52; Laws 1994, LB 76, § 479.

Cross References

Election Act, see section 32-101.

14-2153 Utilities district; restriction on sale of equipment or appliances.

A metropolitan utilities district shall not sell any gas-burning equipment or appliances, at either retail or wholesale, if the retail price of that item exceeds fifty dollars, except that newly developed gas-burning appliances may be merchandised and sold during the period of time in which any such appliances are being introduced to the public. New models of existing appliances shall not be deemed to be newly developed appliances. A gas-burning appliance shall be considered to be in such introductory period of time until the particular type of appliance is used by twenty-five percent of all the gas customers served by such district, but such period shall in no event exceed seven years from the date of introduction by the manufacturer of the new appliance to the local market.

Source: Laws 1921, c. 111, § 1, p. 390; C.S.1922, § 3775; C.S.1929, § 14-1101; R.S.1943, § 14-1101; Laws 1961, c. 34, § 1, p. 155; R.S.1943, (1991), § 14-1101; Laws 1992, LB 746, § 53.

Name of existing district was derived from this section. Erickson v. Metropolitan Utilities Dist., 171 Neb. 654, 107 N.W.2d 324 (1961).

Metropolitan utilities district is a municipal corporation created by statute to take over, control and operate the water plant formerly owned by the city of Omaha and certain other public utilities. Keystone Investment Company v. Metropolitan Utilities District, 113 Neb. 132, 202 N.W. 416 (1925), 37 A.L.R. 1507 (1925).

Metropolitan utilities district is a corporation, and as such, it succeeded to the rights, powers and duties of the water board and the metropolitan water district. State ex rel. Metropolitan Utilities District v. City of Omaha, 112 Neb. 694, 200 N.W. 871 (1924), 46 A.L.R. 602 (1924).

In 1921, metropolitan utilities district became the successor of the metropolitan water district and has all the powers and authority conferred upon the district as fully and effectually as though the corporate name had not been changed. Metropolitan Utilities District v. City of Omaha, 112 Neb. 93, 198 N.W. 858 (1924).

14-2154 Utilities district; energy conservation or weatherization programs; establish; powers.

A metropolitan utilities district may establish energy conservation or weatherization programs that will encourage and promote the efficient use of energy supplies. A metropolitan utilities district may enter into agreements with companies, service organizations, municipalities, political subdivisions, or state or federal agencies to establish or participate in such programs. Such participation may include the providing of administrative or other similar services from the district's separate gas utility for the support of such programs.

Source: Laws 1983, LB 362, § 1; R.S.1943, (1991), § 14-1102.01; Laws 1992, LB 746, § 54.

14-2155 Utilities district; public offstreet motor vehicle parking facilities; location.

A metropolitan utilities district is hereby authorized to own, purchase, construct, equip, and operate public offstreet motor vehicle parking facilities on property owned or leased by such district within the area designated as the civic center by the city council in the master plan of a city of the metropolitan

class. Such parking facilities shall be constructed upon land contiguous to the office or administrative headquarters of such district and shall be used in whole or in part in connection therewith.

Source: Laws 1973, LB 577, § 1; R.S.1943, (1991), § 14-1116; Laws 1992, LB 746, § 55.

14-2156 Utilities district; public offstreet motor vehicle parking facilities; bonds; powers.

A metropolitan utilities district shall have authority to issue bonds and evidences of indebtedness for the purposes of acquiring, purchasing, constructing, and equipping such parking facilities as provided in section 14-2142 for other public utilities under its control and may manage the funds of such parking facilities and borrow money as provided by section 14-2141 for other utilities.

Source: Laws 1973, LB 577, § 2; R.S.1943, (1991), § 14-1117; Laws 1992, LB 746, § 56.

14-2157 Utilities district; termination; petition; election.

The existence of a metropolitan utilities district may be terminated by the people of the district in the following manner: Upon the filing of a petition with the board of directors signed by fifteen percent of the registered voters of the district at least thirty days prior to the date of any general state election requesting that the question of the continuance or termination of the existence of such district be submitted to a vote of the registered voters of the district, it shall be the duty of such board to submit the question at such general state election, and if a majority of the votes cast thereon shall be in favor of the continuance of such district, then it shall continue, otherwise its existence shall cease at the close of the thirty-first day of the following month.

Source: Laws 1913, c. 143, § 21, p. 361; R.S.1913, § 4263; C.S.1922, § 3766; C.S.1929, § 14-1022; R.S.1943, § 14-1032; R.S.1943, (1991), § 14-1032; Laws 1992, LB 746, § 57.

CHAPTER 15
CITIES OF THE PRIMARY CLASS

Article.
1. Incorporation, Extensions, Additions, Wards, Consolidation. 15-101 to 15-118.
2. General Powers. 15-201 to 15-278.
3. Elections; Officers and Employees. 15-301 to 15-332.
4. Council and Proceedings. 15-401 to 15-406.
5. Water Department. 15-501, 15-502.
6. Contracts and Franchises. Transferred or Repealed.
7. Public Improvements. 15-701 to 15-759.
8. Fiscal Management, Revenue, and Finances. 15-801 to 15-849.
9. City Planning, Zoning. 15-901 to 15-905.
10. Pensions. 15-1001 to 15-1027.
11. Planning Department. 15-1101 to 15-1106.
12. Appeals. 15-1201 to 15-1205.
13. Community Development. 15-1301 to 15-1307.

Cross References

Constitutional provisions:
Charter, adoption and amendment, see Article XI, sections 2 to 5, Constitution of Nebraska.
Charter, home rule, see Article XI, section 5, Constitution of Nebraska.
City property, exemption from taxation, see Article VIII, section 2, Constitution of Nebraska.
Corporate debts of municipal corporations, private property not liable for, see Article VIII, section 7, Constitution of Nebraska.
Industrial and economic development, see Article XIII, section 2, Constitution of Nebraska.
Special assessments, power to levy for local improvements, see Article VIII, section 6, Constitution of Nebraska.
Taxes on municipal corporations for corporate purposes, Legislature shall not impose, see Article VIII, section 7, Constitution of Nebraska.
Air conditioning air distribution board, see sections 18-2301 to 18-2315.
Ambulance service, see section 13-303.
Annexation:
Of contiguous property, county road, effect, see section 18-1716.01.
Statute of Limitations, see section 18-1718.
Armories, state, see sections 18-1001 to 18-1006.
Aviation fields, see sections 18-1501 to 18-1509.
Bankruptcy, power to file for, see section 13-402.
Bids for public work, see Chapter 73, articles 1 and 2.
Bonds and indebtedness:
Compromise of indebtedness, see sections 10-301 to 10-305.
Industrial development bonds, see sections 13-1101 to 13-1110.
Purchase of community development bonds, see section 18-2134.
Railroad aid and other internal improvement work bonds, see sections 10-401 to 10-411.
Refunding outstanding instruments, see sections 18-1101 and 18-1102.
Registration of bonds, see Chapter 10, articles 1 and 2.
Various purpose bonds, see sections 18-1801 to 18-1805.
Warrants, see Chapter 77, article 22.
Budget Act, Nebraska, see section 13-501 et seq.
Building permit, duplicate to county assessor, when, see section 18-1743.
Business Improvement District Act, see section 19-4015 et seq.
Charter conventions, see sections 19-501 to 19-503.
City manager plan of government, see sections 19-601 to 19-648.
Commission form of government, see sections 19-401 to 19-433.
Community nurse, employment, see sections 71-1637 to 71-1639.
Condemnation of property, see section 18-1722 et seq.
Contracts:
Contractors, bond required, see sections 52-118 to 52-118.02.
Home-delivered meals, contracts authorized, see section 13-308 et seq.
Officers, conflicts of interest, see sections 49-14,103.01 to 49-14,103.07.
Public lettings and contracts, see Chapter 73, articles 1 and 2.
Economic development:
Community Development Assistance Act, see section 13-201 et seq.
Community Development Law, see section 18-2101 et seq.
Industrial development, see sections 13-1101 to 13-1121.
Local Option Municipal Economic Development Act, see section 18-2701 et seq.

Power to levy, see Article VIII, section 6, Constitution of Nebraska.
Taxes on municipal corporations for corporate purposes, Legislature shall not impose, see Article VIII, section 7, Constitution of Nebraska.
Television, community antenna television service, see sections 18-2201 to 18-2206.
Tort claims, Political Subdivisions Tort Claims Act, see section 13-901 et seq.
Traffic violations, violations bureau, see section 18-1729.
Transportation:
Dock board, see sections 13-1401 to 13-1417.
Nebraska Public Transportation Act, see section 13-1201 et seq.
Utilities:
Districts, public utility districts, see sections 18-401 to 18-413.
Eminent domain, see sections 19-701 to 19-710.
Financing, Municipal Cooperative Financing Act, see section 18-2401 et seq.
Heating and lighting systems, see sections 19-1401 to 19-1404.
Municipal Proprietary Function Act, see section 18-2801 et seq.
Sewerage system, see sections 18-501 to 18-512 and 18-1748.
Workers' compensation, city subject to, see Chapter 48, article 1.
Zoning and planning, see sections 13-302, 18-1716, and 18-1721.

ARTICLE 1
INCORPORATION, EXTENSIONS, ADDITIONS, WARDS, CONSOLIDATION

Section

15-101 Cities of the primary class, defined; population required.

All cities having more than one hundred thousand and less than three hundred thousand inhabitants shall be known as cities of the primary class. The population of a city of the primary 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. 16, § 1, p. 71; R.S.1913, § 4404; C.S.1922, § 3780; C.S.1929, § 15-101; R.S.1943, § 15-101; Laws 1947, c. 50, § 2, p. 171; Laws 1961, c. 58, § 2, p. 216; Laws 1965, c. 85, § 2, p. 328; Laws 1993, LB 726, § 4.

A city may put into its home rule charter any provisions that it deems proper so long as they do not run contrary to the Constitution or to any general statute. Eppley Hotels Co. v. City of Lincoln, 133 Neb. 550, 276 N.W. 196 (1937).

In matters relating exclusively to local and municipal affairs, home rule charter prevails over conflicting provisions in statute. Pester v. City of Lincoln, 127 Neb. 440, 255 N.W. 923 (1934).

Home rule charter may not contravene Constitution or general statutes. Schroeder v. Zehrung, 108 Neb. 573, 188 N.W. 237 (1922).

Classification is not special legislation although only one city in state falls within class. State ex rel. Pentzer v. Malone, 74 Neb. 645, 105 N.W. 893 (1905).

Act was not void as to tax commissioners, nor was it amendatory of state revenue law. State ex rel. Prout v. Aitken, 62 Neb. 428, 87 N.W. 153 (1901).

15-102 Declaration as city of the primary class; when.

Whenever any city not of the metropolitan class shall attain a population of over one hundred thousand inhabitants, and such fact shall be duly certified by the mayor thereof to the Governor under seal, he shall by proclamation declare such city to be of the primary class.

Source: Laws 1901, c. 16, § 2, p. 71; R.S.1913, § 4405; C.S.1922, § 3781; C.S.1929, § 15-102; R.S.1943, § 15-102; Laws 1967, c. 53, § 1, p. 189.

15-103 Declaration as city of the primary class; government pending reorganization.

The government of such city shall continue in authority from the date of such proclamation until reorganization as a city of the primary class.

Source: Laws 1901, c. 16, § 3, p. 71; R.S.1913, § 4406; C.S.1922, § 3782; C.S.1929, § 15-103.

15-104 Corporate limits; extension; annexation of villages; powers of city council.

The corporate limits of such city shall remain as before and the city council may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts, streets, or highways such distance and in such direction as may be deemed proper, and may include, annex, merge or consolidate with such city by such extension of its corporate limits, any village which is within the limits of such city, and which it serves with water service or supply or with a sanitary sewerage system and service, or both such water and sanitary sewerage service. Such city shall have power by ordinance to compel owners of land so brought within the corporate limits to lay out streets and public ways to conform to and be continuous with the streets and ways of such city, or otherwise as appears best for the convenience of the inhabitants of such city and the public. It may vacate any public road established through such land when necessary to secure regularity in the general system of its public ways.

Source: Laws 1901, c. 16, § 4, p. 71; R.S.1913, § 4407; Laws 1919, c. 41, § 1, p. 124; C.S.1922, § 3783; C.S.1929, § 15-104; R.S.1943, § 15-104; Laws 1957, c. 51, § 9, p. 242; Laws 1963, c. 86, § 1, p. 295; Laws 1965, c. 43, § 1, p. 238.

Lands annexed by city of primary class met all requirements set out in this section. Campbell v. City of Lincoln, 182 Neb. 459, 155 N.W.2d 444 (1968).

Agricultural lands may not be annexed to city where the sole object of annexation is to increase its revenue. Witham v. City of Lincoln, 125 Neb. 366, 250 N.W. 247 (1933).

Under conditions stated, council had power to include plaintiff's land in city. Miller v. City of Lincoln, 94 Neb. 577, 143 N.W. 921 (1913).

15-105 Corporate limits; extension; contiguous territory, defined.

Land shall be deemed contiguous although a stream, embankments, strip or parcel of land, not more than five hundred feet wide, lies between such land and the corporate limits.

Source: Laws 1901, c. 16, § 5, p. 72; R.S.1913, § 4408; C.S.1922, § 3784; C.S.1929, § 15-105; R.S.1943, § 15-105; Laws 1972, LB 1147, § 1.

15-106 Additions; how platted; approval; filed and recorded; effect; powers of mayor, city planning commission, and city planning director; appeal.

The proprietor of any land within the corporate limits of a city of the primary class or contiguous thereto may lay out such land into lots, blocks, public ways, and other grounds under the name of ..... addition to the city of .... and shall cause an accurate plat thereof to be made, designating explicitly the land so laid out and particularly describing the lots, blocks, public ways, and grounds belonging to such addition. The lots shall be designated by number and by street. Public ways and other grounds shall be designated by name and by number. Such plat shall be acknowledged before some officer authorized to take acknowledgment of deeds and shall have appended to it a certificate made by a registered land surveyor that he or she has accurately surveyed such addition and that the lots, blocks, public ways, and other grounds are staked and marked as required by such city.

When such plat is made, acknowledged, and certified, complies with the requirements of section 15-901, and is approved by the city planning commission, such plat shall be filed and recorded in the office of the register of deeds and county assessor of the county. In lieu of approval by the city planning commission, the city council may designate specific types of plats which may be approved by the city planning director. No plat shall be recorded in the office of the register of deeds or have any force or effect unless such plat is approved by the city planning commission or the city planning director. The plat shall, after being filed with the register of deeds, be equivalent to a deed in fee simple absolute to the city, from the proprietor, of all streets, all public ways, squares, parks, and commons, and such portion of the land as is therein set apart for public use or dedicated to charitable, religious, or educational purposes.

All additions thus laid out shall remain a part of the city, and all additions, except those additions as set forth in sections 15-106.01 and 15-106.02, laid out adjoining or contiguous to the corporate limits of a city of the primary class shall be included therein and become a part of the city for all purposes. The inhabitants of such addition shall be entitled to all the rights and privileges and subject to all the laws, ordinances, rules, and regulations of the city. The mayor and city council shall have power by ordinance to compel owners of any such addition to lay out streets and public ways to correspond in width and direction and to be continuous with the streets and public ways in the city or additions contiguous to or near the proposed addition.

No addition shall have any validity, right, or privilege as an addition unless the terms and conditions of such ordinance and of this section are complied with, the plats thereof are submitted to and approved by the city planning commission or the city planning director, and the approval of the city planning commission or the city planning director is endorsed thereon. The city council may provide procedures in land subdivision regulations for appeal by any

person aggrieved by any action of the city planning commission or city planning director on any plat.

Source: Laws 1901, c. 16, § 6, p. 72; R.S.1913, § 4409; C.S.1922, § 3785; C.S.1929, § 15-106; R.S.1943, § 15-106; Laws 1959, c. 40, § 1, p. 217; Laws 1974, LB 757, § 2; Laws 1975, LB 410, § 1; Laws 1982, LB 909, § 1; Laws 1987, LB 715, § 1; Laws 1993, LB 39, § 1.

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).

15-106.01 Certain additions with low population density; included within corporate limits of city; when.

Commencing on April 17, 1982, an addition which has been approved pursuant to section 15-106 and is adjoining or contiguous to the corporate boundaries of the city but which includes land which lies wholly or partially (1) outside of the area designated and described as being for future urban uses in the comprehensive plan adopted by the city pursuant to sections 15-1102 and 15-1103 and (2) within a zoning district adopted pursuant to section 15-902 which allows a residential density of not more than one dwelling per acre shall be included within the corporate limits of the city only upon the enactment of a city ordinance specifically annexing such addition.

Source: Laws 1982, LB 909, § 2; Laws 1993, LB 39, § 2.

15-106.02 Certain agricultural-industrial reserve additions; included within corporate limits of city; when.

Commencing on April 17, 1982, an addition which has been approved pursuant to section 15-106 and is adjoining or contiguous to the corporate boundaries of the city, but which (1) includes land which lies wholly or partially within the area designated as being for future urban uses in the comprehensive plan adopted by the city pursuant to sections 15-1102 and 15-1103 and (2) is set aside in such comprehensive plan as an agricultural-industrial reserve shall be included within the corporate limits of the city only upon the enactment of a city ordinance specifically annexing such addition.

Source: Laws 1982, LB 909, § 3.

15-107 Corporate name; service of process.

The corporate name of each city of the primary class shall be The City of ..... . All process affecting any such city shall be served in the manner provided for service of a summons in a civil action.

Source: Laws 1901, c. 16, § 7, p. 73; R.S.1913, § 4410; C.S.1922, § 3786; C.S.1929, § 15-107; R.S.1943, § 15-107; Laws 1983, LB 447, § 4.

15-108 Reorganization; rights and privileges preserved.

When any city shall be incorporated as a city of the primary class, all its trusts, rights, and privileges shall be transmitted to and be invested in such latter corporation.

Source: Laws 1901, c. 16, § 8, p. 73; R.S.1913, § 4411; C.S.1922, § 3787; C.S.1929, § 15-108.

15-109 Repealed. Laws 1994, LB 76, § 615.

15-110 Precincts; numbering; division.

Precinct lines in that part of the county not under township organization within the corporate limits of a city of the primary class shall correspond in number with the ward and be coextensive therewith; *Provided*, when a ward is divided into election districts, the precinct corresponding with such ward shall be divided to correspond with the election district.

Source: Laws 1901, c. 16, § 11, p. 74; R.S.1913, § 4413; C.S.1922, § 3789; C.S.1929, § 15-110; R.S.1943, § 15-110; Laws 1961, c. 35, § 1, p. 157.

15-111 Cities and villages; consolidation; petition; election; ballot forms.

A city of the second class or village, which adjoins a city of the primary class, as well as other villages either adjoining such city of the second class or villages, or supplied in whole or in part with gas, electric light, or street transportation service or supply from manufacturing or power plants and systems mainly located in and maintained and operated mainly from chief headquarters or offices within such city of the primary class, may be consolidated with such city of the primary class in the manner hereinafter set out. It shall be the duty of the officers of such cities of the second class and villages twenty days prior to any general city or village election, to submit to the electors thereof at such general city or village election whenever petitioned to do so by twenty percent of the qualified electors thereof, the question of the consolidation of such adjoining cities or villages with the city of the primary class. Such question shall be submitted in substantially the following form:

Shall the city of ..... be consolidated with the city of ..... ? Or, as the case may be, Shall the village of ..... be consolidated with the city of ..... ? The ballot shall provide in the usual manner for a Yes and No vote on the question.

Source: Laws 1921, c. 202, § 1, p. 730; C.S.1922, § 3790; C.S.1929, § 15-111; R.S.1943, § 15-111; Laws 1955, c. 55, § 1, p. 177.

Action of city council, in passing on validity of proceedings for consolidation, was final in absence of fraud or mistake. State ex rel. Loomis v. City of Lincoln, 119 Neb. 352, 229 N.W. 19 (1930).

15-112 Consolidation; approval of electors; certification.

If at such election a majority of the vote cast in such municipality shall be in favor of such consolidation, the result shall be certified to the city council of the city of the primary class. If the city council of such city of the primary class approves of the consolidation, an ordinance shall be passed extending the limits of such city to include all the territory of the city of the second class or village voting for consolidation, and the city or cities, village or villages, so consolidated with the city of the primary class shall become a part thereof.

Source: Laws 1921, c. 202, § 2, p. 730; C.S.1922, § 3791; C.S.1929, § 15-112.

15-113 Annexed cities and villages; rights and liabilities of city, franchise holders, and licensees.

Whenever any city of the primary class shall extend its boundaries so as to annex any village, or whenever there is consolidation taking effect in the

manner herein provided, the charter, laws, ordinances, powers, and government of such city of the primary class, shall at once extend over the territory embraced within any such city or village so annexed or consolidated with it; and such city of the primary 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 city or village so annexed or consolidated with it; and it shall be liable for and assume and carry out all valid contracts, obligations, franchises, and licenses of any such city or village so annexed or consolidated with it. Such city or village so annexed or consolidated with such city of the primary class shall be deemed fully compensated by virtue of such annexation or consolidation and the said assumption of its obligations and contracts for all its property and property rights of every kind so acquired. Any public franchise granted to or held by any person or corporation from such city of the primary class, before such consolidation or annexation, shall not by virtue of such consolidation or annexation be extended into, upon or over the streets or public places of the city or village so consolidated with or annexed by such city. Any public franchise, license or privilege granted to or held by any person or corporation from any of the cities or villages consolidated with or annexed by such city of the primary class before such consolidation or annexation shall not by virtue of such consolidation be extended into, upon or over the streets, alleys or public places of the city of the primary class involved in such consolidation or annexation.

Source: Laws 1921, c. 202, § 3, p. 731; C.S.1922, § 3792; C.S.1929, § 15-113; R.S.1943, § 15-113; Laws 1965, c. 43, § 2, p. 239.

Upon consolidation of village with city of the primary class, status of streets as to vacation was subject to conditions binding upon the village. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

Upon consolidation with another municipality, city of Lincoln became liable for, assumed and was required to carry out all valid obligations of the municipality consolidated with it. Enyeart v. City of Lincoln, 136 Neb. 146, 285 N.W. 314 (1939).

15-114 Repealed. Laws 1961, c. 284, § 1.

15-115 Annexed cities and villages; taxes, fines, fees, claims; inure to city of the primary class.

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

Source: Laws 1921, c. 202, § 5, p. 732; C.S.1922, § 3794; C.S.1929, § 15-115; R.S.1943, § 15-115; Laws 1965, c. 43, § 3, p. 239.

15-116 Annexed cities and villages; authorized taxes, assessments; right of city of the primary class to assess and levy.

All taxes and special assessments which such city of the second class or village so consolidated or annexed was authorized to levy or assess and which are not levied or assessed at the time of such consolidation or 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 primary class as consolidated or annexed, and such city of the primary class shall have power to reassess all special assessments or taxes levied or assessed by any such city of the second class or village thus consolidated or annexed with it, in all cases

where such city of the second class or village is authorized to make reassessments or relevies of such taxes and assessments.

Source: Laws 1921, c. 202, § 6, p. 732; C.S.1922, § 3795; C.S.1929, § 15-116; R.S.1943, § 15-116; Laws 1965, c. 43, § 4, p. 240.

15-117 Annexed cities and villages; actions pending; claims; claimants' rights.

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

Source: Laws 1921, c. 202, § 7, p. 732; C.S.1922, § 3796; C.S.1929, § 15-117; R.S.1943, § 15-117; Laws 1965, c. 43, § 5, p. 240.

Right of action on account of injuries received, due to negligence of municipality prior to consolidation with city of Lincoln, could be prosecuted after consolidation against latter city. Enyeart v. City of Lincoln, 136 Neb. 146, 285 N.W. 314 (1939).

15-118 Annexed cities and villages; books, records, property; transfer to city; offices; termination.

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

Source: Laws 1921, c. 202, § 8, p. 732; C.S.1922, § 3797; C.S.1929, § 15-118; R.S.1943, § 15-118; Laws 1965, c. 43, § 6, p. 241.

ARTICLE 2

GENERAL POWERS

Section

Section

15-201 General powers; how exercised; seal.

Cities of the primary class shall be bodies corporate and politic and shall have power:

(1) To sue and be sued;

(2) To purchase, lease, or otherwise acquire as authorized by their home rule charters or state statutes real estate or personal property within or without the limits of the city for its use for a public purpose;

(3) To purchase real or personal property upon sale for general or special taxes or assessments and to lease, sell, convey, or exchange such property so purchased;

(4) To sell, convey, exchange, or lease real or personal property owned by the city in such manner and upon such terms and conditions as shall be deemed in the best interests of the city as authorized by its home rule charter, 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;

(5) To make contracts and do all acts relative to the property and concerns of the city necessary or incident or appropriate to the exercise of its corporate powers, including powers granted by the Constitution of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto and including the power to execute such bonds and obligations on the part of the city as may be required in judicial proceedings;

(6) To purchase, construct, and otherwise acquire, own, maintain, and operate public service and public utility property and facilities within and without the limits of the city and to redeem such property from prior encum-

brance in order to protect or preserve the interest of the city therein and to exercise such other and further powers as may be necessary or incident or appropriate to the powers of such city, including powers granted by the Constitution of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto. If the public service or public utility property or facility is located outside the limits of the city but within the zoning jurisdiction of another political subdivision, the city and the other political subdivision may by interlocal agreement provide or exchange services, including utility services, relating to the property or facilities;

(7) To receive grants, devises, donations, and bequests of money or property for public purposes in trust or otherwise; and

(8) To provide for the planting, maintenance, protection, and removal of shade, ornamental, and other useful trees upon the streets or boulevards; to assess the cost thereof, when appropriate, as a special assessment against the property specially benefited to the extent of benefits received; and to provide by general ordinance for the manner in which such benefits are to be measured and the assessments calculated and the means of notice to the owners of the record title of the property proposed to be improved, including a written statement of the proposed benefits and an estimate of the costs to be assessed according to the method of assessment. The city may create districts by ordinance which shall designate the property within the district to be benefited and the method of assessment. Notwithstanding the provisions of any city charter and except as provided below, no such improvement shall be finally ordered by the city council until a petition, signed by the owners of the record title of property within the proposed district which would be subject to more than fifty percent of the total of all special assessments to be levied for the purposes authorized by this subdivision, is presented and filed with the city clerk petitioning therefor. The sufficiency of the petitions and objections so presented and the sufficiency of notice as provided in this subdivision shall be determined by the city council and its determination thereof shall be conclusive in the absence of objections made and presented to the city council prior to the letting of the contract for the improvement. If an assessment district is proposed without a prior authorizing petition as described in this subdivision, the owners of the record title of property within the proposed district which would be subject to more than fifty percent of the total of all special assessments to be levied for the purposes authorized by this subdivision may, by petition, stop formation of such 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. The powers shall be exercised by the mayor and council of the city except in cases otherwise specified by law. The mayor and council shall adopt a corporate seal for the use of any officer, board, or agent of the city whose duties require an official seal.

Source: Laws 1901, c. 16, § 9, p. 73; Laws 1905, c. 16, § 1, p. 199; R.S.1913, § 4414; Laws 1915, c. 81, § 1, p. 206; C.S.1922, § 3798; C.S.1929, § 15-201; Laws 1935, Spec. Sess., c. 10, § 5, p. 73; Laws 1941, c. 130, § 11, p. 496; C.S.Supp.,1941, § 15-201; R.S.1943, § 15-201; Laws 1965, c. 44, § 1, p. 242; Laws 1988, LB 793, § 2; Laws 1993, LB 78, § 1; Laws 2005, LB 161, § 2.

Promise of additional compensation to firemen by member of council does not bind city. Scott v. City of Lincoln, 104 Neb. 546, 178 N.W. 203 (1920).

Municipal corporations engaging in private enterprises are liable the same as private persons. Henry v. City of Lincoln, 93 Neb. 331, 140 N.W. 664 (1913).

Excise board, in providing that common carriers should deliver liquors at one station to consignee personally, did not usurp powers of mayor and council. Barrett v. Rickard, 85 Neb. 769, 124 N.W. 153 (1910).

May sell property acquired at tax sale without vote of electors. State ex rel. Caldwell v. Citizens St. Ry. Co., 80 Neb. 357, 114 N.W. 429 (1907).

Power to sue and be sued includes power to compromise suits. Farnham v. City of Lincoln, 75 Neb. 502, 106 N.W. 666 (1906).

Where suit is commenced by proper law officers of city, authority is presumed. Lincoln Street Ry. Co. v. City of Lincoln, 61 Neb. 109, 84 N.W. 802 (1901).

15-201.01 Zoning regulations; authority outside of county.

Any jurisdiction or authority which a city of the primary class may exercise outside of its corporate limits by authority of state law may be exercised by such city outside of the county in which it is located.

Source: Laws 1967, c. 75, § 7, p. 242.

15-201.02 Purchase of real or personal property; installment contracts authorized.

In addition to any other powers granted to it by law, a city of the primary class may enter into installment contracts for the purchase of real or personal property. Such contracts need not be restricted to a single year and may provide for the purchase of the property in installment payments to be paid over more than one fiscal year. This section shall be in addition to and notwithstanding the provisions of a home rule charter.

Source: Laws 1988, LB 978, § 1; Laws 2006, LB 1175, § 1.

15-202 Property and occupation taxes; power to levy.

A city of the primary class shall have power to levy taxes for general revenue purposes on all property within the corporate limits of the city taxable according to the laws of Nebraska and to levy an occupation tax on public service property or corporations in such amounts as may be proper and necessary, in the judgment of the mayor and council, for purposes of revenue. All such taxes shall be uniform with respect to the class upon which they are imposed. The occupation tax may be based upon a certain percentage of the gross receipts of such public service corporation or upon such other basis as may be determined upon by the mayor and council.

Source: Laws 1901, c. 16, § 129, I, p. 126; Laws 1905, c. 16, § 11, p. 212; Laws 1907, c. 9, § 12, p. 84; R.S.1913, § 4416; C.S.1922, § 3800; C.S.1929, § 15-203; R.S.1943, § 15-202; Laws 2001, LB 329, § 13.

Tax based upon gross receipts, though part received from long distance tolls, is valid. Nebraska Tel. Co. v. City of Lincoln, 82 Neb. 59, 117 N.W. 284 (1908).

15-203 Occupation tax; power to levy; exemptions.

A city of the primary class shall have power to 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 regulate the same by ordinance except as otherwise provided in this section and in section 15-212. 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. 16, § 129, XIV, p. 130; Laws 1905, c. 16, § 11, p. 212; R.S.1913, § 4425; C.S.1922, § 3809; C.S.1929, § 15-212; R.S.1943, § 15-203; Laws 1993, LB 121, § 131.

Assessment of occupation tax based on gross earnings and also a franchise tax is not double taxation. Lincoln Traction Co. v. City of Lincoln, 84 Neb. 327, 121 N.W. 435 (1909); Nebraska Tel. Co. v. City of Lincoln, 82 Neb. 59, 117 N.W. 284 (1908).

Payment of an occupation tax cannot be made a condition precedent to obtaining a license to conduct business sought to be taxed. State ex rel. School Dist. of City of Lincoln v. Aitken, 61 Neb. 490, 85 N.W. 395 (1901).

15-204 Additional taxes; authorized.

A primary city shall have power to levy any other tax or special assessment authorized by law, and to appropriate money and provide for the payment of the debts and expenses of the city.

Source: Laws 1901, c. 16, § 129, II, p. 126; R.S.1913, § 4417; C.S.1922, § 3801; C.S.1929, § 15-204.

15-205 Safety regulations; sidewalk structures; powers.

A primary city shall have power to remove all obstructions from the sidewalk, 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 to regulate the building of bulkheads, cellars, and basement ways, stairways, railways, window and doorways, awnings, hitching posts and rails, lampposts, awning posts, and all other structures upon or over adjoining excavations through or under the sidewalks of the city.

Source: Laws 1901, c. 16, § 129, VI, p. 128; R.S.1913, § 4418; C.S.1922, § 3802; C.S.1929, § 15-205.

Allowing and regulating entrances to basements through sidewalks is within reasonable discretion of mayor and council. State ex rel. McNerney v. Armstrong, 97 Neb. 343, 149 N.W. 786 (1914).

Where boiler room was constructed under proper authority from city, after maintenance for fifteen years, authorities could not have same removed as a nuisance. Tiernan v. Thorp, 88 Neb. 662, 130 N.W. 280 (1911).

City must keep streets and walks free of obstructions for entire width. Chapman v. City of Lincoln, 84 Neb. 534, 121 N.W. 596 (1909).

15-206 Repealed. Laws 1967, c. 54, § 1.

15-207 Traffic; regulations; vehicle tax; powers.

A primary city shall have power, by ordinance, to regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to provide for a vehicle license or tax.

Source: Laws 1901, c. 16, § 129, VIII, p. 129; Laws 1905, c. 16, § 11, p. 212; R.S.1913, § 4420; C.S.1922, § 3804; C.S.1929, § 15-207.

15-208 Signs and obstructions on streets and public property; traffic and safety regulations; powers.

A primary city shall have power to prevent and remove all encroachments on streets, avenues, alleys, and other city property; prevent and punish 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; to regulate the riding, driving or passing along any street of the city, and to regulate, prevent and punish the riding, driving or passing of horses, mules, oxen, cattle or teams, or any vehicle drawn

thereby over, upon or across sidewalks; to regulate and prevent the use of streets, sidewalks, and public grounds for signs, signposts, awnings, telegraph, telephone or other poles, racks, bulletin boards, and the posting of handbills and advertisements; to regulate traffic and sales upon the streets; to prohibit and punish cruelty to animals; to regulate and prevent the moving of buildings through or upon the streets.

Source: Laws 1901, c. 16, § 129, IX, p. 129; R.S.1913, § 4421; C.S.1922, § 3805; C.S.1929, § 15-208.

The fact that the Legislature enacts a law making driving a motor vehicle while intoxicated a crime, does not abrogate city ordinance defining and prescribing a penalty for same offense, or deprive municipality of power to legislate on same subject in future. State v. Hauser, 137 Neb. 138, 288 N.W. 518 (1939).

City of Lincoln does not have power under home rule charter to require by ordinance a sign painter to pay ten dollars annual license fee in addition to inspectors' regulatory permit and fee of one dollar for each sign. State v. Wiggenjost, 130 Neb. 450, 265 N.W. 422 (1936).

15-209 Railroads, depots, warehouses; power to regulate.

A primary city shall have power, by ordinance, to regulate levees, depots, depot grounds and places for storing freight and goods, and to provide for and regulate the passing of railways through the streets and public grounds of the city, reserving the rights of all persons injured thereby.

Source: Laws 1901, c. 16, § 129, X, p. 129; R.S.1913, § 4422; C.S.1922, § 3806; C.S.1929, § 15-209.

Selection and grading of streets by railway company for its track are subject to regulation and control of city. Omaha, L. & B. Ry. Co. v. City of Lincoln, 97 Neb. 122, 149 N.W. 319 (1914).

15-210 Parks, monuments, recreation centers; acquire; construct; maintain; donations.

A primary city shall have power to acquire, hold, and improve public grounds, parks, playgrounds, swimming pools, recreation centers, or any other park or recreational use or facility within or without the limits of the city, to provide for the protection and preservation and use of such grounds, parks, and other uses and facilities, to provide for the planting and protection of trees, to erect and construct or aid in the erection and construction of statues, memorials, works of art and other structures upon any public grounds of the city or state or political subdivision thereof, and to receive grants, devises, donations and bequests of money or property for the above purposes in trust or otherwise.

Source: Laws 1901, c. 16, § 129, XI, p. 129; Laws 1911, c. 11, § 2, p. 91; R.S.1913, § 4423; C.S.1922, § 3807; C.S.1929, § 15-210; R.S. 1943, § 15-210; Laws 1959, c. 41, § 1, p. 222; Laws 1967, c. 55, § 1, p. 190.

15-211 Lots; drainage.

A primary city shall have power, by ordinance, to require any and all lots or pieces of ground within the city to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. Upon the failure of the owners of such lots or pieces of ground to fill or drain the same when so required, the council may cause such lots or pieces of ground to be drained or filled, and the cost and expenses thereof shall be levied upon the property so filled or drained, and collected as any other special tax.

Source: Laws 1901, c. 16, § 129, XII, p. 130; R.S.1913, § 4424; C.S.1922, § 3808; C.S.1929, § 15-211.

15-212 Peddlers and vendors; regulation.

A primary city shall have power, by ordinance, to prevent forestalling, prohibit or regulate huckstering, prescribe the kind and description of articles which may be sold and places to be occupied by vendors, and may authorize the immediate seizure and arrest or removal from the markets of persons violating regulations fixed by ordinance; together with articles of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions. Nothing herein shall be construed to authorize the council by ordinance to assess or impose any tax, assessment, fine or punishment on any farmer or producer for selling at any time within the city any article of provision or vegetables grown or produced by him.

Source: Laws 1901, c. 16, § 129, XVI, p. 131; R.S.1913, § 4426; C.S.1922, § 3810; C.S.1929, § 15-213.

15-213 Repealed. Laws 1991, LB 356, § 36.

15-214 Repealed. Laws 1967, c. 54, § 1.

15-215 Theatres, churches, halls; licenses; safety regulations.

A primary city shall have power to regulate, license or suppress halls, opera houses, churches, places of amusement, entertainment or instruction or other buildings used for the assembly of citizens. It may 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 fires and for escape from such places in case of fire. It may prevent overcrowding and regulate the placing 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 not to exceed two hundred dollars shall be imposed, and that upon the conviction of any violation of any ordinance regulating such places, the license of such place shall be revoked by the mayor and council. Whenever the mayor or 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 the license, any owner, proprietor, manager, lessee or person, opening, using or permitting such place to be opened or used, involving the assembling 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. 16, § 129, XIX, p. 132; R.S.1913, § 4429; C.S.1922, § 3813; C.S.1929, § 15-216.

15-216 Buildings; construction; safety devices; regulation.

A primary city shall have power, by ordinance, to prescribe the thickness, strength, and manner of constructing stone, brick and other buildings, the number and construction of means of exit and entrance, and of fire escapes. It may require the keeper and proprietor of any hotel, boarding house or dormitory to provide and maintain such kind and number of ladders, ropes, balconies and 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. 16, § 129, XX, p. 133; R.S.1913, § 4430; C.S.1922, § 3814; C.S.1929, § 15-217.

15-217 Auctions; licensing; regulation.

A city of the primary class shall have power to regulate, license, or prohibit the sale of domestic animals, goods, wares, and merchandise at public auction in the streets, alleys, highways, or any public grounds within the city, and to regulate or license the auctioneering of goods, wares, and merchandise. If the applicant is an individual, an application for a license shall include the applicant's social security number.

Source: Laws 1901, c. 16, § 129, XXI, p. 133; R.S.1913, § 4431; C.S.1922, § 3815; C.S.1929, § 15-218; R.S.1943, § 15-217; Laws 1997, LB 752, § 74.

15-218 Animals at large; regulation; penalty.

A primary city shall have power, by ordinance, to regulate or prohibit 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 violation of such prohibitions and the fees and expenses of impounding and keeping the same and of such sale.

Source: Laws 1901, c. 16, § 129, XXII, p. 133; R.S.1913, § 4432; C.S. 1922, § 3816; C.S.1929, § 15-219.

15-219 Pounds; power to establish; operation.

A primary city shall have power to provide for the erection of all needful pens, pounds, and buildings for the use of the city, within or without such city limits, to appoint and compensate keepers thereof, and to establish and enforce rules governing the same.

Source: Laws 1901, c. 16, § 129, XXIII, p. 133; R.S.1913, § 4433; C.S. 1922, § 3817; C.S.1929, § 15-220.

15-220 Dogs and other animals; licensing; regulation.

A primary city shall have power to regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom, and to authorize the destruction of the same when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for dog guides, hearing aid dogs, and service dogs.

Source: Laws 1901, c. 16, § 129, XXIV, p. 133; R.S.1913, § 4434; C.S. 1922, § 3818; C.S.1929, § 15-221; R.S.1943, § 15-220; Laws 1981, LB 501, § 2; Laws 1997, LB 814, § 3.

Cross References

For other provisions for regulation of dogs and cats, see sections 15-218, 54-601 to 54-624, and 71-4401 to 71-4412.

15-221 Nuisances; prevention; abatement.

A primary city shall have power, by ordinance, to prevent any person from bringing, having, depositing or leaving upon or near his premises or elsewhere within the city any dead carcass, or other putrid beef, pork, fish, hides or skins

of any kind, or any other unwholesome substance, and to compel the removal of the same.

Source: Laws 1901, c. 16, § 129, XXV, p. 133; R.S.1913, § 4435; C.S. 1922, § 3819; C.S.1929, § 15-222.

Cross References

Mosquitoes, flies, or other insects, nuisance, abatement, see sections 71-2917 and 71-2918.

15-222 Public utilities; franchises; power to grant; elections required, when.

A primary city shall have power to make contracts with and authorize any person, company or association to erect gas works, electric or other light works in said city, and give such person, company or association the privilege of furnishing light for the streets, lanes, and alleys of said city for any length of time not exceeding one year, or for any time not exceeding five years upon being authorized so to do by a majority vote of the electors of such city. The mayor and council shall not have power to grant a franchise for any purpose for a period longer than twenty-five years. Franchises to be granted for a longer period than twenty-five years shall be submitted to a vote of the people and shall require a majority vote of the electors of the city voting thereon at a general or special election. All franchise ordinances shall require three readings on three separate days before passage by the council.

Source: Laws 1901, c. 16, § 129, XXVI, p. 133; Laws 1905, c. 16, § 11, p. 213; R.S.1913, § 4436; C.S.1922, § 3820; C.S.1929, § 15-223.

15-223 Water; rates; regulation.

A primary city shall have power to fix the rate of tax to be paid for the use of water furnished by the city or any person or corporation by means of waterworks, and provide by ordinance that any tax for the use of water furnished by said city shall be a lien upon the property where the same is furnished.

Source: Laws 1901, c. 16, § 129, XXVII, p. 134; R.S.1913, § 4437; C.S.1922, § 3821; C.S.1929, § 15-224.

15-224 Watercourses; wells; reservoirs; regulation.

A primary city shall have power to establish, alter, and change the channel of watercourses, and to wall and cover them over, to establish, make, and regulate public wells, cisterns, aqueducts and reservoirs of water, and to provide for the filling of the same.

Source: Laws 1901, c. 16, § 129, XXVIII, p. 134; R.S.1913, § 4438; C.S.1922, § 3822; C.S.1929, § 15-225.

15-225 Fire department; establishment; government.

A primary city shall have power to provide for the organization of a fire department, to procure fire engines, hooks, ladders, buckets and other apparatus, to organize fire engine, hook, ladder and bucket companies, to prescribe rules of duty, and the government thereof, with such penalties as the council may deem proper, not exceeding a one-hundred-dollar fine, to make all neces-

sary appropriations therefor, and to establish regulations for the prevention and extinguishment of fires.

Source: Laws 1901, c. 16, § 129, XXIX, p. 134; Laws 1907, c. 9, § 13, p. 84; Laws 1913, c. 7, § 1, p. 65; R.S.1913, § 4439; C.S.1922, § 3823; C.S.1929, § 15-226.

15-226 Repealed. Laws 1957, c. 24, § 1.

15-227 Repealed. Laws 1967, c. 54, § 1.

15-228 Water districts; water mains; enlarging; construction; assessments.

The city council shall have power to create water districts for the purpose of supplying water for domestic, industrial, or fire purposes, or for the purpose of enlarging any water mains, now existing or hereafter constructed. All such districts, to be known as water districts, shall be created by ordinance and shall designate the property to be benefited. Upon creation of any water district, the city council shall have power to construct or cause to be constructed, either by contract with the lowest responsible bidder or directly by the city, such water main or mains, or extensions or enlargements, including all necessary appliances for fire protection, within such districts as the council shall determine, and assess the costs thereof against the property in such district, not exceeding the special benefits accruing on account thereof. The city council shall have power and authority to fix the period of time, not to exceed twenty years, in which the special assessments against any property for the payment of the cost of such improvements may be made. The city council shall have power and authority to issue bonds in accordance with the provisions of a home rule charter of the city or of state law.

Source: Laws 1907, c. 9, § 13, p. 85; Laws 1913, c. 7, § 1, p. 65; R.S.1913, § 4439; C.S.1922, § 3823; C.S.1929, § 15-226; R.S.1943, § 15-228; Laws 1969, c. 66, § 1, p. 378.

15-229 Eminent domain; power to exercise; procedure; entry to make surveys and tests; damages.

A primary city is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for any present or future necessary or authorized public purpose within or without the city by gift, agreement, purchase, condemnation, or otherwise. In all such cases the city shall make the person or persons whose property shall be taken or injured thereby adequate compensation therefor. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. A primary city shall have authority to enter upon any property to make surveys, examinations, investigations, and tests, and to acquire other necessary and relevant data in contemplation of establishing a location of a necessary or authorized public purpose, acquiring property therefor, or performing other operations incident to construction, reconstruction, or maintenance of such public purpose, and entry upon any property pursuant to this authority shall not be considered to be a legal trespass and no damages shall be recovered on that account alone. In case of any actual or demonstrable damages to the premises, the city shall pay the owner of the premises the amount of the damages. Upon the failure of the landowner and the city to agree upon the

amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided for in section 76-705. The entry by the city or its representatives shall be made only after notice of the entry and its purpose.

Source: Laws 1901, c. 16, § 129, XXX, p. 135; R.S.1913, § 4440; C.S. 1922, § 3824; C.S.1929, § 15-227; R.S.1943, § 15-229; Laws 1951, c. 101, § 46, p. 467; Laws 1961, c. 36, § 1, p. 161; Laws 1967, c. 56, § 1, p. 191.

15-229.01 Acquisition of land, property, or interest; uneconomic remnants of land; acquire, when.

In connection with the acquisition of lands, property, or interests therein for a public purpose, the city may acquire by any lawful means, except through condemnation, an entire lot, block, or tract of land or property if, by so doing, the interests of the public will be best served, even though the entire lot, block, or tract is not immediately needed for public purposes. Without limiting such authority, this may be done where uneconomic remnants of land would be left the original owner or owners or where severance or consequential damages to a remainder make the acquisition of the entire parcel more economical to the city; *Provided*, that when any such property is left without access to a street and the cost of acquisition of such landlocked property or land through condemnation would be more economical to the city than the cost of providing a means of reasonable ingress to or egress from the property or land, the city may acquire such landlocked property or land by condemnation.

Source: Laws 1967, c. 56, § 2, p. 192.

15-229.02 Real property; acquisition.

The city may acquire additional real property by gift, agreement, purchase, exchange, or condemnation if such additional real property is needed for the purpose of moving and establishing thereon buildings, structures, or other appurtenances which are situated on real property acquired by the city for a public purpose. The city may make agreements for the exchange of property, to make allowances for differences in the value of the properties being exchanged, and move or pay the cost of moving buildings, structures, or other appurtenances.

Source: Laws 1967, c. 56, § 3, p. 193.

15-230 Public libraries; establishment.

A primary city may establish, maintain, and operate public library facilities, purchase books, papers, maps and manuscripts therefor, receive donations and bequests of money or property for the same in trust or otherwise, and pass necessary bylaws and regulations for the protection and government of the same.

Source: Laws 1901, c. 16, § 129, XXXI, p. 135; R.S.1913, § 4441; C.S. 1922, § 3825; C.S.1929, § 15-228; R.S.1943, § 15-230; Laws 1961, c. 36, § 2, p. 161.

15-231 Hospital; establishment.

A primary city may purchase or otherwise acquire ground for and erect, establish, operate, regulate, and repair a city hospital or any hospital, the

governing board of which is appointed by the mayor or council; to receive donations and bequests of money or property for the same in trust or otherwise; and to issue bonds of the city for acquiring, constructing, reconstructing, improving, extending, equipping, or furnishing such hospital facilities.

Source: Laws 1901, c. 16, § 129, XXXII, p. 135; R.S.1913, § 4442; C.S.1922, § 3826; C.S.1929, § 15-229; R.S.1943, § 15-231; Laws 1959, c. 42, § 1, p. 223.

15-232 Repealed. Laws 1961, c. 37, § 4.

15-233 Repealed. Laws 1961, c. 37, § 4.

15-234 Hospital; rules; management.

There shall be established such rules for the government of such hospital and admission of persons to its privileges as may be deemed expedient. No religious or sectarian association, organization or body shall be permitted to manage or control such hospital.

Source: Laws 1901, c. 16, § 129, XXXV, p. 136; R.S.1913, § 4445; C.S. 1922, § 3829; C.S.1929, § 15-232; R.S.1943, § 15-234; Laws 1963, c. 55, p 1, p. 235.

15-235 Hospital; contracts to support; when authorized.

The council may enter into an agreement with a corporation or association organized for charitable purposes in such municipal corporation for the erection and management of a hospital for the sick and disabled, and have a permanent interest therein to an extent and upon such terms and conditions as may be agreed upon between the council and such corporation or association. The council shall provide for the payment of the amount agreed upon, for any interests therein so required, either in one payment or in installments, or so much from year to year as the parties may stipulate; *Provided*, such agreement shall not be made if the city shall have established a hospital as authorized by section 15-231. No such agreement shall extend more than one year.

Source: Laws 1901, c. 16, § 129, XXXVI, p. 136; R.S.1913, § 4446; C.S.1922, § 3830; C.S.1929, § 15-233.

15-235.01 Hospital; terms, defined.

As used in sections 15-235.01 to 15-235.05, unless the context otherwise requires:

(1) Governmental subdivision shall mean any city of the primary class and also any county in which a city of the primary class is the county seat thereof;

(2) Hospital shall mean any hospital organized pursuant to section 15-231, or any hospital or hospital facility established by a governmental subdivision in conjunction with or adjoining a hospital organized pursuant to section 15-231.

Source: Laws 1961, c. 38, § 1, p. 165.

15-235.02 Hospital; sinking fund; levy.

A governmental subdivision shall have the power to levy a tax, known as a hospital sinking-fund tax, upon all of the taxable property in its jurisdiction, which levy shall be in addition to all other authorized levies, for the use and

benefit of the hospital, and the proceeds of such taxes when and as collected shall be set aside and deposited in the special account or accounts in which other revenue of the governmental subdivision is deposited. This levy shall be accumulated as a sinking fund by the governmental subdivision from fiscal year to fiscal year to provide funds for hospital improvements, maintenance, and operation.

Source: Laws 1961, c. 38, § 2, p. 165; Laws 1992, LB 719A, § 40.

15-235.03 Hospital; income, revenue, profits; disbursement.

All income, revenue, and profits of the hospital and money derived from such levy, or from grants, loans, or contributions from the United States, the State of Nebraska, or any agency or instrumentality of either of them, shall be held by the treasurer of the governmental subdivision having jurisdiction over the hospital, and the treasurer shall not commingle such money with any other money under his control. Such money shall be deposited in a separate bank account or accounts and shall be withdrawn only by check or draft signed by said treasurer on requisition of the chairman of the hospital board or such other person as the hospital board may authorize. The chief auditing officer of the governmental subdivision and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of such hospital board including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its financial standing.

Source: Laws 1961, c. 38, § 2, p. 165.

15-235.04 Hospital; sinking fund; investment.

A governmental subdivision shall have the power and authority to invest and reinvest all idle funds in the hospital sinking fund, including but not limited to current tax receipts for such period of time as such funds are not immediately needed, in evidences of indebtedness of the United States Government and agencies thereof.

Source: Laws 1961, c. 38, § 5, p. 166.

15-235.05 Act, how cited.

Sections 15-235.01 to 15-235.05 may be cited as the Hospital Sinking Fund Act.

Source: Laws 1961, c. 38, § 6, p. 166.

15-236 Contagious diseases; control; board of health; hospitals.

A primary city may make all such ordinances, bylaws, rules and regulations not inconsistent with the general laws of the state as may be necessary or expedient to promote the public health, safety and welfare, including ordinances, bylaws, rules and regulations as may be necessary or expedient to prevent the introduction or spread of contagious, infectious or malignant diseases. This power and authority is granted to such city in the area which is within the city or within three miles of the city and outside of any organized city or village. It may create a department of health, make laws and regulations

for that purpose, and enforce all ordinances, bylaws, rules and regulations made as authorized herein as provided in section 15-263.

Source: Laws 1901, c. 16, § 129, XXXVII, p. 137; R.S.1913, § 4447; Laws 1919, c. 40, § 1, p. 123; C.S.1922, § 3831; C.S.1929, § 15-234; R.S.1943, § 15-236; Laws 1967, c. 57, § 1, p. 193.

The city of Lincoln enacted Municipal Code § 8.44.040, which regulates the disposition of refuse pursuant to a grant of authority found in this section. The court held that the authority to enforce ordinances is granted to an area within the city or within three miles of the city and outside any organized city or village. State v. Austin, 209 Neb. 174, 306 N.W.2d 861 (1981).

15-237 Health regulations; nuisances; abatement; slaughterhouses; stockyards; location.

A primary city shall have power to regulate in the area which is within the city or within three miles of the city and outside the zoning jurisdiction of any organized city or village in order to secure the general health; to provide rules for the prevention, abatement and removal of nuisances, including the pollution of air and water; to make and prescribe regulations for the construction, location and regulation of all slaughterhouses, stockyards, warehouses, commercial feed lots, stables or other places where offensive matter is kept, or is likely to accumulate.

Source: Laws 1901, c. 16, § 129, XXXVIII, p. 137; R.S.1913, § 4448; Laws 1919, c. 40, § 1, p. 124; C.S.1922, § 3832; C.S.1929, § 15-235; R.S.1943, § 15-237; Laws 1967, c. 57, § 2, p. 194.

Cross References

Mosquitoes, flies, or other insects, nuisance, abatement, see sections 71-2917 and 71-2918.

15-238 Health regulations; sewer connections; power to compel.

A primary city shall have power by ordinance to regulate and prohibit cesspools and privy vaults in said city, and shall have power to require the owner or owners of any lot, lots or lands within said cities, upon which any building or buildings are located, to connect said building or buildings with a sewer, provide same with a suitable privy or watercloset, to connect said privy or watercloset with a sewer, and to require said owner or owners to keep all privy vaults and cesspools clean. Upon the refusal to connect with a sewer or failure of said owner or owners to provide a suitable watercloset or privy, or to make any sewer connection, or to remove any privy vault or cesspool, or to clean the same, after five days' notice by publication, or in place thereof, personal notice to so do, then said city, through its proper officers, shall have power to make any sewer connection, construct any watercloset or privy, regulate or remove any privy vault or cesspool, or clean the same, or cause the same to be done, and shall have the power to provide by ordinance for assessing the cost thereof by special assessment against the lot, lots or lands of said owner.

Source: Laws 1915, c. 216, § 1, p. 485; C.S.1922, § 3833; C.S.1929, § 15-236.

15-239 Cemeteries; establishment.

A primary city may purchase, hold and pay for, in the manner herein provided, lands outside the limits of such city for the purpose of burial and cemetery grounds, and avenues leading thereto.

Source: Laws 1901, c. 16, § 129, XXXIX, p. 137; R.S.1913, § 4449; C.S.1922, § 3834; C.S.1929, § 15-237.

15-240 Cemeteries; improvement.

A primary city may survey, plot, map, grade, fence, ornament and otherwise improve all burial and cemetery grounds and avenues leading thereto owned by said city. It may construct walks, rear and protect ornamental trees therein, and provide for paying the expenses thereof.

Source: Laws 1901, c. 16, § 129, XL, p. 137; R.S.1913, § 4450; C.S.1922, § 3835; C.S.1929, § 15-238.

15-241 Cemeteries; conveyance of lots.

A primary city may convey cemetery lots owned by such city by certificates signed by the mayor and countersigned by the clerk under seal of the city, specifying that the person to whom the same is issued is 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 to such lot or lots for the sole purpose of interment under the regulations of the city council. 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 sufficient description thereof.

Source: Laws 1901, c. 16, § 129, XLI, p. 137; R.S.1913, § 4451; C.S.1922, § 3836; C.S.1929, § 15-239.

15-242 Cemeteries; ownership of lots; monuments.

A primary city may limit the number of cemetery lots which shall be owned by the same person at the same time. It may prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots and 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 such lots, the burial therein, nor the ornamentation of graves or lots.

Source: Laws 1901, c. 16, § 129, XLII, p. 138; R.S.1913, § 4452; C.S. 1922, § 3837; C.S.1929, § 15-240.

15-243 Cemeteries; regulation.

A primary city 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 full jurisdiction and power in the enforcement of such rules and ordinances as though they related to the city itself.

Source: Laws 1901, c. 16, § 129, XLIII, p. 138; R.S.1913, § 4453; C.S. 1922, § 3838; C.S.1929, § 15-241.

15-244 Money; power to borrow; pledges to secure; issuance of bonds; purposes; conditions.

A primary city 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, and in the manner otherwise provided by law or by the home rule charter of the city. It shall have the power to issue general obligation bonds of the city, general obligation notes, and refunding bonds, as provided in its home rule charter or as otherwise provided

by law. It 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 the city which is for a public purpose; *Provided*, that unless authorized by a majority of the voters of such city voting upon the question, no revenue bonds shall be issued for entering the public transportation, natural gas distribution or telephone fields or functions, or to acquire before 1972 that part of a retail distribution system of a public power district within the corporate limits of such city as those corporate limits existed on March 3, 1959. Such city shall also have the power to contract for the acquisition of the electric facilities and properties used or useful in connection therewith of a public power district within or without the city, and to pay for all or any part of the same out of the earnings of electric facilities and properties.

Source: Laws 1901, c. 16, § 129, XLIV, p. 138; R.S.1913, § 4454; C.S. 1922, § 3839; C.S.1929, § 15-242; R.S.1943, § 15-244; Laws 1965, c. 45, § 1, p. 244.

15-245 Repealed. Laws 1967, c. 54, § 1.

15-246 Repealed. Laws 1967, c. 54, § 1.

15-247 Election districts; establishment.

A primary city may divide the city into election districts, establish the boundaries thereof, and number the same.

Source: Laws 1901, c. 16, § 129, XLVII, p. 139; R.S.1913, § 4457; C.S.1922, § 3842; C.S.1929, § 15-245.

15-248 Repealed. Laws 1965, c. 44, § 3.

15-249 Officers; removal; vacancies; how filled.

A city of the primary class may provide for removing officers of the city for misconduct, except as otherwise provided in Chapter 15, and may provide for filling vacancies in any elective office as provided in sections 32-568 and 32-569.

Source: Laws 1901, c. 16, § 129, XLIX, p. 140; R.S.1913, § 4459; C.S. 1922, § 3844; C.S.1929, § 15-247; R.S.1943, § 15-249; Laws 1961, c. 37, § 1, p. 163; Laws 1994, LB 76, § 480.

Provisions of general election law for filling vacancies apply to alderman where no ordinance is inconsistent therewith, and appointee holds until successor is chosen at next general election. State ex rel. Castle v. Schroeder, 79 Neb. 759, 113 N.W. 192 (1907).

15-250 Officers; powers, duties; compensation; power to prescribe.

A primary city may regulate and prescribe the powers and duties, and compensation of officers of the city not herein provided.

Source: Laws 1901, c. 16, § 129, L, p. 140; R.S.1913, § 4460; C.S.1922, § 3845; C.S.1929, § 15-248.

15-251 Officers and employees; bonds or insurance.

A city of the primary class may require all officers or employees elected or appointed to give bond 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. It shall be optional with such officers to give a surety or guaranty company bond.

Source: Laws 1901, c. 16, § 129, LI, p. 140; R.S.1913, § 4461; C.S.1922, § 3846; C.S.1929, § 15-249; R.S.1943, § 15-251; Laws 1961, c. 37, § 2, p. 163; Laws 2007, LB347, § 4.

15-252 Officers; reports required.

A primary city may require of any officer of the city, at any time, a detailed report of the transactions of his office or any matters connected therewith.

Source: Laws 1901, c. 16, § 129, LII, p. 140; R.S.1913, § 4462; C.S.1922, § 3847; C.S.1929, § 15-250.

15-253 Repealed. Laws 1961, c. 37, § 4.

15-254 Ordinances; revision; publication.

A primary city may provide for the revision of the ordinances from time to time, and for their publication in pamphlet or book form, with or without the statutes relative to cities of the primary class.

Source: Laws 1901, c. 16, § 129, LIV, p. 141; R.S.1913, § 4464; C.S.1922, § 3849; C.S.1929, § 15-252.

15-255 Public safety; measures to protect.

A primary city may prohibit riots, routs, noise or disorderly assemblies; prevent use of firearms, rockets, powder, fireworks or other dangerous and combustible material; prohibit carrying of concealed weapons; arrest, punish, fine or set at work on streets or elsewhere vagrants and persons found without visible means of support or legitimate business; regulate and prevent the transportation of gunpowder or combustible articles, tar, pitch, rosin, coal, oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or its products or other explosives or inflammables; regulate use of lights in stables, shops or other places, and building of bonfires; and regulate and prohibit the piling of building material or any excavation or obstruction of the streets.

Source: Laws 1901, c. 16, § 129, LV, p. 141; R.S.1913, § 4465; C.S.1922, § 3850; C.S.1929, § 15-253.

15-256 Public safety; disturbing the peace; power to punish.

A primary city may punish disturbance of the peace or good order, clamor, intoxication, drunkenness, fighting, obscene or profane language, or other violations of the public peace by indecent or disorderly conduct, or blockading any street, sidewalk, way or space, or interfering with the passing of people.

Source: Laws 1901, c. 16, § 129, LVI, p. 141; R.S.1913, § 4466; C.S.1922, § 3851; C.S.1929, § 15-254.

15-257 Vagrancy; offenses against public morals; punishment.

A primary city 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 games, tricks 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. 16, § 129, LVII, p. 141; R.S.1913, § 4467; C.S. 1922, § 3852; C.S.1929, § 15-255.

15-258 Billiard halls; disorderly houses; desecration of Sabbath.

A city of the primary class may restrain, prohibit, and suppress unlicensed tippling shops, billiard tables, bowling alleys, 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 purposes 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. 16, § 129, LVIII, p. 142; R.S.1913, § 4468; C.S. 1922, § 3853; C.S.1929, § 15-256; R.S.1943, § 15-258; Laws 1986, LB 1027, § 187; Laws 1991, LB 849, § 60; Laws 1993, LB 138, § 62.

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.

Ordinance prohibiting all business except of necessity on Sunday is not void as discriminatory. Liberman v. State, 26 Neb. 464, 42 N.W. 419 (1889).

15-259 Jail facilities; establishment.

A primary city may erect, establish, and regulate houses of correction, jails, community residential centers, work release centers, halfway houses, and such other places of control or confinement as may be designated as a jail facility from time to time by the city, including station houses and other buildings necessary to the keeping and confinement of prisoners, and provide for the government and support of same.

Source: Laws 1901, c. 16, § 129, LIX, p. 142; R.S.1913, § 4469; C.S.1922, § 3854; C.S.1929, § 15-257; R.S.1943, § 15-259; Laws 1979, LB 315, § 1.

15-260 Repealed. Laws 1967, c. 54, § 1.

15-261 Railroads; railroad crossings; buses; safety regulations; installation of safety devices.

A primary city may regulate railroad crossings, provide precautions, and prescribe rules for running engines or cars, and their speed, for prevention of accidents at crossings or on tracks or by fires from engines. It may regulate the running of buses and require heating and cleaning thereof. It may require reasonable lighting of railway crossings in such manner as the council may

prescribe. If the owner or operator fails to comply, it may cause the same to be done and assess expense thereof against such railway company to be collected as other taxes and to be a lien on its property, or it may enforce compliance by action of mandamus. The city may enforce such regulations as are otherwise provided by law. It may require railways to keep flagmen at all railway street crossings where necessary to protect the public against injury to person or property, and require the installation, maintenance, and proper operation of gates, flashing signals, or other warning devices to insure such safety. It may compel railways to conform tracks to grades at any time established, to keep them level with the street surface, and it may compel railways to keep streets open, construct and keep in repair ditches, drains, sewers, and culverts along or under their right-of-way or tracks, and lay and maintain paving upon their whole right-of-way on paved streets.

Source: Laws 1901, c. 16, § 129, LXI, p. 142; R.S.1913, § 4471; C.S.1922, § 3856; C.S.1929, § 15-259; R.S.1943, § 15-261; Laws 1961, c. 36, § 3, p. 162.

Selection and grading of streets by railway company for its track are subject to regulation and control of city. Omaha, L. & B. Ry. Co. v. City of Lincoln, 97 Neb. 122, 149 N.W. 319 (1914).

15-262 Census; city may take.

A primary city may provide for and cause to be taken a census of the city.

Source: Laws 1901, c. 16, § 129, LXII, p. 143; R.S.1913, § 4472; C.S. 1922, § 3857; C.S.1929, § 15-260.

15-263 General welfare; ordinances to insure; powers; enforcement; penalties; imposition.

A primary city may make all such ordinances, bylaws, rules, and regulations 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, its trade, commerce, and manufactories, for preserving order, securing persons or property from violence, danger and destruction, for protecting public and private property, for promoting the public health, safety, convenience, comfort, morals, and general interests and welfare of the inhabitants of the city, and to enforce all ordinances by providing for imprisonment of those convicted of violations thereof at hard labor for a period not to exceed six months and to impose forfeitures, fines, and penalties not exceeding five hundred dollars for any one offense, recoverable with costs, and, in the default of the payment thereof, to provide for confinement in the city prison or county jail, with or without hard labor upon the city streets or elsewhere for the benefit of the city, until the judgment and costs are paid.

Source: Laws 1901, c. 16, § 129, LXIII, p. 143; R.S.1913, § 4473; C.S. 1922, § 3858; C.S.1929, § 15-261; R.S.1943, § 15-263; Laws 1955, c. 27, § 1, p. 122; Laws 1965, c. 44, § 2, p. 243.

15-264 City; keeping prisoners; contract.

Any city shall have the right to contract with any other governmental subdivision or agency, whether local, state or federal for the keeping of prisoners, either in a facility of the city or in a facility of the other governmental

subdivision or agency. Payment shall be made as provided in any such contract or agreement.

Source: Laws 1901, c. 16, § 124, p. 124; R.S.1913, § 4474; C.S.1922, § 3859; C.S.1929, § 15-262; R.S.1943, § 15-264; Laws 1961, c. 35, § 2, p. 157; Laws 1969, c. 67, § 1, p. 383.

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).

City is not liable to sheriff but is to county. Douglas County v. Coburn, 34 Neb. 351, 51 N.W. 965 (1892).

15-265 Public grounds and highways; control.

The mayor and council shall have supervision and control of all public ways and public grounds within the city, and shall require the same to be kept open, in repair and free from nuisances.

Source: Laws 1901, c. 16, § 96, p. 105; R.S.1913, § 4475; C.S.1922, § 3860; C.S.1929, § 15-263.

Performance of duty under this section is part of business of city of Lincoln within contemplation of compensation law. Sentor v. City of Lincoln, 124 Neb. 403, 246 N.W. 924 (1933).

Allowing and regulating entrances to basements through sidewalks is within discretion of city authorities. State ex rel. McNerney v. Armstrong, 97 Neb. 343, 149 N.W. 786 (1914).

City has general control of its streets and of the grades thereof. Omaha, L. & B. Ry. Co. v. City of Lincoln, 97 Neb. 122, 149 N.W. 319 (1914).

City must keep streets and sidewalks free of obstructions for entire width, and is not estopped by past failure to enforce. Chapman v. City of Lincoln, 84 Neb. 534, 121 N.W. 596 (1909).

Owners need not repair until notified. City of Lincoln v. Janesch, 63 Neb. 707, 89 N.W. 280 (1902).

15-266 Streets; lights; telephone lines; regulation.

The mayor and council shall have power to regulate and provide for the lighting of streets, laying down gas, water and other pipes, and the erection of lampposts, electric towers or other apparatus. They may regulate the sale and use of gas and electric lights and fix and determine the price of gas, the charge of electric lights and power, and the rents of gas meters within the city, and regulate the inspection thereof. They may regulate telephone service and the use of telephones within the city, prohibit or regulate the erection of telegraph, telephone or electric wire poles or other poles for whatsoever purpose desired or used in the public grounds, streets or alleys, and the placing of wires thereon, require the removal from the public grounds, streets or alleys of any or all such poles, and require the removal and placing under ground of any or all telegraph, telephone or electric wires.

Source: Laws 1901, c. 16, § 129, XIII, p. 130; R.S.1913, § 4476; C.S.1922, § 3861; C.S.1929, § 15-264.

15-267 Repealed. Laws 1983, LB 44, § 1.

15-268 Weeds; destruction and removal.

A primary city may provide for the destruction and removal of weeds and worthless vegetation growing upon any lot or lots or lands within the corporate limits of such city or upon the streets and alleys abutting upon any lot or lots or lands, and such city may require the owner or owners of such lot or lots or lands to destroy and remove the same therefrom and from the streets and alleys abutting thereon. If the owner or owners fail, neglect, or refuse, after five days' notice by publication or by certified United States mail, to destroy or remove the same, the city, through its proper officers, shall destroy and remove the same or cause the same to be destroyed or removed from the lot or lots or lands

and streets and alleys abutting thereon and shall assess the cost thereof against such lot or lots or lands, as provided by ordinance.

Source: Laws 1915, c. 215, § 1, p. 484; C.S.1922, § 3863; C.S.1929, § 15-266; R.S.1943, § 15-268; Laws 1988, LB 973, § 1.

This section provides local governing bodies with adequate limitations and standards for carrying out the statute's duties. Thus, the statute does not violate constitutional standards regarding delegations of legislative powers. Howard v. City of Lincoln, 243 Neb. 5, 497 N.W.2d 53 (1993).

It is the duty of city to destroy weeds if owner does not. Greenwood v. City of Lincoln, 156 Neb. 142, 55 N.W.2d 343 (1952).

15-268.01 Garbage or refuse; constituting a nuisance; collection and removal; notice.

(1) Any city of the primary class may provide for the collection and removal of garbage or refuse found upon any lot, lots, or land within the corporate limits of such city or within the three-mile jurisdictional limit of the city, or upon the streets, roads, or alleys abutting such lot, lots, or land, which constitutes a public nuisance. The city may require the owner, owners, duly authorized agent, or tenant of such lot, lots, or land to remove the garbage or refuse therefrom and from the streets, roads, or alleys abutting thereon.

(2) Notice that removal of garbage or refuse is necessary shall be given to (a)(i) the owner or owners, or (ii) the duly authorized agent, and (b) the tenant. Such notice shall be provided by personal service or by certified mail. After providing such notice, the city 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, lots, or land, and streets, roads, or alleys abutting thereon.

(3) If the mayor of such city shall declare that the accumulation of such garbage or refuse upon any lot, lots, or land constitutes an immediate nuisance and hazard to public health and safety, the city shall remove the garbage or refuse from such lot, lots, or land twenty-four hours after notice by personal service in accordance with subsection (2) of this section if such garbage or refuse has not been removed.

Source: Laws 1977, LB 74, § 1.

15-268.02 Garbage or refuse; nuisance; removal by city; assess cost.

Whenever any city of the primary class removes any garbage or refuse from any lot, lots, or land pursuant to section 15-268.01, it shall, after a hearing before and conducted by the city council, assess the cost of the removal against such lot, lots, or land.

Source: Laws 1977, LB 74, § 2.

15-269 Offstreet parking; necessity.

State recognition is hereby given to the hazard created in the streets of cities of the primary class of Nebraska by the great increase in the number of motor vehicles, including cars, 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 deemed necessary and of general benefit to the entire State of Nebraska to provide means for such cities in Nebraska to own offstreet parking facilities for the parking of motor vehicles.

Source: Laws 1967, c. 51, § 1, p. 185.

Cross References

For other provisions on offstreet parking, see section 19-3301 et seq.

15-270 Offstreet parking; own, purchase, construct, equip, lease, or operate; right of eminent domain.

Any city of the primary class in Nebraska may own, purchase, construct, equip, lease, or operate within such city offstreet motor vehicle parking facilities for the use of the general public. 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 such facilities, necessary or convenient in the carrying out of this grant of power.

Source: Laws 1967, c. 51, § 2, p. 185.

15-271 Offstreet parking; revenue bonds; authorized.

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; *Provided*, that any such city may not issue revenue bonds under the provisions of sections 15-269 to 15-276 to acquire any privately owned parking garage or privately owned commercial parking lot having space for the parking of two hundred or more motor vehicles.

Any ordinance authorizing such 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 revenue bonds shall not be sold at discounts exceeding five percent, and such bonds shall not bear interest in excess of the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Such 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.

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 primary class may be authorized to issue under its charter or any statute of this state. 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 authorized by this section.

Source: Laws 1967, c. 51, § 3, p. 186; Laws 1980, LB 933, § 6; Laws 1981, LB 167, § 7.

15-272 Offstreet parking; revenue bonds; agreements; terms.

Such city of the primary class may make and enter into any and all contracts and agreements with any individual, public or private corporation, or agency of this state or of the United States, as may be necessary or incidental to the performance of its duties and the execution of its powers under sections 15-269 to 15-276. In the exercise of this authority, such city may make such contracts and agreements as may be needed for the payment of the revenue bonds authorized by sections 15-269 to 15-276 and for the successful operation of the parking facilities. In the exercise of this authority the city may lease or grant

concessions for the use of the facilities or various portions thereof to one or more operators to provide for the efficient operation of the facilities, but no lease or concession shall run for a period in excess of thirty years. In granting any lease or concession, or in making any contract or agreement, the city shall retain such control of the facilities as may be necessary to insure that the facilities will be properly operated in the public interest and that the rates or charges or prices are reasonable.

Source: Laws 1967, c. 51, § 4, p. 186.

15-273 Offstreet parking; rules and regulations; security for bonds.

Such city of the primary class is authorized to make all necessary rules and regulations governing the use, operation and control of such facilities. It shall establish and maintain equitable rates sufficient in amount to pay for the cost of the 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 15-269 to 15-276. The city 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 of the provisions of sections 15-269 to 15-276.

Source: Laws 1967, c. 51, § 5, p. 187.

15-274 Offstreet parking; revenue bonds; performance; action to compel.

The provisions of sections 15-269 to 15-276 and of any ordinance authorizing the issuance of bonds under the provisions of sections 15-269 to 15-276 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 15-269 to 15-276, 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 15-269 to 15-276 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 1967, c. 51, § 6, p. 187.

15-275 Offstreet parking; revenue from onstreet parking meters; use.

Any city of the primary class is authorized to use any or all of the revenue from onstreet parking meters for the purpose set forth in section 15-270 if such revenue has not been pledged for the payment of revenue bonds authorized by the provisions of sections 15-269 to 15-276.

Source: Laws 1967, c. 51, § 7, p. 187.

15-276 Offstreet parking; sections; supplementary to existing law.

Sections 15-269 to 15-276 are supplementary to existing statutes relating to cities of the primary class and confer upon such cities powers not heretofore granted.

Source: Laws 1967, c. 51, § 8, p. 188.

15-277 Commission on the status of women; establish; fund.

A city of the primary class may establish and fund a commission on the status of women. Such commission shall advise the mayor and city council on the existence of social, economic, and legal barriers affecting women and ways to eliminate such barriers.

Source: Laws 1980, LB 780, § 3.

15-278 Commission on the status of women; purposes.

The purpose of a commission established under section 15-277 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, § 4.

ARTICLE 3

ELECTIONS; OFFICERS AND EMPLOYEES

Section

15-301 Elections; when held.

The general city elections in cities of the primary class shall be held on the first Tuesday in May of every odd-numbered year. All city elections shall be conducted in accordance with the Election Act.

Source: Laws 1901, c. 16, § 12, p. 74; Laws 1905, c. 16, § 1½, p. 200; Laws 1905, c. 17, § 1, p. 213; R.S.1913, § 4478; C.S.1922, § 3864; C.S.1929, § 15-301; R.S.1943, § 15-301; Laws 1961, c. 36, § 4, p. 162; Laws 1982, LB 807, § 40; Laws 1994, LB 76, § 481.

Cross References

City council, election, see section 32-535.
Election Act, see section 32-101.
Home rule charter, election provisions, see sections 32-501, 32-537, 32-556, 32-568, 32-606, 32-608, and 32-1302.
Vacancies, see sections 32-568 and 32-569.

15-302 Repealed. Laws 1994, LB 76, § 615.

15-303 Repealed. Laws 1961, c. 37, § 4.

15-304 Repealed. Laws 1961, c. 37, § 4.

15-305 Repealed. Laws 1961, c. 37, § 4.

15-306 Repealed. Laws 1961, c. 37, § 4.

15-307 Elective officers; bond or insurance.

All elective officers of the city, except council members, shall give a good and sufficient bond or evidence of equivalent insurance in an amount to be fixed by ordinance, for the faithful performance of their duties. Each council member before entering upon the duties of his or her office shall give a bond or evidence of equivalent insurance in favor of the city in the sum of two thousand dollars. If a bond is given, it shall be signed by a surety company or by two or more good and sufficient sureties who are residents of such city, who shall justify that he or she is worth at least two thousand dollars over and above his or her debts, liabilities, and exemptions, conditioned for the faithful discharge of the duties of the council members and conditioned further that if the council members vote for an expenditure of money or the creation of any liability in excess of the amount allowed by law, or vote for the transfer of any sum of money from one fund to another where such transfer is not allowed by law,

such council members and surety or sureties signing the bonds shall be liable thereon.

Source: Laws 1901, c. 16, § 16, p. 76; R.S.1913, § 4484; C.S.1922, § 3870; C.S.1929, § 15-307; Laws 2007, LB347, § 5.

Cross References

Joint control of funds by principal and surety on bond, see section 11-130.

15-308 Appointive officers; bond or insurance.

All appointive officers of the city before entering upon their respective duties shall give a good and sufficient bond or evidence of equivalent insurance in an amount to be fixed by ordinance in favor of the city, conditioned upon the faithful performance of their duties.

Source: Laws 1901, c. 16, § 17, p. 76; R.S.1913, § 4485; C.S.1922, § 3871; C.S.1929, § 15-308; Laws 2007, LB347, § 6.

Cross References

Joint control of funds by principal and surety on bond, see section 11-130.

15-309 Officers, employees; compensation.

The council shall have power by ordinance to fix the salaries of the officers and employees of the city and provide by ordinance for the forfeiting of the salary of any officer or employee.

Source: Laws 1901, c. 16, § 21, p. 77; Laws 1905, c. 16, § 4, p. 202; Laws 1907, c. 9, § 3, p. 76; Laws 1913, c. 5, § 1, p. 58; R.S.1913, § 4486; C.S.1922, § 3872; C.S.1929, § 15-309.

15-309.01 Officer; extra compensation prohibited; exception.

No officer shall receive any pay or perquisite from the city other than his or her salary; and the city council shall not pay or appropriate any money or other valuable thing to any person, not an officer, for the performance of any act, service, or duty, the performance of which shall come within the proper scope of the duties of any officer of the city, unless the same is specially appropriated and ordered by unanimous vote of all members elected to the council.

Source: Laws 1901, c. 16, § 67, p. 94; R.S.1913, § 4520; C.S.1922, § 3906; C.S.1929, § 15-603; R.S.1943, § 15-603; Laws 1957, c. 38, § 1, p. 206; Laws 1961, c. 283, § 1, p. 829; Laws 1969, c. 68, § 1, p. 384; Laws 1983, LB 370, § 6; R.S.1943, (1983), § 15-603.

15-310 Mayor; head of city government; powers and duties.

The mayor shall be the chief executive officer of the city. The executive and administrative power of a city of the primary class shall be vested in and exercised by the mayor, who shall also be the ceremonial head of the city government. The mayor shall enforce the city ordinances and all applicable laws. He may administer oaths, perform all the duties devolving upon a magistrate, and shall sign commissions and appointments of all officers appointed by him with the council approval.

Source: Laws 1901, c. 16, § 22, p. 78; R.S.1913, § 4487; C.S.1922, § 3873; C.S.1929, § 15-310; R.S.1943, § 15-310; Laws 1963, c. 56, § 1, p. 236.

15-311 Mayor; territorial jurisdiction.

The mayor shall have such jurisdiction as may be vested in him by ordinance, over all places within the city or within three miles of the corporate limits of the city and outside of any organized city or village, for the enforcement of the health ordinances and regulations thereof, and for the purpose of carrying out the provisions of all such ordinances except the ordinances respecting taxation shall not be enforced outside of the corporate limits of such primary city.

Source: Laws 1901, c. 16, § 25, p. 78; R.S.1913, § 4488; C.S.1922, § 3874; C.S.1929, § 15-311; R.S.1943, § 15-311; Laws 1967, c. 57, § 3, p. 194.

15-312 Repealed. Laws 1961, c. 37, § 4.

15-313 Repealed. Laws 1994, LB 76, § 615.

15-314 Mayor and chief of police; citizen aid in law enforcement; powers.

The mayor and chief of police shall each have power to call upon any citizen to aid in the enforcement of any ordinance or suppression of any riot, and any person who shall refuse or neglect to obey such call shall forfeit and pay a fine not exceeding one hundred dollars. Such power shall not be construed to include the appointment of special police or special deputies.

Source: Laws 1901, c. 16, § 28, p. 79; R.S.1913, § 4491; C.S.1922, § 3877; C.S.1929, § 15-314; R.S.1943, § 15-314; Laws 1976, LB 782, § 11.

15-315 Mayor; remission of fines; pardons.

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 1901, c. 16, § 29, p. 79; R.S.1913, § 4492; C.S.1922, § 3878; C.S.1929, § 15-315.

15-316 City clerk; duties; deputy.

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 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 keep a correct record of all outstanding bonds against the city showing the number and amount of each, for what and to whom issued, when purchased, paid or canceled, and shall make an annual report showing particularly the bonds issued and sold during the year, and the terms of sale, with each item of expense thereof. He shall perform such other or further duties as may be required of him by ordinances of the city. He shall also make a monthly report to the council showing the amount appropriated to each fund, and the whole amount of funds drawn thereon, which report shall be spread at large upon the minutes. He may, if the council

deem assistance necessary, appoint a deputy who shall give a bond in favor of the city the same as is required of the clerk himself.

Source: Laws 1901, c. 16, § 30, p. 79; R.S.1913, § 4493; C.S.1922, § 3879; C.S.1929, § 15-316; R.S.1943, § 15-316; Laws 1973, LB 224, § 3.

Cross References

Joint control of funds by principal and surety on bond, see section 11-130.

15-317 Treasurer; bond or insurance; deputy; duties.

The treasurer shall be required to give a bond or evidence of equivalent insurance of not less than one hundred fifty thousand dollars or he or she may be required to give a bond or evidence of equivalent insurance double the sum of money estimated by the council to be at any time in his or her hands belonging to the city and school districts, and he or she shall be the custodian of all money belonging to the city and all securities belonging or to be held by the city. He or she shall keep a separate account of each fund or appropriation and debits 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, and he or she shall also file copies of receipts with his or her monthly report. He or she shall monthly and as often as required render to the city council an account under oath showing the state of the treasury at that date, the amount of money remaining in each fund, the amount paid therefrom, 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, together with any and all vouchers held by him or her, shall be filed in the clerk's office, and if he or she neglects or fails for thirty days from the end of any month to enter such accounts, his or her office may by resolution of the mayor and council be declared vacant, and the mayor with the concurrence of the council shall fill the vacancy by appointment until the next election of the city officers. The treasurer may employ and appoint a deputy and an assistant or assistants as determined by ordinance. The treasurer shall be liable upon his or her official bond for the acts of such appointees.

Source: Laws 1901, c. 16, § 31, p. 80; R.S.1913, § 4494; C.S.1922, § 3880; R.S.1943, § 15-317; Laws 1996, LB 1007, § 1; Laws 2007, LB347, § 7.

Cross References

Joint control of funds by principal and surety on bond, see section 11-130.

15-318 Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.

15-319 Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.

15-320 Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.

15-321 Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.

15-322 City attorney; duties; deputy; assistants; appointment.

The city attorney shall be the legal advisor of the mayor, the city council, and city officers. He shall commence, prosecute, and defend actions on behalf of the city, attend the meetings of the council and give opinions, orally or in writing, as required, upon any matter submitted to him by the mayor, the city council, or any officers of the city. He is authorized to prepare, file, and sign the proper complaint when there is sufficient evidence to warrant the belief that a person is guilty and can be convicted of a violation of a city ordinance. 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 by ordinance. The city attorney may appoint a deputy city attorney and one or more assistant city attorneys, whose duties may be prescribed by ordinance.

Source: Laws 1901, c. 16, § 32, p. 81; R.S.1913, § 4495; C.S.1922, § 3881; C.S.1929, § 15-318; R.S.1943, § 15-322; Laws 1959, c. 43, § 1, p. 224.

15-323 Repealed. Laws 1961, c. 37, § 4.

15-324 Repealed. Laws 1961, c. 37, § 4.

15-325 Repealed. Laws 1961, c. 37, § 4.

15-326 Marshal or chief of police; powers and duties.

The marshal or chief of police shall have the immediate charge of the police, and he or she and his or her officers shall have the power and duty to arrest all offenders against the laws of the state or the ordinances of the city in the same manner as the sheriff and to keep such offenders in the city jail or other place to prevent their escape until a trial or examination may be had before a proper officer. The jurisdiction of the marshal or chief of police and his or her officers in the service of process, in all criminal cases, and in cases for the violation of city ordinances shall be coextensive with the county

Source: Laws 1901, c. 16, § 40, p. 85; R.S.1913, § 4503; C.S.1922, § 3889; C.S.1929, § 15-326; R.S.1943, § 15-326; Laws 1972, LB 1032, § 100; Laws 1984, LB 13, § 4; Laws 1988, LB 1030, § 3; Laws 1993, LB 390, § 1.

Cross References

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

15-327 Repealed. Laws 1961, c. 37, § 4.

15-328 Repealed. Laws 1961, c. 37, § 4.

15-329 Repealed. Laws 1961, c. 37, § 4.

15-330 Repealed. Laws 1961, c. 37, § 4.

15-331 Repealed. Laws 1961, c. 37, § 4.

15-332 City officers; removal; power of district court; procedure.

The power to remove from office the mayor or any councilman or other officer for good and sufficient cause is hereby conferred upon the district court for the county in which such city is situated, when not otherwise herein provided, and whenever any three councilmen shall make and file with the

clerk of said court the proper charges and specifications against the mayor, alleging and showing that he is guilty of malfeasance or misfeasance as such officer, or that he is incompetent or neglects any of his duties as mayor, or that for any other good and sufficient cause stated, he should be removed from office as mayor; or whenever the mayor or any three councilmen shall make and file with the clerk of said court the proper charges and specifications against any councilman or other officer, alleging and showing that he is guilty of malfeasance or misfeasance in office or that he is incompetent or neglects any of his duties, or that from any other good and sufficient cause stated, he should be removed from office, the judge of such court may issue the proper writ, requiring such officer to appear before him on a day named therein, not more than ten days after the service of such writ, together with a copy of such charges and specifications, upon such officer to show cause why he should not be removed from his office. The proceedings in such case shall take precedence over all civil cases, and be conducted according to the rules of such court in such cases made and provided, and such officer may be suspended from the duties of his office during the pendency of such proceedings by order of said court. During the time any officer is suspended the mayor and council, or in case the mayor is suspended, then the council may appoint any competent person to perform the duties of the officer so suspended and provide for his compensation, and require such appointee to execute a good and sufficient bond for the faithful performance of the duties of the office.

Source: Laws 1901, c. 16, § 65, p. 93; R.S.1913, § 4509; C.S.1922, § 3895; C.S.1929, § 15-332.

ARTICLE 4

COUNCIL AND PROCEEDINGS

Section
15-401. City council; meetings; quorum; vote required to transact business.
15-402. Ordinances, passage; publication; proof.
15-403. Ordinances; form; publication; when operative.
15-404. Ordinances; enactment; amendment; reading.
15-405. Repealed. Laws 1961, c. 37, § 4.
15-406. Mayor; recommendations to city council.

15-401 City council; meetings; quorum; vote required to transact business.

Regular meetings of the council shall be held at least once each week on such days and at such times as the council may prescribe in its rules, and special meetings whenever called by the mayor or any four members of the council. The council may choose not to meet during any week in which a federal or state holiday occurs. Four members of the council shall constitute a quorum for the transaction of any business, and four affirmative votes shall be required to pass any measure or to transact any business unless it is otherwise provided by any charter of a city of the primary class.

Source: Laws 1901, c. 16, § 20, p. 77; R.S.1913, § 4510; C.S.1922, § 3896; C.S.1929, § 15-401; R.S.1943, § 15-401; Laws 1963, c. 56, § 2, p. 236; Laws 2002, LB 932, § 1.

15-402 Ordinances, passage; publication; proof.

Ordinances shall be passed pursuant to such rules and regulations as the council may provide, and may be proved by the certificate of the clerk under

seal of the city. The passage, approval, publication or posting of ordinances shall be sufficiently proved by certificate of the clerk under seal of the city showing when passed and approved, when and in what paper published or when, by whom, and where the same was posted. Ordinances printed or published in book or pamphlet form, purporting to be published under authority of the city, shall be received in evidence in all courts without further proof. All such ordinances need not be otherwise published and shall be received in court as evidence of the passage, approval and publication thereof, as required by law, and of the respective dates thereof.

Source: Laws 1901, c. 16, § 127, p. 125; R.S.1913, § 4511; C.S.1922, § 3897; C.S.1929, § 15-402.

Courts will not enjoin passage of unauthorized ordinance. Chicago, R. I. & P. Ry. Co. v. City of Lincoln, 85 Neb. 733, 124 N.W. 142 (1910).

15-403 Ordinances; form; publication; when operative.

The style of ordinances shall be: Be it ordained by the city council of the city of ..... . All ordinances shall be published within fifteen days after passage thereof, such publication to be sufficient if published in one issue of a daily or weekly newspaper of general circulation in the city, or posted on the official bulletin board of the city at the city hall, or in book or pamphlet form, as may be provided by ordinance, to be distributed or sold in the city. Ordinances fixing a penalty or forfeiture for the violation thereof shall not take effect until fifteen days after passage, and in no case before one week after the publication thereof in the manner above prescribed; *Provided*, in case of riots, infectious or contagious diseases or other impending danger or other emergency requiring immediate operation of the ordinance, the same shall take effect immediately upon the publication thereof as above prescribed. All ordinances, except as hereinabove prescribed, shall take effect fifteen days after passage.

Source: Laws 1901, c. 16, § 128, p. 126; R.S.1913, § 4512; C.S.1922, § 3898; C.S.1929, § 15-403; R.S.1943, § 15-403; Laws 1963, c. 56, § 3, p. 236.

15-404 Ordinances; enactment; amendment; reading.

All ordinances, resolutions or orders for the appropriation or payment of money shall require for passage or adoption the concurrence of a majority of the members elected to the council. Ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless the council shall dispense with this rule by a two-thirds vote of the members elected. No ordinance shall contain a subject which is not clearly expressed in its title. 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 shall be repealed.

Source: Laws 1901, c. 16, § 73, p. 96; R.S.1913, § 4513; C.S.1922, § 3899; C.S.1929, § 15-404.

When no vote was taken to dispense with further reading of ordinance after being amended, fact that it passed by more than two-thirds vote of members was substantial compliance. Miller v. City of Lincoln, 94 Neb. 577, 143 N.W. 921 (1913).

15-405 Repealed. Laws 1961, c. 37, § 4.

15-406 Mayor; recommendations to city council.

The mayor shall from time to time communicate to the council such recommendations or information as in his opinion tend to improve the finances, police, health, comfort and general welfare of the city.

Source: Laws 1901, c. 16, § 24, p. 78; R.S.1913, § 4515; C.S.1922, § 3901; C.S.1929, § 15-406.

ARTICLE 5

WATER DEPARTMENT

Section
15-501. Waterworks; construction; right of eminent domain; procedure.
15-502. Waterworks; contract for water; option to buy plant.

15-501 Waterworks; construction; right of eminent domain; procedure.

When a system of waterworks shall have been adopted and the people shall have voted to borrow money to aid their construction, the mayor and council may (1) construct and maintain such system of waterworks, either within or without the corporate limits of the city, (2) make all needful rules and regulations concerning the use of such waterworks, and (3) do all acts necessary for the construction, completion, and management and control of the same, not inconsistent with law, including 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 1901, c. 16, § 112, p. 118; R.S.1913, § 4516; C.S.1922, § 3902; C.S.1929, § 15-501; R.S.1943, § 15-501; Laws 1951, c. 101, § 47, p. 467.

15-502 Waterworks; contract for water; option to buy plant.

In case such aid shall not be voted by the people in the manner aforesaid or in case the system of waterworks shall prove inadequate for the needs of the city, both public and private, then the mayor and council may contract with and procure individuals or corporations to construct and maintain a system of waterworks in such city for any time not exceeding twenty years from the date of the contract, and with a reservation to the city of the right to purchase such waterworks at any time after the lapse of ten years from the date of the contract, upon payment to such individuals or corporation of an amount to be determined by the contract not exceeding the cost of construction of such waterworks. In other respects such contracts may be upon such terms as may be agreed upon by a two-thirds vote of the mayor and council, entered upon the minutes; *Provided*, no such contract shall be made unless authorized by a majority vote of the legal voters at a special election called for such purpose.

Source: Laws 1901, c. 16, § 113, p. 119; R.S.1913, § 4517; C.S.1922, § 3903; C.S.1929, § 15-502.

ARTICLE 6

CONTRACTS AND FRANCHISES

Section
15-601. Repealed. Laws 1961, c. 37, § 4.
15-602. Repealed. Laws 1961, c. 37, § 4.
15-603. Transferred to section 15-309.01.
15-604. Repealed. Laws 1959, c. 265, § 1.

15-601 Repealed. Laws 1961, c. 37, § 4.

15-602 Repealed. Laws 1961, c. 37, § 4.

15-603 Transferred to section 15-309.01.

15-604 Repealed. Laws 1959, c. 265, § 1.

ARTICLE 7
PUBLIC IMPROVEMENTS

Section

Section
15-739. Repealed. Laws 1967, c. 54, § 1.
15-740. Repealed. Laws 1967, c. 54, § 1.
15-741. Repealed. Laws 1967, c. 54, § 1.
15-742. Repealed. Laws 1967, c. 54, § 1.
15-743. Repealed. Laws 1967, c. 54, § 1.
15-744. Repealed. Laws 1967, c. 54, § 1.
15-745. Repealed. Laws 1967, c. 54, § 1.
15-746. Repealed. Laws 1967, c. 54, § 1.
15-747. Repealed. Laws 1967, c. 54, § 1.
15-748. Repealed. Laws 1967, c. 54, § 1.
15-749. Repealed. Laws 1967, c. 54, § 1.
15-750. Repealed. Laws 1967, c. 54, § 1.
15-751. Joint city and county facilities; cooperation with other governmental agencies; authorization; dual officers and employees.
15-752. Joint city and county facilities; authorization; vote required.
15-753. Ornamental lighting districts; bids; letting; special assessment.
15-754. Public improvement districts; cost; special assessment.
15-755. Repealed. Laws 1983, LB 44, § 1.
15-756. Repealed. Laws 1983, LB 44, § 1.
15-757. Repealed. Laws 1983, LB 44, § 1.
15-758. Repealed. Laws 1983, LB 44, § 1.
15-759. Repealed. Laws 1983, LB 44, § 1.

15-701 Streets, sidewalks, public ways; improvements; condemnation; vacating; sale, exchange, or lease of property.

The city council shall have power by ordinance to create, open, widen or otherwise improve, vacate, control, name, and rename any street, alley, or public way or ways, including the sidewalk space within the limits of the city, except that all damages sustained by the owners of the property thereon by opening or widening shall be ascertained in the manner set forth in sections 76-704 to 76-724. Whenever any street, alley, or public way shall be vacated, the same shall revert to the owners of the adjacent real estate, one-half on each side thereof, unless the city reserves title thereto in the ordinance vacating such street, alley, or public way. In the event 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, as authorized in its home rule charter. When the city vacates all or any portion of a street, alley, or public way or ways, 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. 16, § 129, IV, p. 128; R.S.1913, § 4522; C.S.1922, § 3908; C.S.1929, § 15-701; R.S.1943, § 15-701; Laws 1951, c. 101, § 48, p. 468; Laws 1959, c. 44, § 1, p. 225; Laws 1969, c. 66, § 2, p. 379; Laws 2001, LB 483, § 3.

Primary class city council action to vacate street or alley, retain title, and later sell property will not be overturned on review unless fraud, illegality of proceedings, absence of jurisdiction, or abuse of discretion clearly shown. Cather & Sons Constr., Inc. v. City of Lincoln, 200 Neb. 510, 264 N.W.2d 413 (1978).

Special proviso in Viaduct Act was enacted in view of this and other articles. State ex rel. City of Grand Island v. Union Pacific R. R. Co., 152 Neb. 772, 42 N.W.2d 867 (1950).

15-701.01 Streets, sidewalks, public ways; establish grade; special assessment.

The city council shall have the power to grade partially, or to an established grade, curb, recurb, gutter, construct sidewalks, or otherwise improve or repair

any street or streets, alley or alleys, public grounds, public way or ways, or parts thereof, including sidewalk space, at public cost, or by levy of special benefits on the property specially benefited thereby, proportionate to the benefits. When the streets, public ways, or public grounds shall have been brought to an established grade, the council shall have power to bring sidewalks and sidewalk space therein to a grade and to construct sidewalks, and shall have power and authority to levy special assessments against the property specially benefited, not to exceed the cost of the improvement. Ordinary repairs, not including repaving or resurfacing or relaying existing pavement or making sidewalk repairs, shall be at public cost.

Source: Laws 1969, c. 66, § 3, p. 380.

15-701.02 Streets, sidewalks, public ways; hard surface; special assessments.

The city council shall have power to grade, to change grade, to pave, repave, macadamize, curb, recurb, gravel or regravel, open and widen streets, roadways or public ways, gutter, resurface, or relay existing pavement or otherwise improve any street, streets, alley, alleys, public grounds, public way or ways, or parts thereof, including the sidewalk space, and including improvement by mall or promenade, and by ordinance to create grading, paving, repaving, curbing, recurbing, resurfacing, graveling, regraveling, sidewalk, or improvement districts thereof, to be consecutively numbered and such districts may include two or more connecting or intersecting streets, alleys, or public ways and may include two or more improvements, in this section mentioned, in one proceeding. Cost of so improving the street, streets, alley, alleys, public grounds, public way or ways, including sidewalks, may be in whole or in part assessed, proportionate to benefits, on the property specially benefited. The city council may fix the depth to which property may be charged and assessed for benefits, and to a greater depth than the lots fronting on the street, streets, alley, alleys, public grounds, public way or ways so improved and the determination thereof by the city council shall be conclusive. The city council shall have power and authority to fix the period of time for the payment of the special assessments, and to issue bonds, as authorized by the home rule charter.

Source: Laws 1969, c. 66, § 4, p. 380.

15-702 Repealed. Laws 1967, c. 54, § 1.

15-702.01 Controlled-access facilities; designation.

A city of the primary class shall have the power to designate and establish controlled-access facilities, and may design, construct, maintain, improve, alter, and vacate such facilities, and may regulate, restrict, or prohibit access to such facilities so as best to serve the traffic for which such facilities are intended. Such a city may provide for the elimination of intersections at grade with existing roads, streets, highways or alleys, if the public interest shall be served thereby. An existing road, street, alley or other traffic facility may be included within such facilities or such facilities may include new or additional roads, streets, highways, or the like. In order to carry out the purposes of this section, the city, in addition to any other powers it may have, may acquire, in private or public property, such rights of access as are deemed necessary, including but not necessarily limited to air, light, view, egress, and ingress. Such acquisitions may be by gift, devise, purchase, agreement, adverse possession, prescription, condemnation, or otherwise as provided by law and may be in fee simple

absolute or in any lesser estate or interest. The city may make provision to mitigate damages caused by such acquisitions, terms, and conditions regarding the abandonment or reverter of such acquisitions, and any other provisions or conditions that are desirable for the needs of the city and the general welfare of the public.

No automotive service stations or other commercial establishments for serving motor vehicle users shall be constructed or located on the publicly owned right-of-way of, or on any publicly owned or publicly leased land used for, or in connection with, a controlled-access facility.

Source: Laws 1959, c. 45, § 1, p. 226.

15-702.02 Controlled-access facilities; frontage roads.

A city of the primary class is authorized to designate, establish, design, construct, maintain, vacate, alter, improve and regulate frontage roads within the boundaries of any present or hereafter acquired right-of-way and to exercise the same jurisdiction over such frontage roads as is authorized over controlled-access facilities. Such frontage roads may be connected to or separated from the controlled-access facilities at such places as the city shall determine to be consistent with public safety. Upon the construction of any frontage road, any right of access between the controlled-access facility and property abutting or adjacent to such frontage shall terminate and ingress to and egress from the frontage road shall be provided at such places as will afford reasonable and safe connections.

Source: Laws 1959, c. 45, § 2, p. 227.

15-702.03 Streets; egress and ingress; rights to.

The right of reasonably convenient egress to and ingress from lands or lots, abutting on an existing highway, street, or road, may not be denied except with the consent of the owners of such lands or lots, or with the condemnation of such right of access to and from such abutting lands or lots. If the construction or reconstruction of any highway, street, or road, to be paid for in whole or in part with federal or state highway funds, results in the abutment of property on such highway, street, or road that did not theretofore have direct egress from and ingress to it, no rights of direct access shall accrue because of such abutment, but the city may prescribe and define the location of the privilege of access, if any, of properties that then, but not theretofore, abut on such highway, street, or road.

Source: Laws 1959, c. 45, § 3, p. 227.

In order for property to "abut" a street, according to the terms of this section, the lot line and street line must be in common; mere touching at a single point is not sufficient. City of Lincoln v. Cather & Sons Const., Inc., 206 Neb. 10, 290 N.W.2d 798 (1980).

15-702.04 Access ways; materials; standards; establish.

In all specifications for materials to be used in paving, curbing, and guttering of every kind, of access ways, the city shall establish a standard or standards of strength and quality, to be demonstrated by physical, chemical, or other tests within the limits of reasonable variations. In every instance the materials shall be so described in the specifications, either by standard or quality, to permit genuine competition between contractor so that there may be two or more bids by individuals or companies in no manner connected with each other and no material shall be specified which shall not be subject to such competition.

Source: Laws 1959, c. 45, § 4, p. 228.

15-703 Repealed. Laws 1949, c. 28, § 20.

15-704 Repealed. Laws 1949, c. 28, § 20.

15-705 Repealed. Laws 1967, c. 54, § 1.

15-706 Repealed. Laws 1967, c. 54, § 1.

15-707 Repealed. Laws 1967, c. 54, § 1.

15-708 Streets; improvements; public property, how assessed.

If in any city of the primary class there shall be any real estate belonging to any county, school district, municipal or quasi-municipal corporation, cemetery association, library board or other public board or association, abutting upon the street, streets, alley, alleys, public way or grounds proposed to be improved, the proper officer or officers having control and jurisdiction over such real estate or authorized to purchase, lease, hold or convey real estate, shall have power to sign a petition for paving, repaving, curbing, recurbing, grading, changing grade, guttering, resurfacing, relaying existing pavement, or otherwise improving any street, streets, alley, alleys, public way or public grounds or improvement districts. When such improvements have been ordered, it shall be the duty of the county board of education, library board, cemetery trustees or other proper officers controlling and having jurisdiction over said real estate benefited by said improvement, to pay such special taxes or assessments, or its proportionate share of the cost of said improvements; and in event of neglect or refusal so to do, the city may recover the amount of such special taxes or assessments, or proportionate share of the cost, in any proper action, and the judgment thus obtained may be enforced in the usual manner.

Source: Laws 1901, c. 16, § 97, p. 106; Laws 1905, c. 16, § 9, p. 209; Laws 1913, c. 5, § 4, p. 61; R.S.1913, § 4524; Laws 1915, c. 82, § 1, p. 209; Laws 1917, c. 94, § 1, p. 250; C.S.1922, § 3910; C.S.1929, § 15-703.

15-709 Streets; improvements; utility service connections; duty of landowner.

The council may order the owner of lots abutting on a street to be paved, to lay sewer, gas, and water service pipes to connect mains; and if he neglects so to do, after five days' notice by publication in a newspaper of general circulation in the city, or in place thereof by personal service of such notice, as the council in its discretion may direct, the council shall have power to cause the same to be laid, along with and as part of the work of the improvement district, and assess the cost thereof on the property of such owner, along with and in the manner as provided, for making the assessment to pay the cost of the pavement or improvements in the improvement district and to be collected and enforced as special taxes.

Source: Laws 1901, c. 16, § 97, p. 106; Laws 1905, c. 16, § 9, p. 209; Laws 1913, c. 5, p 4, p. 61; R.S.1913, § 4524; Laws 1915, c. 82, § 1, p. 209; Laws 1917, c. 94, § 1, p. 250; C.S.1922, § 3910; C.S.1929, § 15-703.

15-710 Repealed. Laws 1969, c. 66, § 9.

15-711 Repealed. Laws 1969, c. 66, § 9.

15-712 Repealed. Laws 1969, c. 66, § 9.

15-713 Curbing gutter bonds.

To pay the cost of curbing and guttering public ways the council may issue bonds called curbing gutter bonds, district No. ....., payable in not over twenty years or at the option of the city at any interest-paying date, and assess the cost, not exceeding the special benefits, on abutting property, said assessments to become due, delinquent, draw interest, be subject to like penalty and collected as other special taxes, and shall constitute a sinking fund for the payment of such bonds. No paving bonds and no curbing gutter bonds shall be sold or delivered until necessary to make payments for work done on such improvements.

Source: Laws 1901, c. 16, § 97, p. 107; Laws 1905, c. 16, § 9, p. 210; Laws 1913, c. 5, § 4, p. 60; R.S.1913, § 4524; Laws 1915, c. 82, § 1, p. 210; Laws 1917, c. 94, § 1, p. 251; C.S.1922, § 3910; C.S.1929, § 15-703; R.S.1943, § 15-713; Laws 1969, c. 51, § 24, p. 287.

15-714 Repealed. Laws 1967, c. 54, § 1.

15-715 Repealed. Laws 1967, c. 54, § 1.

15-716 Repealed. Laws 1967, c. 54, § 1.

15-717 Sewers and drains; construction; cost; assessment against property owners.

The city council shall have the power to lay off the city into suitable districts for the purpose of establishing a system of sewerage and drainage; to provide such system and regulate the construction, repairs, and use of sewers and drains, and to provide penalties for any obstruction of, or injury to, any sewers or drains, and for any violation of the rules and regulations with respect thereto that may be prescribed by the city council. The city council shall have power to create sewer districts by ordinance and designate the property to be benefited by the construction of sewers in such districts. The city council shall have power to construct or cause to be constructed such sewer or sewers in such district or districts and assess the cost thereof against the property in such districts, to the extent of the special benefits.

Source: Laws 1901, c. 16, § 100, p. 108; Laws 1907, c. 9, § 9, p. 81; R.S.1913, § 4527; C.S.1922, § 3913; C.S.1929, § 15-706; R.S. 1943, § 15-717; Laws 1969, c. 66, § 6, p. 381.

City tax assessments on property owners for approved sewer costs are valid to the extent of benefits to the property, even if the improvement produces no immediate and proportionate increase in market value of the property. Nebco, Inc. v. Speedlin, 198 Neb. 34, 251 N.W.2d 710 (1977).

15-718 Sewers and drains; construction; assessment of benefits; collection.

Special taxes may be levied by the city council for the purpose of paying the cost of constructing such sewers and drains within the city. Such taxes shall be levied upon the real estate within the sewerage districts in which such sewer or drain may be, to the extent of benefits to such property by reason of such improvements. The benefits to such property shall be determined by the city

council as in other cases of special assessments. All taxes or assessments made for sewerage or drainage purposes shall be levied and collected in the same manner as other special assessments.

Source: Laws 1901, c. 16, § 101, p. 108; Laws 1907, c. 9, § 10, p. 81; R.S.1913, § 4528; C.S.1922, § 3914; C.S.1929, § 15-707; R.S. 1943, § 15-718; Laws 1969, c. 66, § 7, p. 381.

City tax assessments on property owners for approved sewer costs are valid to the extent of benefits to the property, even if the improvement produces no immediate and proportionate increase in market value of the property. Nebco, Inc. v. Speedlin, 198 Neb. 34, 251 N.W.2d 710 (1977).

15-719 Repealed. Laws 1969, c. 66, § 9.

15-720 Sewer district bonds.

The mayor and council may issue sewer district bonds to cover the cost of the work of constructing sewers in sewer districts, and the special assessment levied on account of such work shall constitute a sinking fund for the payment of such bonds.

Source: Laws 1907, c. 9, § 10, p. 81; R.S.1913, § 4530; C.S.1922, § 3916; C.S.1929, § 15-709.

15-721 Repealed. Laws 1961, c. 37, § 4.

15-722 Repealed. Laws 1965, c. 44, § 3.

15-723 Repealed. Laws 1967, c. 54, § 1.

15-724 Public markets; establishment.

The mayor and council may by ordinance purchase and own grounds for, erect and establish market houses and market places, regulate and govern the same, and prescribe the fees to be charged persons for stalls therein; *Provided*, the revenue so derived shall be applied (1) to the payment of the salaries of the officers appointed to take charge of said market, (2) to the payment of repairs of the market house, and (3) to the payment of the cost of erecting said market house. After all salaries, repairs and costs of construction have been paid, the surplus, if any remaining, shall be disposed of as the council shall direct. The mayor and council may contract with any person or persons, or association of persons, companies or corporations for the erection and regulation of said market house and market place on such terms and conditions and in such manner as the council may prescribe, and raise all necessary revenue therefor as herein provided. They may locate market houses and market places and buildings aforesaid on any street, alley or public ground, or any land purchased for such purpose, and 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; *Provided*, any such improvement, costing in the aggregate a sum greater than five hundred dollars, shall not be authorized until the ordinance providing therefor shall be first submitted to and ratified by a majority of the legal voters thereof.

Source: Laws 1901, c. 16, § 129, XV, p. 131; R.S.1913, § 4534; C.S.1922, § 3920; C.S.1929, § 15-713.

15-725 Public improvements; special tax assessments.

Special tax assessments to pay cost of local improvements, except special assessments for sidewalk purposes or as herein otherwise provided, shall be made in the manner following: (1) Assessment shall be made on the district by resolution of the council at any meeting, stating cost of the improvement and benefit accruing to the property in the district to be taxed, which, with the vote by yeas and nays, shall be recorded in the minutes. Therewith shall be submitted a proposed distribution of the tax on each separate property to be taxed subject to action of the board of equalization as prescribed therein; and (2) notice of time of assessment shall be published in some newspaper published and of general circulation in the city ten days before the assessment, and that the council will sit as a board of equalization to distribute the tax at a time in such notice fixed, not less than five days after such assessment, and the proper distribution of such special tax shall be open to examination of all persons interested. Property shall not be specially taxed for more than the total cost of the improvement nor more than the special benefit accruing thereto by the improvement. If the aggregate tax be less than the cost of improvement the excess shall be paid from the general fund. Special taxes may be assessed as the improvement progresses and as soon as completed in front of or along property taxed, or when the whole is complete, as the council shall determine. Special assessments for local benefits shall be a lien on all property so specially benefited superior and prior to all other liens save general taxes or other special assessments and equal therewith. If any special assessment be declared void, or doubt of its validity exist, the mayor and council, to pay the cost of improvement, may make a reassessment thereof on the original estate within the district, and any sums paid on the original assessment shall be credited to the property on which it was paid and any excess refunded to the owner paying it, with lawful interest. Taxes reassessed and not paid shall be enforced and collected as other special taxes. No special tax or assessment which the mayor and council acquire jurisdiction to make shall be void for any irregularity, defect, error or informality in procedure, in levy or equalization thereof.

Source: Laws 1901, c. 16, § 102, p. 109; R.S.1913, § 4535; C.S.1922, § 3921; C.S.1929, § 15-714.

Reassessment of benefits is provided for when original assessment is invalid. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

Blanket notice of sitting of council as board of equalization is sufficient. Price v. City of Lincoln, 103 Neb. 366, 171 N.W. 921 (1919).

When lots are subdivided, assessment for paving is made on equitable basis. Lansing v. City of Lincoln, 32 Neb. 457, 49 N.W. 650 (1891).

15-726 Special tax assessments; certificate; warrants.

When any special tax, except sidewalk tax, is levied, it shall be the duty of the city clerk to issue a certificate describing such lot or piece of ground by number and block, and stating the amount of special tax levied thereon and the purpose for which such tax was levied, and when the same shall become due and delinquent. He shall forthwith deliver a duplicate of such certificate to the city treasurer, who shall, without delay, give at least five days' notice through a newspaper published in the city, of the time when such tax will become delinquent. To every such certificate the clerk shall append a warrant in the usual form, requiring such city treasurer to collect such special tax or taxes by distress and sale of goods and chattels of the person, persons or bodies corporate owing any such special tax or taxes, if the same be not paid before the time fixed for the same to become delinquent. The city treasurer shall make

his return of such warrants with a report of his doings thereunder on or before the fifteenth day of July next thereafter.

Source: Laws 1901, c. 16, § 103, p. 110; R.S.1913, § 4536; C.S.1922, § 3922; C.S.1929, § 15-715.

15-727 Special tax assessments; multiple owners; treatment.

It shall be sufficient in any case to describe the lot or piece of ground as the same is platted or recorded, although the same belong to several persons, but in case any lot or piece of ground belong 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. 16, § 104, p. 111; R.S.1913, § 4537; C.S.1922, § 3923; C.S.1929, § 15-716.

15-728 Public improvements; city engineer; inspection and acceptance.

When any public 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 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. 16, § 105, p. 111; R.S.1913, § 4538; C.S.1922, § 3924; C.S.1929, § 15-717.

15-729 Street railways; paving between tracks; duty.

All street railway companies in any city of the primary class shall be required to pave, repave or repair between and to one foot beyond their outer rails. In case any such railway uses more than one track in any street, it shall pave, repave or repair between tracks and to one foot beyond the outer rails where such company owns, at its own cost. Whenever any street shall be ordered paved or repaved by the mayor and council of the city, such paving or repaving shall be done at the same time and shall be of the same material and character as the paving or repaving of the street upon which such railway track is located, unless other material be specially ordered by the mayor and council of the city. Such street railway companies shall be required to keep that portion of the streets required by them to be paved, repaved or repaired, in repair, using for said purpose the same material as the streets upon which the track is laid at the point of repair, or such other material as the mayor and council may require and order upon streets in such city.

Source: Laws 1901, c. 16, § 106, p. 111; R.S.1913, § 4539; C.S.1922, § 3925; C.S.1929, § 15-718.

The right to levy a special tax against a street railway company to pay the cost of paving along its track is valid and is not class legislation. City of Lincoln v. Lincoln St. Ry. Co., 67 Neb. 469, 93 N.W. 766 (1903); Lincoln Street Ry. Co. v. City of Lincoln, 61 Neb. 109, 84 N.W. 802 (1901).

15-730 Street railways; tracks; duty to repair; liability for injuries.

Track of all railway companies, when located upon the streets or avenues of the city, shall be kept in repair and safe in all respects for the use of the traveling public, and such companies shall be liable for all damages resulting by reason of neglect to keep such track in repair or for obstructing the streets or avenues of such city. For injuries to persons or property arising wholly from a failure of such companies to keep their tracks in proper repair and free from obstruction, such company shall be liable.

Source: Laws 1901, c. 16, § 106, p. 112; R.S.1913, § 4539; C.S.1922, § 3925; C.S.1929, § 15-718.

15-731 Street railway company, defined.

The words street railway company, as used in sections 15-729 to 15-732, shall be taken to mean and include any persons, companies, corporations or associations, owning any street railway in said city.

Source: Laws 1901, c. 16, § 106, p. 112; R.S.1913, § 4539; C.S.1922, § 3925; C.S.1929, § 15-718.

15-732 Street railway; abandonment of line; failure to pay paving tax; forfeiture of charter.

Any street railway company which shall abandon the use of and fail to use its line of railway or any material portion thereof for railway purposes, or shall fail to pay its paving taxes and assessments, shall be subject to forfeiture of its charter; and upon reasonable notice in writing served upon such company, the city council shall have power by ordinance to declare the charter of such company forfeited; and the city council may cause the said unused tracks to be taken up and the street and paving repaired, may assess the cost of the same to the said street railway company, and may collect the said costs as a special tax against said company.

Source: Laws 1901, c. 16, § 106, p. 112; R.S.1913, § 4539; C.S.1922, § 3925; C.S.1929, § 15-718.

15-733 Street railways; failure to pave or repair; power of city; cost of paving; assessment; collection.

In the event of the refusal or neglect of such street railway companies to pave, repave or repair, when so directed by the mayor and the city council, upon the grading, paving or repaving of any street upon which their track is laid, the mayor and council shall have power to pave, repave or repair the same; and the cost of such paving, repaving or repairing may be collected by levy and sale of any real or personal property of said street railway company, the same as special taxes are collected. Special taxes for paying the cost of such paving, repaving, macadamizing or repairing of any street railway may be levied upon the track, including the ties, iron, roadbed and right-of-way, side tracks and appurtenances, including buildings and real estate belonging to such company or person, and used for the purpose of such street railway business, all as one property, or upon such part of such tracks, appurtenances, and property as may be within the district paved, repaved, macadamized or repaired, or any part thereof, and shall be a lien upon the property of such company in its entirety and as one property from the time of the levy until satisfied. The lien so created shall attach in like manner and with like effect to all property of such company or companies after acquired which shall be used

in the operation of such railway. No mortgage, conveyance, pledge, transfer or encumbrance of any such property of any such company shall be made or suffered, except subject to the actual or prospective lien of such special taxes, whether actually levied or not. Such special taxes when levied shall constitute a lien upon the property of such railway in its entirety and as one property prior and superior to all other liens or encumbrances, except liens for taxes or for other special assessments. The treasurer shall have the power and authority to seize any personal property belonging to any such person or company for the satisfaction of any such special taxes when delinquent, and to sell the same upon the same advertisement and in the same manner as constables are now authorized to sell personal property upon execution at law, but failure to do so shall in nowise affect or impair the lien of the tax or any proceeding allowed by law for the enforcement thereof. The railroad track or any other property upon which such special taxes shall be levied, or so much thereof as may be necessary, may be sold for the payment of such special taxes in the same manner and with the same effect as real estate may be sold upon which such special taxes may be levied. It shall also be competent for any such city to bring civil action against any party owning or operating any such street railway and liable to pay said taxes, to recover the amount thereof, or any part thereof delinquent and unpaid, in any court having jurisdiction of the amount, and obtain judgment and have execution therefor, and no property, real or personal, shall be exempt from any such execution; *Provided*, real estate shall not be levied upon by execution, except by execution out of the district court, on a judgment therein or transcript of a judgment filed therein, as provided by law. No property seized by the treasurer, as hereinbefore provided, or upon any such execution, shall be taken from the officer holding the same upon any order of replevin. No defense shall be allowed in any such civil action, except such as goes to the groundwork, equity and justice of the tax, and the burden of proof shall rest upon the party assailing the tax. In case part of such special assessment shall be shown to be invalid, unjust or inequitable, judgment shall be rendered for such amount as is just and equitable, and costs shall follow the judgment. It shall be competent for the mayor and council, upon the written application of any company, association, corporation or person owning any such street railway, to provide that such special tax shall become delinquent and payable in installments, as in case of taxes levied upon abutting real estate as hereinbefore provided, but such application shall be taken and deemed a waiver of any and all objections to such taxes and to the validity thereof. Such application shall be made at or before the final levy of such taxes. The provisions of this section in regard to the levy, collection, and enforcement of special taxes to pay the cost of paving, repaving, macadamizing or repairing of any such street railways shall apply to all such special taxes.

Source: Laws 1901, c. 16, § 107, p. 113; R.S.1913, § 4540; C.S.1922, § 3926; C.S.1929, § 15-719.

Mortgage made prior to contemplation of paving is superior to tax lien. City of Lincoln v. Lincoln St. Ry. Co., 67 Neb. 469, 93 N.W. 766 (1903).

Council may make levy independently of petition by abutting owners, and levy by resolution instead of ordinance is valid. Lincoln St. Ry. Co. v. City of Lincoln, 61 Neb. 109, 84 N.W. 802 (1901).

15-734 Sidewalks; construction; repair; duty of landowner; power of city in case of default; cost; assessment.

The owner of property abutting on public streets is hereby primarily charged with the duty of keeping and maintaining the sidewalks thereon in a safe and

sound condition, and free from snow, ice, and other obstructions; and in default thereof, upon notice to such abutting property owner as hereinafter provided, such abutting property owner shall be liable for injuries or damages sustained by reason thereof. The city is given general charge, control, and supervision of the streets and sidewalks thereof, and is required to cause to be maintained or maintain the same in a reasonably safe condition. It is given full power to require owners of abutting property to keep and maintain the sidewalks thereof in a safe and sound condition and free from snow, ice, and other obstructions, and to require such abutting property owners to construct and maintain the sidewalks of such material and of such dimensions and upon such grade as may be determined by the council. 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 so construct or maintain such sidewalk, the city through the proper officers may construct or repair such sidewalk or cause the same to be constructed or repaired, and report the cost thereof to the council, whereupon the council shall assess the same against such abutting property. The council may receive bids for constructing or repairing any or all such walks, and may let contracts to the lowest responsible bidders 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, replacing, repairing, or grading thereof shall be assessed at a regular council meeting by resolution, fixing the cost along abutting property as a special assessment against such property; and the amount charged or 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 council and its purpose shall be published once in a newspaper published and of general circulation in the city at least five days before the meeting of the council 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 assessments, 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 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 date of the levy thereof until satisfied.

Source: Laws 1901, c. 16, § 107, p. 113; R.S.1913, § 4540; C.S.1922, § 3926; C.S.1929, § 15-719; R.S.1943, § 15-734; Laws 1980, LB 933, § 7; Laws 1981, LB 167, § 8.

Giving of statutory notice is condition precedent to action based on injury from failure to remove snow and ice. Stump v. Stransky, 168 Neb. 414, 95 N.W.2d 691 (1959).

City is not an insurer of safety of pedestrians using sidewalks, but is required only to keep them in a reasonably safe condition for travel. Anthony v. City of Lincoln, 152 Neb. 320, 41 N.W.2d 147 (1950).

When city contracted for construction of sidewalk but neglected to collect assessment and agreed to release owner, it was liable to contractor. Ward v. City of Lincoln, 87 Neb. 661, 128 N.W. 24 (1910).

In action by city against owner for damages paid for injuries from defective walk, statute of limitations began to run when final judgment was rendered against city. City of Lincoln v. First Nat. Bank of Lincoln, 67 Neb. 401, 93 N.W. 698 (1903).

Not liable unless city, through proper officers, knew of defect or same had existed so long as to constitute notice. Nothdurft v. City of Lincoln, 66 Neb. 430, 92 N.W. 628 (1902), rehearing denied 66 Neb. 434, 96 N.W. 163 (1903).

Owner need not repair until notified by city. City of Lincoln v. Janesch, 63 Neb. 707, 89 N.W. 280 (1902).

The fact that the duty of maintaining sidewalks in repair is imposed upon owner does not relieve city from such duty and consequent liability. City of Lincoln v. Pirner, 59 Neb. 634, 81 N.W. 846 (1900); City of Lincoln v. O'Brien, 56 Neb. 761, 77 N.W. 76 (1898).

Traveler has right to presume walk is safe; city liable for unguarded excavations in street and sidewalks. City of Lincoln v. Walker, 18 Neb. 250, 25 N.W. 66 (1885).

15-735 Special sidewalk assessments; collection.

Special sidewalk assessments may be collected:

(1) In the manner usual for the collection or foreclosure of county or state taxes against real estate;

(2) By foreclosure as in case of county or state taxes against real estate; *Provided, however*, in the foreclosure of such special sidewalk assessments any number of parties, owners of abutting property against which property a special sidewalk assessment has been made may be made parties defendant, and any number of special sidewalk assessments may be foreclosed in one action, the decree, however, to be separate as to each particular piece of abutting property against which such special sidewalk assessments have been levied; *and provided further*, a certified copy by the city clerk of the action of the council in making such special sidewalk assessments shall be received in evidence as prima facie evidence of the regularity of all proceedings in the matter of making and levying such special sidewalk assessments, and such special sidewalk assessments shall constitute a lien prior and superior to all other liens except liens for taxes or other special assessments upon such abutting property; *and provided further*, in the foreclosure of such special assessments, the action may be brought in the name of the city against any and all parties subject to the payment of such special sidewalk assessments in one or more actions, and the city may become a purchaser thereof for an amount not exceeding the amount of the special sidewalk assessment, interest and penalties thereon; or

(3) The city clerk upon the request of the council, shall, under seal of the city, make out a statement containing a description of the property against which special sidewalk assessments are delinquent, the amount of such special sidewalk assessments, together with interest and penalties thereon, the name of the owner of such abutting property at the time of the levy and the date of the levy, and shall transmit the same to the clerk of the district court; and upon request of the city the clerk of the district court shall issue an order of sale of such abutting property and deliver the same to the sheriff, who shall thereupon cause such property to be advertised and sold as in case of sale of real estate under judgment and execution, except that it shall not be necessary for the said sheriff to cause such property to be appraised; upon sale the sheriff shall report the sale thereof to the district court for confirmation.

Source: Laws 1901, c. 16, § 109, p. 116; R.S.1913, § 4542; C.S.1922, § 3928; C.S.1929, § 15-721.

15-736 Repealed. Laws 1967, c. 54, § 1.

15-737 Repealed. Laws 1967, c. 54, § 1.

15-738 Repealed. Laws 1967, c. 54, § 1.

15-739 Repealed. Laws 1967, c. 54, § 1.

15-740 Repealed. Laws 1967, c. 54, § 1.

15-741 Repealed. Laws 1967, c. 54, § 1.

15-742 Repealed. Laws 1967, c. 54, § 1.

15-743 Repealed. Laws 1967, c. 54, § 1.

15-744 Repealed. Laws 1967, c. 54, § 1.

15-745 Repealed. Laws 1967, c. 54, § 1.

15-746 Repealed. Laws 1967, c. 54, § 1.

15-747 Repealed. Laws 1967, c. 54, § 1.

15-748 Repealed. Laws 1967, c. 54, § 1.

15-749 Repealed. Laws 1967, c. 54, § 1.

15-750 Repealed. Laws 1967, c. 54, § 1.

15-751 Joint city and county facilities; cooperation with other governmental agencies; authorization; dual officers and employees.

(1) Any county and any city of the primary class, which is the county seat thereof, shall have the power to join with each other and with other political or governmental subdivisions, agencies, or public corporations whether federal, state, or local, or with any number of combinations thereof, by contract or otherwise in the joint ownership, operation, or performance of any property, facility, power, or function, or in agreements containing the provisions that one or more thereof operate or perform for the other or others. Any such county and any such city shall also have the power to authorize and undertake research, formulate plans, draft and seek the enactment of legislation, take other actions concerning improvement of the relationships between themselves or between each of them and other political or governmental subdivisions, agencies, or public corporations, whether federal, state or local, for the attainment of voluntary cooperation agreements, annexations, transfers of functions to or from such city, or to or from such county, or city-county consolidation or separation, or any other means of accomplishing changes in governmental organization in which such city or such county has an interest. Such city and such county may undertake such efforts alone or in concert with other political or governmental subdivisions, agencies, or public corporations, whether federal, state, or local, or with public or private research or professional organizations. Such city and such county may appropriate and spend money for such purposes.

(2) Any officer or employee, whether elected or appointed, of any county, may also simultaneously be and serve as an officer or employee of any such city of the primary class, referred to in subsection (1) of this section, which is the county seat of the county where such duties are not incompatible. Any officer or employee, whether elected or appointed, of a city of the primary class which is the county seat of a county may also simultaneously be and serve as an officer or employee of the county of which said city is the county seat where such duties are not incompatible; *Provided*, that this provision shall not apply to or cover the county board of such county or the mayor or members of the city council of such city.

Source: Laws 1957, c. 25, § 1, p. 178.

15-752 Joint city and county facilities; authorization; vote required.

Any action authorized under section 15-751 shall be taken only upon the affirmative vote of a majority of the board of commissioners of such county or a majority of the members of the city council and mayor of such city and when

such action is taken by such governing body it shall be binding upon all officers and employees of such county or such city.

Source: Laws 1957, c. 25, § 2, p. 179.

15-753 Ornamental lighting districts; bids; letting; special assessment.

The city council shall have power to create ornamental lighting districts for the purpose of acquiring and installing ornamental lights, including poles, fixtures, wiring, underground conduits, and all necessary equipment and accessories, in or along any street, streets, public grounds, public way or ways, within the city. All such districts shall be known as ornamental lighting districts and shall be created by ordinance which shall designate the property within the district to be benefited. The city shall have power to advertise for bids for the installation, construction and equipment therefor, and to contract with the lowest responsible bidder therefor as authorized in its home rule charter. The cost thereof may be, in whole or in part, assessed proportionately to the benefits on the property specially benefited, and the city council shall have power and authority to fix the period of time for the payment of the special assessments, and to issue bonds, as authorized by the home rule charter.

Source: Laws 1969, c. 66, § 5, p. 381.

15-754 Public improvement districts; cost; special assessment.

The city council shall have power by ordinance to create public improvement districts for opening, widening, or enlarging of any street, alley, boulevard, or public way or the establishing or enlarging of any park or parkway within the city. Such special improvement district having been created, the city may require, by agreement, purchase, condemnation, or otherwise, the necessary lands, lots, or grounds to carry out the purposes of the district. The cost thereof may be, in whole or in part, assessed proportionate to benefits, on the property specially benefited. The city council shall have power and authority to fix the period of time for the payment of the special assessments, and to issue bonds, as authorized by the home rule charter.

Source: Laws 1969, c. 66, § 8, p. 382.

15-755 Repealed. Laws 1983, LB 44, § 1.

15-756 Repealed. Laws 1983, LB 44, § 1.

15-757 Repealed. Laws 1983, LB 44, § 1.

15-758 Repealed. Laws 1983, LB 44, § 1.

15-759 Repealed. Laws 1983, LB 44, § 1.

ARTICLE 8

FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section
15-801. Biennial budget authorized.
15-802. Repealed. Laws 1961, c. 37, § 4.
15-803. Repealed. Laws 1961, c. 37, § 4.
15-804. Repealed. Laws 1961, c. 37, § 4.
15-805. Repealed. Laws 1961, c. 37, § 4.

15-801 Biennial budget authorized.

A city of the primary class may adopt biennial budgets for biennial periods if such budgets are provided for by a city charter provision. For purposes of this section:

(1) Biennial budget means a budget that provides for a biennial period to determine and carry on the city's financial and taxing affairs; and

(2) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered years.

Source: Laws 2000, LB 1116, § 1.

15-802 Repealed. Laws 1961, c. 37, § 4.

15-803 Repealed. Laws 1961, c. 37, § 4.

15-804 Repealed. Laws 1961, c. 37, § 4.

15-805 Repealed. Laws 1961, c. 37, § 4.

15-806 Repealed. Laws 1972, LB 1150, § 3.

15-807 Board of equalization; procedure; quorum.

The city council shall constitute the board of equalization for the city, and shall have power as such board to equalize all taxes and assessments, to correct any errors in the listing or valuation of property, and to supply any omissions in the same. A majority of all the members elected to the council shall constitute a quorum for the transaction of business properly before the board, 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 general or special taxes the council may adopt rules and regulations as to the manner of presenting complaints and applying for relief. It shall not invalidate or prejudice the proceedings of the board that a majority of the members thereof after organization as a board do not in fact continue present during the advertised hours for the sitting of such board; *Provided, however*, the clerk and some member of the board shall be present to receive complaints or applications for relief. No final action shall be taken with respect to any taxes or assessments by the board until a majority of the members of the council sitting as a board of equalization shall be present and in open session.

Source: Laws 1901, c. 16, § 77, p. 99; R.S.1913, § 4547; C.S.1922, § 3934; C.S.1929, § 15-805.

A tax levied by city of Lincoln on property that is exempt is one levied for an unauthorized purpose and its collection may be enjoined. East Lincoln Lodge No. 210, A.F. & A.M. v. City of Lincoln, 131 Neb. 379, 268 N.W. 91 (1936).

15-807.01 Board of equalization for cities of primary class; delinquency.

Notwithstanding any existing provisions to the contrary, whenever any city of the primary class has the county within which it is situated collect the taxes for the city, the officials of the county as designated by state law shall constitute a board of equalization for the city except as to special assessments of the city, and the dates when taxes of such city except special taxes shall be a lien or shall be due and payable or shall be delinquent shall be as provided by state law for taxes otherwise collected by the county.

Source: Laws 1972, LB 1150, § 2.

15-808 Board of equalization; hearings; duties.

The city council sitting as a board of equalization shall hold a session of not less than three or more than thirty days annually commencing on the first Tuesday after the third Monday in June and shall have power:

(1) To assess any taxable property, real and personal, not assessed;

(2) To review assessments made and correct the same as appears to be just. The board shall not increase the assessment of any person, partnership, limited liability company, or corporation until such person, partnership, limited liability company, or corporation has been notified by the board to appear and show

cause, if any, why the assessment should not be increased. If personal service of such notice cannot be made in the city, notice may be given by publication and it shall be sufficient if such notice is published in one issue of a daily paper of general circulation within the city; and

(3) To equalize the assessments of all taxable property in the city and to correct any errors in the listing or value thereof. The city council sitting as a board of equalization shall be authorized and empowered to meet at any time for the purpose of equalizing assessment of any omitted or undervalued property and to add to the assessment rolls any taxable property not included.

Source: Laws 1901, c. 16, § 78, p. 99; Laws 1907, c. 9, § 7, p. 79; R.S.1913, § 4548; C.S.1922, § 3935; C.S.1929, § 15-806; R.S. 1943, § 15-808; Laws 1961, c. 39, § 1, p. 167; Laws 1992, LB 1063, § 7; Laws 1992, Second Spec. Sess., LB 1, § 7; Laws 1993, LB 121, § 132.

Owner of tax exempt real estate is entitled to enjoin collection of taxes thereon even though statute provides a remedy, inasmuch as tax is absolutely void. East Lincoln Lodge No. 210, A.F. & A.M. v. City of Lincoln, 131 Neb. 379, 268 N.W. 91 (1936).

Upon notice, board may assess property omitted from list. White v. City of Lincoln, 79 Neb. 153, 112 N.W. 369 (1907).

15-809 Board of equalization; special assessments; equalization.

The council shall act as a board to equalize all special assessments, except for sidewalks affecting single properties, before special taxes for local improvements be finally levied, distributed and apportioned, and to correct any errors therein, upon notice as provided herein. The board shall be in session not less than two hours on two successive days and until it hears all complaints owners may make to the proposed distribution and levy of the tax, and shall equalize the tax and correct errors therein. If by reduction of the amount charged on any property it is necessary to increase the proposed amount upon other property the owner shall be notified in person or at his residence, or by five days' publication if not a resident, or if changes are many, another distribution may be submitted by any member or any owner interested, and notice by five days' publication be given of a second session for equalization at which time the equalization shall be completed.

Source: Laws 1901, c. 16, § 80, p. 100; R.S.1913, § 4549; C.S.1922, § 3936; C.S.1929, § 15-807.

Review of decision of board of equalization is by error proceeding. Webster v. City of Lincoln, 50 Neb. 1, 69 N.W. 394 (1896).

15-810 Board of equalization; power to compel testimony.

The council or any committee of the members thereof or the council, when sitting as a board of equalization, 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 the requisite oaths, and such council or committee or the council, when sitting as a board of equalization, shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

Source: Laws 1901, c. 16, § 123, p. 123; R.S.1913, § 4550; C.S.1922, § 3937; C.S.1929, § 15-808.

In assessment of omitted property, board may place property on tax list from evidence given in nature of judicial proceedings. White v. City of Lincoln, 79 Neb. 153, 112 N.W. 369 (1907).

15-811 Taxes; omitted property; assessment.

If for any reason any taxable property in the city shall escape taxation in any year, it shall be the duty of the city council when sitting as a board of equalization in any subsequent year to assess such property at a fair valuation for the year or years for which such property should have been assessed, and to levy thereon under such assessment a tax at the same rate and upon the same basis that other taxable property was assessed for the year in which such property escaped taxation, which tax and levy shall be in addition to all current or other taxes on the same property.

Source: Laws 1901, c. 16, § 79, p. 100; R.S.1913, § 4552; C.S.1922, § 3939; C.S.1929, § 15-810.

15-812 Tax list; delivered to city treasurer; errors.

As soon as the assessment roll shall have been equalized, and the annual levy made thereon, the city clerk shall immediately make out a tax list, which shall be as nearly as practicable in the form prescribed by law for the tax list to be furnished county treasurers, and he shall deliver such tax list to the city treasurer on or before the first day of October next after the date of the levy in each year. Errors in the name of persons assessed may be corrected by the treasurer and the tax collected from the person intended, and in case the treasurer finds that any land has been omitted in the assessment, he shall report that fact to the council, who may assess the same and direct the correction of the tax list as provided in this section and in section 15-811.

Source: Laws 1901, c. 16, § 123, p. 123; R.S.1913, § 4550; C.S.1922, § 3940; C.S.1929, § 15-811.

15-813 Taxes; warrant of city clerk; form.

To each tax list so delivered a warrant under the hand of the city clerk shall be annexed, to be substantially in the following form:

In the name and by the authority of the State of Nebraska: To ..... city treasurer of the city of ..... in Nebraska;

You are hereby commanded to collect from each of the persons and corporations named in the annexed tax list and owners of real estate described therein the taxes set down in such list opposite their respective names, and the several parcels of land described therein; and in case any person or corporation upon whom any such tax or sum is imposed, or who by law is required to pay the same, shall refuse or neglect to pay the full amount thereof before the first day of March (or September), 20.... (insert year after levy), you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed as are by law required to pay such tax.

Given under my hand and official seal this ..... day of ..... A.D. 20.... .

. . . . . .

City Clerk of the City of . . . . . .

Source: Laws 1901, c. 16, § 83, p. 101; R.S.1913, § 4557; C.S.1922, § 3944; C.S.1929, § 15-815; Laws 1933, c. 136, § 16, p. 526; C.S.Supp.,1941, § 15-815; R.S.1943, § 15-813; Laws 2004, LB 813, § 3.

15-814 Taxes; warrant of city clerk; authority of city treasurer.

Such warrant shall fully authorize and empower the city treasurer to levy on any personal property belonging to such delinquent, and such warrant shall be a full and complete justification of the treasurer in any action brought to recover damages or costs for any act or proceeding by him done or taken in conformity with the commands thereof.

Source: Laws 1901, c. 16, § 84, p. 102; R.S.1913, § 4558; C.S.1922, § 3945; C.S.1929, § 15-816.

15-815 Repealed. Laws 1965, c. 460, § 4.

15-816 Delinquent taxes; collection.

All municipal personal taxes shall be collected from the personal property of the person, partnership, limited liability company, or corporation owning the same. All delinquent municipal taxes levied on any real estate within such city shall be collected by sale of such real estate in the same manner as in case of sale for delinquent county taxes.

Source: Laws 1901, c. 16, § 86, p. 102; R.S.1913, § 4560; C.S.1922, § 3947; C.S.1929, § 15-818; R.S.1943, § 15-816; Laws 1993, LB 121, § 133.

15-817 Ordinances to enforce collection of taxes; power.

The mayor and council shall have full power and authority to pass ordinances not inconsistent with the laws of this state which they may deem necessary to secure a speedy and thorough collection of all municipal taxes and special assessments.

Source: Laws 1901, c. 16, § 87, p. 102; R.S.1913, § 4561; C.S.1922, § 3948; C.S.1929, § 15-819.

15-818 Taxes; payable in cash, warrants, and coupons.

All municipal taxes and special assessments in the city shall be paid in cash, or in warrants of the city drawn on the fund for which the same is offered; *Provided*, coupons on any bonds of the city shall be received in payment of taxes or special assessments.

Source: Laws 1901, c. 16, § 88, p. 102; R.S.1913, § 4562; C.S.1922, § 3949; C.S.1929, § 15-820.

15-819 Personal property tax; lien upon personal property.

Taxes assessed upon personal property in the city shall be a lien upon the personal property of the person, partnership, limited liability company, or corporation assessed from and after the time the tax books are received by the

treasurer. Such lien shall be prior and superior to all other liens thereon except liens for taxes.

Source: Laws 1901, c. 16, § 89, p. 103; R.S.1913, § 4563; C.S.1922, § 3950; R.S.1943, § 15-819; Laws 1993, LB 121, § 134.

15-820 Repealed. Laws 1965, c. 460, § 4.

15-821 Special assessments; lien, when; collection; interest.

Special assessments on real estate shall be a lien from the date of the levy, and interest on all unpaid installments shall be payable annually. Such lien shall be perpetual and superior to all other liens upon the property except liens for taxes. In case of sale of any property for such tax or special assessment the same shall be governed by the general revenue law, except as herein otherwise provided, and the rights and limitations shall be the same as in other tax sales; *Provided*, each installment 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, payable annually, from levy until due; and installments delinquent 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 1901, c. 16, § 91, p. 104; R.S.1913, § 4565; C.S.1922, § 3952; C.S.1929, § 15-824; Laws 1933, c. 136, § 17, p. 527; C.S.Supp.,1941, § 15-824; R.S.1943, § 15-821; Laws 1980, LB 933, § 8; Laws 1981, LB 167, § 9.

15-822 Special assessments; reassessment; procedure.

The council shall have power in all cases where special assessments for any purpose have or may be declared void or invalid for want of jurisdiction in making or levying such special assessments, or on account of any defect or irregularity in the manner of levying the same, or for any cause whatever, to reassess and relevy a new assessment equal to the special benefits or not to exceed the cost of the improvement for which the assessment was made upon the property originally assessed, and such assessment so made shall constitute a lien upon the property prior and superior to all other liens except liens for taxes or other special assessments; *Provided*, in all cases under the provisions of this section the council before making any such reassessment or relevy of special taxes or assessments shall give five days' notice in a newspaper published and of general circulation in the city of the time when the council will meet to determine the matter of reassessing or relevying all such special assessments.

Source: Laws 1901, c. 16, § 93, p. 104; R.S.1913, § 4566; C.S.1922, § 3953; C.S.1929, § 15-825.

Reassessment of benefits is provided for when original assessment is invalid. Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960).

15-823 Taxes; revenue to pay bonds; investment.

All taxes levied for the purpose of raising money to pay 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, and 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 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 the city, provided they can be secured by the treasurer at such rate or premiums as shall be prescribed by ordinance. Any due or overdue coupon or bond shall be a sufficient warrant or order for the payment of the same out of any fund specially created for that purpose, without any further order or allowance by the mayor or council.

Source: Laws 1901, c. 16, § 117, p. 121; R.S.1913, § 4567; C.S.1922, § 3954; C.S.1929, § 15-826.

15-824 Taxes; irregularities; effect.

Irregularities in making assessments and returns thereof, in the equalization of assessments, and in the mode and manner of advertising the sale of any property shall not invalidate or affect the sale thereof when advertised and sold for delinquent city taxes and special assessments as herein provided; nor shall the sale of any real estate or any such tax or assessment be invalid on account of such real estate having been listed in the name of any other person than that of the rightful owner.

Source: Laws 1901, c. 16, § 92, p. 104; R.S.1913, § 4568; C.S.1922, § 3955; C.S.1929, § 15-827.

15-825 Repealed. Laws 1978, LB 847, § 4.

15-826 Repealed. Laws 1961, c. 37, § 4.

15-827 Repealed. Laws 1961, c. 37, § 4.

15-828 Repealed. Laws 1961, c. 37, § 4.

15-829 Repealed. Laws 1961, c. 37, § 4.

15-830 Repealed. Laws 1961, c. 37, § 4.

15-831 Repealed. Laws 1961, c. 37, § 4.

15-832 Repealed. Laws 1961, c. 37, § 4.

15-833 Repealed. Laws 1961, c. 37, § 4.

15-834 Bonds; sale; terms.

No bonds issued by the city which are general obligation bonds shall be sold for less than par or face value. All such bonds may contain such provisions with respect to their redemption as the city shall provide. There shall be no tax levy to pay more than the interest upon such bonds until the year before they become due, and then only so much as is needed to meet the bonds maturing the year after.

Source: Laws 1901, c. 16, § 121, p. 123; R.S.1913, § 4577; C.S.1922, § 3964; C.S.1929, § 15-836; R.S.1943, § 15-834; Laws 1947, c. 15, § 11, p. 89; Laws 1963, c. 36, § 3, p. 202; Laws 1969, c. 69, § 1, p. 386; Laws 1969, c. 51, § 25, p. 288.

15-835 Special funds; diversion of surplus.

All money received from any 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; *Provided, however*, any surplus remaining in any such fund after all obligations against the same shall have been satisfied, may be transferred to any other fund by order of the council.

Source: Laws 1901, c. 16, § 70, p. 95; R.S.1913, § 4556; C.S.1922, § 3943; C.S.1929, § 15-814.

15-836 Repealed. Laws 1967, c. 54, § 1.

15-837 Repealed. Laws 1965, c. 45, § 2.

15-838 Repealed. Laws 1965, c. 45, § 2.

15-839 Repealed. Laws 1961, c. 37, § 4.

15-840 Claims; how submitted and allowed.

All liquidated and unliquidated claims and accounts payable against the city shall: (1) Be presented in writing; (2) state the name 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. The finance director shall be responsible for the preauditing and approval of all claims and accounts payable, and no warrant in payment of any claim or account payable shall be drawn or paid without such approval. In order to maintain an action for a claim, other than a tort claim as defined in section 13-903, it shall be necessary, as a condition precedent, that the claimant file such claim within one year of the accrual thereof, in the office of the city clerk, or other official whose duty it is to maintain the official records of a primary-class city.

Source: Laws 1901, c. 16, § 126, p. 124; R.S.1913, § 4580; C.S.1922, § 3967; C.S.1929, § 15-839; R.S.1943, § 15-840; Laws 1967, c. 59, § 1, p. 196; Laws 1979, LB 145, § 1; Laws 1983, LB 52, § 1.

With regard to those actions subject to the requirements of this section, a cause of action shall be deemed to have accrued when all factors have arisen which would allow the claimant to commence and maintain an action in court with the exception of the filing of the claim pursuant to this section. The conditions precedent to maintaining an action against a city do not apply to actions allegedly arising under 42 U.S.C. section 1983. Bauers v. City of Lincoln, 245 Neb. 632, 514 N.W.2d 625 (1994).

Concerning a contract claim against a city of the primary class, this section requires that such claim be filed with the city clerk and disallowed before a claimant, pursuant to section 15-841, may timely appeal from the city's disallowance and thereby become entitled to invoke a district court's power to adjudicate the merit of the disallowed claim. Andrews v. City of Lincoln, 224 Neb. 748, 401 N.W.2d 467 (1987).

This statute is not an exclusive remedy for a fireman entitled to benefits under Firemen's Pension Act. Hooper v. City of Lincoln, 183 Neb. 591, 163 N.W.2d 117 (1968).

15-841 Claims; allowance; disallowance; appeal.

Any taxpayer of the city, after the allowance in whole or in part of any liquidated or unliquidated claim, or the claimant, after the disallowance in whole or in part of any such claim, may appeal therefrom to the district court of the county in which the city is situated in accordance with the procedures set forth in sections 15-1201 to 15-1205. In an appeal by a taxpayer in case the claimant finally recovers judgment for as great a sum exclusive of interest as was allowed by the council, such appellant shall pay all costs of such appeal. In an appeal by a claimant in case claimant fails to recover as great a sum exclusive of interest as was allowed by the council, such claimant shall pay all

costs. No warrant shall issue for the payment of any such claim until the appeal is finally determined. No appeal bond shall be required of the city by any court in case of appeal by the city, and judgment shall be stayed pending such appeal.

Source: Laws 1901, c. 16, § 126, p. 124; R.S.1913, § 4581; C.S.1922, § 3968; C.S.1929, § 15-840; R.S.1943, § 15-841; Laws 1967, c. 59, § 2, p. 196; Laws 1983, LB 52, § 2.

In a wage claim brought under this section against a city of the primary class, there is nothing in the plain language of section 48-1231 that requires an employee to plead a specific cause of action for attorney fees or to file a separate proceeding for attorney fees in order to receive an award of attorney fees under the Nebraska Wage Payment and Collection Act. Rauscher v. City of Lincoln, 269 Neb. 267, 691 N.W.2d 844 (2005).

Concerning a contract claim against a city of the primary class, section 15-840 requires that such claim be filed with the city clerk and disallowed before a claimant, pursuant to this section, may timely appeal from the city's disallowance and thereby become entitled to invoke a district court's power to adjudicate the merit of the disallowed claim. Andrews v. City of Lincoln, 224 Neb. 748, 401 N.W.2d 467 (1987).

An appeal from the disallowance of a claim against a city of the primary class is perfected by filing a notice of appeal and bond. The filing of a transcript is not a jurisdictional requirement. Cole Investment Co. v. City of Lincoln, 213 Neb. 422, 329 N.W.2d 356 (1983).

15-842 Repealed. Laws 1983, LB 52, § 6.

15-842.01 Claims; appeal and actions by city; bond not required.

No bond for costs, appeal, supersedeas, injunction or attachment shall be required of any city of the primary class or of any officer, board, commission, head of any department, agent or employee of any such city in any proceeding or court action in which said city of the primary class or officer, board, commission, head of department, agent or employee is a party litigant in its or his official capacity.

Source: Laws 1963, c. 52, § 1, p. 231.

15-843 Repealed. Laws 1969, c. 138, § 28.

15-844 Property belonging to city; exempt from taxation; when.

Land, buildings, money, debts due the city, real and personal property, and assets of every kind and description belonging to any city of the primary class shall be exempt from execution liens and sales and shall be exempt from taxation to the extent used for a public purpose. Judgments against a city of the primary class shall be paid out of the judgment fund or out of a special fund created for that purpose.

Source: Laws 1963, c. 53, § 1, p. 232; Laws 1988, LB 798, § 1; Laws 2001, LB 173, § 14.

15-845 Deposit of city funds; conditions.

The city treasurer of a city of the primary class shall deposit and at all times keep on deposit for safekeeping in the banks, in the capital stock financial institutions, in the qualifying mutual financial institutions, or in some of them doing business in such city of approved and responsible standing all money collected, received, or held by him or her as such city treasurer. Any such bank, capital stock financial institution, or qualifying mutual financial institution located in the city may apply for the privilege of keeping such money or any part thereof upon the following conditions: (1) All such deposits shall be subject to payment when demanded by the city treasurer; and (2) such deposits shall be subject to all regulations imposed by law or adopted by the city 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, 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 1963, c. 54, § 1, p. 232; Laws 1987, LB 440, § 2; Laws 1989, LB 33, § 13; Laws 1996, LB 1274, § 14; Laws 2001, LB 362, § 14.

15-846 Deposit of funds; bond required; conditions.

For the security of the funds deposited as provided in section 15-845 the city treasurer shall require each depository to give bond for the safekeeping and payment of such deposits and the accretions to the deposit, which bond shall run to the city and be approved by the city attorney for form and legality. 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 to the deposit, and how credited. The bond shall also be conditioned that the depository shall pay such deposit and the accretion when demanded by the city treasurer at any time, perform as required by sections 15-845 to 15-847, 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 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 1963, c. 54, § 2, p. 233; Laws 1987, LB 440, § 3; Laws 1989, LB 33, § 14; Laws 1995, LB 384, § 13; Laws 2001, LB 362, § 15.

15-847 Deposit of city funds; security in lieu of bond.

In lieu of the bond required by section 15-846, 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 treasurer. The penal sum of such bond or the sum of such security may be reduced in the amount 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 1963, c. 54, § 3, p. 233; Laws 1987, LB 440, § 4; Laws 1989, LB 33, § 15; Laws 1989, LB 377, § 9; Laws 1992, LB 757, § 15; Laws 1995, LB 384, § 14; Laws 1996, LB 1274, § 15; Laws 2001, LB 362, § 16.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

15-848 Deposit of city funds; limitations; city treasurer liability.

The city treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more than the maximum amount of the bond given by such 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 one-half of the amount of the bond of such bank, capital stock financial institution, or qualifying mutual financial institution. The amount on deposit plus accretions at any time with any such bank, capital stock financial institution, or qualifying mutual financial institution shall not in either case exceed 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 shall have been duly approved by the city attorney as provided by section 15-846 or which has, in lieu of a surety bond, given security as provided by section 15-847. 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 1963, c. 54, § 4, p. 234; Laws 1987, LB 440, § 5; Laws 1989, LB 33, § 16; Laws 1995, LB 384, § 15; Laws 1996, LB 1274, § 16; Laws 2001, LB 362, § 17.

15-849 City funds; additional investments authorized.

The city treasurer may 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 pursuant to sections 15-846 to 15-848. The certificates of deposit purchased and time deposits made shall bear interest and shall be secured as prescribed in such sections. 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 1987, LB 440, § 6; Laws 1989, LB 33, § 17; Laws 1992, LB 757, § 16; Laws 1996, LB 1274, § 17; Laws 2001, LB 362, § 18.

ARTICLE 9

CITY PLANNING, ZONING

Section

15-901 Real estate; subdivisions; platting; standards; approval of city planning commission required; bond; appeal.

No owner of real estate located in any city of the primary class or within three miles of the corporate limits of any city of the primary class, when such real estate is located in the same county as the city and outside of any organized city or village, shall be permitted to subdivide, plat, or lay out the 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 approval by the city planning commission and, when applicable, having complied with sections 39-1311 to 39-1311.05. 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 city planning commission. A city of the primary class shall have authority within the area to regulate the subdivision of land for the purpose, whether immediate or future, of transferring ownership or building development, except that the city shall have no power to regulate subdivision in those instances where the smallest parcel created is more than ten acres in area. A city of the primary class shall have authority within the area to prescribe standards for laying out subdivisions in harmony with the comprehensive plan; to require the installation of improvements by the owner, by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements; and to require the dedication of land for public purposes.

For purposes of this section, subdivision shall mean 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.

Subdivision plats shall be approved by the city planning commission on recommendation by the city planning director and public works and utilities department. The city planning commission may withhold approval of a plat until the public works and utilities department has certified that the improvements required by the regulations have been satisfactorily installed, until a sufficient bond guaranteeing installation of the improvements has been posted, or until public improvement districts are created. The city council may provide procedures in land subdivision regulations for appeal by any person aggrieved by any action of the city planning commission or city planning director on any plat.

Source: Laws 1929, c. 49, § 1, p. 204; C.S.1929, § 15-1001; R.S.1943, § 15-901; Laws 1959, c. 40, § 2, p. 219; Laws 1963, c. 57, § 1, p. 238; Laws 1980, LB 61, § 2; Laws 1993, LB 39, § 3; Laws 2003, LB 187, § 3.

This section does not authorize a city to require a developer to pay the cost of widening a street, while, at the same time, prohibit the developer's subdivision from having direct access to that street. Briar West, Inc. v. City of Lincoln, 206 Neb. 172, 291 N.W.2d 730 (1980).

This section does not authorize cities to use subdivision control as a device to evade constitutional prohibitions of taking of property without compensation. Briar West, Inc., v. City of Lincoln, 206 Neb. 172, 291 N.W.2d 730 (1980).

Approval of plat by municipal authorities is not required where there is no subdivision of land, no dedication of roadways, and no sale of lots to others. Reller v. City of Lincoln, 174 Neb. 638, 119 N.W.2d 59 (1963).

15-902 Building regulations; zoning; powers; comprehensive plan; manufactured homes.

(1) Every city of the primary class shall have power in the area which is within the city or within three miles of the corporate limits of the city and

outside of any organized city or village to regulate and restrict: (a) The location, height, bulk, and size of buildings and other structures; (b) the percentage of a lot that may be occupied; (c) the size of yards, courts, and other open spaces; (d) the density of population; and (e) the locations and uses of buildings, structures, and land for trade, industry, business, residences, and other purposes. Such city shall have power to divide the area 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. Such zoning regulations may include reasonable provisions regarding nonconforming uses and their gradual elimination.

(2)(a) The city 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 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 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 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.

Source: Laws 1929, c. 49, § 2, p. 204; C.S.1929, § 15-1002; R.S.1943, § 15-902; Laws 1959, c. 40, § 3, p. 220; Laws 1963, c. 57, § 2, p. 239; Laws 1981, LB 298, § 2; Laws 1985, LB 313, § 2; Laws 1994, LB 511, § 2; Laws 1996, LB 1044, § 55; Laws 1998, LB 1073, § 2.

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.

A zoning ordinance, defining the term ''family'' as one or more persons related by blood, marriage, or adoption living in a single housekeeping unit but prohibiting more than two unrelated persons from living together, is a constitutional attempt to promote the public health, safety, and general welfare. State v. Champoux, 252 Neb. 769, 566 N.W.2d 763 (1997).

Property lying within three miles of corporate limits may be zoned. Reller v. City of Lincoln, 174 Neb. 638, 119 N.W.2d 59 (1963).

15-903 Repealed. Laws 1959, c. 40, § 5.

15-904 Transferred to section 19-3101.

15-905 Building regulations; zoning; distance from city authorized; powers granted.

Every city of the primary class shall have power to regulate in the area which is within the city or within three miles of the corporate limits of the city and outside of any organized city or village, and except as to construction on farmsteads outside of the corporate limits (1) the minimum standards of construction of buildings, dwellings and other structures, in order to provide safe and sound condition thereof for the preservation of health, safety, security and general welfare, which standards may include regulations as to electric wiring, heating, plumbing, pipefitting, sewer connections, ventilation, size of habitable rooms, and the method of constructing buildings, dwellings and other structures, and to provide for inspection thereof, and building permits and fees therefor, (2) the removal and tearing down of buildings, dwellings, and other structures in such areas which constitute nuisances because of the dilapidated, unsafe, or rundown condition or conditions, and (3) except as to the United States of America, the State of Nebraska, a county or village, in the area outside of the corporate limits of the city of the primary class, the nature, kind, and manner of constructing streets, alleys, sidewalks, curbing or abridging curbs, driveway approaches constructed on or to public right-of-way, and sewage disposal facilities. A farmstead is defined as property of twenty acres or more which produces one thousand dollars or more of farm products each year.

Source: Laws 1963, c. 57, § 3, p. 240; Laws 1965, c. 40, § 2, p. 233.

ARTICLE 10
PENSIONS

Section

15-1001 Repealed. Laws 1987, LB 408, § 13.

15-1001.01 Repealed. Laws 1987, LB 408, § 13.

15-1002 Repealed. Laws 1987, LB 408, § 13.

15-1003 Repealed. Laws 1987, LB 408, § 13.

15-1004 Repealed. Laws 1987, LB 408, § 13.

15-1005 Repealed. Laws 1987, LB 408, § 13.

15-1006 Repealed. Laws 1987, LB 408, § 13.

15-1007 Repealed. Laws 1987, LB 408, § 13.

15-1007.01 Repealed. Laws 1987, LB 408, § 13.

15-1007.02 Repealed. Laws 1987, LB 408, § 13.

15-1007.03 Repealed. Laws 1987, LB 408, § 13.

15-1007.04 Repealed. Laws 1987, LB 408, § 13.

15-1007.05 Repealed. Laws 1987, LB 408, § 13.

15-1008 Repealed. Laws 1987, LB 408, § 13.

15-1009 Repealed. Laws 1987, LB 408, § 13.

15-1010 Repealed. Laws 1984, LB 1019, § 14.

15-1011 Repealed. Laws 1987, LB 408, § 13.

15-1012 Firemen; existing system; rights retained.

Notwithstanding any other language in Laws 1947, c. 23, sections 1 to 22, it is specifically provided that the provisions of article 2, Chapter 35, in effect for firemen of cities of the primary class on September 7, 1947, at variance with the provisions of Laws 1947, c. 23, sections 1 to 22, shall be controlling and supersede the provisions of Laws 1947, c. 23, sections 1 to 22, as to all persons who were members of such fire department on such date and the widows and children of all such members.

Source: Laws 1947, c. 23, § 18, p. 122.

15-1013 Repealed. Laws 1987, LB 408, § 13.

15-1013.01 Repealed. Laws 1987, LB 408, § 13.

15-1013.02 Repealed. Laws 1987, LB 408, § 13.

15-1013.03 Repealed. Laws 1987, LB 408, § 13.

15-1014 Repealed. Laws 1987, LB 408, § 13.

15-1015 Repealed. Laws 1987, LB 408, § 13.

15-1016 Repealed. Laws 1987, LB 408, § 13.

15-1017 Pension funds; investment; reports.

(1) A city of the primary class which has a city pension and retirement plan or fund, or a city fire and police pension plan or fund, or both, may provide by ordinance as authorized by its home rule charter, and not prohibited by the Constitution of Nebraska, for the investment of any plan or fund, and it may provide that (a) such a city shall place in trust any part of such plan or fund, (b) it shall place in trust any part of any such plan or fund with a corporate trustee in Nebraska, or (c) it shall purchase any part of any such plan from a life insurance company licensed to do business in the State of Nebraska. The powers conferred by this section shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby and this section 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.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the clerk of a city of the primary class shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursu-

ant to this section, section 15-1026, and section 401(a) of the Internal Revenue Code 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 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 of a city of the primary class 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 such report. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section and section 15-1026. 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 1967, c. 52, § 1, p. 188; Laws 1998, LB 1191, § 17; Laws 1999, LB 795, § 6.

15-1018 Repealed. Laws 1987, LB 408, § 13.

15-1019 Repealed. Laws 1987, LB 408, § 13.

15-1020 Repealed. Laws 1987, LB 408, § 13.

15-1021 Repealed. Laws 1987, LB 408, § 13.

15-1022 Repealed. Laws 1987, LB 408, § 13.

15-1023 Repealed. Laws 1987, LB 408, § 13.

15-1024 Repealed. Laws 1987, LB 408, § 13.

15-1025 Repealed. Laws 1987, LB 408, § 13.

15-1026 Fire and police pension fund; authorized; tax levy; authorized.

Any city of the primary class may establish a fire and police pension fund. Such city may anticipate its liability for future pension payments on an actuarial basis and, in order to equalize the tax burden over a period of years, may levy and collect taxes in each fiscal year sufficient to meet current needs and equalize the future payments. The tax so levied and collected, together with contributions made by firefighters and police officers, shall be credited to the fund. Any unexpended balance remaining in the fund at the close of the fiscal year shall be reappropriated for the ensuing year. Pension payments required by law shall be a general obligation of the city and may be made out of, but not limited to, the fund.

Source: Laws 1987, LB 408, § 9; Laws 1996, LB 1114, § 27; Laws 2000, LB 1116, § 15.

15-1027 Pension or benefits; existing system; rights retained.

Nothing in sections 15-1001.01, 15-1007.02, 15-1007.05, 15-1013.02, and 15-1022 to 15-1026, the repeal of any sections in Chapter 15, article 10, or the unilateral action of any city of the primary class shall in any manner diminish the right of any person receiving or entitled to receive, now or in the future, pension or other benefits provided for in Chapter 15, article 10, as the sections of such article existed immediately prior to the repeal of any such sections, to receive such pension or other benefits in all respects the same as if such repealed sections remained in full force and effect.

Source: Laws 1987, LB 408, § 10.

ARTICLE 11

PLANNING DEPARTMENT

Section
15-1101. Planning department; commission; planning director; employees.
15-1102. Comprehensive plan; requirements; contents.
15-1103. Planning director; prepare comprehensive plan; review by commission; city council; adopt or amend plan.
15-1104. Ordinance or resolution; submit to planning department; report.
15-1105. Planning director; duties; commission; hearings.
15-1106. Board of zoning appeals; powers; appeals; variances.

15-1101 Planning department; commission; planning director; employees.

In any city of the primary class there shall be created a planning department, which shall consist of a city planning commission, a planning director, and such subordinate employees as are required to administer the planning program hereinafter set forth. The planning director shall serve as the secretary of the city planning commission and as the administrative head of the planning department.

Source: Laws 1959, c. 46, § 1, p. 228.

15-1102 Comprehensive plan; requirements; contents.

The general plan for the improvement and development of the city of the primary class shall be known as the comprehensive plan. This plan for govern-

mental 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 city and of any land outside its boundaries related thereto, 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 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 1959, c. 46, § 2, p. 229; Laws 1975, LB 111, § 1.

A comprehensive plan is a general guide to community development. Holmgren v. City of Lincoln, 199 Neb. 178, 256 N.W.2d 686 (1977).

15-1103 Planning director; prepare comprehensive plan; review by commission; city council; adopt or amend plan.

The planning director shall be responsible for preparing the comprehensive plan and amendments and extensions thereto, and for submitting such plans

and modifications to the city planning commission for its consideration and action. The commission shall review such plans and modifications, and those which the city council may suggest, and, after holding at least one public hearing on each proposed action, shall provide its recommendations to the city council within a reasonable period of time. The city council 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 as submitted, except that the city council may, by an affirmative vote of at least five members of the city council, adopt a plan or amendments to the proposed plan different from that recommended by the planning commission.

Source: Laws 1959, c. 46, § 3, p. 230; Laws 1975, LB 111, § 2.

15-1104 Ordinance or resolution; submit to planning department; report.

No ordinance or 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 15-1103, shall be adopted by the council until such ordinance or 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 council within thirty days after the date of receipt of the referral unless a longer period is granted by the council. If the department fails to render any such report within the allotted time, the approval of the department may be presumed by the council.

Source: Laws 1959, c. 46, § 4, p. 230.

15-1105 Planning director; duties; commission; hearings.

The planning director shall be responsible for preparing the zoning ordinance and for submitting it to the city planning commission for its consideration and action. The commission shall review the proposed zoning ordinance 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 ordinance shall be submitted to the council for its consideration, and the zoning ordinance shall become effective when adopted by the council. The city council of such primary city may amend, supplement, or otherwise modify the zoning ordinance. 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 city council 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 city 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

ordinance 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, and shall be posted at least five days before the hearing.

Source: Laws 1959, c. 46, § 5, p. 231.

15-1106 Board of zoning appeals; powers; appeals; variances.

There may be created a board of zoning appeals comprised of five members appointed by the mayor and confirmed by the council, 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 ordinance in those cases when 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 council may provide in the zoning ordinance, to vary the strict application of sign regulations or height, area, parking, or density requirements to the extent necessary to permit the owner a reasonable use of his or her land in those specific instances when 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 mayor or council may assign. The council may provide for appeals from a decision of the board.

Source: Laws 1959, c. 46, § 6, p. 231; Laws 1961, c. 35, § 5, p. 159; Laws 1987, LB 317, § 1.

ARTICLE 12

APPEALS

Section
15-1201. Appeals; exception.
15-1202. Appeal; procedure.
15-1203. City clerk; duties.
15-1204. Petition on appeal; time for filing.
15-1205. District court; hearing; order; appeal.

15-1201 Appeals; exception.

Any person or persons, jointly or severally aggrieved by any final administrative or judicial order or decision of the board of zoning appeals, the board of equalization, the city council, or any officer or department or board of a city of the primary class, shall, except as provided for claims in sections 15-840 to 15-842.01, appeal from such order or decision to the district court in the manner herein prescribed.

Source: Laws 1969, c. 65, § 1, p. 377.

This section applies only where the various bodies controlled thereby act judicially or quasi-judicially. Quasi-judicial decisions by various organs of a city are reviewable in both the trial and appellate courts. Whitehead Oil Co. v. City of Lincoln, 245 Neb. 660, 515 N.W.2d 390 (1994).

That municipal code decision shall be final and binding upon appointing authority in collective-bargaining agreement means definitive act of official or agency is binding until and unless set aside by judicial review. City of Lincoln v. Soukup, 215 Neb. 732, 340 N.W.2d 420 (1983).

The enactment of a zoning ordinance by a municipal governing body is an exercise of legislative authority from which no direct appeal lies. This statute applies only where the bodies mentioned therein act judicially or quasi-judicially. An increase in business competition is not sufficient to confer standing to challenge a change of zone. Copple v. City of Lincoln, 210 Neb. 504, 315 N.W.2d 628 (1982).

On appeal of a final decision of a city council, only the subject matter in question may be appealed, not collateral issues beyond the scope of the particular decision. Cather & Sons Constr., Inc. v. City of Lincoln, 200 Neb. 510, 264 N.W.2d 413 (1978).

15-1202 Appeal; procedure.

The party appealing shall within thirty days from the date of the order or decision complained of:

(1) File a notice of appeal with the city clerk specifying the parties taking the appeal and the order or decision appealed from and shall serve a copy of the notice upon the city attorney. The notice of appeal shall serve as a praecipe for a transcript;

(2) Deposit with the city clerk a docket fee in the amount of the filing fee in district court for cases originally commenced in district court;

(3) Deposit with the city clerk a cash bond or undertaking with at least one good and sufficient surety approved by the city clerk, in the amount of two hundred dollars, on condition that the appellant will satisfy any judgment and costs that may be adjudged against him or her; and

(4) Deposit with the city clerk the fees for the preparation of a certified and complete transcript of the proceedings of the city relating to the order or decision appealed.

Source: Laws 1969, c. 65, § 2, p. 377; Laws 1983, LB 52, § 3; Laws 1988, LB 352, § 17.

The time for appeal under this section begins to run as of the date the administrative body votes on the action to be taken, rather than the date on which the body finalizes its order. McCorison v. City of Lincoln, 218 Neb. 827, 359 N.W.2d 775 (1984).

15-1203 City clerk; duties.

The city clerk, on payment to him or her of the costs of the transcript, shall transmit within fifteen days to the clerk of the district court the docket fee and a certified and complete transcript of the proceedings of the city relating to the order or decision appealed. After receipt of such fee and transcript, the clerk of the district court shall docket the appeal.

Source: Laws 1969, c. 65, § 3, p. 378; Laws 1983, LB 52, § 4; Laws 1988, LB 352, § 18.

15-1204 Petition on appeal; time for filing.

The party appealing shall file a petition within thirty days from the date the transcript is filed in the district court. Satisfaction of the requirements of section 15-1202 and this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

Source: Laws 1969, c. 65, § 4, p. 378; Laws 1983, LB 52, § 5; Laws 1988, LB 352, § 19.

15-1205 District court; hearing; order; appeal.

The district court shall hear the appeal as in equity and without a jury and determine anew all questions raised before the city. The court may reverse or affirm, wholly or partly, or may modify the order or decision brought up for review. Either party may appeal from the decision of the district court to the Court of Appeals.

Source: Laws 1969, c. 65, § 5, p. 378; Laws 1991, LB 732, § 19.

This section does not limit review to illegality, but provides that appeals from various organs of a city of the primary class shall be considered as in equity. Thus, such decisions are quasi-judicial in nature and reviewable under section 15-1201 as in equity in both the trial and appellate courts. Moulton v. Board of Zoning Appeals, 251 Neb. 95, 555 N.W.2d 39 (1996).

On appeal from an order of the municipal human rights commission, the district court found the evidence insufficient to

establish any unlawful employment discrimination by the employer. American Stores v. Jordan, 213 Neb. 213, 328 N.W.2d 756 (1982).

ARTICLE 13
COMMUNITY DEVELOPMENT

Section
15-1301. Terms, defined.
15-1302. Community development agency; powers.
15-1303. Citizen participation.
15-1304. Power to levy taxes and issue bonds and notes.
15-1305. City jurisdiction and authority; concurrent with and independent of housing authority; report; contents.
15-1306. Acquisition of property; procedure.
15-1307. Sections; supplementary.

15-1301 Terms, defined.

As used in sections 15-1301 to 15-1307, unless the context otherwise requires:

(1) City shall mean any city of the primary class;

(2) Federal government shall mean the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America; and

(3) Community development activity shall mean any activity authorized in sections 18-2101 to 18-2144, construction of community facilities, conservation and rehabilitation of property, neighborhood development, code enforcement and all of the jurisdiction and authority granted a housing authority under Chapter 71, article 15.

Source: Laws 1974, LB 825, § 1.

15-1302 Community development agency; powers.

A city which has a community development agency as authorized by law is hereby granted power and authority to:

(1) Do all community development activities;

(2) Do all things necessary to cooperate with the federal government in all matters relating to community development activities as a grantee, or as agent or otherwise; and

(3) Exercise the jurisdiction and authority granted under Chapter 71, article 15, acting independently, concurrently or by assisting or cooperating with any existing housing authority within the territorial jurisdiction of the city.

Source: Laws 1974, LB 825, § 2.

15-1303 Citizen participation.

Whenever a city proposes to exercise the power conferred in sections 15-1301 to 15-1307, the city shall certify that it has afforded adequate opportunity for citizen participation in the development of the annual application and has provided for the meaningful involvement of the residents of areas in which community development activities are to be concentrated in the planning and execution of these activities, including the provision of adequate information and resources.

Source: Laws 1974, LB 825, § 3.

15-1304 Power to levy taxes and issue bonds and notes.

Whenever the city exercises the power conferred in sections 15-1301 to 15-1307, it shall have the power to levy taxes for the exercise of such jurisdiction and authority, and it shall also have the power to issue general obligation bonds, general obligation notes, revenue bonds and revenue notes including general obligation and revenue refunding bonds and notes for a community development activity under the power granted to any authority described or as otherwise authorized by home rule charter or state law.

Source: Laws 1974, LB 825, § 4.

15-1305 City jurisdiction and authority; concurrent with and independent of housing authority; report; contents.

Whenever any city shall exercise the jurisdiction and authority granted in sections 15-1301 to 15-1307 with respect to Chapter 71, article 15, it shall have the jurisdiction and authority concurrent with and independent of any existing housing authority for such purposes within the city and its area of jurisdiction; *Provided*, that in order to coordinate the actions of the local housing authority and the community development agency, the local housing authority shall submit to the city council of such city, prior to the date it submits its annual budget request to the federal government, a complete report of its activities during the past calendar year and a complete description of its proposed actions for the coming calendar year. Such report shall include the number of units added to or removed from the authority's programs, the number of families housed by the authority, the number applying who were not housed and the reasons for their not being housed, the sources and amounts of all funds spent or to be spent and the amounts available for use in its housing programs that have not been used, and the policies of the authority on eligibility, admissions, occupancy, termination of tenancies, and grievance procedures. Such report shall be made available to the public upon its delivery to the city council, and shall be subject to public hearing prior to its formal acceptance by the council.

Source: Laws 1974, LB 825, § 5.

15-1306 Acquisition of property; procedure.

Whenever any city shall exercise the jurisdiction and authority granted in sections 15-1301 to 15-1307 it shall comply with Chapter 76, article 12, regarding the acquisition of property for publicly financed projects.

Source: Laws 1974, LB 825, § 6.

15-1307 Sections; supplementary.

The provisions of sections 15-1301 to 15-1307 are supplementary to existing laws relating to cities of the primary class and confer upon such cities powers not heretofore granted.

Source: Laws 1974, LB 825, § 7.