

LEGISLATIVE BILL 245

Approved by the Governor February 24, 1973

Introduced by Cavanaugh, 9

AN ACT to amend sections 31-727, 31-728, 31-729, 31-739, 31-740, 31-744, and 31-749, Revised Statutes Supplement, 1972, relating to sanitary and improvement districts; to permit districts to install public waterways, docks or wharfs and related appurtenances and to construct or to contract for the construction of dikes and levees for flood protection; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 31-727, Revised Statutes Supplement, 1972, be amended to read as follows:

31-727. (1) A majority of the owners having an interest in the real property within the limits of a proposed sanitary and improvement district, situated in one or more counties in this state, may form a sanitary and improvement district for the purpose of installing electric service lines and conduits, a sewer system, a water system, a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, to contract for water for fire protection and for resale to residents of the district, and to contract for gas and for electricity for street lighting for the public streets and highways within said proposed district, to construct and to contract for the construction of dikes and levees for flood protection for the district, and to acquire, improve and operate public parks, playgrounds and recreational facilities. Nothing in this section shall authorize districts to purchase electric service and resell the same. The district, in lieu of establishing its own water system, may contract with any utilities district, municipality or corporation for the installation of a water system and to provide water service for fire protection and for the use of the residents of the district. For that purpose said majority of the owners may make and sign articles of association in which shall be stated (a) the name of the district, (b) that same shall have perpetual existence, (c) the limits of the district, (d) the names and places of residence of the owners of the land in the proposed district, (e) the description of the several tracts of land situated in the district owned by those who may



organize the district, (f) the name or names and the description of the real estate owned by such owners as do not join in the organization of the district, but who will be benefited thereby, and (g) whether the purpose of the corporation shall be installing electric service lines and conduits, installing a sewer system, installing a water system, installing a system of public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, or contracting for street lighting for the public streets and highways within the proposed district, constructing or contracting for the construction of dikes and levees for flood protection of the proposed district, or acquiring, improving and operating public parks, playgrounds and recreational facilities, or a combination of any one or more of such purposes, or all of such purposes. Such owners of real estate as are unknown may also be set out in said articles as such. No sanitary and improvement district may own or hold land in excess of ten acres, unless such land so owned and held by such district is actually used for a public purpose, as provided in this section, within three years of its acquisition. Any sanitary and improvement district which has heretofore acquired land in excess of ten acres in area and has not devoted the same to a public purpose, as set forth in this section, within three years of the date of its acquisition, shall devote the same to a use set forth in this section, or shall divest itself of such land within one year of July 18, 1969. When a district divests itself of land pursuant to this section, it shall do so by sale at public auction to the highest bidder after notice of such sale has been given by publication at least three times for three consecutive weeks prior to the date of sale in a legal newspaper of general circulation within the area of the district.

(2) The articles of association, referred to in subsections (1), (3), and (4) of this section, shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be levied against all the property in the district and special assessments against the real property benefited which may be assessed against them, to pay the expenses that may be necessary to install a sewer, or water system, or both a sewer and water system, the cost of water for fire protection, the cost of grading, changing grade, paving, repairing, graveling, regrading, widening, or narrowing sidewalks and roads, resurfacing or relaying existing pavement, or otherwise improving any public roads, streets, or highways within the district, the cost of constructing public waterways, docks or wharfs, and



related appurtenances, the cost of constructing or contracting for the construction of dikes and levees for flood protection for the district, and the cost of electricity for street lighting for the public streets and highways within the district, the cost of installing gas and electric service lines and conduits, and the cost of acquiring, improving and operating public parks, playgrounds, and recreational facilities, as provided by law.

(3) The articles, referred to in subsections (1), (2), and (4) of this section, shall propose the names of five or more trustees, who shall be owners of real estate located in the proposed district, to serve as a board of trustees until their successors are elected and qualified, should said district be organized. No corporation formed or hereafter formed shall perform any new functions, other than those for which the corporation was formed, without amending its articles of association to include the new function or functions.

(4) After the articles referred to in subsections (1), (2), and (3) of this section are signed, the same shall be filed in the office of the clerk of the district court of the county in which such sanitary and improvement district is located or, if such sanitary and improvement district is composed of tracts or parcels of land in two or more different counties, in the office of the clerk of the district court for the county in which the greater portion of such proposed sanitary and improvement district is located, together with a petition praying that the same may be declared a sanitary and improvement district under sections 31-727 to 31-762.

(5) Public waterways as used in sections 31-727 to 31-762 shall mean artificially created boat channels dedicated to public use and providing access to navigable rivers or streams.

Sec. 2. That section 31-728, Revised Statutes Supplement, 1972, be amended to read as follows:

31-728. Immediately after the petition and articles of association shall have been filed, as provided for by subsection (4) of section 31-727, the clerk of the district court for the county where same is filed shall issue a summons, as now provided by law, returnable as any other summons in a civil action filed in said court, and directed to the several owners of real estate in the proposed district who may be alleged in such petition to be benefited thereby, but who have not signed the articles of association, which shall be served as summonses in civil cases. In case any owner or owners

of real estate in the proposed district are unknown, or are nonresidents, they shall be notified in the same manner as nonresident defendants are now notified according to law in actions in the district courts of this state, setting forth in such notice (1) that the articles of association have been filed, (2) the purpose thereof, (3) that the real estate of such owner or owners situated in the district, describing the same, will be affected thereby and rendered liable to taxation and special assessment in accordance with law for the purpose of installing and maintaining such sewer or water system, or both, and maintaining the district, for constructing and maintaining a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, for the furnishing of water for fire protection, for contracting for gas and for electricity for street lighting for the public streets and highways within the district, for constructing or contracting for the construction of dikes and levees for flood protection for the district, for installing electric service lines and conduits, and for the acquisition, improvement and operation of public parks, playgrounds, and recreational facilities, (4) the names of the proposed trustees, and (5) that a petition has been made to have the district declared a sanitary and improvement district.

Sec. 3. That section 31-729, Revised Statutes Supplement, 1972, be amended to read as follows:

31-729. All owners of real estate situated in the proposed district who have not signed the articles of association and who may object to the organization of the district or to any one or more of the proposed trustees shall, on or before the time in which they are required to answer, file any such objection in writing, stating (1) why such sanitary and improvement district should not be organized and declared a public corporation in this state, (2) why their land will not be benefited by the installation of a sewer or water system, or both a sewer and water system, a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, gas and electricity for street lighting for the public streets and highways within the district, by the construction or contracting for the construction of dikes and levees for flood protection for the district, gas or electric service lines and conduits, and water for fire protection and the health and property of the owners protected, and by the acquisition, improvement and operation of public parks, playgrounds, and recreational facilities, (3) why their land should not be embraced in the limits of such district, and (4) their objections if any to any one or more of the



proposed trustees.

Sec. 4. That section 31-739, Revised Statutes Supplement, 1972, be amended to read as follows:

31-739. (1) The district may borrow money for corporate purposes and issue its general obligation bonds therefor, and shall annually levy a tax on the assessed value of all the taxable property in the district, except intangible property, sufficient to pay the interest and principal on the bonds and for the purpose of creating a sinking fund for the maintenance and repairing of any sewer or water system or electric lines and conduits in the district, for the payment of any hydrant rentals, for the maintenance and repairing of any sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances in the district, and for the cost of operating any street lighting system for the public streets and highways within the district, and for the cost of maintaining and operating public parks, playgrounds, and recreational facilities. It shall also be required to levy a tax to make up any deficiencies caused by the nonpayment of any special assessments. On or before the first day of August in each year, the clerk of the board shall certify the same to the county clerk of the counties in which such district is located, in order that the same may be extended upon the county tax list; Provided, nothing contained in this section shall authorize any district which has been annexed by a city or village to levy any taxes within or upon the annexed area after the effective date of the annexation, if the effective date of the annexation is prior to such levy certification date of the district for the year in which such annexation occurs.

(2) The county treasurer of the county in which the greater portion of the area of the district is located shall be ex officio treasurer of the sanitary and improvement district and shall be responsible for all funds of the district coming into his hands. He shall collect all taxes and special assessments levied by the district and deposit the same in a bond sinking fund for the payment of principal and interest on any bonds outstanding.

(3) The trustees of the district may authorize the clerk, or appoint an independent agent, to collect connection charges, service charges, and all items other than taxes and funds from sale of bonds and warrants, but all funds so collected shall, at least once each month, be remitted to the treasurer to be held in the general fund of the district.



(4) The treasurer of the district shall not be responsible for such funds until they are received by him. The treasurer shall disburse the funds of the district only on warrants authorized by the trustees and signed by the chairman and clerk.

Sec. 5. That section 31-740, Revised Statutes Supplement, 1972, be amended to read as follows:

31-740. The board of trustees of any district organized under sections 31-727 to 31-762 shall have power to provide for establishing, maintaining, and constructing electric service lines and conduits, water mains, sewers, and disposal plants, and disposing of drainage, waste, and sewage of such district in a satisfactory manner; for establishing, maintaining, and constructing sidewalks, public roads, streets, and highways, including the grading, changing grade, paving, repaving, graveling, regravelling, widening or narrowing roads, resurfacing or relaying existing pavement, or otherwise improving any road, street, or highway within the district; for establishing, maintaining, and constructing public waterways, docks or wharfs, and related appurtenances, for constructing and contracting for the construction of dikes and levees for flood protection for the district; and may contract for electricity for street lighting for the public streets and highways within the district, and shall have power to provide for acquisition, improvement, maintenance and operation of public parks, playgrounds and recreational facilities; provided, that power to construct clubhouses and similar facilities for the giving of private parties within the zoning jurisdiction of any city or village is not included in the powers herein granted. Any sewer system established shall be approved by the Department of Health. Prior to the installation of any of the improvements provided for in this section, the plans for such improvements, other than for public parks, playgrounds and recreational facilities, shall be approved by the public works department of any municipality when such improvements or any part thereof are within the area of the zoning jurisdiction of such municipality, and plans and exact costs for public parks, playgrounds and recreational facilities shall be approved by resolution of the governing body of such municipality. Such approval shall relate to conformity with the master plan and the construction specifications and standards theretofore established by such municipality; provided, where no master plan and construction specifications and standards have been established such approval shall not be required. In cases where such improvements are within the area of the zoning jurisdiction of more than one municipality, then such approval shall be required only



from the most populous municipality, except that where such improvements are furnished to the district by contract with a particular municipality, the necessary approval may in all cases be given by such municipality. The district may construct its sewage disposal plant and other sewerage or water improvements, or both, in whole or in part, inside or outside the boundaries of the district and may contract with corporations or municipalities for disposal of sewage and use of existing sewerage improvements, and for a supply of water for fire protection and for resale to residents of the district. It may also contract with any corporation or municipality for the installation, maintenance, and cost of operating a system of street lighting upon the public streets and highways within the district or for installation, maintenance and operation of a water system or for the installation, maintenance and operation of electric service lines and conduits and to provide water service for fire protection and use by the residents of the district.

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



any present or past officer or employee of any such district, or by any other person, that is essential to the making of a comprehensive and correct audit.

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

Whenever the sanitary sewer system or any part thereof of a sanitary and improvement district is directly or indirectly connected to the sewerage system of a metropolitan city, such city, without enacting an ordinance or adopting any resolution for such purpose, may collect such city's applicable rental or use charge from the users in the sanitary and improvement district and from the owners of the property served within the sanitary and improvement district. The charges of such city shall be charged to each property served by the city sewerage system, shall be a lien upon the property served, and may be collected from the owner or the person, firm, or corporation using the service. If the city's applicable rental or service charge is not paid when due, such sum may be recovered by the municipality in a civil action, or it may be assessed against the premises served in the same manner as special taxes or assessments are assessed by such city of the metropolitan class, and collected and returned in the same manner as other municipal special taxes or assessments are enforced and collected. When any such tax or assessment is levied it shall be the duty of the city clerk to deliver a certified copy of the ordinance to the county treasurer of the county in which the premises assessed are located and such county treasurer shall collect the same as provided by law and return the same to the city treasurer of the metropolitan city. Funds of such city raised from such charges of the metropolitan city shall be used by it in accordance with laws applicable to its sewer service rental or charges. The governing body of a city of the metropolitan class may make all necessary rules and regulations governing the direct or indirect use of its sewerage system by any user and premises within any sanitary and improvement district and may establish just and equitable rates or charges to be paid to such city of the metropolitan class for use of any of its disposal plants and sewerage system.



Sec. 6. That section 31-744, Revised Statutes Supplement, 1972, be amended to read as follows:

31-744. Whenever the board of trustees shall deem it advisable or necessary to build, reconstruct, purchase, or otherwise acquire a water system, a sanitary sewer system, or a sanitary and storm sewer or sewage disposal plant or pumping stations or sewer outlets, or gas or electric service lines and conduits constructed or to be constructed in whole or in part inside or outside of the district, or a system of sidewalks, public roads, streets, and highways wholly within the district, public waterways, docks or wharfs, and related appurtenances wholly within the district, or a public park or parks, playgrounds, and recreational facilities wholly within the district, or to contract for the installation and operation of a water system, it shall declare the advisability and necessity therefor in a proposed resolution, which resolution, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, and shall include cement concrete pipe and vitrified clay pipe and any other material deemed suitable, and shall state the size or sizes and kinds of sewers proposed to be constructed and shall designate the location and terminal points thereof. If it is proposed to construct a water system, disposal plants, pumping stations, outlet sewers, gas or electric service lines and conduits, or a system of sidewalks, public roads, streets, or highways, or public waterways, docks or wharfs, or to construct or contract for the construction of dikes and levees for flood protection for the district, or public parks, playgrounds, or recreational facilities, the resolution shall refer to the plans and specifications thereof which shall have been made and filed before the publication of such resolution by the engineer employed for such purpose. If it is proposed to purchase or otherwise acquire a water system, a sanitary sewer system, a sanitary or storm water sewer, sewers, sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits, or public parks, playgrounds, or recreational facilities, the resolution shall state the price and conditions of the purchase or how same is being acquired. If it is proposed to contract for the installation and operation of a water system for fire protection and for the use of the residents of the district, or to contract for the construction of dikes and levees for flood protection for the district, or gas or electric service lines and conduits, the resolution shall state the principal terms of the proposed agreement and how the cost thereof is to be paid. When gas or electric service lines and conduits are among the improvements that are proposed to be constructed, purchased, otherwise acquired or contracted



for, and no construction specifications and standards therefor have been established by the municipality having zoning jurisdiction over the area where such improvements are to be located, or when such service lines and conduits are not to be located within any municipality's area of zoning jurisdiction, the plans and specifications for and the method of construction of such service lines and conduits shall be approved by the supplier of gas or electricity within whose service or customer area they are to be located. Such engineer shall also make and file, prior to the publication of such resolution, an estimate of the total cost of the proposed improvement. The proposed resolution shall state the amount of such estimated cost. The board of trustees shall have power to assess, to the extent of special benefits, the cost of such portions of said improvements as are local improvements, upon properties found specially benefited thereby. The resolution, hereinabove mentioned, shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Sec. 7. That section 31-749, Revised Statutes Supplement, 1972, be amended to read as follows:

31-749. After the completion of any such work or purchase or otherwise acquiring a sewer or water system, or both, or public parks, playgrounds or recreational facilities, or gas or electric service lines or conduits or upon completion of the work on a system of sidewalks, public roads, streets, or highways, public waterways, docks or wharfs, and related appurtenances, or levees for flood protection for the district, the engineer shall file with the clerk of the district a certificate of acceptance, which acceptance shall be approved by the board of trustees by resolution. The board of trustees shall then require the engineer to make a complete statement of all the costs of any such improvements, a plat of the property in the district, and a schedule of the amount proposed to be assessed against each separate piece of property in such district, which statement, plat, and schedule shall be filed with the clerk of the district within ten days after the date of acceptance of the work, purchase, or otherwise acquiring a sewer or water system, or both, or acceptance of the work on a system of sidewalks, public roads, streets, or highways, or public waterways, docks or wharfs, and related appurtenances, or dikes and levees for flood protection for the district. The board of trustees shall then order the clerk to give notice that said statement, plat, and schedules are on file in his office and that all objections thereto, or to prior proceedings on account of errors, irregularities, or inequalities, not made in writing and filed with the clerk of the district within



twenty days after the first publication of said notice, shall be deemed to have been waived. Such notice shall be given by publication the same day each week two consecutive weeks in a newspaper of general circulation published in the county where the district was organized and by handbills posted along the line of the work. Said notice shall state the time and place where any objections, filed as herein provided for, shall be considered by the board of trustees. The cost of such improvements in the district which are within the area of the zoning jurisdiction of any municipality shall be assessed to the full extent of special benefits against the property in the zoning jurisdiction of such municipality. The complete statement of costs and the schedule of amounts proposed to be assessed for such improvements which are within the zoning jurisdiction of such municipality against each separate piece of property in districts located within the zoning jurisdiction of such municipality shall be given to such municipality within seven days after the first publication of notice of statement, plat and schedules; Provided, that where such improvements are within the area of the zoning jurisdiction of more than one municipality, then such proposed assessments schedule and statement need be given only to the most populous municipality. Such municipality shall have the right to be heard, and it shall have the right of appeal from a final determination by the board of trustees against objections which such city has filed. Notice of the amount proposed to be assessed for such improvements against each separate piece of property shall be given to each owner of record thereof within five days after the first publication of notice of statement, plat and schedules. Each owner shall have the right to be heard, and shall have the right of appeal from the final determination made by the board of trustees. Any person or any such municipality feeling aggrieved may appeal to the district court by petition within twenty days after such a final determination. The court shall hear and determine such appeal in a summary manner as in a case in equity and without a jury and shall increase or reduce the assessments as the same may be required to provide that the assessments shall be to the full extent of special benefits, and to make the apportionment of benefits equitable.

Sec. 8. That original sections 31-727, 31-728, 31-729, 31-739, 31-740, 31-744, and 31-749, Revised Statutes Supplement, 1972, are repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.