

## LEGISLATIVE BILL 494

Approved by the Governor June 1, 1995

Introduced by Fisher, 35

AN ACT relating to corporations; to amend sections 21-2301 to 21-2317, Reissue Revised Statutes of Nebraska; to change provisions relating to the Nebraska Industrial Development Corporation Act; and to repeal the original sections.

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

Section 1. Section 21-2301, Reissue Revised Statutes of Nebraska, is amended to read:

21-2301. As used in sections 21-2301 to 21-2318 For purposes of the Nebraska Industrial Development Corporation Act, unless the context otherwise requires:

(1) Corporation ~~shall mean~~ means any corporation organized pursuant to the ~~provisions of sections 21-2301 to 21-2318 act;~~

(2) Local political subdivision means any county or any city of the metropolitan class, and Municipality shall mean any city of the metropolitan class;

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

~~(4) Governing body shall mean the city council.~~

Sec. 2. Section 21-2302, Reissue Revised Statutes of Nebraska, is amended to read:

21-2302. It is the intent of the Legislature to authorize the incorporation in the cities of the metropolitan class any local political subdivision in this state of public corporations to acquire, enlarge, improve, expand, own, lease, and dispose of properties to the end that such corporations may be able to promote industry, develop trade, and further the use of the agricultural products and natural resources of this state by inducing manufacturing, industrial, commercial, and research enterprises (1) to establish new projects in this state, (2) to enlarge and expand existing projects located in this state, or (3) to relocate, in or around the same municipality local political subdivision in this state, projects to replace projects all or a major portion of which have been acquired for one or more public purposes by the United States of America, the State of Nebraska, or any branch, arm, agency, instrumentality, or political subdivision of either, whether by purchase, through the exercise of the power of eminent domain, or by other means.

It is the further intent of the Legislature to vest such public the corporations with all the powers that may be necessary to enable them to accomplish such their purposes, except that the corporations shall not have the power of eminent domain. It is not intended that any such corporation shall itself the corporations themselves be authorized to operate any such manufacturing, industrial, commercial, or research enterprise. Sections 21-2301 to 21-2318 The Nebraska Industrial Development Corporation Act shall be liberally construed in conformity with such intention.

Sec. 3. Section 21-2303, Reissue Revised Statutes of Nebraska, is amended to read:

21-2303. Whenever any number of natural persons, not less than three, each of whom shall be a duly qualified elector of and taxpayer in the municipality local political subdivision, shall file with the governing body of any city of the metropolitan class local political subdivision an application in writing seeking permission to apply for the incorporation of an industrial development board of such municipality the local political

subdivision, the governing body shall proceed to consider such the application. If the governing body, shall, by appropriate resolution duly adopted, (1) find and determine finds and determines that it is wise, expedient, necessary, or advisable that the corporation be formed, (2) authorize authorizes the persons making such the application to proceed to form such the corporation, and (3) approve approves the form of the articles of incorporation proposed to be used in organizing the corporation, then the persons making such the application shall execute, acknowledge, and file articles of incorporation for the corporation as provided in sections 21-2301 to 21-2318 under the Nebraska Industrial Development Corporation Act. No corporation may be formed unless such the application shall have has first been filed with the governing body of the municipality local political subdivision and the governing body shall have has adopted a resolution as provided in pursuant to this section.

Sec. 4. Section 21-2304, Reissue Revised Statutes of Nebraska, is amended to read:

21-2304. The articles of incorporation shall set forth: (1) The names and residences of the applicants together with a recital that each of them is an elector of and taxpayer in the municipality local political subdivision, (2) the name of the corporation, (3) a recital that permission to organize the corporation had has been granted by resolution duly adopted by the governing body of the municipality local political subdivision and the date of the adoption of such the resolution, (4) the location of the registered office of the corporation, which shall be in the municipality local political subdivision, and the name of its registered agent at such office, (5) the purposes for which the corporation is proposed to be organized, (6) the number of directors of the corporation, (7) the period, if any, for the of duration of the corporation, and (8) any other matter which the applicants may choose to insert therein in the articles of incorporation which shall not be is not inconsistent with sections 21-2301 to 21-2318 the Nebraska Industrial Development Corporation Act or with the laws of this state. The articles of incorporation shall be subscribed and acknowledged before a notary public by each of the applicants, before an officer authorized by the laws of Nebraska to take acknowledgments to deeds.

Sec. 5. Section 21-2305, Reissue Revised Statutes of Nebraska, is amended to read:

21-2305. When executed and acknowledged in conformity with notarized under section 21-2304, the articles of incorporation shall be filed with the Secretary of State. The Secretary of State shall thereupon examine the articles of incorporation and, if he or she finds (1) that the recitals contained therein in the articles of incorporation are correct, (2) that the requirements of section 21-2304 have been complied with, and (3) that the name of the corporation is not identical with or so nearly similar enough to that the name of another corporation already in existence in this state as to lead to confusion and uncertainty, he the Secretary of State shall approve the articles of incorporation and record them in his or her office. When such the articles of incorporation have been so made, filed, and approved, the applicants shall constitute a public corporation under the name set out in the articles of incorporation pursuant to the Nebraska Industrial Development Corporation Act.

Sec. 6. Section 21-2306, Reissue Revised Statutes of Nebraska, is amended to read:

21-2306. The articles of incorporation may at any time and from time to time be amended so as to make any changes therein and or add any provisions thereto which might have been included in the articles of incorporation in the first instance. To effect any such amendment amend the articles of incorporation, the members of the board of directors of the corporation shall file with the governing body of the municipality local political subdivision an application in writing seeking permission to amend the articles of incorporation, and specifying in such the application the amendment proposed to be made. Such The governing body shall consider such the application and, if it shall by appropriate resolution it (1) duly find and determine finds and determines that it is wise, expedient, necessary, or advisable that the proposed amendment be made, (2) authorize authorizes the same to be made, and (3) approve approves the form of the proposed amendment, then the persons making such the application shall execute an instrument embodying the amendment specified in such the application, which shall be subscribed and acknowledged The instrument shall be subscribed and acknowledged before a notary public by each member of the board of directors before an officer authorized by the laws of Nebraska to take acknowledgments to deeds, and shall file the same be filed with the Secretary of State. The Secretary of State shall thereupon examine the proposed amendment and, if he

or she finds that the requirements of this section have been complied with and that the proposed amendment is within the scope of what might be included in the original articles of incorporation, he the Secretary of State shall approve the amendment and record it in an appropriate book in his or her office. When such the amendment has been so made, filed, and approved, it shall thereupon become effective and the articles of incorporation shall thereupon be amended to the extent provided in pursuant to the amendment. No The articles of incorporation under sections 21-2301 to 21-2318 the Nebraska Industrial Development Corporation Act shall be amended except in the manner only as provided in this section.

Sec. 7. Section 21-2307, Reissue Revised Statutes of Nebraska, is amended to read:

21-2307. The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors, not less than three, all of whom shall be duly qualified electors of and taxpayers in the municipality local political subdivision. The directors shall serve as such without compensation except that they shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties under sections 21-2301 to 21-2318 the Nebraska Industrial Development Corporation Act with reimbursement for expenses to be made as provided in pursuant to sections 81-1174 to 81-1177, for state employees. The directors shall be elected by the governing body of the municipality local political subdivision. Any meeting held by the board of directors for any purpose whatsoever shall be open to the public.

Sec. 8. Section 21-2308, Reissue Revised Statutes of Nebraska, is amended to read:

21-2308. (1) The corporation shall have the following powers together with all powers incidental thereto or necessary for the performance thereof of its duties under the Nebraska Industrial Development Corporation Act: (a) To have succession by its corporate name for the period specified in the articles of incorporation unless sooner dissolved as provided in section 21-2314, (b) to sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties, (c) to have and to use a corporate seal and to alter the same corporate seal at pleasure, (d) to acquire, whether by purchase, construction, exchange, gift, lease, or otherwise, and to improve, maintain, equip, and furnish one or more projects, including all real and personal properties which the board of directors may deem necessary in connection therewith with the projects and regardless of whether or not any such of the projects shall then be in existence, (e) to lease to others any or all of its projects and to charge and collect rent therefor for the projects and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof of the lease, (f) to sell, exchange, donate, and convey any or all of its properties whenever its board of directors shall find any such the action to be in furtherance of the purposes for which the corporation was organized, (g) to issue its bonds for the purpose of carrying out any of its powers, (h) to mortgage and pledge any or all of its projects or any part or parts thereof of its projects, whether then owned or thereafter acquired, and to pledge the revenue and receipts therefrom or from any thereof from the mortgage or pledge as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith with the bonds issued, and (i) to employ and pay compensation to such the employees and agents, including attorneys, as the board of directors shall deem necessary for the business of the corporation.

(2) Any project or projects of the corporation may be located within or without or partially within and partially without the municipality local political subdivision, subject to the following conditions: (a) No such project or part thereof of a project shall be located more than twenty-five miles from the corporate limits of the municipality local political subdivision, (b) in no event shall any project or part thereof of a project be located within the corporate limits of another city or of any village local political subdivision in this state, (c) no such project or part thereof of a project shall be located within the police jurisdiction of another city or of any village local political subdivision in this state unless the governing body of such the other city or village local political subdivision has first adopted a resolution consenting to the location of such the project or part thereof of the project in the police jurisdiction of such the other city or village local political subdivision, and (d) no such project or part thereof of a project shall be located in a county other than that in which the municipality local political subdivision is situated unless the board of county commissioners of such the other county has first adopted a resolution consenting to the location of such the project or part thereof of the project

in such the county. The corporation shall not ~~have power to operate any project as a business other than as a lessor.~~

Sec. 9. Section 21-2309, Reissue Revised Statutes of Nebraska, is amended to read:

21-2309. All bonds issued by the corporation shall be payable solely out of the revenue and receipts derived from the leasing or sale by the corporation of its projects or of any thereof as may be designated in the proceedings of the board of directors under which the bonds shall be authorized to be issued. ~~Such~~ The bonds may be executed and delivered by the corporation at any time, ~~and from time to time,~~ may be in such a form and in denominations and of such a tenor and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such a time or times not exceeding forty years from the date ~~thereof~~ of issuance, may be payable at such a place or places whether within or without the State of Nebraska, may bear interest at such a rate or rates payable at such a time or times and at such a place or places and evidenced in such a manner, may be executed by such officers of the corporation and in such a manner, and may contain such provisions not inconsistent with this section, ~~all as shall be provided in the proceedings of the board of directors by which the bonds shall be authorized authorizing the bonds to be issued.~~ If deemed advisable by the board of directors, there may be included in the proceedings under which ~~any~~ bonds of the corporation are authorized to be issued, an option to redeem all or any part ~~thereof~~ of the bonds as may be specified in such the proceedings, at such a price or prices and after such notice or notices and on such terms and conditions as may be set forth in such the proceedings and as may be briefly recited summarized on the face of the bonds. This ~~but nothing contained in this section shall not be construed to confer on the corporation any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be the bonds are issued.~~ Any bonds of the corporation may be sold at public or private sale in such a manner and from time to time as may be determined by the board of directors to be most advantageous. The ~~and the~~ corporation may pay all expenses, premiums, and commissions which its board of directors ~~may deem~~ deems necessary or advantageous in connection with the issuance ~~thereof of the bonds.~~ Issuance by the corporation of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same project or any other project, but the proceedings under which any subsequent bonds ~~may be~~ are issued shall recognize and protect any prior pledge or mortgage made for ~~any~~ a prior issue of bonds, unless in the proceedings authorizing such the prior issue the right was reserved to issue subsequent bonds on a parity with such the prior issue. Any bonds of the corporation at any time outstanding may at any time ~~and from time to time~~ be refunded by the corporation by the issuance of its refunding bonds in such an amount ~~as~~ the board of directors ~~may deem~~ deems necessary, but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest ~~thereon on the bonds to be refunded~~ and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have ~~then~~ matured at that time or ~~shall thereafter mature at a later date,~~ either by sale of the refunding bonds and the application of the proceeds thereof of the refunding bonds for the payment of the bonds to be refunded, ~~thereby,~~ or by the exchange of the refunding bonds for the bonds to be refunded ~~thereby~~ with the consent of the holders of the bonds ~~so~~ to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same projects or separate projects, and regardless of whether or not the bonds proposed to be refunded ~~shall be~~ are payable on the same date or on different dates or ~~shall be~~ are due serially or otherwise. All such bonds and the interest coupons applicable ~~thereto to the bonds~~ are hereby made and shall be construed to be negotiable instruments.

Sec. 10. Section 21-2310, Reissue Revised Statutes of Nebraska, is amended to read:

21-2310. The principal of and interest on ~~any~~ bonds issued by the corporation shall be secured by a pledge of the revenue and receipts out of which ~~the same shall be made principal of and interest on the bonds~~ is payable, and may be secured by a mortgage or deed of trust covering all or any part of the projects from which the revenue or receipts ~~so~~ pledged may be derived, including any enlargements of and additions to any such projects ~~thereafter made at a later date.~~ The resolution under which the bonds are authorized to be issued and any such mortgage or deed of trust may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the corporation to others, the creation and maintenance of special funds from

~~such~~ the revenue and the rights and remedies available in the event of default, all as the board of directors shall deem ~~deems~~ advisable and not in conflict with the provisions of this section. Each pledge, agreement, mortgage, and deed of trust made for the benefit of security of any of the bonds of the corporation shall continue to be effective until the principal of and interest on the bonds for the benefit of which the ~~same~~ pledge, agreement, mortgage, and deed of trust were made shall have been fully paid. In the event of default in ~~such~~ payment or in any agreements of the corporation made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any mortgage or deed of trust executed as security ~~therefor~~ for the bonds, the rights of the bondholders may be enforced by mandamus, the appointment of a receiver in equity, or by foreclosure of any such mortgage or deed of trust, or any one or more of ~~such~~ the remedies.

Sec. 11. Section 21-2311, Reissue Revised Statutes of Nebraska, is amended to read:

21-2311. The corporation and all properties at any time owned by it and only while owned by it and the income ~~therefrom~~ from the properties, and all bonds issued by it and the income ~~therefrom~~ from the bonds, shall be exempt from ~~all~~ taxation in the State of Nebraska.

Sec. 12. Section 21-2312, Reissue Revised Statutes of Nebraska, is amended to read:

21-2312. The municipality local political subdivision shall not in ~~any event~~ be liable for the payment of the principal of or interest on any bonds of the corporation, or for the performance of any pledge, mortgage, obligation, or agreement of any kind ~~whatsoever~~ which may be undertaken by the corporation, and none of the bonds of the corporation or any of its agreements or obligations shall be construed to constitute an indebtedness of the municipality local political subdivision within the meaning of any constitutional or statutory provision.

Sec. 13. Section 21-2313, Reissue Revised Statutes of Nebraska, is amended to read:

21-2313. The corporation shall be a nonprofit corporation and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm, or corporation, except that, in the event the board of directors shall ~~determine~~ determines that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, any net earnings of the corporation thereafter accruing shall be paid to the municipality local political subdivision with respect to which the corporation was organized.

Sec. 14. Section 21-2314, Reissue Revised Statutes of Nebraska, is amended to read:

21-2314. Whenever the board of directors shall by resolution ~~determine~~ determines that the purposes for which the corporation was formed have been substantially complied with and all bonds ~~theretofore~~ issued and all obligations ~~theretofore~~ incurred by the corporation have been fully paid, the board of directors shall ~~thereupon~~ execute and file for record in the office of the Secretary of State a certificate of dissolution reciting such facts and declaring the corporation ~~to be~~ dissolved. ~~Such~~ A certificate of dissolution shall be executed under the corporate seal of the corporation. Upon the filing of ~~such~~ the certificate of dissolution, the corporation shall stand dissolved and the title to all funds and properties owned by it at the time of ~~such~~ dissolution shall vest in the local political subdivision. Possession municipality, and possession of ~~such~~ the funds and properties shall ~~forthwith~~ be delivered to ~~such municipality~~ the local political subdivision.

Sec. 15. Section 21-2315, Reissue Revised Statutes of Nebraska, is amended to read:

21-2315. The articles of incorporation, any deeds or other documents ~~whereby~~ conveying properties ~~are conveyed~~ to the corporation, any mortgages or deeds of trust executed by the corporation, any leases made by the corporation, and the certificate of dissolution of the corporation, may all be filed for record without the payment of any tax or fees other than ~~such~~ fees as ~~may be~~ authorized by law for the recording of ~~such~~ the instruments.

Sec. 16. Section 21-2316, Reissue Revised Statutes of Nebraska, is amended to read:

21-2316. ~~Sections 21-2301 to 21-2318~~ The Nebraska Industrial Development Corporation Act shall not be construed as a restriction or limitation upon ~~any~~ powers which the corporation might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, notice, or approval shall be required for the organization of the corporation or the issuance of any bonds or any instrument as security ~~therefor~~ for the bonds or instrument, except as ~~is~~ provided in

sections 21-2301 to 21-2318 the act, any other law to the contrary notwithstanding, but nothing in sections 21-2301 to 21-2318 the act shall be construed to deprive the state and its governmental subdivisions of their respective police powers over any properties of the corporation, or to impair any power ~~thereover~~ of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

Sec. 17. Section 21-2317, Reissue Revised Statutes of Nebraska, is amended to read:

21-2317. In all cases when there has heretofore been an attempt to incorporate a municipal local political subdivision industrial development corporation under the provisions of the Nebraska Nonprofit Corporation Act, and articles of incorporation have been duly recorded and filed containing provisions substantially similar to those for incorporation under the provisions of sections 21-2301 to 21-2318 the Nebraska Industrial Development Corporation Act, such the corporation may, with the approval of the governing body of the municipality local political subdivision in which it is located, be and become validated ab initio as a corporation organized under and governed by the provisions of sections 21-2301 to 21-2318 act with respect to any bonds ~~heretofore~~ issued and all other matters concerning its affairs and business by executing and filing with the Secretary of State a certificate of its adoption of sections 21-2301 to 21-2318 the act.

Sec. 18. Original sections 21-2301 to 21-2317, Reissue Revised Statutes of Nebraska, are repealed.