

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 373

Introduced by Brewer, 43.

Read first time January 16, 2019

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to zoning restrictions; to amend sections
2 23-114.01, 66-914, and 72-272, Reissue Revised Statutes of Nebraska;
3 to define a term; to require zoning provisions prior to construction
4 of wind energy projects as prescribed; to provide for fees as
5 prescribed; to eliminate provisions relating to variances or
6 exceptions from zoning regulations; to provide limitations on
7 agreements relating to school lands; to repeal the original
8 sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section, wind energy generation
2 project means a project for the construction of a facility for the
3 generation of electricity using wind that is subject to sections 70-1001
4 to 70-1028.

5 (2) Beginning on the effective date of this act, no wind energy
6 generation project shall be constructed unless:

7 (a) As part of the project, no wind turbine will be located within
8 three miles of any residential dwelling without the written permission of
9 the owner of the dwelling prior to any construction on the project. Any
10 owner of such a dwelling shall have a cause of action for any damages,
11 including loss of property value, against the developer of a wind energy
12 generation project failing to comply with this subdivision; or

13 (b) Beginning July 1, 2021, the county in which the project would be
14 located has zoning regulations or a zoning resolution described in
15 section 23-114 as prescribed in subsection (3) of this section.

16 (3) For purposes of this section, the zoning provisions shall
17 address:

18 (a) Fixed-distance setbacks measured from buildings used for
19 residential purposes and setbacks measured from property lines. The
20 setbacks shall not be variable distances based on the height of a
21 turbine. The determination of setbacks based on surface danger area due
22 to issues such as collapse and ice-throw shall ensure that the surface
23 danger area does not overlap a nonparticipating property owner's
24 property;

25 (b) Noise standards restricting the low-level noise generated by the
26 operation of a wind turbine so that it does not exceed a specified A-
27 weighted, equivalent sound level or specified A-weighted decibels at the
28 property line of the wind energy generation project. The measure of noise
29 shall meet the following requirements:

30 (i) Any instrument used to measure noise shall meet sound level
31 meter performance specifications of the American National Standards

1 Institute or the International Electrotechnical Commission for Wind Class
2 I;

3 (ii) The procedures used to measure noise shall meet the
4 requirements of the American National Standards Institute, the
5 International Electrotechnical Commission, or the International
6 Organization for Standardization for the measurement of sound or its
7 characteristics; and

8 (iii) The procedures shall not include procedures based on the
9 International Electrotechnical Commission Standard IEC 61400-11 (2002)
10 regarding noise measurement techniques;

11 (c) Decommissioning terms and conditions which must be in place
12 before construction begins. The terms and conditions shall include a site
13 restoration plan and surety to be held by the county to pay for
14 decommissioning, which may include, but not be limited to, a performance
15 bond for each wind turbine; and

16 (d) Fees for conditional use permits for wind energy generation
17 projects.

18 Sec. 2. Section 23-114.01, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 23-114.01 (1) In order to avail itself of the powers conferred by
21 section 23-114, the county board shall appoint a planning commission to
22 be known as the county planning commission. The members of the commission
23 shall be residents of the county to be planned and shall be appointed
24 with due consideration to geographical and population factors. Since the
25 primary focus of concern and control in county planning and land-use
26 regulatory programs is the unincorporated area, a majority of the members
27 of the commission shall be residents of unincorporated areas, except that
28 this requirement shall not apply to joint planning commissions. Members
29 of the commission shall hold no county or municipal office, except that a
30 member may also be a member of a city, village, or other type of planning
31 commission. The term of each member shall be three years, except that

1 approximately one-third of the members of the first commission shall
2 serve for terms of one year, one-third for terms of two years, and one-
3 third for terms of three years. All members shall hold office until their
4 successors are appointed. Members of the commission may be removed by a
5 majority vote of the county board for inefficiency, neglect of duty, or
6 malfeasance in office or other good and sufficient cause upon written
7 charges being filed with the county board and after a public hearing has
8 been held regarding such charges. Vacancies occurring otherwise than
9 through the expiration of terms shall be filled for the unexpired terms
10 by individuals appointed by the county board. Members of the commission
11 shall be compensated for their actual and necessary expenses incurred in
12 connection with their duties in an amount to be fixed by the county
13 board. Reimbursement for mileage shall be made at the rate provided in
14 section 81-1176. Each county board may provide a per diem payment for
15 members of the commission of not to exceed fifteen dollars for each day
16 that each such member attends meetings of the commission or is engaged in
17 matters concerning the commission, but no member shall receive more than
18 one thousand dollars in any one year. Such per diem payments shall be in
19 addition to and separate from compensation for expenses.

20 (2) The commission: (a) Shall prepare and adopt as its policy
21 statement a comprehensive development plan and such implemental means as
22 a capital improvement program, subdivision regulations, building codes,
23 and a zoning resolution; (b) shall consult with and advise public
24 officials and agencies, public utilities, civic organizations,
25 educational institutions, and citizens relating to the promulgation of
26 implemental programs; (c) may delegate authority to any of the groups
27 named in subdivision (b) of this subsection to conduct studies and make
28 surveys for the commission; and (d) shall make preliminary reports on its
29 findings and hold public hearings before submitting its final reports.
30 The county board shall not hold its public meetings or take action on
31 matters relating to the comprehensive development plan, capital

1 improvements, building codes, subdivision development, or zoning until it
2 has received the recommendations of the commission.

3 (3) The commission may, with the consent of the governing body, in
4 its own name: Make and enter into contracts with public or private
5 bodies; receive contributions, bequests, gifts, or grants of funds from
6 public or private sources; expend the funds appropriated to it by the
7 county board; employ agents and employees; and acquire, hold, and dispose
8 of property. The commission may, on its own authority: Make arrangements
9 consistent with its program; conduct or sponsor special studies or
10 planning work for any public body or appropriate agency; receive grants,
11 remuneration, or reimbursement for such studies or work; and at its
12 public hearings, summon witnesses, administer oaths, and compel the
13 giving of testimony.

14 (4) In all counties in the state, the county planning commission may
15 grant conditional uses or special exceptions to property owners for the
16 use of their property if the county board of commissioners or supervisors
17 has officially and generally authorized the commission to exercise such
18 powers and has approved the standards and procedures the commission
19 adopted for equitably and judiciously granting such conditional uses or
20 special exceptions. The granting of a conditional use permit or special
21 exception shall only allow property owners to put their property to a
22 special use if it is among those uses specifically identified in the
23 county zoning regulations as classifications of uses which may require
24 special conditions or requirements to be met by the owners before a use
25 permit or building permit is authorized. The applicant for a conditional
26 use permit or special exception for a livestock operation specifically
27 identified in the county zoning regulations as a classification of use
28 which may require special conditions or requirements to be met within an
29 area of a county zoned for agricultural use may request a determination
30 of the special conditions or requirements to be imposed by the county
31 planning commission or by the county board of commissioners or

1 supervisors if the board has not authorized the commission to exercise
2 such authority. Upon request the commission or board shall issue such
3 determination of the special conditions or requirements to be imposed in
4 a timely manner. Such special conditions or requirements to be imposed
5 may include, but are not limited to, the submission of information that
6 may be separately provided to state or federal agencies in applying to
7 obtain the applicable state and federal permits. The commission or the
8 board may request and review, prior to making a determination of the
9 special conditions or requirements to be imposed, reasonable information
10 relevant to the conditional use or special exception. If a determination
11 of the special conditions or requirements to be imposed has been made,
12 final permit approval may be withheld subject only to a final review by
13 the commission or county board to determine whether there is a
14 substantial change in the applicant's proposed use of the property upon
15 which the determination was based and that the applicant has met, or will
16 meet, the special conditions or requirements imposed in the
17 determination. For purposes of this section, substantial change shall
18 include any significant alteration in the original application including
19 a significant change in the design or location of buildings or
20 facilities, in waste disposal methods or facilities, or in capacity.

21 (5) The power to grant conditional uses or special exceptions as set
22 forth in subsection (4) of this section shall be the exclusive authority
23 of the commission, except that the county board of commissioners or
24 supervisors may choose to retain for itself the power to grant
25 conditional uses or special exceptions for those classifications of uses
26 specified in the county zoning regulations. The county board of
27 commissioners or supervisors may exercise such power if it has formally
28 adopted standards and procedures for granting such conditional uses or
29 special exceptions in a manner that is equitable and which will promote
30 the public interest. In any county other than a county in which is
31 located a city of the primary class, an appeal of a decision by the

1 county planning commission or county board of commissioners or
2 supervisors regarding a conditional use or special exception shall be
3 made to the district court. In any county in which is located a city of
4 the primary class, an appeal of a decision by the county planning
5 commission regarding a conditional use or special exception shall be made
6 to the county board of commissioners or supervisors, and an appeal of a
7 decision by the county board of commissioners or supervisors regarding a
8 conditional use or special exception shall be made to the district court.

9 (6) Whenever a county planning commission or county board is
10 authorized to grant conditional uses or special exceptions pursuant to
11 subsection (4) or (5) of this section, the planning commission or county
12 board shall, with its decision to grant or deny a conditional use permit
13 or special exception, issue a statement of factual findings arising from
14 the record of proceedings that support the granting or denial of the
15 conditional use permit or special exception. If a county planning
16 commission's role is advisory to the county board, the county planning
17 commission shall submit such statement with its recommendation to the
18 county board as to whether to approve or deny a conditional use permit or
19 special exception.

20 (7) A county planning commission or county board may establish fees
21 for applications for conditional uses or special exceptions.

22 Sec. 3. Section 66-914, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 66-914 When the application of any zoning or subdivision regulation
25 or ordinance would prevent or unduly restrict the use of solar energy
26 systems ~~or wind energy conversion systems~~, the governing body of the
27 county or municipality having zoning or subdivision jurisdiction is
28 authorized to grant a variance or exception from the strict application
29 thereof so as to relieve such restriction and protect access to solar
30 energy ~~or wind energy~~ if such relief may be granted without substantial
31 detriment to the public good and without substantially impairing the

1 intent and purpose of such regulation or ordinance. Any variance or
2 exception granted prior to July 1, 2019, for a wind energy conversion
3 system may continue in effect as long as the system is in operation
4 subject to oversight by the county or municipality.

5 Sec. 4. Section 72-272, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 72-272 Subject to section 1 of this act, the ~~The~~ board may
8 authorize agreements for the use of any school or public lands belonging
9 to the state and under its control for exploration and development of
10 wind energy or solar energy for such durations and under such terms and
11 conditions as the board shall deem appropriate, except that such
12 agreements shall comply with sections 66-901 to 66-914. In making such
13 determinations, the board shall consider comparable arrangements
14 involving other lands similarly situated and any other relevant factors
15 bearing upon such agreements.

16 Sec. 5. Original sections 23-114.01, 66-914, and 72-272, Reissue
17 Revised Statutes of Nebraska, are repealed.

18 Sec. 6. Since an emergency exists, this act takes effect when
19 passed and approved according to law.