

LEGISLATIVE BILL 1116

Approved by the Governor April 13, 2000

Introduced by Schimek, 27; Beutler, 28; Landis, 46; Price, 26; Raikes, 25

AN ACT relating to cities; to amend sections 3-503, 3-706, 13-316, 13-510, 13-918, 14-501 to 14-504, 15-1026, and 18-2716, Reissue Revised Statutes of Nebraska, section 77-3523, Revised Statutes Supplement, 1998, and sections 13-503, 13-511, and 14-512, Revised Statutes Supplement, 1999; to provide for biennial budgeting in cities of the metropolitan and primary classes; to define terms; to eliminate obsolete provisions relating to fire and police pension funds; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. 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.

Sec. 2. 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.

Sec. 3. Section 3-503, Reissue Revised Statutes of Nebraska, is amended to read:

3-503. (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.

Sec. 4. Section 3-706, Reissue Revised Statutes of Nebraska, is amended to read:

3-706. (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 ~~sections 3-701 to 3-716~~ 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 ~~sections 3-701 to 3-716~~ 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.

Sec. 5. Section 13-316, Reissue Revised Statutes of Nebraska, is amended to read:

13-316. 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 ~~said~~ the budget.

Sec. 6. Section 13-503, Revised Statutes Supplement, 1999, is amended to read:

13-503. For purposes of the Nebraska Budget Act, unless the context otherwise requires:

(1) Governing body shall mean, in the case of a city, the council; in the case of a village, cemetery district, community hospital for two or more adjoining counties, 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 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; in the case of a county agricultural society, the board of directors; and in the case of an elected county fair board, the board;

(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; ~~and~~

(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, or (f) statutorily authorized sinking funds 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.

Sec. 7. Section 13-510, Reissue Revised Statutes of Nebraska, is amended to read:

13-510. 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.

Sec. 8. Section 13-511, Revised Statutes Supplement, 1999, is amended to read:

13-511. (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, and (d) a copy of the summary of the originally adopted budget previously published.

(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, and with the auditor, a copy of the revised budget, as adopted, and shall certify the revised amount of tax to be levied. 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.

Sec. 9. Section 13-918, Reissue Revised Statutes of Nebraska, is amended to read:

13-918. 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.

Sec. 10. Section 14-501, Reissue Revised Statutes of Nebraska, is amended to read:

14-501. 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.

Sec. 11. Section 14-502, Reissue Revised Statutes of Nebraska, is amended to read:

14-502. 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 ~~said~~ 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 ~~annual~~ 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.

Sec. 12. Section 14-503, Reissue Revised Statutes of Nebraska, is amended to read:

14-503. The balances remaining in any of the funds created by ~~the provisions of~~ 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.

Sec. 13. Section 14-504, Reissue Revised Statutes of Nebraska, is amended to read:

14-504. As soon as the ~~annual~~ 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 ~~said~~ 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.

Sec. 14. Section 14-512, Revised Statutes Supplement, 1999, is amended to read:

14-512. 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.

Sec. 15. Section 15-1026, Reissue Revised Statutes of Nebraska, is amended to read:

15-1026. 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. ~~The unexpended balance of any fire and police pension fund established by a city of the primary class existing on August 30, 1987, shall be transferred on such date to the fund authorized in this section.~~

Sec. 16. Section 18-2716, Reissue Revised Statutes of Nebraska, is amended to read:

18-2716. Following the adoption of an ordinance establishing an economic development program, the amount to be expended on the program for the ensuing year or biennial period shall be fixed at the time of making the annual or biennial budget required by law and shall be included in the budget.

Sec. 17. Section 77-3523, Revised Statutes Supplement, 1998, is amended to read:

77-3523. The county treasurer shall, on or before November 30 of each year, certify to the Tax Commissioner the total tax revenue that will be lost to all taxing agencies within his or her county from taxes levied and assessed in that year because of exemptions allowed under Chapter 77, article 35, multiplied by the aggregate assessment sales ratio calculated by the Property Tax Administrator for all single-family residential real property in the county for the current year after adjustments by the Tax Equalization and Review Commission, except that any assessment sales ratio greater than 100 or any assessment sales ratio that complies with the standards of equalization as determined by the commission shall be deemed to be 100 for such purpose. The county treasurer may amend the certification to show any change or correction in the total tax that will be lost until May 30 of the next succeeding year. If a homestead exemption is approved, denied, or corrected by the Tax Commissioner under subsection (2) of section 77-3517 after May 1 of the next year, the county treasurer shall prepare and submit amended reports to the Tax Commissioner and the political subdivisions covering any affected year and shall adjust the reimbursement to the county and the other political subdivisions by adjusting the reimbursement due under this section in later years. The Tax Commissioner shall, on or before January 1 next following such certification or within thirty days of any amendment to the certification, notify the Director of Administrative Services of the amount so certified to be reimbursed by the state. Reimbursement of the funds lost shall be made to each county according to the certification and shall be distributed in six as nearly as possible equal monthly payments on the last business day of each month beginning in January. The State Treasurer shall, on the business day preceding the last business day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund

for payment purposes. The Director of Administrative Services shall, on the last business day of each month, draw warrants against funds appropriated. Out of the amount so received the county treasurer shall distribute to each of the taxing agencies within his or her county the full amount so lost by such agency, multiplied by the aggregate assessment sales ratio calculated by the Property Tax Administrator for all single-family residential real property in the county for the current year after adjustments by the commission, except that any assessment sales ratio greater than 100 or any assessment sales ratio that complies with the standards of equalization as determined by the commission shall be deemed to be 100 for such purpose, except that one percent of such amount shall be deposited in the county general fund and that the amount due a Class V school district shall be paid to the district and the county shall be compensated pursuant to section 14-554. Each taxing agency shall, in preparing its annual or biennial budget, take into account the amount to be received under this section.

Sec. 18. This act becomes operative on January 1, 2001.

Sec. 19. Original sections 3-503, 3-706, 13-316, 13-510, 13-918, 14-501 to 14-504, 15-1026, and 18-2716, Reissue Revised Statutes of Nebraska, section 77-3523, Revised Statutes Supplement, 1998, and sections 13-503, 13-511, and 14-512, Revised Statutes Supplement, 1999, are repealed.