

LEGISLATIVE BILL 1139

Approved by the Governor April 7, 1994

Introduced by Hartnett, 45; Avery, 3

AN ACT relating to counties; to amend sections 81-15,148, 81-15,150, 81-15,152, 81-15,154, 81-15,155, and 81-15,158, Revised Statutes Supplement, 1992, and sections 81-15,149 and 81-15,153, Revised Statutes Supplement, 1993; to adopt the County Industrial Sewer Construction Act; to include counties in the Wastewater Treatment Facilities Construction Assistance Act; to provide severability; and to repeal the original sections.

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

Section 1. Sections 1 to 37 of this act shall be known and may be cited as the County Industrial Sewer Construction Act.

Sec. 2. The Legislature finds that:

(1) The ability of Nebraska to attract and retain large commercial or industrial businesses to the state is dependent to a large extent upon the presence of adequate and efficient infrastructure improvements available for use at the time the business begins construction of new plant or facilities;

(2) The ability to construct the necessary infrastructure improvements and most particularly sewerage disposal systems and plant or plants depends upon the presence and willingness of an appropriate public entity to plan, develop, and finance the facilities;

(3) The distance of many large tracts of land appropriate for industrial development from nearby cities and the large cost for developing sewerage disposal systems and plant or plants often makes it impractical, infeasible, and unfair for the financing burdens to be borne by a single municipality;

(4) The benefits of new industrial and commercial businesses are generally spread throughout a regional area and it is fairer and more appropriate that the costs of providing sewerage disposal systems and plant or plants for such users should be shared more broadly through the same area;

(5) It is necessary to facilitate industrial and commercial development in certain areas of the state by providing the authority for county governments to plan, develop, finance, and construct sewerage disposal systems and plant or plants so that the costs and benefits of such development are more properly allocated;

(6) The development of sewerage disposal systems and plant or plants can inevitably lead to additional urbanization and residential development in areas surrounding industrial tracts which are beyond the current limits of authorized zoning control by municipalities;

(7) This urbanization beyond municipal control can lead to the distortion of logical, planned development patterns and the creation of new demands for county services and other infrastructure improvements which distort budget priorities and add additional pressures on scarce financial resources;

(8) It is appropriate to extend to neighboring municipalities that may, through future growth, assume the responsibility for the planning and zoning and ultimately the annexation of the area the additional authority to prevent additional residential development in the area by authorizing it to review and control the activity of the county in authorizing the use of the sewerage disposal system and plant or plants constructed under its authority for additional residential purposes; and

(9) Because of the primary role of municipalities in the development and construction of sewerage disposal systems and plant or plants under the state's current statutory scheme, it is appropriate to provide for the review of county disposal sewerage development plans by appropriate municipalities prior to the construction of such systems and plant or plants to foster cooperative arrangements and insure that appropriate municipal concerns about additional residential development impacts have been addressed by the county.

Sec. 3. For purposes of the County Industrial Sewer Construction

Act:

(1) County shall mean any county with a population in excess of one hundred thousand inhabitants according to the most recent federal decennial census and at least forty percent of the population residing within the corporate boundaries of cities of the first and second class located in the county; and

(2) Sewerage disposal system and plant or plants shall mean and

include any system or works above or below ground which has for its purpose the removal, discharge, conduction, carrying, treatment, purification, or disposal of liquid and solid waste and night soil.

Sec. 4. (1) Any county in this state may own, construct, equip, and operate a sewerage disposal system and plant or plants for the treatment, purification, and disposal, in a sanitary manner, of liquid and solid wastes, sewage, and night soil or extend or improve any existing sanitary sewer system for the purpose of meeting the future needs of planned commercial or industrial users. The authority granted to a county under the provisions of the County Industrial Sewer Construction Act shall extend to the acquisition, leasing, or contracting for the use of a sewerage disposal system and plant or plants, and the county shall exercise this authority in the same manner as provided in the act for the construction, installation, improvement, or extension of a sewerage disposal system and plant or plants. A county is authorized to contract for the performance of any act or function provided for in the act with regard to the construction, installation, improvement, or extension of a sewerage disposal system and plant or plants or for the acquisition, leasing, or contracting for the use of a sewerage disposal system and plant or plants, except for such acts or functions as are governmental in nature.

(2) No county shall exercise the authority granted by the act within the boundaries of any incorporated city or village or outside the boundaries of the county. When more than fifty percent of the proposed length of a sewerage disposal system project will be located within the area of a city or village's declared extraterritorial zoning jurisdiction, the authority granted by the act shall not be exercised by a county without prior approval of the proposed project by a vote of the governing body of the city or village.

(3) Any county may acquire by gift, grant, purchase, or condemnation the necessary lands for the purposes authorized by the act.

Sec. 5. At such time as the county board decides to construct or install a sewerage disposal system and plant or plants or decides to improve or extend an existing system, the county board shall formally adopt a resolution indicating its intent to proceed with such engineering studies and the development of such plans as are necessary to proceed with the development of the system. Such resolution shall specify the proposed location of the system and the area or areas which it will serve. The resolution shall specify what particular future needs of planned commercial or industrial users will be served by the development of the proposed system. Prior to adopting the resolution, the county board may conduct feasibility studies on sewerage system development and receive preliminary cost estimates on such development. At the discretion of the county board the resolution may, if such information is available, indicate the estimated cost of the development of the proposed sewerage disposal system and plant or plants and the manner in which such system and plants will be financed. Following the adoption of the resolution, the county board shall require that appropriate engineering studies be conducted and that plans and specifications be prepared of the proposed sewerage disposal system and plant or plants or improvement or extension of the existing system.

Sec. 6. Not later than seven days after the adoption of the resolution by the county board regarding a sewerage disposal system and plant or plants pursuant to section 5 of this act, the county board shall:

(1) Send formal notice of such resolution to the clerk of each city and village located within the county and inform such clerks of its intent to establish the boundaries of each city's or village's area of future growth and development within the boundaries of the county; and

(2) Send formal notice of such resolution to any city or other political subdivision into whose sewerage disposal system and plant or plants the proposed county sewerage system will or may connect.

Sec. 7. Within forty-five days after the receipt of the notice provided for in section 6 of the act, each city or village shall file with the county clerk a map clearly delineating the proposed boundaries of the area of future growth and development of the city or village within the county as developed and approved by the governing body of the city or village.

Sec. 8. In defining the proposed boundaries of its area of future growth and development, each city or village shall include at least the area over which it formally exercises jurisdiction for purposes of zoning and platting. Each city or village may include in its proposed boundaries of the area of future growth and development such unincorporated lands within the county not more than five miles beyond its corporate limits which the city or village reasonably anticipates will in the future come within the jurisdiction of the city or village for purposes of zoning and platting as a result of long-range future growth. The boundaries of the area of future growth and

development proposed by each city or village shall be based upon documented population and economic growth trends and projected patterns of land development and infrastructure improvement. The area of future growth and development of a city or village shall be delineated in conformity with the comprehensive development plan of the city or village or in conformity with the goals and standards in such plan. The governing body of the city or village shall not take formal action on the delineation of its area of future growth and development until it has received a recommendation thereon from its planning commission.

Sec. 9. The county board shall review the maps delineating the areas of future growth and development received from each city and village and shall identify those portions of the county which two or more cities or villages claim as being within each of their respective areas of future growth and development. Within fifteen days after the date upon which the last map was filed pursuant to section 7 of this act, the county board shall notify the cities or villages that are claiming overlapping portions of areas of future growth and development of the territory which is the subject of dispute and of the other cities or villages claiming the same territory within their areas of future growth and development. The notice shall state the location, date, and time when the county board will hold a public hearing for all interested parties on the question of which city or village should properly be permitted to include the disputed territory within its defined area of future growth and development. Such notice shall be delivered at least twenty days prior to the public hearing.

Sec. 10. (1) The county board shall hold a public hearing on each disputed area pursuant to such notice as set out in section 9 of this act. Within fifteen days after the completion of such public hearings, the county board shall formally adopt a map designating and delineating the boundaries of the area of future growth and development of each city or village within the county.

(2) Over all territory regarding which there is no dispute between any cities or villages as to inclusion in their respective areas of future growth and development, the county board shall accept the recommended delineations of the cities and villages and incorporate them without amendment into its formal map.

(3) When any cities or villages involved in a dispute over the inclusion of territory within their respective areas of future growth and development reach an agreement on the allocation of the disputed territory and inform the county board of such agreement prior to the board's final action to adopt a formal map, the county board shall accept the agreement on the allocation and incorporate the agreed-upon delineation without amendment into its formal map.

(4) In determining any disputes on the allocation of territory not otherwise resolved by agreement between disputing cities and villages and in making its formal delineations with regard to such territory, the county board shall base its decision on the relative likelihood of the disputed area coming within the jurisdiction of the cities or villages for zoning or platting purposes based on (a) growth and land development patterns and (b) documented population and economic growth trends. The county board shall place the disputed area within the area of future growth and development of the city or village which would, based upon such factors, be the most likely city or village to first assume jurisdiction over such territory for zoning or platting purposes.

Sec. 11. (1) After the adoption of the map designating and delineating areas of future growth and development of the cities and villages in the county by the county board as provided in section 10 of this act, the map shall not be changed or amended except as provided in subsections (2) and (3) of this section.

(2) When the county board is notified that the area over which a city or village formally exercises jurisdiction for purposes of zoning or platting has been extended so as to include a portion of the area of future growth and development of another city or village, the board shall promptly amend the map so as to place the territory that is in the jurisdiction of the city or village for zoning or platting purposes within the area of future growth and development of the same city or village.

(3) Upon the request of a city or village which recites that changes in growth and development patterns or population and economic trends have necessitated changes in the map of areas of growth and development, the county board shall review the territories specified in the request as requiring reallocation and make such changes as it deems warranted. The review shall be carried out in the same manner as prescribed in sections 9 and 10 of this act for dealing with disputed territory, and any changes made by the county board

shall be based on the same criteria as used by the board in making its original determination.

Sec. 12. At such time as the county board determines that it is prepared to proceed with orders for the development of the sewerage disposal system and plant or plants proposed in the resolution under section 5 of this act, it shall formally give notice to the city or village, within whose area of future growth and development the sewerage disposal system and plant or plants will be located, of its intent to proceed. In the event that the sewerage disposal system and plant or plants project will be located within the area of future growth and development of more than one city or village, the county shall give notice to that city or village within whose area more than fifty percent of the sewerage disposal system and plant or plants, as determined by linear measure, will be located. With the notice the county shall provide the city or village with copies of all relevant documents and information regarding the sewerage disposal system and plant or plants and the plans for its development, including any estimates of cost and proposed plans for financing the project.

Sec. 13. Not less than twenty days after receiving the notice provided for in section 12 of this act, the city or village governing body shall schedule a public hearing for consideration of the county proposal for development of the sewerage disposal system and plant or plants. At such hearing, the county shall present its plans for the proposed development for the sewerage disposal system and plant or plants and the governing body of the city or village shall receive public comment on the matter.

Sec. 14. Within fifteen days after the public hearing under section 13 of this act, the city or village governing body shall vote in open public session on whether or not to authorize the county to proceed with the development of the sewerage disposal system and plant or plants. The governing body shall base its decision on the following criteria:

(1) Whether the development of the proposed sewerage disposal system and plant or plants is consistent with the sewerage system of the city or village and the comprehensive development plan of the county;

(2) Whether the proposed sewerage disposal system and plant or plants will enhance the possibility for industrial or commercial development in the area it will serve;

(3) Whether the proposed sewerage disposal system and plant or plants will encourage additional residential development in the area it will serve;

(4) Whether the county has developed appropriate plans and procedures to address the possibility of future residential development in the area and to ensure that such development proceeds in a fashion consistent with the standards established by the city or village for development within its area of jurisdiction for platting and zoning purposes;

(5) Whether the county has proposed measures for cooperative action between the city or village and the county to address matters of concern with regard to the sewerage disposal system and plant or plants, its development, or related development issues;

(6) Whether the city or village is willing to proceed with the development of the proposed sewerage disposal system and plant or plants as its own project or in cooperation with the county;

(7) Whether the land development projects occurring as a result of the development of the sewerage disposal system and plant or plants will require additional infrastructure expenditures to support the proposed industrial or commercial development and the impact of such required infrastructure expenditures upon then-current city or village and county capital improvement plans; and

(8) Whether the projected commercial or industrial development occurring as a result of the development of the sewerage disposal system and plant or plants will have a positive or adverse impact upon the economy of the city or village and the county.

Unless a number of members of the city or village governing body equal to two-thirds or more of its elected members vote against authorizing the county to proceed with the development of the sewerage disposal system and plant or plants, the county may proceed with the development of the system at the discretion of the county board.

Sec. 15. Whenever the county board has ordered the installation of a sewerage disposal system and plant or plants or the improvement or extension of an existing system, the fact that such order was issued shall be recited in the official minutes of the county board. Upon approval of plans for such installation, improvement, or extension, the county board shall advertise for sealed bids for the construction of the system, improvement, or extension once a week for three weeks in a legal newspaper published in or of general

circulation within the county, and the contract shall be awarded to the lowest responsible bidder.

Sec. 16. For the purpose of owning, operating, constructing, maintaining, and equipping a sewerage disposal system and plant or plants as authorized by the County Industrial Sewer Construction Act or improving or extending an existing system, a county may make a special levy known as the sewer tax levy not to exceed three and five-tenths cents on each one hundred dollars upon the actual value of all the taxable property within any such county. Any levy exceeding such amount for the purposes of such act shall be submitted for approval to the registered voters of the county at a general election or special election called for such purpose. Any levy made pursuant to this section shall not be included as part of the county property tax levy for purposes of sections 77-3437 to 77-3440. The proceeds of such levy shall be used only for the purposes enumerated in this section and for no other purpose.

Sec. 17. A county may issue revenue bonds for the purpose of owning, operating, constructing, and equipping a sewerage disposal system and plant or plants or improving or extending an existing system. Such revenue bonds shall not impose any general liability upon the county but shall be secured only by the revenue as provided from such sewerage disposal system and plant or plants. Such revenue bonds shall be sold for not less than par value and bear interest at a rate set by the county board. The amount of such revenue bonds, either issued or outstanding, shall not be included in computing the maximum amount of bonds which the county may be authorized to issue under any statute of this state.

Sec. 18. (1) The county board may adopt and promulgate rules and regulations governing the use, operation, and control of such sewerage disposal system and plant or plants, including the authority to compel all proper connections and to provide a penalty not to exceed one hundred dollars for any obstruction or injury to any sewer or part thereof or for failure to comply with the rules and regulations adopted and promulgated. If, after ten days' notice by certified mail or publication in a newspaper of general circulation, a property owner fails to make such connections and comply with such rules and regulations as may be ordered in accordance with this section, the county board may order such connection to be made and assess the cost of the connection against the property benefited in the same manner as special taxes are levied for other purposes.

(2) The county board may establish usage fees to be paid to it for the use of such sewerage disposal system and plant or plants by each person, firm, or corporation whose premises are served thereby. The county board may contract with another party for the billing and collection of such usage fees. If the usage fee so established is not paid when due, such sum may be recovered by the county in a civil action or it may be certified to the county assessor and assessed against the premises served and collected or returned in the same manner as other county taxes are certified, assessed, collected, and returned.

(3) The county board shall require the issuance of a permit for any property owner to connect with any sewer and the payment of a fee for the permit and connection as determined by the county board, which fee shall be paid prior to issuance of any such permit. The county board shall also require the issuance of a permit to connect with any sewer and payment of a connection fee by any developer payable at the time of filing a plat for the development, which fee shall be paid prior to issuance of such permit.

Sec. 19. (1) Revenue bonds issued as provided in section 17 of this act shall not be a general obligation of the county but shall be paid only out of the revenue received from the usage fees as provided in section 18 of this act.

(2) If a usage fee is charged as a part of the revenue as provided in subsection (1) of this section, a sufficient portion shall be set aside as a sinking fund for the payment of the interest on such revenue bonds and the principal at maturity.

(3) The usage fee for the service of the sewerage disposal system and plant or plants as provided in subsection (1) of this section shall be sufficient, at all times, to pay the cost of operation and maintenance of such system, to pay the principal and interest upon all revenue bonds issued pursuant to section 17 of this act, and to carry out any covenants that may be provided in the resolutions authorizing the issuance of any such bonds.

(4) The holders of any of the revenue bonds or any of the coupons of any revenue bonds issued under such section, in any civil action, mandamus, or other proceeding, may enforce and compel the performance of all duties required by this section and the covenants made by the county board in the resolution providing for the issuance of such bonds, including the making and

collecting of sufficient rates or charges for the specified purposes and for the proper application of the income therefrom.

Sec. 20. For the purpose of owning, operating, constructing, and equipping any sewerage disposal system and plant or plants or improving or extending any existing system or for the purposes stated in the County Industrial Sewer Construction Act, any county may issue and sell the general obligation bonds of the county upon compliance with the provisions of section 21 of this act. Such bonds shall not be sold or exchanged for less than the par value and shall bear interest which shall be payable annually or semiannually. The county board shall have the power to determine the denominations of such bonds and the date, time, and manner of the payment. The amount of such general obligation bonds, either issued or outstanding, shall not be included in the maximum amount of bonds which any such county may be authorized to issue and sell under any statutes of this state.

Sec. 21. Revenue bonds authorized by section 17 of this act may be issued by resolution duly passed by the governing body of the county without any other authority. General obligation bonds authorized by section 20 of this act may be issued by resolution duly adopted by the county board without any other authority, unless the proposed sewer tax levy authorized by section 16 of this act exceeds three and five-tenths cents on each one hundred dollars of actual value, in which case the bonds may be issued only after (1) the question of their issuance has been submitted to the registered voters of the county at a general or special election, (2) three weeks' notice thereof has been published in a legal newspaper published in or of general circulation in the county, and (3) more than a majority of the registered voters voting at the election have voted in favor of the issuance of the bond.

Sec. 22. (1) The county board, in addition to other sources of revenue available to the county, may by resolution set up a rental or use charge, to be collected from users of any sewerage disposal system and plant or plants, and provide methods for collection of the rental or use charge. The charges shall be charged to the real property served by the sewerage disposal system, shall be a lien upon the real property served, and may be collected either from the owner or the person, firm, or corporation requesting the service.

(2) All money raised from the charges referred to in subsection (1) of this section shall be used for maintenance or operation of the existing sewerage disposal system and plant or plants, for payment of principal and interest on bonds issued, or to create a reserve fund for the purpose of future maintenance or construction of a new sewerage disposal system and plant or plants for the county. Any funds raised from such charge shall be placed in a separate fund and shall not be used for any other purpose or diverted to any other fund except as provided in section 25 of this act.

Sec. 23. For the purpose of paying the cost of construction of such sewerage disposal system and plant or plants, the county board may issue warrants in amounts not to exceed the total sum of the sewer tax levy provided in section 16 of this act, which warrants shall bear interest at such rate as the county board orders. When there are no funds immediately available for the payment of the warrants, they shall be registered in the manner provided for the registration of other warrants and called and paid whenever there are funds available for the purpose in the manner provided for the calling and paying of other warrants. For the purpose of paying the warrants and the interest thereon from the time of their registration until paid, the sewer tax levy provided in such section shall be kept as it is paid and collected in a fund to be designated and known as the sewerage fund into which all money levied for such improvements shall be paid as collected and out of which all warrants issued for such purposes shall be paid.

Sec. 24. For the purpose of making partial payments as the work progresses, warrants may be issued by the county board upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project in a total amount not to exceed ninety-five percent of the cost. Upon completion and acceptance of the work, the county board shall issue a final warrant for the balance of the amount due the contractor. The county shall pay to the contractor interest at the rate of seven percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval of the county board and running until the date that the warrant is tendered to the contractor. The warrants shall be redeemed and paid out of the proceeds received from the sewer tax levy levied pursuant to section 16 of this act or usage fees adopted pursuant to section 18 of this act or out of the proceeds of the bonds or warrants issued. The warrants shall draw interest as provided in the warrants from the date of registration until paid.

Sec. 25. All the sewer taxes, usage fees, and other revenue provided for in the County Industrial Sewer Construction Act shall, when levied and collected, constitute a sinking fund for the purpose of paying the cost of the improvements with allowable interest and shall be solely and strictly applied to such purpose to the extent required. Any excess may be by the county board, after fully discharging the purposes for which levied, transferred to such other fund or funds as the county board may deem advisable.

Sec. 26. Whenever any city or village annexes all of the land encompassing a sewerage disposal system and plant or plants constructed, improved, or extended by a county pursuant to the County Industrial Sewer Construction Act, the annexing city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the county with regard to the sewerage disposal system and plant or plants, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the county with regard to the sewerage system and plant or plants. All taxes, assessments, claims, and demands of every kind due or owing to the county with regard to the sewerage disposal system and plant or plants shall be paid to and collected by the city or village. Any special assessments which the county was authorized to levy, assess, relevel, or reassess, but which were not levied, assessed, relevelled, or reassessed at the time of the annexation for improvements made by the county pursuant to such act, may be levied, assessed, relevelled, or reassessed by the annexing city or village to the same extent as the county may have levied or assessed prior to the annexation.

Sec. 27. The county board shall, within thirty days after the effective date of the annexation, submit to the annexing city or village a written accounting of all assets and liabilities, contingent or fixed, of the county with regard to the sewerage disposal system and plant or plants. The annexation of the sewerage disposal system and plant or plants shall be effective thirty days after the effective date of the ordinance annexing the territory unless some later date is specified in the ordinance and is agreed to by the annexing city or village and the county. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the annexation shall be thirty days after the final determination of the validity of the ordinance. The county shall continue in possession of the sewerage disposal system and plant or plants and shall continue to conduct all affairs with regard to the sewerage disposal system and plant or plants until the effective date of the annexation.

Sec. 28. If only a portion of the territory encompassing a sewerage disposal system and plant or plants constructed, improved, or extended by a county pursuant to the County Industrial Sewer Construction Act is annexed by a city or village, the county acting through the county board and the city or village acting through its governing body may agree between themselves as to the equitable division of the assets, liabilities, maintenance, or other obligations of the county so as to exclude the jurisdiction of the county over the portion of the system within the boundaries of the city or village, may agree to the merger of the entire system with the city or village despite the fact that some portion of the system is not within the boundaries of the city or village, or may agree that the county shall continue to own and operate the entire system despite the annexation by the city or village of a portion of the system. If a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 26 and 27 of this act when the city or village annexes the entire territory encompassing the sewerage disposal system and plant or plants and the county shall be relieved of all further duties and liabilities as provided in the agreement between the city or village and the county. No agreement between the county and the city or village shall be effective until submitted to and approved by the district court of the county in which the system or plant is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the county with regard to the sewerage disposal system and plant or plants. The court may authorize or direct amendments to the agreement before approving the same. If the county and the city or village do not agree upon the proper adjustment of all matters growing out of the annexation of the sewerage disposal system and plant or plants, the annexing city or village or the county may apply to the district court for an adjustment of all matters growing out of or in any way connected with the annexation of a portion of the sewerage disposal system and plant or plants and, after a hearing thereon, the court may enter an order or decree fixing the rights, duties, and obligations of the parties. Only the county and the

city or village shall be necessary parties to such an action. The decree, when entered, shall be binding on all parties the same as though the parties had voluntarily agreed thereto.

Sec. 29. No county shall permit the connection of any lot or any structure used or to be used for any residential purpose to a sewerage disposal system and plant or plants constructed pursuant to the County Industrial Sewer Construction Act unless (1) such lot was platted and recorded prior to March 1, 1994, or such structure is or will be constructed on a lot platted and recorded prior to March 1, 1994, or (2) such connection is authorized by the appropriate city or village as provided in the act.

Sec. 30. After the county board formally adopts its resolution of intent to develop a sewerage disposal system and plant or plants pursuant to section 5 of this act, any owner of real property seeking approval from the county to subdivide, plat, or lay out the real property in building lots, any of which are intended for use in whole or in part for the construction of structures to be used for any residential purpose, shall at the time of application for approval inform the county if the owner intends to seek approval for connection of such lots or any proposed structures on them to a sewerage disposal system and plant or plants constructed under the County Industrial Sewer Construction Act. Any owner failing to inform the county of his or her intent to seek approval for connection to the sewerage disposal system or plant or plants at the time of application for a plat shall be barred from applying for a connection to the sewerage disposal system and plant or plants for any lot or any structure used for any residential purpose on such platted lots for a period of three years from the date such plat was finally approved and recorded. Such bar shall extend to any successor in interest of such owner in the platted lots during the same period of time. During the period between the date of adoption of the county board's resolution of intent to develop a sewerage disposal system and plant or plants and the date upon which the county board formally adopts a map designating and delineating the area of future growth and development of each city and village in the county pursuant to section 10 of this act, the county board shall not approve any application for the platting of any territory whose owner has indicated an intent to seek approval for the eventual connection to the sewerage disposal system and plant or plants of any lots or any structures placed on such lots to be used for residential purposes. Such applications shall be treated as if filed on the date upon which the county board formally adopts a map designating and delineating the area of future growth and development of each city and village in the county pursuant to section 10 of this act.

Sec. 31. After the county board formally adopts a map designating and delineating the area of future growth and development of each city and village in the county pursuant to section 10 of this act, the county board shall refer to the urbanizing area planning commission of the county any application by an owner of real property seeking approval from the county to subdivide, plat, or lay out the real property in building lots, any of which are intended for use in whole or in part for the construction of structures to be used for residential purposes, for which the owner indicates an intent to seek connection to the sewerage disposal system and plant or plants of the county constructed pursuant to the County Industrial Sewer Construction Act.

Sec. 32. The urbanizing area planning commission shall consist of six members. Three members shall be chosen by the county board from the membership of the county planning commission. Three members shall be chosen by the mayor with the approval of the governing body of the city or village from the regular membership of the planning commission of the city or village within whose area of future growth and development is located the territory which is the subject of the application. In the event that the territory which is the subject of the application is located in more than one area of future growth and development, the members of the urbanizing area planning commission shall be chosen from the city or village within whose area of future or growth and development more than fifty percent of the territory which is the subject of the plat, as measured by area, is located. The members of the urbanizing area planning commission shall serve without compensation for two-year terms. Initial appointments shall be made within thirty days after the date upon which the county board formally adopts a map designating and delineating the area of future growth and development of each city and village in the county pursuant to section 10 of this act. Members shall hold office until their successors are appointed and qualified. Vacancies shall be filled by appointment by the person or body which made the original designation, and the vacancy shall be filled in the same manner as the original appointment.

Sec. 33. After the county board formally adopts a map designating

and delineating the area of future growth and development of each city and village pursuant to section 10 of this act, the urbanizing area planning commission shall assume jurisdiction of any matter within the jurisdiction of a county planning commission under sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 which arises from the application of an owner of real property seeking approval from the county to subdivide, plat, or lay out the real property in building lots, any of which are intended for use in whole or in part for the construction of structures to be used for any residential purposes, for which the owner has indicated his or her intent to seek approval for the eventual connection to the county sewerage disposal system and plant or plants developed under the provisions of the County Industrial Sewer Construction Act. The jurisdiction of the urbanizing area planning commission is restricted to such portions of the areas of future growth and development of the cities and villages as are outside of their areas of formal jurisdiction for zoning and platting purposes. All powers, duties, responsibilities, and functions of the county planning commission shall be assumed and exercised by the urbanizing area planning commission with regard to matters within its jurisdiction as defined by the act. Actions of the urbanizing area planning commission taken with regard to matters arising within the area of its jurisdiction shall be treated for all purposes as if made by the county planning commission.

Sec. 34. In all matters subject to the jurisdiction of the urbanizing area planning commission, upon the request of the city or village, the county shall make available to the city or village within whose area of future growth and development the matter arises any documentation or materials with regard to the matter in the possession of the county.

Sec. 35. When the county receives an application from an owner of a lot proposed for residential use or a structure used for any residential purpose requesting connection of the lot or structure to a sewerage disposal system and plant or plants constructed pursuant to the County Industrial Sewer Construction Act, the county clerk shall, within five days after receipt of such application, provide a copy of such application to the city or village within whose area of future growth and development the lot or structure is located. The city or village governing body shall set a date for a public hearing on the application not sooner than fifteen days after receipt of the application. The owner of the lot or structure shall be notified by first-class United States mail of the date of the hearing. Within fourteen days after the hearing, the governing body of the city or village shall vote in open public session on whether to recommend that the county approve or disapprove the application. The county shall not authorize the connection of the lot or structure to the county sewerage disposal system and plant or plants without a recommendation of approval by a majority of the elected members of the governing body of the city or village. The determination by the city or village governing body as to whether or not to recommend approval of the application for connection to the sewerage disposal system and plant or plants of the county shall be based on the following criteria:

(1) Whether the subdivision, of which the lot or structure for which the connection is sought is part, is or will be developed in a location and in a manner in conformity with the comprehensive development plan of the city or village and the county;

(2) Whether the county has developed appropriate plans and procedures to ensure that the development of the subdivision proceeds in a fashion consistent with the standards established by the city or village for development within its area of jurisdiction for platting and zoning purposes;

(3) Whether the subdivision, of which the lot or structure for which the connection is sought is part, has been developed in a manner consistent with properly adopted county standards and whether the plans for the proposed structure or the structure, if built, are in accordance with appropriate county building codes;

(4) Whether the sewerage disposal system and plant or plants has sufficient capacity to serve the applicant for connection in light of current and projected future needs for commercial and industrial users;

(5) Whether the additional connection to the sewerage disposal system and plant or plants will impact positively or negatively on the financial status of the system, including its debt structure, cash flow, and operational and maintenance financing requirements;

(6) Whether the use of septic tanks or any other practical alternative form of sewerage disposal in the subdivision or the lot is feasible or will pose present or future threats to public health and safety and the purity of local water supplies used for human consumption or recreational purposes;

(7) Whether the county has developed or adopted appropriate and

adequate rules and regulations governing the sewerage disposal system and plant or plants and procedures to enforce the same so as to ensure the safe, sanitary, and environmentally sound connection of lots or structures to the county sewerage disposal system and plant or plants and whether it has developed procedures to maintain such standards during its operations; and

(8) Whether all appropriate state and federal statutes, rules, and regulations have been complied with prior to the application for the connection to the county sewerage disposal system and plant or plants.

Sec. 36. Prior to the date upon which the county adopts its resolution of intent to develop a sewerage disposal system and plant or plants pursuant to section 5 of this act, the county board shall cause to be prepared a brief statement outlining the procedures set forth in the County Industrial Sewer Construction Act and the methods by which the county will exercise its authority to enforce the procedures so as to fully inform an owner of real property who may seek to plat such property for the eventual construction thereon of structures to be used for residential purposes and who may apply for connection of such lots or structures to the proposed county sewerage disposal system and plant or plants. At the time of the adoption of the resolution of intent pursuant to such section, the county board shall consider and approve the statement. On and after the date of such approval, the county board shall instruct the appropriate county official to inform all applicants to the county for the approval of a plat of the provisions of the act by providing them with a copy of the statement. The county official providing the statement shall obtain a signed acknowledgment from the applicant that he or she has received a copy of such statement. No application for a plat shall be accepted until the appropriate county official has received a copy of such signed acknowledgment.

Sec. 37. The county and any city may enter into any agreement for joint action with regard to the planning, construction, management, operation, or financing of a sewerage disposal system and plant or plants consistent with the authority of the county as provided in the County Industrial Sewer Construction Act and consistent with the authority of the city and county under the Interlocal Cooperation Act. The county may enter into an agreement with any city for the sale to the city of all or any portion of a sewerage disposal system and plant or plants developed by the county under the County Industrial Sewer Construction Act upon such terms and conditions as to which the city and county may formally agree. Any agreement entered into by a city and county pursuant to this section shall be consistent with and conditioned upon the rights of any third party with a direct financial interest in the sewerage disposal system and plant or plants.

Sec. 38. That section 81-15,148, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,148. The Legislature finds that the construction, rehabilitation, operation, and maintenance of modern and efficient sewer systems and wastewater treatment works are essential to protecting and improving the state's water quality, that protecting water quality is an issue of concern to all citizens of the state, that in addition to protecting and improving the state's water quality, adequate wastewater treatment works are essential to economic growth and development, and that the amount of needed assistance which may be provided to municipalities or counties for wastewater treatment purposes can be increased and needed projects can be undertaken more expeditiously through the issuance of revenue bonds and the deposit of the proceeds thereof into the Wastewater Treatment Facilities Construction Loan Fund.

The Legislature finds and determines that the issuance of revenue bonds for the purpose of financing the fund serves a public purpose by assisting municipalities or counties in providing and improving wastewater treatment facilities and thereby providing clean water to the citizens of the state, promoting the health and well-being of the citizens, and assisting in the economic growth and development of the state and its political subdivisions. The full faith and credit and the taxing power of the state are not pledged to the payment of such bonds or the interest thereon.

Sec. 39. That section 81-15,149, Revised Statutes Supplement, 1993, be amended to read as follows:

81-15,149. As used in the Wastewater Treatment Facilities Construction Assistance Act, unless the context otherwise requires:

(1) Clean Water Act shall mean the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq.;

(2) Construction shall mean any of the following: Preliminary planning to determine the feasibility of wastewater treatment works; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications,

procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment works; or the inspection or supervision of any of the foregoing items;

(3) Council shall mean the Environmental Quality Council;

~~(4) County shall mean any county authorized to construct a sewerage disposal system and plant or plants pursuant to the County Industrial Sewer Construction Act;~~

~~(4)~~ (5) Department shall mean the Department of Environmental Quality;

~~(5)~~ (6) Fund shall mean the Wastewater Treatment Facilities Construction Loan Fund;

~~(6)~~ (7) Municipality shall mean any city, town, village, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes;

~~(7)~~ (8) Operate and maintain shall mean all necessary activities including the normal replacement of equipment or appurtenances to assure the dependable and economical function of a wastewater treatment works in accordance with its intended purpose; and

~~(8)~~ (9) Wastewater treatment works shall mean the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

Sec. 40. That section 81-15,150, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,150. The director may obligate and administer any federal grants to municipalities and counties for construction of publicly owned wastewater treatment works pursuant to the Clean Water Act.

Sec. 41. That section 81-15,152, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,152. The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements for making loans under the Wastewater Treatment Facilities Construction Assistance Act;

(2) The power to adopt a system for the ranking of wastewater treatment construction projects with known needs or for which loan applications have been received by the department. In establishing the system the council shall consider, among other things, the severity of pollution, public health, water quality impact, population, financial capability, and eligibility of the construction project for federal or state funds. This priority system shall be reviewed annually by the council;

(3) The power to adopt a system of establishing interest rates to be charged on loans. The system shall presume that the current market interest rate shall be charged unless a municipality or a county demonstrates a serious financial hardship. The system may allow discounted interest rates for short-term loans. The following factors shall be considered when making a determination of serious financial hardship: Income level of residents; amount of debt and debt service requirements; and level of user fees both in absolute terms and relative to income of residents;

(4) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Wastewater Treatment Facilities Construction Assistance Act. Such fee shall be based on the availability of federal funding for such purpose and the projected administrative needs for carrying out the purposes of the act;

(5) The power to determine the maximum amount of any one loan or combination of loans for any single municipality or any single county; and

(6) Except as limited by section 81-15,151, the power to obligate the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof, in whole or in part, to repay with interest bonds, the proceeds of which are deposited into the fund.

Sec. 42. That section 81-15,153, Revised Statutes Supplement, 1993, be amended to read as follows:

81-15,153. The department shall have the following powers and duties:

(1) The power to establish a program to make loans to municipalities or to counties, individually or jointly, for construction or modification of publicly owned wastewater treatment works in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power, if so authorized by the council pursuant to section 81-15,152, to execute and deliver documents obligating the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof to the

extent permitted by section 81-15,151 to repay, with interest, loans to or deposits into the fund and to execute and deliver documents pledging to the extent permitted by section 81-15,151 all or part of the fund and its assets to secure, directly or indirectly, the loans or deposits;

(3) The duty to prepare an annual report for the Governor and the Legislature;

(4) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

- (a) Accounting from the Nebraska Investment Finance Authority for the costs associated with the issuance of bonds pursuant to the act;
- (b) Accounting for payments or deposits received by the fund;
- (c) Accounting for disbursements made by the fund; and
- (d) Balancing the fund at the beginning and end of the accounting period;

(5) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

(6) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by the council;

(7) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Clean Water Act;

(8) The power to make state allocations concurrent with loans to municipalities with populations of eight hundred inhabitants or less which demonstrate serious financial hardships. The annual obligation to the state shall not exceed three hundred thousand dollars. The department may authorize grants for up to one-half of the eligible project cost. Such state allocations shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds. All funds appropriated shall be administered on a cash-flow basis utilizing General Funds appropriated to Agency No. 84 -- Department of Environmental Quality, Program No. 523 - Wastewater Facilities Construction Assistance Program, to meet payment requirements as they occur. The department shall submit to the Governor and the Clerk of the Legislature a semiannual report on January 1 and July 1 of each year containing information which shows the financial status of the program, including a statement of the fund balance, an itemized list of all conditional grants made to municipalities, including actual and estimated amounts and the time of payouts, the necessary appropriations required to meet those grants, and any other information which will reflect the progress and financial status of the program. Each member of the Legislature shall receive a copy of the report required by this subdivision by making a request for it to the department; and

(9) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Wastewater Treatment Facilities Construction Assistance Act.

Sec. 43. That section 81-15,154, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,154. Categories of loan eligibility shall include: Secondary or tertiary treatment and appurtenances; infiltration and inflow correction; major sewer system rehabilitation; new collector sewers and appurtenances; new interceptors and appurtenances; land integral to the treatment process; and correction of combined sewer overflows. Loans shall be made only for eligible items within such categories. For loans made entirely from state funds, eligible items shall include, but not be limited to, the costs of engineering services and contracted construction. Eligible items shall not include the costs of water rights, land, easements, and rights-of-way, legal costs, fiscal agent's fees, operation and maintenance costs, and municipal or county administrative costs. For loans made in whole or in part from federal funds, eligible items shall be those identified pursuant to the Clean Water Act.

Sec. 44. That section 81-15,155, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,155. Loans made under the Wastewater Treatment Facilities Construction Assistance Act shall be made only to municipalities or to counties that:

- (1) Meet the requirements of financial capability set by the department;
- (2) Develop and implement a long-term wastewater treatment works management plan for the term of the loan, including yearly renewals;
- (3) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;
- (4) Provide capacity for twenty years domestic and industrial growth

or reasonable capacity as determined by the department;

(5) Agree to operate and maintain the wastewater treatment works so that it will function properly over the structural and material design life which shall not be less than twenty years;

(6) Agree to maintain financial records according to generally accepted government accounting standards and to conduct an audit of the project's financial records;

(7) Provide a written assurance, signed by an attorney, that the municipality or county has proper title, easements, and rights-of-way to the property on or through which the wastewater treatment works is to be constructed or extended;

(8) Require the contractor of the construction project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;

(9) Provide a certified operator pursuant to voluntary or mandatory certification programs, whichever is in effect;

(10) Provide a written notice of completion and start of operation of the facility; and

(11) Employ a registered professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services.

Sec. 45. That section 81-15,158, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,158. If a municipality or county fails to make any payment pursuant to a loan within sixty days of the date due, such payment shall be deducted from the amount of aid to municipalities or counties to which the municipality or county is entitled under sections 77-27,136 to 77-27,137.01. Such amount shall be paid directly to the Wastewater Treatment Facilities Construction Loan Fund.

Sec. 46. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 47. That original sections 81-15,148, 81-15,150, 81-15,152, 81-15,154, 81-15,155, and 81-15,158, Revised Statutes Supplement, 1992, and sections 81-15,149 and 81-15,153, Revised Statutes Supplement, 1993, are repealed.