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OF
NEBRASKA

REISSUE OF VOLUME 1B

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COMPRISING ALL THE STATUTORY LAWS OF A
GENERAL NATURE IN FORCE AT DATE OF
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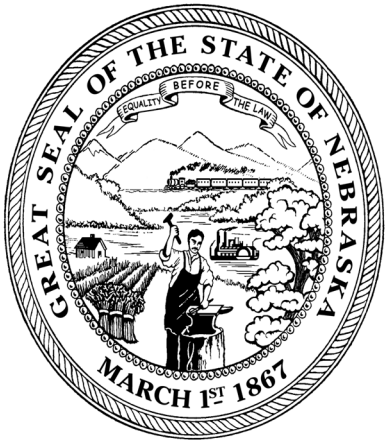
TO CHAPTERS 19 TO 23, INCLUSIVE



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Revisor of Statutes

For the benefit of the
State of Nebraska

CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the Reissue of Volume 1B of the Revised Statutes of Nebraska, 2012, contains all of the laws set forth in Chapters 19 to 23, appearing in Volume 1A, Revised Statutes of Nebraska, 2007, as amended and supplemented by the One Hundredth Legislature, Second Session, 2008, through the One Hundred Second Legislature, Second Session, 2012, of the Nebraska Legislature, in force at the time of publication hereof.

Joanne M. Pepperl
Revisor of Statutes

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OF NEBRASKA, 2012

(in full)

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CHAPTER 19

CITIES AND VILLAGES; LAWS APPLICABLE TO MORE THAN ONE AND LESS THAN ALL CLASSES

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ARTICLE 1

MUNICIPAL DEVELOPMENT FUNDS

(Applicable to cities of the metropolitan or primary class.)

Section
19-101. Legislative intent.
19-102. City of the Primary Class Development Fund; created; use; investment.
19-103. City of the Metropolitan Class Development Fund; created; use; investment.
19-104. Bonds authorized; requirements.

19-101 Legislative intent.

The Legislature recognizes that the more populous cities of the state serve medical, educational, recreational, transportation, and retail needs of the entire state and that infrastructure costs and needs are great. The governing bodies of

such cities have a duty to identify projects which benefit from development funds made available by the Legislature. The creation of the City of the Primary Class Development Fund under section 19-102 and the City of the Metropolitan Class Development Fund under section 19-103 shall be used to meet such needs.

Source: Laws 2001, LB 657, § 1.

19-102 City of the Primary Class Development Fund; created; use; investment.

There is hereby created the City of the Primary Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the Antelope Valley project and financing costs related thereto for the Antelope Valley Study as outlined in the Environmental Impact Statement and Comprehensive Plan Amendment 94-60 to the 1994 Lincoln/Lancaster County Comprehensive Plan. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

No distribution from the fund shall be made unless the city of the primary class provides matching funds equal to the ratio of one dollar for each three dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

Source: Laws 2001, LB 657, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

19-103 City of the Metropolitan Class Development Fund; created; use; investment.

There is hereby created the City of the Metropolitan Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the redevelopment projects within the riverfront redevelopment plan designated for the area along the Missouri River generally north of Interstate 480 to Interstate 680 by the city of Omaha, except that each fiscal year there shall be no distribution from the fund until the finance director of the city certifies that other funds have been encumbered for that calendar year by the city to pay the cost of the combined sewer separation program project east of Seventy-second Street in the city of Omaha. Such certification shall be required only until such sewer separation project is completed or until no cigarette tax money is available to the fund. The amount certified shall be at least seven million dollars each calendar year until 2007 and at least four million dollars each calendar year thereafter. The sewer separation project has such a significant impact on the health and welfare of such a large percentage of the population and on public health in general that the project is a matter of statewide concern. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

No distribution from the fund shall be made unless the city of the metropolitan class provides matching funds equal to the ratio of one dollar for each three

dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

Source: Laws 2001, LB 657, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

19-104 Bonds authorized; requirements.

(1) Cities of the primary class and cities of the metropolitan class may by ordinance issue their bonds and refunding bonds to finance and refinance the acquisition, construction, improving, and equipping of the projects authorized by sections 19-101 to 19-103 and provide for the payment of the same as specified in this section. Bonds, except refunding bonds, authorized by this section may only be issued once, and such issuance must occur within two years after July 1, 2001. An issuer shall be permitted to pledge the amounts on deposit or to be deposited in the City of the Primary Class Development Fund or the City of the Metropolitan Class Development Fund, as applicable, as and when appropriated by the Legislature, to the registered owners of any bonds issued to finance the acquisition, construction, improving, or equipping of projects as approved in sections 19-101 to 19-103 as long as the lien of such pledge does not attach until funds are actually deposited into the issuer's respective fund, and in no event shall such a pledge be construed as an obligation of the Legislature to appropriate such funds. Any such pledge shall be valid and binding from the time when the pledge is made. The money so pledged and thereafter received by the issuer or deposited into its respective fund shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the issuer, irrespective of whether the parties have notice thereof. Neither the ordinance nor any other instrument by which a pledge is created need be recorded.

(2) Such bonds may be sold by the issuer in such manner and for such price as the mayor and city council determine, at a discount, at par, or at a premium, at private negotiated sale or at public sale. The bonds shall have a stated maturity of fifteen years or less and shall bear interest at such rate or rates and otherwise be issued by ordinance adopted by the mayor and city council with such other terms and provisions as are established, permitted, or authorized by applicable state laws, notwithstanding any provisions of a home rule charter. In addition to the pledge of the amounts on deposit or to be deposited in the City of the Primary Class Development Fund or the City of the Metropolitan Class Development Fund, as the case may be and as appropriate, permitted by subsection (1) of this section, such bonds may also be secured as to payment in whole or in part by a pledge, as shall be determined by the issuer, (a) from the income, proceeds, and revenue, if any, of the facilities financed with proceeds of such bonds, and (b) from its revenue and income, including its sales, use, or occupation tax revenue, fees, or receipts, as may be determined by the issuer. The issuer may further secure such bonds by a mortgage or deed of trust encumbering all or any portion of the facilities financed with the proceeds of such bonds and by a bond insurance policy or other credit support facility. No general obligation bonds, except refunding bonds, shall be issued until authorized by a majority of the issuer's electors voting on the question as to the

issuance of the bonds at a statewide regular primary election or at a special election duly called for such purpose.

(3) The face of all such bonds shall plainly state that the bonds and the interest thereon shall not constitute nor give rise to an indebtedness, obligation, or pecuniary liability of the state nor a charge against the general credit, revenue, or taxing power of the state. Bonds issued in accordance with the provisions of this section are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all state income taxes.

(4) For purposes of this section, general obligation bond means any bond or refunding bond which is payable from the proceeds of an ad valorem tax.

Source: Laws 2001, LB 657, § 4.

ARTICLE 2

TOLL BRIDGES

(Applicable to cities of the metropolitan or first class.)

Section
19-201. Toll bridges; licensing; regulation.

19-201 Toll bridges; licensing; regulation.

The mayor and council in any city of the metropolitan or first class shall have power to license and regulate the keeping of toll bridges within or terminating within the city, for the passage of persons and property over any river passing wholly or in part within or running by and adjoining the corporate limits of any such city, to fix and determine the rates of toll over any such bridge, or over the part thereof within the city, and to authorize the owner or owners of any such bridge to charge and collect the rates of toll so fixed and determined from all persons passing over or using the same.

Source: Laws 1871, § 1, p. 26; R.S.1913, § 5273; C.S.1922, § 4496; C.S.1929, § 19-201; R.S.1943, § 19-201; Laws 1969, c. 111, § 1, p. 519.

ARTICLE 3

PLUMBING INSPECTION

Section
19-301. Transferred to section 18-1901.
19-302. Transferred to section 18-1902.
19-303. Transferred to section 18-1903.
19-304. Transferred to section 18-1904.
19-305. Transferred to section 18-1905.
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19-307. Transferred to section 18-1907.
19-308. Transferred to section 18-1908.
19-309. Transferred to section 18-1909.
19-310. Transferred to section 18-1910.
19-311. Transferred to section 18-1911.
19-312. Transferred to section 18-1912.
19-313. Transferred to section 18-1913.
19-314. Transferred to section 18-1914.

19-301 Transferred to section 18-1901.

19-302 Transferred to section 18-1902.

19-303 Transferred to section 18-1903.

19-304 Transferred to section 18-1904.

19-305 Transferred to section 18-1905.

19-306 Transferred to section 18-1906.

19-307 Transferred to section 18-1907.

19-308 Transferred to section 18-1908.

19-309 Transferred to section 18-1909.

19-310 Transferred to section 18-1910.

19-311 Transferred to section 18-1911.

19-312 Transferred to section 18-1912.

19-313 Transferred to section 18-1913.

19-314 Transferred to section 18-1914.

ARTICLE 4

COMMISSION FORM OF GOVERNMENT

(Applicable to cities of 2,000 population or over.)

Section

Section
19-430. Repealed. Laws 1982, LB 807, § 46.
19-431. Repealed. Laws 1982, LB 807, § 46.
19-432. Commission plan; discontinuance; petition; election.
19-433. Commission plan; discontinuance; petition; election; procedure.
19-434. Repealed. Laws 1986, LB 734, § 2.

19-401 Commission plan; population requirement.

Any city in this state having not less than two thousand inhabitants according to the last official state or national census, or according to the last census taken and promulgated in such city by the authority of the mayor and city council of any such city, may adopt the provisions of sections 19-401 to 19-433 and be governed thereunder by proceeding as hereinafter provided.

Source: Laws 1911, c. 24, § 1, p. 150; R.S.1913, § 5288; Laws 1919, c. 35, § 1, p. 113; C.S.1922, § 4511; Laws 1923, c. 141, § 1, p. 344; C.S.1929, § 19-401; R.S.1943, § 19-401.

Laws 1911, Chapter 24 (sections 19-401 to 19-433), is an act complete in itself, and the constitutional provision respecting the manner of amendment and repeal of former statutes has no application. State ex rel. Baughn v. Ure, 91 Neb. 31, 135 N.W. 224 (1912).

19-402 Commission plan; petition for adoption; election; ballot form.

If a petition is filed with the city clerk of any city meeting the requirements of section 19-401, signed by registered voters equal in number to twenty-five percent of the votes cast for all candidates for mayor at the last preceding general city election, the mayor of the city shall, by appropriate proclamation and notice within twenty days after such filing, call and proclaim a special election to be held upon a date fixed in such proclamation and notice, which date shall not be less than fifteen nor more than sixty days after the date and issuance of such proclamation. After the filing of any petition provided for in this section, no signer thereon shall be permitted to withdraw his or her name therefrom. At such special election the proposition of adopting the provisions of sections 19-401 to 19-433 shall be submitted to the registered voters of the city, and such proposition shall be stated as follows: Shall the city of (name of city) adopt the provisions of (naming the charter of the published law containing such sections) called the commission plan of city government? The special election shall be held and conducted, the vote canvassed, and the result declared in the same manner as provided for the holding and conducting of the general city election in any such city. All officers charged with any duty respecting the calling, holding, and conducting of such general city election shall perform such duties for and at such special election.

Source: Laws 1911, c. 24, § 2, p. 150; R.S.1913, § 5289; Laws 1919, c. 35, § 1, p. 113; C.S.1922, § 4512; C.S.1929, § 19-402; R.S.1943, § 19-402; Laws 1994, LB 76, § 507.

19-403 Commission plan; proposal for adoption; frequency.

If the proposition is not adopted at any such special election by a majority vote, the question of adopting it shall not be again submitted in any such city within two years thereafter.

Source: Laws 1911, c. 24, § 3, p. 151; R.S.1913, § 5290; C.S.1922, § 4513; C.S.1929, § 19-403; R.S.1943, § 19-403.

19-404 Adoption of commission plan; effect.

If the proposition is adopted for the commission plan of city government at least sixty days prior to the next general city election in the city, then at the next general city election provided by law in such city, council members shall be elected as provided in section 32-539. If the proposition is not adopted at least sixty days prior to the date of holding the next general city election in such city, then such city shall continue to be governed under its existing laws until council members are elected as provided in section 32-539 at the next general city election thereafter occurring in any such city.

Source: Laws 1911, c. 24, § 4, p. 151; Laws 1913, c. 21, § 1, p. 85; R.S.1913, § 5291; Laws 1919, c. 35, § 1, p. 114; C.S.1922, § 4514; Laws 1923, c. 141, § 2, p. 345; C.S.1929, § 19-404; R.S.1943, § 19-404; Laws 1955, c. 55, § 2, p. 176; Laws 1969, c. 257, § 14, p. 937; Laws 1979, LB 281, § 1; Laws 1979, LB 80, § 37; Laws 1994, LB 76, § 508.

It was not necessary or proper to elect a Tax Commissioner in Lincoln inasmuch as Lincoln operated under the home rule charter plan of the commission form of government. Eppley Hotels Co. v. City of Lincoln, 133 Neb. 550, 276 N.W. 196 (1937).

19-405 Council members; nomination; candidate filing form; primary election; waiver.

(1) Any person desiring to become a candidate for the office of council member provided for in section 19-404 shall file a candidate filing form as provided in sections 32-606 and 32-607 and pay the filing fee as provided in section 32-608.

(2) Candidates shall be nominated at large either at the statewide primary election or by filing a candidate filing form if there are not more than two candidates who have filed for each position or if the council waives the requirement for a primary election.

(3) The council may waive the requirement for a primary election by adopting an ordinance prior to January 5 of the year in which the primary election would have been held. If the council waives the requirement for a primary election, all candidates filing candidate filing forms by August 1 prior to the date of the general election as provided in subsection (2) of section 32-606 shall be declared nominated. If the council does not waive the requirement for a primary election and if there are not more than two candidates filed for each position to be filled, all candidates filing candidate filing forms by the deadline prescribed in subsection (1) of section 32-606 shall be declared nominated as provided in subsection (1) of section 32-811 and their names shall not appear on the primary election ballot.

Source: Laws 1911, c. 24, § 5, p. 152; Laws 1913, c. 21, § 2, p. 86; R.S.1913, § 5292; Laws 1919, c. 35, § 1, p. 115; C.S.1922, § 4515; Laws 1923, c. 141, § 3, p. 345; C.S.1929, § 19-405; R.S.1943, § 19-405; Laws 1969, c. 112, § 1, p. 519; Laws 1969, c. 257, § 15, p. 938; Laws 1979, LB 80, § 38; Laws 1989, LB 327, § 1; Laws 1994, LB 76, § 509; Laws 1999, LB 250, § 1.

19-406 Mayor and council members; election.

Elections for officers listed in section 19-415 shall be conducted as provided in the Election Act. The positions for which candidates are to be nominated or elected shall appear on the ballot in the order listed in section 19-415.

Source: Laws 1911, c. 24, § 5, p. 153; Laws 1913, c. 21, § 2, p. 87; R.S.1913, § 5292; Laws 1919, c. 35, § 1, p. 116; C.S.1922, § 4515; Laws 1923, c. 141, § 3, p. 346; C.S.1929, § 19-405; R.S.1943, § 19-406; Laws 1969, c. 112, § 2, p. 520; Laws 1979, LB 80, § 39; Laws 1989, LB 327, § 2; Laws 1994, LB 76, § 510.

Cross References

Election Act, see section 32-101.

19-407 Excise members; nomination.

Candidates for office of excise member provided for in section 32-539 shall be nominated at large in the same general manner and method as provided in section 19-405 for the nomination of candidates for the office of council members.

Source: Laws 1913, c. 21, § 2, p. 88; R.S.1913, § 5292; Laws 1919, c. 35, § 1, p. 116; C.S.1922, § 4515; Laws 1923, c. 141, § 3, p. 347; C.S.1929, § 19-405; R.S.1943, § 19-407; Laws 1979, LB 80, § 40; Laws 1994, LB 76, § 511.

19-408 Repealed. Laws 1994, LB 76, § 615.

19-409 Council members; excise members; candidates; terms.

(1) The two candidates receiving the highest number of votes at the primary election shall be placed upon the official ballot for such position at the statewide general election. If no candidates appeared on the primary election ballot or if the council waived the primary election under section 19-405, all persons filing pursuant to section 19-405 shall be the only candidates whose names shall be placed upon the official ballot for such position at the statewide general election.

(2) If excise members are to be elected, the six candidates receiving the highest number of votes for excise members at the primary election or all candidates, if there are less than six on the primary election ballot or if no primary election is held, shall be the only candidates whose names shall be placed upon the official ballot for excise members at the statewide general election in any such city.

(3) Terms for council members shall begin on the date of the first regular meeting of the council in December following the statewide general election. The terms of council members holding office on August 28, 1999, shall be extended to the first regular meeting of the council in December following the statewide general election. The changes made to this section by Laws 1999, LB 250, shall not change the staggering of the terms of council members in cities that have adopted the commission plan of government prior to January 1, 1999.

Source: Laws 1911, c. 24, § 7, p. 155; Laws 1913, c. 21, § 3, p. 88; R.S.1913, § 5294; C.S.1922, § 4517; Laws 1923, c. 141, § 5, p. 348; C.S.1929, § 19-407; R.S.1943, § 19-409; Laws 1969, c. 112, § 4, p. 522; Laws 1979, LB 80, § 41; Laws 1989, LB 327, § 3; Laws 1994, LB 76, § 512; Laws 1999, LB 250, § 2.

The provision that the only candidates whose names shall be placed upon the official ballot at the city election means that these are the only candidates whose names shall be printed on the official ballot, and there is no prohibition against any voter inserting the names of such other persons as he may desire to vote for. State ex rel. Zeilinger v. Thompson, 134 Neb. 739, 279 N.W. 462 (1938).

19-410 Repealed. Laws 1994, LB 76, § 615.

19-411 Council members; excise members; bonds; vacancies, how filled.

The council members and excise members shall qualify and give bond in the manner and amount provided by the existing laws governing the city in which they are elected. If any vacancy occurs in the office of council member, the vacancy shall be filled as provided in section 32-568. If any vacancy occurs in the office of excise members, the remaining members of the excise board shall appoint a person to fill such vacancy for the remainder of the term. The terms of office of all other elective or appointive officers in force within or for any such city shall cease as soon as the council selects or appoints their successors and such successors qualify and give bond as by law provided or as soon as such council by resolution declares the terms of any such elective or appointive officers at an end or abolishes or discontinues any of such offices.

Source: Laws 1911, c. 24, § 9, p. 156; Laws 1913, c. 21, § 5, p. 89; R.S.1913, § 5296; C.S.1922, § 4519; C.S.1929, § 19-409; R.S. 1943, § 19-411; Laws 1969, c. 257, § 17, p. 941; Laws 1979, LB 80, § 43; Laws 1990, LB 853, § 3; Laws 1994, LB 76, § 513.

19-412 Officers; employees; compensation.

(1) The officers and employees of the city shall receive such compensation as the mayor and council shall fix by ordinance.

(2) The emoluments of any elective officer shall not be increased or diminished during the term for which he or she was elected, except that when there are officers elected to a council, board, or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who has resigned or vacated any office shall be eligible to the same during the time for which he or she was elected when, during the same time, the emoluments have been increased.

(3) The salary or compensation of all other officers or employees of the city shall be determined when they are appointed or elected by the council, board, or commission and shall be payable at such times or for such periods as the council, board, or commission shall determine.

Source: Laws 1911, c. 24, § 10, p. 157; Laws 1913, c. 21, § 6, p. 90; R.S.1913, § 5297; Laws 1915, c. 97, § 1, p. 239; C.S.1922, § 4520; Laws 1923, c. 141, § 6, p. 349; C.S.1929, § 19-410; Laws 1943, c. 37, § 1, p. 179; R.S.1943, § 19-412; Laws 1951, c. 21, § 1, p. 105; Laws 1979, LB 80, § 44; Laws 1992, LB 950, § 1.

19-413 Council; powers.

The council herein provided for, upon taking office, shall have, possess, and exercise, by itself or through such methods as it may provide, all executive or legislative or judicial powers and duties theretofore held, possessed or exercised under the then existing laws governing any such city, by the mayor or mayor

and city council or water commissioners or water board or water and light commissioner or board of fire and police commissioners or park commissioners or park board or excise board, or members thereof, or fire warden; and the powers, duties and office of such fire warden and of all such boards and the members thereof shall then and thereupon cease and terminate; and the powers and duties and officers of all other boards created by statute for the government of any such city shall also thereupon cease and terminate; *Provided, however,* nothing herein contained shall be so construed as to interfere with the powers, duties, authority, and privileges that have been, are, or may be hereafter conferred and imposed upon the water board in metropolitan cities as prescribed by law or shall affect the power of city school or school district officers, nor of any office or officer named in the state Constitution exercising office, powers or functions within any such city. Such council, upon taking office, shall have and may exercise all executive or legislative or judicial powers possessed or exercised by any other officer or board theretofore provided by law for or within any such city, except officers named in the state Constitution; *Provided, however,* the excise board herein provided for, upon taking office, shall possess and exercise by itself all of the duties and powers theretofore possessed or exercised by the excise board under the existing laws governing any such city except the appointment, removal and control of the police force, which power shall be vested in the council.

Source: Laws 1911, c. 24, § 11, p. 158; Laws 1913, c. 21, § 7, p. 91; R.S.1913, § 5298; C.S.1922, § 4521; Laws 1923, c. 141, § 7, p. 350; C.S.1929, § 19-411; R.S.1943, § 19-413.

19-414 Council; departments; assignment of duties.

The executive and administrative powers, authorities, and duties in such cities shall be distributed into and among departments as follows:

In metropolitan cities, (1) department of public affairs, (2) department of accounts and finances, (3) department of police, sanitation, and public safety, (4) department of fire protection and water supply, (5) department of street cleaning and maintenance, (6) department of public improvements, and (7) department of parks and public property;

In primary cities, (1) department of public affairs, (2) department of accounts and finances, (3) department of public safety, (4) department of streets and public improvements, and (5) department of parks and public property; and

In cities containing two thousand or more and not more than forty thousand population, (1) department of public affairs and public safety, (2) department of accounts and finances, (3) department of streets, public improvements, and public property, (4) department of public works, and (5) department of parks and recreation.

The council shall provide, as nearly as possible, the powers and duties to be exercised and performed by, and assign them to, the appropriate departments. It may prescribe the powers and duties of all officers and employees of the city and may assign particular officers, or employees, to more than one of the departments, may require any officer or employee to perform duties in two or more of the departments, and may make such other rules and regulations as

may be necessary or proper for the efficient and economical management of the business affairs of the city.

Source: Laws 1911, c. 24, § 11, p. 159; Laws 1913, c. 21, § 7, p. 92; R.S.1913, § 5298; C.S.1922, § 4521; Laws 1923, c. 141, § 7, p. 351; C.S.1929, § 19-411; R.S.1943, § 19-414; Laws 1955, c. 55, § 3, p. 179; Laws 1979, LB 281, § 3.

The general plan of the commission form of government has been followed in Lincoln under the home rule charter. Eppley Hotels Co. v. City of Lincoln, 133 Neb. 550, 276 N.W. 196 (1937).

The fact that an officer had been in the habit of employing men in the past does not override the provision of the statute unless it had previously been agreed to by the city commissioner. Scott v. City of Lincoln, 104 Neb. 546, 178 N.W. 203 (1920).

The power to fix salaries of police officers and members of the fire department in cities of the metropolitan class was not included in this section. Adams v. City of Omaha, 101 Neb. 690, 164 N.W. 714 (1917).

19-415 Mayor; council members; powers and duties; heads of departments.

In cities of the metropolitan class, the council shall consist of the mayor who shall be superintendent of the department of public affairs, one council member to be superintendent of the department of accounts and finances, one council member to be superintendent of the department of police, sanitation, and public safety, one council member to be superintendent of the department of fire protection and water supply, one council member to be superintendent of the department of street cleaning and maintenance, one council member to be superintendent of the department of public improvements, and one council member to be superintendent of parks and public property.

In cities containing at least forty thousand and less than three hundred thousand inhabitants, the council shall consist of the mayor who shall be superintendent of the department of public affairs, one council member to be superintendent of the department of accounts and finances, one council member to be superintendent of the department of public safety, one council member to be superintendent of the department of streets and public improvements, and one council member to be superintendent of the department of parks and public property.

In cities containing at least two thousand and less than forty thousand inhabitants, the council shall consist of the mayor who shall be commissioner of the department of public affairs and public safety, one council member to be commissioner of the department of streets, public improvements and public property, one council member to be commissioner of the department of public accounts and finances, one council member to be commissioner of the department of public works, and one council member to be commissioner of the department of parks and recreation.

In all of such cities the commissioner of the department of accounts and finances shall be vice president of the city council and shall, in the absence or inability of the mayor to serve, perform the duties of the mayor of the city. In case of vacancy in the office of mayor by death or otherwise, the vacancy shall be filled as provided in section 32-568.

Source: Laws 1911, c. 24, § 12, p. 160; R.S.1913, § 5299; C.S.1922, § 4522; Laws 1923, c. 141, § 8, p. 352; C.S.1929, § 19-412; R.S.1943, § 19-415; Laws 1963, c. 89, § 1, p. 299; Laws 1969, c. 112, § 6, p. 523; Laws 1979, LB 80, § 45; Laws 1979, LB 281, § 4; Laws 1994, LB 76, § 514.

19-416 Officers; employees; appointment; compensation; removal.

The council shall at its first meeting, or as soon as possible thereafter, elect as many of the city officers provided for by the laws or ordinances governing any such city as may, in the judgment of the council, be essential and necessary to the economical but efficient and proper conduct of the government of the city and shall at the same time fix the salaries of the officers so elected either by providing that such salaries shall remain the same as fixed by the laws or ordinances for such officers or may then raise or lower the existing salaries of any such officers; and the council may modify the powers or duties of any such officers, as provided by laws or ordinances, or may completely define and fix such powers or duties, anew. Any such officers or any assistant or employee elected or appointed by the council may be removed by the council at any time; *Provided, however*, in cities of the metropolitan class no member or officer of the fire department or department of fire protection and water supply shall be discharged for political reasons, nor shall a person be employed or taken into either of such departments for political reasons. Before any such officer or employee can be discharged charges must be filed against him before the council and a hearing had thereon, and an opportunity given such officer or employee to defend against such charges, but this provision shall not be construed to prevent peremptory suspension of such member by the council in case of misconduct or neglect of duty or disobedience of orders. Whenever any such suspension is made, charges shall be at once filed by the council with the officer having charge of the records of the council and a trial had thereon at the second meeting of the council after such charges are filed. For the purpose of hearing such charges the council shall have power to enforce attendance of witnesses, the production of books and papers, and to administer oaths to witnesses in the same manner and with like effect and under the same penalty, as in the case of magistrates exercising civil and criminal jurisdiction under the statutes of the State of Nebraska.

Source: Laws 1911, c. 24, § 13, p. 161; R.S.1913, § 5300; Laws 1919, Spec. Sess., c. 2, § 6, p. 49; C.S.1922, § 4523; C.S.1929, § 19-413; R.S.1943, § 19-416.

The city council of Lincoln, under the provisions of its home rule charter, had the right to discharge one of its firemen without a hearing before the council. State ex rel. Fischer v. City of Lincoln, 137 Neb. 97, 288 N.W. 499 (1939).

A police officer holds indefinitely during good behavior and cannot be discharged for cause without a hearing and opportunity to defend. Rooney v. City of Omaha, 105 Neb. 447, 181 N.W. 143 (1920).

Statutes and judicial opinions refer to policemen as officers, and under the charter of the city of Omaha, can only be removed for cause after notice and hearing. Rooney v. City of Omaha, 104 Neb. 260, 177 N.W. 166 (1920).

Member of fire department cannot be discharged without stating cause and without hearing and opportunity to defend. State ex rel. Marrow v. City of Lincoln, 101 Neb. 57, 162 N.W. 138 (1917).

19-417 Offices and boards; creation; discontinuance.

The council shall have power to discontinue any employment or abolish any office at any time, when, in the judgment of the council, such employment or office is no longer necessary. The council shall have power, at any time and at any meeting, to create any office or board it deems necessary, including the office of city manager, and fix salaries; and it may create a board of three or more members composed of other officers of the city, and confer upon such board any power not required to be exercised by the council itself. It may require such officers to serve upon any such board and perform the services required of it with or without any additional pay for such additional service.

Source: Laws 1911, c. 24, § 14, p. 162; R.S.1913, § 5301; Laws 1919, c. 35, § 1, p. 116; C.S.1922, § 4524; C.S.1929, § 19-414; R.S.1943, § 19-417.

For reasons of economy or lack of public necessity for services of a policeman, the city authorities may, when they see fit, terminate his employment, and he has no right to a statutory hearing upon the question of whether the public welfare requires a continuance of a full police force, or whether or not the revenues available are adequate for the payment of his salary. Rooney v. City of Omaha, 105 Neb. 447, 181 N.W. 143 (1920).

19-418 Council; meetings; quorum.

The regular meetings of the council in metropolitan cities shall be held at least once in each week and upon such day and hour as the council may designate. In all other cities having a population of two thousand or more, the regular meetings of the council shall be held at such intervals and upon such day and hour as the council may by ordinance or resolution designate; and special meetings of the council in any of such cities may be called, from time to time, by the mayor or two council members, giving notice in such manner as may be fixed or defined by law or ordinance in any of such cities or as shall be fixed by ordinance or resolution by such council. A majority of such council shall constitute a quorum for the transaction of any business, but it shall require a majority vote of the whole council in any such city to pass any measure or transact any business.

Source: Laws 1911, c. 24, § 15, p. 163; R.S.1913, § 5302; C.S.1922, § 4525; C.S.1929, § 19-415; R.S.1943, § 19-418; Laws 1969, c. 257, § 18, p. 941; Laws 1979, LB 80, § 46.

19-419 Mayor; council members; office; duties.

The mayor and council members shall maintain offices at the city hall; and the mayor shall, in a general way, constantly investigate all public affairs concerning the interest of the city and investigate and ascertain, in a general way, the efficiency and manner in which all departments of the city government are being conducted; and the mayor shall recommend to the city council all such matters as in his or her judgment should receive the investigation, consideration, or action of that body.

Source: Laws 1911, c. 24, § 16, p. 163; R.S.1913, § 5303; C.S.1922, § 4526; C.S.1929, § 19-416; R.S.1943, § 19-419; Laws 1979, LB 80, § 47.

19-420 Repealed. Laws 1992, LB 950, § 2.

19-421 Petitions; requirements; verification; costs.

All petitions provided for in sections 19-401 to 19-433 shall be subject to and meet the requirements of sections 32-628 to 32-630. Upon the filing of a petition or supplementary petition, a city, upon passage of a resolution by the city council, and the county clerk or election commissioner of the county in which such city is located may by mutual agreement provide that the county clerk or election commissioner shall ascertain whether the petition or supplementary petition is signed by the requisite number of legal voters. The city shall reimburse the county for any costs incurred by the county clerk or election commissioner.

Source: Laws 1911, c. 24, § 18, p. 164; R.S.1913, § 5305; C.S.1922, § 4528; C.S.1929, § 19-418; R.S.1943, § 19-421; Laws 1983, LB 281, § 1; Laws 1994, LB 76, § 515.

Verification inadvertently omitted may be attached after petitions are filed. State ex rel. Miller v. Berg, 97 Neb. 63, 149 N.W. 61 (1914).

A petition filed under Nebraska referendum act did not suspend an ordinance providing for an election and vote on question whether Nebraska City should proceed to condemn power company's property. Central Power Co. v. Nebraska City, 112 F.2d 471 (8th Cir. 1940).

19-422 Cities adopting the commission plan; laws applicable.

All general state laws governing cities described in section 19-401 shall, according to the class within which it is embraced, apply to and govern any city adopting sections 19-401 to 19-433 and electing officers thereunder so far, and only so far, as such laws are applicable and not inconsistent with the provisions, intents and purposes of said sections.

Source: Laws 1911, c. 24, § 19, p. 164; R.S.1913, § 5306; C.S.1922, § 4529; C.S.1929, § 19-419; R.S.1943, § 19-422.

The interests of the state in the police and fire protection would bring it within the jurisdiction of the state to regulate those matters. Adams v. City of Omaha, 101 Neb. 690, 164 N.W. 714 (1917).

19-423 Appropriations and expenses; alteration; power of first council.

If at the beginning of the term of office of the first council elected under sections 19-401 to 19-409 the appropriations or distribution of the expenditures of the city government for the current fiscal year have been made, the council shall have power, by ordinance, to revise, repeal, or change such distribution or to make additional appropriation, within the limit of the total taxes levied for such year.

Source: Laws 1911, c. 24, § 20, p. 164; R.S.1913, § 5307; C.S.1922, § 4530; C.S.1929, § 19-420; R.S.1943, § 19-423; Laws 1994, LB 76, § 516.

19-424 Repealed. Laws 1984, LB 975, § 14.

19-425 Repealed. Laws 1994, LB 76, § 615.

19-426 Repealed. Laws 1984, LB 975, § 14.

19-427 Repealed. Laws 1982, LB 807, § 46.

19-428 Repealed. Laws 1982, LB 807, § 46.

19-429 Repealed. Laws 1982, LB 807, § 46.

19-430 Repealed. Laws 1982, LB 807, § 46.

19-431 Repealed. Laws 1982, LB 807, § 46.

19-432 Commission plan; discontinuance; petition; election.

Any city which shall have operated for more than four years under the provisions of sections 19-401 to 19-433 may abandon organization thereunder, and accept the provisions of the general law of the state then applicable to cities of its population, by proceeding as follows: Upon a petition, signed by such number of the qualified electors of any such city as equals at least twenty-five percent of the highest vote cast for any of the council members elected at the last preceding general or regular election in any such city, being filed with and found sufficient by the city clerk or clerk of such council, a special election shall be called in any such city, at which special election the following proposition only shall be submitted: Shall the city of (name of city) abandon its

organization under Chapter 19, article 4, and become a city under the general laws of the state governing cities of like population? If a majority of the votes cast at any such special election are in favor of such proposition, the officers elected at the next succeeding general city election in any such city shall be those then prescribed by the general laws of the state for cities of like population, and upon the qualification of such officers, according to the terms of such general state law, such city shall become a city governed by and under such general state law; *Provided,* if such special election is not held and the result thereof declared at least sixty days before the election date in any such city, then such city shall continue to be governed under the provisions of said sections until the second general city election occurring after the date of such special election, and at such general city election the officers provided by such general state law for the government of any such city shall be elected, and, upon their qualification, the terms of office of the council members elected under the provisions of this article shall cease and terminate.

Source: Laws 1911, c. 24, § 24, p. 169; Laws 1913, c. 21, § 8, p. 93; R.S.1913, § 5311; C.S.1922, § 4534; C.S.1929, § 19-424; R.S. 1943, § 19-432; Laws 1969, c. 257, § 19, p. 942; Laws 1979, LB 80, § 52.

19-433 Commission plan; discontinuance; petition; election; procedure.

(1) Within ten days after the date of filing the petition asking for a special election on the issue of discontinuing the commission plan of government, the city clerk shall examine it and, with the assistance of the election commissioner or county clerk, ascertain whether the petition is signed by the requisite number of registered voters. If necessary, the city council shall allow the city clerk extra help for the purpose of examining the petition. No new signatures may be added after the initial filing of the petition. If the petition contains the requisite number of signatures, the city clerk shall promptly submit the petition to the council.

(2) Upon receipt of the petition, the council shall promptly order and fix a date for holding the special election, which date shall not be less than thirty nor more than sixty days from the date of the clerk's certificate to the council showing the petition sufficient. The special election shall be conducted in the same manner as provided for the election of council members under sections 19-401 to 19-433.

Source: Laws 1911, c. 24, § 24, p. 170; Laws 1913, c. 21, § 8, p. 93; R.S.1913, § 5311; C.S.1922, § 4534; C.S.1929, § 19-424; R.S. 1943, § 19-433; Laws 1979, LB 80, § 53; Laws 1984, LB 975, § 11; Laws 1994, LB 76, § 517.

19-434 Repealed. Laws 1986, LB 734, § 2.

ARTICLE 5

CHARTER CONVENTION

(Applicable to cities over 5,000 population.)

Section
19-501. Charter convention; charter; amendments; election.
19-502. Charter convention; work, when deemed complete; charter, when published.
19-503. Charter amendments; petition; adoption.

19-501 Charter convention; charter; amendments; election.

Whenever, in any city having a population of more than five thousand inhabitants, a charter convention shall have prepared and proposed any charter for the government of said city or any amendments to the charter previously in force, it shall be the duty of the city clerk to also publish and submit, at the same time and in the same manner as in the case of the submission of said proposed charter, any additional or alternative articles or sections, to the qualified voters of said city for their approval, which shall be proposed by the petition of at least ten percent of the qualified electors of said city voting for the gubernatorial candidates at the next preceding general election; *Provided*, said petition must be filed within thirty days after the work of said charter convention shall have been completed.

Source: Laws 1913, c. 192, § 1, p. 569; R.S.1913, § 5312; C.S.1922, § 4535; C.S.1929, § 19-501; R.S.1943, § 19-501.

19-502 Charter convention; work, when deemed complete; charter, when published.

The city clerk shall not begin the publication of any proposed charter or amendments, as required by the constitution, in less than thirty days from the time of the completion of the work of said charter convention; and the work of said charter convention shall be deemed completed whenever its certified copy of charter or amendments shall be delivered to the city clerk, together with twenty-five correct copies thereof. Said copies shall when filed be open to the inspection of any elector of said city.

Source: Laws 1913, c. 192, § 2, p. 570; R.S.1913, § 5313; C.S.1922, § 4536; C.S.1929, § 19-502; R.S.1943, § 19-502.

19-503 Charter amendments; petition; adoption.

Whenever any petition, as above provided, shall be filed with the city clerk and shall contain the required number of bona fide electoral signatures, asking for the submission of additional or alternative articles or sections in the complete form in which such articles or sections are to read as amended, they shall be deemed to be proposed for adoption by the qualified electors of said city with the same force and effect as if proposed by said convention, and the article or section which receives the majority of all the votes cast for and against said additional or alternative articles or sections shall be declared adopted, and certified to the Secretary of State, a copy deposited in the archives of the city, and shall become the charter or part thereof, of said city.

Source: Laws 1913, c. 192, § 3, p. 570; R.S.1913, § 5314; C.S.1922, § 4537; C.S.1929, § 19-503; R.S.1943, § 19-503.

ARTICLE 6

CITY MANAGER PLAN

(Applicable to cities of 1,000 population or more and less than 200,000.)

(a) GENERAL PROVISIONS

Section
19-601. City, defined.
19-602. Population; how determined.

Section

(h) CIVIL SERVICE BOARD

19-649. Repealed. Laws 1985, LB 372, § 27.
19-650. Repealed. Laws 1985, LB 372, § 27.
19-651. Repealed. Laws 1985, LB 372, § 27.
19-652. Repealed. Laws 1985, LB 372, § 27.
19-653. Repealed. Laws 1985, LB 372, § 27.
19-654. Repealed. Laws 1985, LB 372, § 27.
19-655. Repealed. Laws 1985, LB 372, § 27.
19-656. Repealed. Laws 1985, LB 372, § 27.
19-657. Repealed. Laws 1985, LB 372, § 27.
19-658. Repealed. Laws 1985, LB 372, § 27.
19-659. Repealed. Laws 1985, LB 372, § 27.
19-660. Repealed. Laws 1985, LB 372, § 27.
19-661. Repealed. Laws 1985, LB 372, § 27.

(i) PETITION FOR ABANDONMENT

19-662. Plan of government; abandoning; petition; filing; election.

(a) GENERAL PROVISIONS

19-601 City, defined.

The term city as used in sections 19-601 to 19-648 includes any city having a population of one thousand or more and less than two hundred thousand.

Source: Laws 1917, c. 208, § 1, p. 497; C.S.1922, § 4538; C.S.1929, § 19-601; R.S.1943, § 19-601; Laws 1955, c. 55, § 4, p. 180; Laws 1963, c. 89, § 2, p. 300; Laws 1985, LB 372, § 1; Laws 1998, LB 893, § 1.

The sections in this article relate to cities operating under the city manager plan. State ex rel. Warren v. Kleman, 178 Neb. 564, 134 N.W.2d 254 (1965).

19-602 Population; how determined.

For the purposes of sections 19-601 to 19-648, the population of a city shall be the number of inhabitants as ascertained by the last state census or United States census, whichever shall be later.

Source: Laws 1917, c. 208, § 2, p. 498; C.S.1922, § 4539; C.S.1929, § 19-602; R.S.1943, § 19-602.

19-603 Charter and general laws; force and effect.

The charter and all general laws governing any city shall continue in full force and effect, except that insofar as any provisions thereof are inconsistent with sections 19-601 to 19-648, the same shall be superseded in any city upon the taking effect of sections 19-601 to 19-648 therein.

Source: Laws 1917, c. 208, § 3, p. 498; C.S.1922, § 4540; C.S.1929, § 19-603; R.S.1943, § 19-603.

19-604 Ordinances; resolutions; regulations; force and effect.

All valid ordinances, resolutions, orders or other regulations of a city, or any authorized body or official thereof, existing at the time sections 19-601 to 19-648 become applicable to the city, and not inconsistent with their provi-

sions, shall continue in full force and effect until amended, repealed or otherwise superseded.

Source: Laws 1917, c. 208, § 4, p. 498; C.S.1922, § 4541; C.S.1929, § 19-604; R.S.1943, § 19-604.

(b) ADOPTION AND ABANDONMENT OF PLAN

19-605 City manager plan; petition for adoption; election.

Whenever electors of any city, equal in number to twenty percent of those who voted at the last regular city election, shall file a petition with the city clerk, asking that the question of organizing the city under the plan of government provided in sections 19-601 to 19-648 be submitted to the electors thereof, said clerk shall within one week certify that fact to the council of the city, and the council shall, within thirty days, adopt a resolution to provide for submitting such question at a special election to be held not less than thirty days after the adoption of the resolution except as provided in this section. Any such election shall be conducted in accordance with the general election laws of the state except as otherwise provided in sections 19-601 to 19-648. If such petition is filed not more than one hundred eighty days nor less than seventy days prior to the regular municipal statewide primary or statewide general election, the council shall adopt a resolution to provide for submitting such question at the next such election.

Source: Laws 1917, c. 208, § 6, p. 498; C.S.1922, § 4543; C.S.1929, § 19-606; R.S.1943, § 19-605; Laws 1974, LB 897, § 2.

19-606 City manager plan; adoption or abandonment; election.

The proposition to adopt or to abandon the plan of government provided in sections 19-601 to 19-648, shall not be submitted to the electors of any city later than sixty days before a regular municipal election. If, in any city, a sufficient petition is filed requiring that the question of adopting the commission plan of city government, or the question of choosing a convention to frame a charter, be submitted to the electors thereof, or if an ordinance providing for the election of such a charter convention is passed by the city council, the proposition to adopt the plan of government provided in sections 19-601 to 19-648 shall not be submitted in that city so long as the question of adopting such plan of government, or of choosing such convention, or adopting a charter framed by it, is pending.

Source: Laws 1917, c. 208, § 7, p. 498; C.S.1922, § 4544; C.S.1929, § 19-607; R.S.1943, § 19-606.

Cross References

Petition for abandonment of city manager plan of government, see section 19-662.

19-607 Election; ballot; form.

In submitting the question of adopting the plan of government provided in sections 19-601 to 19-648 the city council shall cause to be printed on the ballots the following question: Shall the city manager plan of government as provided in (giving the legal designation of sections 19-601 to 19-648 as published) be adopted? Immediately following such question there shall be printed on the ballots the following propositions in the order here set forth: For

the adoption of the city manager plan of government and Against the adoption of the city manager plan of government. Immediately to the left of each proposition shall be placed a square in which the electors may vote by making a cross (X) mark.

Source: Laws 1917, c. 208, § 8, p. 499; C.S.1922, § 4545; C.S.1929, § 19-608; R.S.1943, § 19-607.

19-608 Election; adoption of plan; when effective; rejection; resubmission.

If the plan of government provided in sections 19-601 to 19-648 is approved by a majority of the electors voting thereon, it shall go into effect immediately, insofar as it applies to the nomination and election of officers provided for herein, and in all other respects it shall go into effect on the first Monday following the next regular municipal election. If the proposition to adopt the provisions of sections 19-601 to 19-648 is rejected by the electors, it shall not again be submitted in that city within two years thereafter.

Source: Laws 1917, c. 208, § 9, p. 499; C.S.1922, § 4546; C.S.1929, § 19-609; R.S.1943, § 19-608.

19-609 City manager plan; abandonment; petition; election.

Any city which shall have operated four years under the plan provided in sections 19-601 to 19-648 may abandon such organization and either accept the provisions of the general law applicable to such city, or adopt any other optional plan or organization open thereto. The petition for abandonment shall designate the plan desired, and the following proposition shall be submitted: Shall the city of (. . . . .) abandon the city manager plan of government and adopt the (name of plan) as provided in (giving the legal designation of the law as published)? If a majority of the votes cast thereon be in favor of such proposition, the officers elected at the next regular municipal election shall be those prescribed by the laws designated in the petition, and upon the qualification of such officers the city shall become organized under said law. Such change shall not affect the property right or ability of any nature of such city, but shall extend merely to its form of government.

Source: Laws 1917, c. 208, § 10, p. 499; C.S.1922, § 4547; C.S.1929, § 19-610; R.S.1943, § 19-609.

Cross References

Petition for abandonment of city manager plan of government, see section 19-662.

19-610 Local charters; right to adopt.

Nothing in sections 19-601 to 19-648 shall be construed to interfere with or prevent any city at any time from framing and adopting a charter for its own government as provided by the state Constitution. In exercising the right to frame its own charter, it shall not be obligatory upon any city to adopt or retain any of the provisions of sections 19-601 to 19-648.

Source: Laws 1917, c. 208, § 11, p. 500; C.S.1922, § 4548; C.S.1929, § 19-611; R.S.1943, § 19-610.

(c) CITY COUNCIL

19-611 City council; powers.

The governing body of the city shall be the city council, which shall exercise all the powers which have been or may be conferred upon the city by the Constitution and laws of the state, except as herein otherwise provided.

Source: Laws 1917, c. 208, § 12, p. 500; C.S.1922, § 4549; C.S.1929, § 19-612; R.S.1943, § 19-611.

19-612 Council members; nomination and election; terms.

City council members in a city under the city manager plan shall be nominated and elected as provided in section 32-538. The terms of office of all such members shall commence on the first regular meeting of such board in December following their election.

Source: Laws 1917, c. 208, § 13, p. 500; C.S.1922, § 4550; C.S.1929, § 19-613; R.S.1943, § 19-612; Laws 1963, c. 90, § 1, p. 311; Laws 1967, c. 90, § 1, p. 279; Laws 1969, c. 257, § 21, p. 943; Laws 1972, LB 661, § 6; Laws 1975, LB 323, § 3; Laws 1977, LB 201, § 6; Laws 1979, LB 80, § 54; Laws 1994, LB 76, § 518.

19-613 Council members; qualifications; forfeiture of office; grounds.

Members of the city council in a city under the city manager plan shall be residents and registered voters of the city and shall hold no other employment with the city. Any council member who ceases to possess any of the qualifications required by this section or who has been convicted of a felony or of any public offense involving the violation of the oath of office of such member while in office shall forthwith forfeit such office.

Source: Laws 1917, c. 208, § 14, p. 500; C.S.1922, § 4551; C.S.1929, § 19-614; R.S.1943, § 19-613; Laws 1971, LB 494, § 6; Laws 1975, LB 453, § 2; Laws 1977, LB 50, § 1; Laws 1979, LB 80, § 55; Laws 1983, LB 370, § 9; Laws 1990, LB 931, § 4; Laws 1991, LB 12, § 3; Laws 1994, LB 76, § 519; Laws 2012, LB786, § 1.
Effective date March 15, 2012.

Cross References

Vacancies, see sections 32-568 and 32-569.

19-613.01 Council members; elected from a ward; election; ballots.

Any council member to be elected from a ward, or an appointed successor in the event of a vacancy, shall be a resident and a registered voter of such ward. The council member shall be nominated and elected in the same manner as provided for at-large candidates, except that only residents and registered voters of the ward may participate in the signing of nomination petitions. All nominating petitions and ballots shall clearly identify the ward from which such person shall be a candidate. The ballots within a ward shall not contain the names of ward candidates from other wards.

Source: Laws 1967, c. 90, § 2, p. 280; Laws 1972, LB 661, § 7; Laws 1975, LB 323, § 4; Laws 1979, LB 80, § 56; Laws 1984, LB 975, § 12; Laws 1994, LB 76, § 520.

19-614 Repealed. Laws 1994, LB 76, § 615.

19-615 Council; meetings; quorum.

At the first regular meeting in December following the general election in every even-numbered year, the council shall meet in the usual place for holding meetings and the newly elected council members shall assume the duties of their office. Thereafter the council shall meet at such time and place as it may prescribe by ordinance, but not less frequently than twice each month in cities of the first class. The mayor, any two council members, or the city manager may call special meetings of the council upon at least six hours' written notice. The meetings of the council and sessions of committees of the council shall be public. A majority of the members shall constitute a quorum, but a majority vote of all the members elected shall be required to pass any measure or elect to any office.

Source: Laws 1917, c. 208, § 16, p. 501; C.S.1922, § 4553; C.S.1929, § 19-616; R.S.1943, § 19-615; Laws 1972, LB 661, § 8; Laws 1974, LB 609, § 1; Laws 1977, LB 203, § 1; Laws 1979, LB 80, § 57; Laws 2001, LB 484, § 3.

To be valid, a resolution recommending issuance or refusal of liquor license must be adopted by a majority of all elected members of city council. Hadlock v. Nebraska Liquor Control Commission, 193 Neb. 721, 228 N.W.2d 887 (1975).

19-616 Appointive or elected official; compensation; no change during term of office.

The annual compensation of the mayor and a council member in cities adopting sections 19-601 to 19-648 shall be payable quarterly in equal installments and shall be fixed by the council. The emoluments of any appointive or elective officer shall not be increased or diminished during the term for which such officer was elected or appointed, except that when there are officers elected or appointed to the council, or a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who has resigned or vacated any office shall be eligible to the same during the time for which such person was elected or appointed when, during the same time, the emoluments have been increased. For each absence from regular meetings of the council, unless authorized by a two-thirds vote of all members thereof, there shall be deducted a sum equal to two percent of such annual salary.

Source: Laws 1917, c. 208, § 17, p. 501; C.S.1922, § 4554; C.S.1929, § 19-617; R.S.1943, § 19-616; Laws 1969, c. 113, § 1, p. 515; Laws 1979, LB 80, § 58; Laws 2002, LB 1054, § 2.

Cross References

Vacancies, how filled, see sections 19-3101 and 32-560 to 32-573.

19-617 Council; organization, when; president; powers.

At the first regular meeting in December following the general election in every even-numbered year, the council shall elect one of its members as president, who shall be ex officio mayor, and another as vice president, who shall serve in the absence of the president. In the absence of the president and the vice president, the council may elect a temporary chairperson. The presi-

dent shall preside over the council and have a voice and vote in its proceedings but no veto. The president shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the Governor for military purposes. In addition, the president shall exercise such other powers and perform such duties, not inconsistent with sections 19-601 to 19-648, as are conferred upon the mayor of the city.

Source: Laws 1917, c. 208, § 18, p. 502; C.S.1922, § 4555; C.S.1929, § 19-618; R.S.1943, § 19-617; Laws 1972, LB 661, § 9; Laws 1977, LB 203, § 2; Laws 1978, LB 591, § 1; Laws 2001, LB 484, § 4.

19-617.01 Repealed. Laws 1988, LB 809, § 1.

19-618 Council; city manager; appointment; investigatory powers of council.

The council shall choose a city manager, a city clerk, and, where required, a civil service commission, but no member of the council shall be chosen as manager or as a member of the civil service commission. Neither the council nor any of its committees or members shall dictate the appointment of any person to office or employment by the city manager or in any manner seek to prevent him or her from exercising his or her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager, either publicly or privately. The council, or a committee thereof, may investigate the affairs of any department or the official acts and conduct of any city officer. It shall have power to administer oaths and compel the attendance of witnesses and the production of books and papers and may punish for contempt any person failing to obey its subpoena or refusing to testify. No person shall be excused from testifying, but his or her testimony shall not be used against him or her in any criminal proceeding other than for perjury.

Source: Laws 1917, c. 208, § 19, p. 502; C.S.1922, § 4556; C.S.1929, § 19-619; R.S.1943, § 19-618; Laws 1985, LB 372, § 2.

19-619 Appropriations and expenses; revision; power of first council.

If, at the beginning of the term of office of the first council elected under sections 19-601 to 19-648, the appropriations or distribution of the expenditures of the city government for the current fiscal year have been made, the council shall have power, by ordinance, to repeal or revise such distribution, or to make additional appropriations within the limit of the total taxes levied for the year.

Source: Laws 1917, c. 208, § 20, p. 503; C.S.1922, § 4557; C.S.1929, § 19-620; R.S.1943, § 19-619.

19-620 Council; departments and offices; control.

The council shall have authority, subject to the provisions of sections 19-601 to 19-648, to create and discontinue departments, offices and employments, and by ordinance or resolution to prescribe, limit or change the compensation of such officers and employees; *Provided, however,* that nothing herein contained shall be so construed as to interfere with or to affect the office or powers

of city school or school district officers, or of any officer named in the state Constitution.

Source: Laws 1917, c. 208, § 21, p. 503; C.S.1922, § 4558; C.S.1929, § 19-621; R.S.1943, § 19-620.

(d) NOMINATIONS AND ELECTIONS

19-621 Repealed. Laws 1994, LB 76, § 615.

19-622 Repealed. Laws 1974, LB 897, § 15.

19-623 Repealed. Laws 1994, LB 76, § 615.

19-624 Repealed. Laws 1994, LB 76, § 615.

19-625 Repealed. Laws 1969, c. 257, § 44.

19-626 Repealed. Laws 1969, c. 257, § 44.

19-627 Repealed. Laws 1994, LB 76, § 615.

(e) RECALL

19-628 Repealed. Laws 1984, LB 975, § 14.

19-629 Repealed. Laws 1984, LB 975, § 14.

19-630 Repealed. Laws 1984, LB 975, § 14.

19-631 Repealed. Laws 1984, LB 975, § 14.

19-632 Repealed. Laws 1984, LB 975, § 14.

19-633 Repealed. Laws 1984, LB 975, § 14.

19-634 Repealed. Laws 1984, LB 975, § 14.

19-635 Repealed. Laws 1984, LB 975, § 14.

19-636 Repealed. Laws 1984, LB 975, § 14.

19-637 Repealed. Laws 1984, LB 975, § 14.

(f) INITIATIVE AND REFERENDUM

19-638 Repealed. Laws 1982, LB 807, § 46.

19-639 Repealed. Laws 1982, LB 807, § 46.

19-640 Repealed. Laws 1982, LB 807, § 46.

19-641 Repealed. Laws 1982, LB 807, § 46.

19-642 Repealed. Laws 1973, LB 561, § 11.

19-643 Repealed. Laws 1982, LB 807, § 46.

19-644 Repealed. Laws 1982, LB 807, § 46.

(g) CITY MANAGER

19-645 City manager; how chosen; qualifications; salary.

The chief executive officer of the city shall be a city manager, who shall be responsible for the proper administration of all affairs of the city. He shall be chosen by the council for an indefinite period, solely on the basis of administrative qualifications, and need not be a resident of the city or state when appointed. He shall hold office at the pleasure of the council, and receive such salary as it shall fix by ordinance. During the absence or disability of the city manager the council shall designate some properly qualified person to perform the duties of the office.

Source: Laws 1917, c. 208, § 46, p. 510; C.S.1922, § 4583; C.S.1929, § 19-646; R.S.1943, § 19-645.

19-646 City manager; powers; duties.

The powers and duties of the city manager shall be (1) to see that the laws and ordinances are enforced, (2) to appoint and remove all heads of departments and all subordinate officers and employees in the departments in both the classified and unclassified service, which appointments shall be upon merit and fitness alone, and in the classified service all appointments and removals shall be subject to the civil service provisions of the Civil Service Act, (3) to exercise control over all departments and divisions thereof that may be created by the council, (4) to attend all meetings of the council with the right to take part in the discussion but not to vote, (5) to recommend to the council for adoption such measures as he or she may deem necessary or expedient, (6) to prepare the annual budget and keep the council fully advised as to the financial condition and needs of the city, and (7) to perform such other duties as may be required of him or her by sections 19-601 to 19-648 or by ordinance or resolution of the council.

Source: Laws 1917, c. 208, § 47, p. 511; C.S.1922, § 4584; C.S.1929, § 19-647; R.S.1943, § 19-646; Laws 1985, LB 372, § 3.

Cross References

Civil Service Act, see section 19-1825.

19-647 City manager; investigatory and inquisitional powers.

The city manager may investigate at any time the affairs of any department or the conduct of any officer or employee. He, or any person or persons appointed by him for the purpose, shall have the same power to compel the attendance of witnesses and the production of books and papers and other evidence, and to punish for contempt, which has herein been conferred upon the council.

Source: Laws 1917, c. 208, § 48, p. 511; C.S.1922, § 4585; C.S.1929, § 19-648; R.S.1943, § 19-647.

19-648 City manager; bond; premium; payment.

Before taking office the city manager shall file with the city clerk a surety company bond, conditioned upon the honest and faithful performance of his

duties, in such sum as shall be fixed by the council. The premium of this bond shall be paid by the city.

Source: Laws 1917, c. 208, § 49, p. 511; C.S.1922, § 4586; C.S.1929, § 19-649; R.S.1943, § 19-648.

(h) CIVIL SERVICE BOARD

19-649 Repealed. Laws 1985, LB 372, § 27.

19-650 Repealed. Laws 1985, LB 372, § 27.

19-651 Repealed. Laws 1985, LB 372, § 27.

19-652 Repealed. Laws 1985, LB 372, § 27.

19-653 Repealed. Laws 1985, LB 372, § 27.

19-654 Repealed. Laws 1985, LB 372, § 27.

19-655 Repealed. Laws 1985, LB 372, § 27.

19-656 Repealed. Laws 1985, LB 372, § 27.

19-657 Repealed. Laws 1985, LB 372, § 27.

19-658 Repealed. Laws 1985, LB 372, § 27.

19-659 Repealed. Laws 1985, LB 372, § 27.

19-660 Repealed. Laws 1985, LB 372, § 27.

19-661 Repealed. Laws 1985, LB 372, § 27.

(i) PETITION FOR ABANDONMENT

19-662 Plan of government; abandoning; petition; filing; election.

Whenever electors of any city, equal in number to thirty percent of those who voted at the last regular city election, shall file a petition with the city clerk, asking that the question of abandoning the plan of government provided by the provisions of Chapter 19, article 6, be submitted to the electors thereof, such clerk shall within one week certify that fact to the council of the city, and the council shall, within thirty days, adopt a resolution to provide for submitting such question at the next regular municipal election after adoption of the resolution. When such a petition is filed with the city clerk within a seventy-day period prior to a regular municipal election, the resolution adopted by the city council shall provide for the submission of such question at the second regular municipal election thereafter as provided by law.

Source: Laws 1974, LB 897, § 3.

ARTICLE 7
EMINENT DOMAIN

Section
19-701. Public utility; condemnation; election; resubmission.
19-702. Court of condemnation; members; hearing; parties; notice.
19-703. Court of condemnation; powers and duties; vacancy, how filled.

Section
19-704. Court of condemnation; award; appeal; procedure; effect of appeal.
19-705. Court of condemnation; appeal; judgment; bonds.
19-706. Court of condemnation; members; compensation; costs; witness fees.
19-707. Powers; on what cities conferred.
19-708. Public utility; acquisition by city or village of distribution system; wholesale service.
19-709. Property; acquisition for public use; limitation; purposes enumerated; procedure.
19-710. City council action; rights of adjoining property owner.

19-701 Public utility; condemnation; election; resubmission.

Whenever the qualified electors of any city of the primary class, city of the first class, city of the second class, or village shall vote at any general or special election to acquire and appropriate, by an exercise of the power of eminent domain, any waterworks, waterworks system, electric light plant, electric light and power plant, heating plant, street railway, or street railway system, located or operating within or partly within and partly without such city or village, together with real and personal property needed or useful in connection therewith, if the main part of such works, plant, or system be within any such city or village and even though a franchise for the construction and operating of any such works, plant, or system may or may not have expired, then any such city or village shall possess and have the power and authority, by an exercise of the power of eminent domain to appropriate and acquire, for the public use of any such city or village, any such works, plant, railway, pipelines, or system. If any public utility properties supplying different kinds of service to such a city or village are operated as one unit and under one management, the right to acquire and appropriate, as provided in sections 19-701 to 19-707, shall cover and extend to the entire property and not to any divided or segregated part thereof, and the duly constituted authorities of any such city or village shall have the power to submit such question or proposition, in the usual manner, to the qualified electors of any such city or village at any general city or village election or at any special city or village election and may submit the proposition in connection with any city or village special election called for any other purpose, and the votes cast thereon shall be canvassed and the result found and declared as in any other city or village election. Such city or village authorities shall submit such question at any such election whenever a petition asking for such submission, signed by the legal voters of such a city or village equaling in number fifteen percent of the votes cast at the last general city or village election, and filed in the city or village clerk's office at least sixty days before the election at which the submission is asked, but if the question of acquiring any particular plant or system has been submitted once, the same question shall not again be submitted to the voters of such a city or village until two years shall have elapsed from and after the date of the findings by the board of appraisers regarding the value of the property and the city's or village's rejection of the same.

Source: Laws 1919, c. 188, § 1, p. 422; C.S.1922, § 4600; C.S.1929, § 19-701; Laws 1941, c. 26, § 1, p. 122; C.S.Supp.,1941, § 19-708; R.S.1943, § 19-701; Laws 1955, c. 56, § 1, p. 183; Laws 2002, LB 384, § 29.

1. Constitutionality
2. Procedure
3. Election

4. Miscellaneous

1. Constitutionality

Act held constitutional. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945); City of Mitchell v. Western Public Service Co., 124 Neb. 248, 246 N.W. 484 (1933).

Constitutionality of this and succeeding sections authorizing condemnation of property of public utility sustained. Central Electric & Gas Co. v. City of Stromsburg, 192 F.Supp. 280 (D. Neb. 1960).

2. Procedure

Where the Supreme Court enjoined a city and its officials from issuing bonds for purpose of raising money to tender an award in proceedings to condemn property of power company, city could not proceed further until another election was held. City of Kearney v. Consumers Public Power Dist., 146 Neb. 29, 18 N.W.2d 437 (1945).

Proceeding in Supreme Court to vacate appointment of members of court of condemnation is not within jurisdiction of Supreme Court. Consumers Public Power Dist. v. City of Sidney, 144 Neb. 6, 12 N.W.2d 104 (1945).

Condemnation proceeding was not a civil action subject to removal to federal court. Village of Walthill v. Iowa Electric L. & P. Co., 228 F.2d 647 (8th Cir. 1956).

3. Election

Proposition of acquisition of gas plant was properly submitted to voters. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

Notice of election was sufficient. Central Electric & Gas Co. v. City of Stromsburg, 289 F.2d 217 (8th Cir. 1961).

Ballot title submitting question of proposition to acquire complete gas system was sufficient. Iowa Electric Light & Power Co. v. City of Lyons, 166 F.Supp. 676 (D. Neb. 1958), affirmed 265 F.2d 273 (1959).

4. Miscellaneous

All property, and not segregated portions, must be taken. Consumers Public Power Dist. v. Eldred, 146 Neb. 926, 22 N.W.2d 188 (1946).

Authority of court of condemnation is limited to determination of just compensation. Kansas-Nebraska Nat. Gas Co. v. Village of Deshler, 192 F.Supp. 303 (D. Neb. 1960).

Village could not acquire by eminent domain gas distribution system only. Village of Walthill v. Iowa Electric Light & Power Co., 125 F.Supp. 859 (D. Neb. 1954).

19-702 Court of condemnation; members; hearing; parties; notice.

If the election at which the question is submitted is a special election and sixty percent of the votes cast upon such proposition are in favor thereof, or if the election at which the question is submitted is a general election and a majority of the votes cast upon such proposition are in favor thereof, then the city council or village board of trustees or officer possessing the power and duty to ascertain and declare the result of such election shall certify such result immediately to the Supreme Court of the state. The Supreme Court shall within thirty days after the receipt of such certificate, appoint three district judges from three of the judicial districts of the state, and said three judges shall constitute a court of condemnation for the ascertainment and finding of the value of any such plant, works or system and the said Supreme Court shall enter an order requiring such judges to attend as a court of condemnation at the county seat in which such city or village is located within such time as may be stated in such order. Said district judges shall so attend as ordered and such court of condemnation at such time it meets shall organize and proceed with its duties. It may adjourn from time to time, and it shall fix a time for the appearance before it of all such corporations or persons as the court may deem necessary to be made parties to such condemnation proceedings or which the city, the village or the corporation or persons owning any such plant, system or works may desire to have made a party to such proceedings. If such time of appearance shall occur after any proceedings have begun, they shall be reviewed by the court, as it may direct, to give all parties full opportunity to be heard. All corporations or persons, including all mortgagees, bondholders, trustees for bondholders, leaseholders, or any other party or person claiming any interest in or lien upon any such works, plant or system may be made parties to such condemnation proceedings, and shall be served with notice of such proceedings and the time and place of the meeting of the court of condemnation in the same manner and for such length of time as the service of a summons in cases begun in the district court of the state, either by personal

service or service by publication, and actual personal service of notice within or without the state shall supersede the necessity of notice by publication.

Source: Laws 1919, c. 188, § 2, p. 423; C.S.1922, § 4601; C.S.1929, § 19-702; Laws 1941, c. 26, § 2, p. 123; C.S.Supp.,1941, § 19-709; R.S.1943, § 19-702.

Appointment of court of condemnation is a ministerial act and in no way enlarges jurisdiction of Supreme Court. Consumers Public Power Dist. v. City of Sidney, 144 Neb. 6, 12 N.W.2d 104 (1943).

Appointment of members of condemnation court is a ministerial act only. Village of Walthill v. Iowa Electric L. & P. Co., 228 F.2d 647 (8th Cir. 1956).

Where proposition is submitted at general election, a majority of votes cast at election is sufficient to carry the proposition. Central Electric & Gas Co. v. City of Stromsburg, 192 F.Supp. 280 (D. Neb. 1960).

19-703 Court of condemnation; powers and duties; vacancy, how filled.

Such court of condemnation shall have full power to summon and swear witnesses, take evidence, order the taking of depositions, and require the production of any and all books and papers deemed necessary for a full investigation and ascertainment of the value of any such works, plant or system; *Provided,* that when part of the public utilities appropriated under sections 19-701 to 19-707 extends beyond the territory within which the city or village exercising the right of eminent domain has a right to operate the same, the court of condemnation, in determining the damages caused by the appropriation thereof, shall take into consideration the fact that such portion of the utility beyond such territory is being detached and not appropriated by the city or village, and the court of condemnation shall award damages by reason of such detachment and the destruction in value and usefulness of the detached and unappropriated property as it will remain and be left after the detachment and appropriation. Such court of condemnation may appoint a reporter of its proceedings who shall report and preserve all evidence introduced before it. Such court shall have all the powers and perform all the duties of commissioners in the condemnation and ascertainment of the value and in making of an award of all property of any such works, plant or system. The clerk of the district court, in the county where such city or village is located, shall attend upon said court of condemnation and perform such duties, as the clerk thereof, as such condemnation court may direct. The sheriff of any such county, or any of his deputies shall attend upon said court and shall have power to serve summons, subpoenas, and all other orders or papers ordered to be served by such condemnation court. In case of vacancy in said court of condemnation such vacancy shall be filled by the Supreme Court if the vacancy occurs while the court is in session, and if it occurs while the court is not in session, then by the Chief Justice of said court.

Source: Laws 1919, c. 188, § 3, p. 424; C.S.1922, § 4602; C.S.1929, § 19-703; Laws 1941, c. 26, § 3, p. 124; C.S.Supp.,1941, § 19-710; R.S.1943, § 19-703.

Condemnation court's authority is limited to fixing the value of the property. Village of Walthill v. Iowa Electric L. & P. Co., 228 F.2d 647 (8th Cir. 1956).

19-704 Court of condemnation; award; appeal; procedure; effect of appeal.

Upon the determination and filing of a finding of the value of any such plant, works or system by the said court of condemnation, such city or village shall then have the right and power by ordinance duly passed by its duly constituted authorities, to elect to abandon such condemnation proceedings. If it does not

elect within ninety days after the finding and filing of value, then the person or corporation owning any such plant, works or system may appeal from the finding of value and award by the said court of condemnation to the district court by filing within twenty days from the expiration of the said time given the city or village to exercise its rights of abandonment, with the city clerk of any such city or the village clerk of any such village, a bond, to be approved by him, conditioned for the payment of all costs which may be made on any such appeal, and by filing in said district court, within ninety days after such bond is filed, a transcript of the proceedings before such condemnation court including the evidence taken before it certified by the clerk, reporter, and judges of such court. The appeal in the district court shall be tried and determined upon the pleadings, proceedings, and evidence embraced in such transcript; *Provided*, that if such appeal is taken the city or village, upon tendering the amount of the value and award made by such condemnation court, to the party owning any such plant, works or system, shall, notwithstanding such appeal, have the right and power to take immediate possession of any such plant, works or system, and the city or village authorities, without vote of the people, shall have the power, if necessary, to issue and sell bonds of the city or village to provide funds to make such tender.

Source: Laws 1919, c. 188, § 4, p. 425; C.S.1922, § 4603; C.S.1929, § 19-704; Laws 1941, c. 26, § 4, p. 125; C.S.Supp.,1941, § 19-711; R.S.1943, § 19-704.

General obligation bonds were issued by city to tender amount of award. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

Bonds purporting to pledge revenue and earnings of electric light and power plant cannot be issued without vote of people. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945).

Municipality is given ninety days after determination of value to abandon proceedings. Village of Walthill v. Iowa Electric L. & P. Co., 228 F.2d 647 (8th Cir. 1956).

Provision is made for making up and preservation of record of the hearing before court of condemnation. Kansas-Nebraska Nat. Gas Co. v. Village of Deshler, 192 F.Supp. 303 (D. Neb. 1960).

19-705 Court of condemnation; appeal; judgment; bonds.

Upon the hearing of such appeal in the district court, judgment shall be pronounced, as in ordinary cases, for the value of any such works, plant, or system. The city, village, party, or corporation owning any such plant, works, or system may appeal to the Court of Appeals. Upon a final judgment being pronounced as to the value of any such plant, works, or system, the duly constituted authorities of any such city or village shall issue and sell bonds of any such city or village to pay the amount of such value and judgment without a vote of the people.

Source: Laws 1919, c. 188, § 5, p. 426; C.S.1922, § 4604; C.S.1929, § 19-705; Laws 1941, c. 26, § 5, p. 125; C.S.Supp.,1941, § 19-712; R.S.1943, § 19-705; Laws 1991, LB 732, § 22.

19-706 Court of condemnation; members; compensation; costs; witness fees.

The district judges constituting the aforesaid court of condemnation shall each receive from and be paid by such city or village fifteen dollars per day for their services and their necessary traveling expenses, hotel bills, and all other necessary expenses incurred while in attendance upon the sittings of such court of condemnation, with reimbursement for expenses to be made as provided in sections 81-1174 to 81-1177 for state employees, and the city or village shall pay the reporter that may be appointed by said court such an amount as said

court of condemnation shall allow him or her. The sheriff shall serve all such summons, subpoenas, or other orders or papers ordered issued or served by such condemnation court at the same rate and compensation for which he or she serves like papers issued by the district court, but shall account for all such compensation to the county as is required by him or her under the law governing his or her duties as sheriff of the county. The court of condemnation shall have power to apportion the cost made before it, between the city or village and the corporation or party owning any such plant, works, or system and the city or village shall provide for and pay all such costs or portion of costs as the said court shall order, and shall also make provisions for the necessary funds and expenses to carry on the proceedings of such condemnation court, from time to time while such proceedings are in progress, but in the event the city or village elects to abandon the condemnation proceedings, as aforesaid, then the city or village shall pay all the costs made before such condemnation court; *Provided,* if services of expert witnesses are secured then their fees or compensation to be taxed and paid as costs shall be only such amount as the said condemnation court shall fix, notwithstanding any contract between such experts and the party producing them to pay them more, but a contract to pay them more than the court shall allow as costs may be enforced between any such experts and the litigant or party employing them. The costs made by any such appeal or appeals shall be adjudged against the party defeated in such appeal in the same degree and manner as is done under the general court practice relating to appellate proceedings.

Source: Laws 1919, c. 188, § 6, p. 426; C.S.1922, § 4605; C.S.1929, § 19-706; Laws 1941, c. 26, § 6, p. 126; C.S.Supp.,1941, § 19-713; R.S.1943, § 19-706; Laws 1981, LB 204, § 18.

19-707 Powers; on what cities conferred.

The powers herein vested in the city or village shall be conferred upon cities of the primary, first or second classes or villages, whether or not such city or village is operating under a home rule charter adopted pursuant to Article XI, Constitution of Nebraska.

Source: Laws 1919, c. 188, § 7, p. 427; C.S.1922, § 4606; C.S.1929, § 19-707; Laws 1941, c. 26, § 7, p. 127; C.S.Supp.,1941, § 19-714; R.S.1943, § 19-707.

19-708 Public utility; acquisition by city or village of distribution system; wholesale service.

Whenever the local distribution system of any public utility, has been acquired by any city or village under the provisions of Chapter 19, article 7, the condemnee, if it is also the owner of any transmission system, whether by wire, pipeline, or otherwise, from any other point to such city or village shall, at the option of such city or village, be required to render wholesale service to such city or village whether otherwise acting as wholesaler or not; *Provided,* that if the condemnee is a public power district subject to the provisions of section 70-626.01, the obligations of the public power district to the condemner under this section shall be no greater than to other cities and villages under said section 70-626.01.

Source: Laws 1957, c. 44, § 1, p. 220.

Condemnation proceeding was not invalidated by inclusion in notice of election of right to purchase gas at wholesale under this section. Kansas-Nebraska Nat. Gas Co. v. Village of Deshler, 288 F.2d 717 (8th Cir. 1961).

Right of village to purchase gas at wholesale, as an incident to condemnation, is recognized. Kansas-Nebraska Nat. Gas Co. v. Village of Deshler, 192 F.Supp. 303 (D. Neb. 1960).

19-709 Property; acquisition for public use; limitation; purposes enumerated; procedure.

The mayor and city council of any city of the first or second class or the chairperson and members of the board of trustees of any village shall have power to purchase or appropriate private property or school lands for the use of the city or village for streets, alleys, avenues, parks, parkways, boulevards, sanitary sewers, storm water sewers, public squares, public auditoriums, public fire stations, training facilities for firefighters, market places, public heating plants, power plants, gas works, electric light plants, wells, or waterworks, including mains, pipelines, and settling basins therefor, and to acquire outlets and the use of streams for sewage disposal. When necessary for the proper construction of any of the works above provided, the right of appropriation shall extend such distance as may be necessary from the corporate limits of the city or village, except that no city of the first or second class or village may acquire through the exercise of the power of eminent domain or otherwise any real estate within the zoning jurisdiction of any other city of the first or second class or village for any of the works enumerated in this section if the use for which the real estate is to be acquired would be contrary to or would not be a use permitted by the existing zoning ordinances and regulations of such other city or village, but such real estate may be acquired within the zoning jurisdiction of another city of the first or second class or village for such contrary or nonpermitted use if the governing body of such other city or village shall approve such acquisition and use. Such power shall also include the right to appropriate for any of the above purposes any plant or works already constructed, or any part thereof, whether the same lies wholly within the city or village or part within and part without the city or village or beyond the corporate limits of such city or village, including all real estate, buildings, machinery, pipes, mains, hydrants, basins, reservoirs, and all appurtenances reasonably necessary thereto and a part thereof, or connected with such works or plants, and all franchises to own and operate the same, if any. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable.

Source: Laws 1901, c. 18, § 50, p. 268; Laws 1901, c. 18, § 52, p. 270; Laws 1901, c. 18, § 54, p. 272; Laws 1901, c. 19, § 5, p. 316; Laws 1907, c. 14, § 1, p. 121; Laws 1909, c. 19, § 1, p. 184; R.S.1913, § 4904; C.S.1922, § 4072; C.S.1929, § 16-601; R.S. 1943, § 16-601; Laws 1951, c. 101, § 50, p. 464; Laws 1961, c. 44, § 1, p. 175; R.R.S.1943, § 16-601; Laws 1963, c. 88, § 1, p. 297; Laws 1965, c. 81, § 1, p. 318; Laws 1967, c. 91, § 1, p. 281; Laws 1971, LB 583, § 1; Laws 1977, LB 340, § 1; Laws 2002, LB 384, § 30.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

Village could acquire land through the power of eminent domain even though the use which it sought to make of the land was not permitted by its zoning ordinance. Witzel v. Village of Brainard, 208 Neb. 231, 302 N.W.2d 723 (1981).

The term ''street'' includes the portion for parkway and sidewalk. M.R.D. Corp. v. City of Bellevue, 195 Neb. 722, 240 N.W.2d 46 (1976).

19-710 City council action; rights of adjoining property owner.

In cases of appeal from an action of the city council condemning real property as a nuisance or as dangerous under the police powers of the city, the owners of the adjoining property may intervene in the action at any time before trial.

Source: Laws 1985, LB 532, § 1.

ARTICLE 8

AVIATION FIELDS

Section
19-801. Transferred to section 18-1501.
19-802. Transferred to section 18-1502.
19-803. Transferred to section 18-1503.
19-803.01. Transferred to section 18-1504.
19-803.02. Transferred to section 18-1505.
19-804. Transferred to section 18-1506.
19-805. Transferred to section 18-1507.
19-806. Transferred to section 18-1508.
19-807. Transferred to section 18-1509.

19-801 Transferred to section 18-1501.

19-802 Transferred to section 18-1502.

19-803 Transferred to section 18-1503.

19-803.01 Transferred to section 18-1504.

19-803.02 Transferred to section 18-1505.

19-804 Transferred to section 18-1506.

19-805 Transferred to section 18-1507.

19-806 Transferred to section 18-1508.

19-807 Transferred to section 18-1509.

ARTICLE 9

CITY PLANNING, ZONING

(Applicable to cities of the first or second class and villages.)

Section
19-901. Zoning regulations; power to adopt; when; comprehensive development plan; planning commission; reports and hearings; purpose; validity of plan; not applicable; when.
19-902. Building zones; regulations; uniformity; manufactured homes; certain codes excepted.
19-903. Comprehensive development plan; requirements; regulations and restrictions made in accordance with plan; considerations.
19-904. Building zones and regulations; creation; hearing; notice.
19-904.01. Building zones and regulations; nonconforming use; continuation; termination.

19-901 Zoning regulations; power to adopt; when; comprehensive development plan; planning commission; reports and hearings; purpose; validity of plan; not applicable; when.

(1) For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative bodies in cities of the first and second class and in villages may adopt zoning regulations which regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

(2) Such powers shall be exercised only after the municipal legislative body has established a planning commission, received from its planning commission a recommended comprehensive development plan as defined in section 19-903, adopted such comprehensive development plan, and received the specific recommendation of the planning commission on the adoption or amendment of zoning regulations. The planning commission shall make a preliminary report and hold public hearings on its recommendations regarding the adoption or repeal of the comprehensive development plan and zoning regulations and shall hold public hearings thereon before submitting its final report to the legislative body. Amendments to the comprehensive plan or zoning regulations shall be considered at public hearings before submitting recommendations to the legislative body.

(3) A comprehensive development plan as defined in section 19-903 which has been adopted and not rescinded by such legislative body prior to May 17, 1967, shall be deemed to have been recommended and adopted in compliance with the procedural requirements of this section when, prior to the adoption of the plan by the legislative body, a recommendation thereon had been made to the legislative body by a zoning commission in compliance with the provisions of section 19-906, or by a planning commission appointed under the provisions of Chapter 19, article 9, regardless of whether the planning commission had been appointed as a zoning commission.

(4) The requirement that a planning commission be appointed and a comprehensive development plan be adopted shall not apply to cities of the first and second class and villages which have legally adopted a zoning ordinance prior to May 17, 1967, and which have not amended the zoning ordinance or zoning map since May 17, 1967. Such city or village shall appoint a planning commission and adopt the comprehensive plan prior to amending the zoning ordinance or zoning map.

Source: Laws 1927, c. 43, § 1, p. 182; C.S.1929, § 19-901; Laws 1941, c. 131, § 8, p. 509; C.S.Supp.,1941, § 19-901; R.S.1943, § 19-901; Laws 1959, c. 65, § 1, p. 289; Laws 1967, c. 92, § 1, p. 283; Laws 1967, c. 93, § 1, p. 288; Laws 1974, LB 508, § 1; Laws 1975, LB 410, § 10; Laws 1977, LB 95, § 1; Laws 1983, LB 71, § 8.

When a legislative body does not specify the manner in which a comprehensive development plan is to be adopted, it is assumed that such plan may be effectively adopted via resolution. Smith v. City of Papillion, 270 Neb. 607, 705 N.W.2d 584 (2005).

Zoning powers granted to villages under section 19-901, R.R.S.1943, shall be exercised only after the municipal legislative body has appointed a planning commission, received from its planning commission a recommended comprehensive development plan as defined in section 19-903, R.R.S.1943, adopted such comprehensive development plan, and received the specific recommendation of the planning commission on the adoption or amendment of zoning regulations. Village of McGrew v. Steidley, 208 Neb. 726, 305 N.W.2d 627 (1981).

Plaintiff was not entitled to an injunction enjoining defendant from erecting a fire station in violation of a zoning ordinance. Witzel v. Village of Brainard, 208 Neb. 231, 302 N.W.2d 723 (1981).

Adoption, amendment, supplement, or change of regulations and restrictions under comprehensive development plan shall not become effective until after a public hearing of which notice has been given. Stec v. Countryside of Hastings, Inc., 190 Neb. 733, 212 N.W.2d 561 (1973).

Cities of the first class have authority to regulate and restrict the use of land located within boundaries of the city. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

This section was not applicable to zoning act relating to first class cities only. Schlientz v. City of North Platte, 172 Neb. 477, 110 N.W.2d 58 (1961).

Action of city council in zoning or rezoning must have a foundation in promoting health, safety, morals, or general welfare of the community. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

19-902 Building zones; regulations; uniformity; manufactured homes; certain codes excepted.

(1) For any or all of the purposes designated in section 19-901, the city council or village board may divide the municipality into districts of such

number, shape, and area as may be deemed best suited to carry out the purposes of sections 19-901 to 19-914 and may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within the districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations applicable to one district may differ from those applicable to other districts. If a regulation affects the Niobrara scenic river corridor as defined in section 72-2006 and is not incorporated within the boundaries of the municipality, the Niobrara Council shall act on the regulation as provided in section 72-2010.

(2)(a) The city council or village board shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The city council or village board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The city council or village board may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The city council or village board may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(3) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

(4) Subdivision regulations and building, plumbing, electrical, housing, fire, or health codes or similar regulations and the adoption thereof shall not be subject to sections 19-901 to 19-915.

Source: Laws 1927, c. 43, § 2, p. 183; C.S.1929, § 19-902; R.S.1943, § 19-902; Laws 1975, LB 410, § 11; Laws 1981, LB 298, § 3; Laws 1985, LB 313, § 3; Laws 1994, LB 511, § 3; Laws 1996, LB 1044, § 56; Laws 1998, LB 1073, § 3; Laws 2000, LB 1234, § 9.

Cross References

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

19-903 Comprehensive development plan; requirements; regulations and restrictions made in accordance with plan; considerations.

The regulations and restrictions authorized by sections 19-901 to 19-915 shall be in accordance with a comprehensive development plan which shall consist of both graphic and textual material and shall be designed to accommodate anticipated long-range future growth which shall be based upon documented population and economic projections. The comprehensive development plan shall, among other possible elements, include:

(1) A land-use element which designates the proposed general distributions, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;

(2) The general location, character, and extent of existing and proposed major roads, streets, and highways, and air and other transportation routes and facilities;

(3) The general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services;

(4) When a new comprehensive plan or a full update to an existing comprehensive plan is developed on or after July 15, 2010, but not later than January 1, 2015, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community. This subdivision shall not apply to villages; and

(5)(a) When next amended after January 1, 1995, an identification of sanitary and improvement districts, subdivisions, industrial tracts, commercial tracts, and other discrete developed areas which are or in the future may be appropriate subjects for annexation and (b) a general review of the standards and qualifications that should be met to enable the municipality to undertake annexation of such areas. Failure of the plan to identify subjects for annexation or to set out standards or qualifications for annexation shall not serve as the basis for any challenge to the validity of an annexation ordinance.

Regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to secure safety from flood; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools,

parks and other public requirements; to protect property against blight and depreciation; to protect the tax base; to secure economy in governmental expenditures; and to preserve, protect, and enhance historic buildings, places, and districts.

Such regulations shall be made with reasonable consideration, among other things, for the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Source: Laws 1927, c. 43, § 3, p. 183; C.S.1929, § 19-903; R.S.1943, § 19-903; Laws 1967, c. 430, § 2, p. 1318; Laws 1967, c. 92, § 2, p. 283; Laws 1975, LB 410, § 12; Laws 1994, LB 630, § 4; Laws 2010, LB997, § 3.

Adoption, amendment, supplement, or change of regulations and restrictions under comprehensive development plan shall not become effective until after a public hearing of which notice has been given. Stec v. Countryside of Hastings, Inc., 190 Neb. 733, 212 N.W.2d 561 (1973).

Municipal code and ordinance did not constitute a comprehensive plan contemplated by this section. City of Milford v. Schmidt, 175 Neb. 12, 120 N.W.2d 262 (1963).

Zoning regulations must be made in accordance with comprehensive plan. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

19-904 Building zones and regulations; creation; hearing; notice.

The legislative body of such municipality shall provide for the manner in which such regulations and restrictions, and the boundaries of such districts, shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The legislative body shall receive the advice of the planning commission before taking definite action on any contemplated amendment, supplement, change, modification, or repeal. No such regulation, restriction, or boundary shall become effective until after separate public hearings are held by both the planning commission and the legislative body in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by publication thereof in a paper of general circulation in such municipality at least one time ten days prior to such hearing.

Source: Laws 1927, c. 43, § 4, p. 183; C.S.1929, § 19-904; R.S.1943, § 19-904; Laws 1955, c. 57, § 1, p. 185; Laws 1957, c. 45, § 1, p. 221; Laws 1967, c. 92, § 3, p. 284; Laws 1975, LB 410, § 13; Laws 1983, LB 71, § 9.

When a legislative body does not specify the manner in which a comprehensive development plan is to be adopted, it is assumed that such plan may be effectively adopted via resolution. Smith v. City of Papillion, 270 Neb. 607, 705 N.W.2d 584 (2005).

Adoption, amendment, supplement, or change of regulations and restrictions under comprehensive development plan shall not become effective until after a public hearing of which notice has been given. Stec v. Countryside of Hastings, Inc., 190 Neb. 733, 212 N.W.2d 561 (1973).

This section provides different procedure from that applicable to zoning act relating to first-class cities only. Schlientz v. City of North Platte, 172 Neb. 477, 110 N.W.2d 58 (1961).

Sufficiency of notice given of proposed rezoning action raised but not decided. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

City council has duty of providing manner in which regulations and restrictions are amended or changed. Kelley v. John, 162 Neb. 319, 75 N.W.2d 713 (1956).

19-904.01 Building zones and regulations; nonconforming use; continuation; termination.

The use of a building, structure, or land, existing and lawful at the time of the adoption of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with provisions of such regulation or amendment; and such

use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The municipal legislative body may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning regulations. The municipal legislative body may, in any zoning regulation, provide for the termination of nonconforming uses, either by specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery of amortization of the investment in the nonconformance, except that in the case of a legally erected outdoor advertising sign, display, or device, no amortization schedule shall be used.

Source: Laws 1967, c. 92, § 4, p. 285; Laws 1975, LB 410, § 14; Laws 1981, LB 241, § 3.

19-905 Building zones and regulations; changes; protest; notice; publication; posting; mailing; personal service; when not applicable.

Regulations, restrictions, and boundaries authorized to be created pursuant to sections 19-901 to 19-915 may from time to time be amended, supplemented, changed, modified, or repealed. In case of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred feet therefrom, and of those directly opposite thereto extending three hundred feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of section 19-904 relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice therein prescribed, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than eighteen inches in height and twenty-four inches in width with a white or yellow background and black letters not less than one and one-half inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least ten days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor. If the record title owners of any lots included in such proposed change be nonresidents of the municipality, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last-known addresses at least ten days prior to such hearing. At the option of the legislative body of the municipality, in place of the posted notice provided above, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within three hundred feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least ten days prior to the date of the hearing, if they can be served with such notice within the county where such real estate is located. Where such notice cannot be served personal-

ly upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last-known addresses at least ten days prior to such hearing. The provisions of this section in reference to notice shall not apply (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different types of zoning districts are proposed, whether or not such additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the municipality, but only the requirements of section 19-904 shall be applicable.

Source: Laws 1927, c. 43, § 5, p. 183; C.S.1929, § 19-905; R.S.1943, § 19-905; Laws 1957, c. 45, § 2, p. 221; Laws 1967, c. 94, § 1, p. 290; Laws 1975, LB 410, § 15; Laws 2005, LB 161, § 8.

The fact that a person is entitled to notice of an administrative hearing because he or she owns property adjacent or very close to the property in issue supports the conclusion that such a person would have standing in a corresponding zoning case. Smith v. City of Papillion, 270 Neb. 607, 705 N.W.2d 584 (2005).

Approval of a conditional use permit in nature of special exception use is ordinarily subject to statutory requirement of a favorable three-fourths majority vote if requisite protests are made against change or supplement of regulations or restrictions. Stec v. Countryside of Hastings, Inc., 190 Neb. 733, 212 N.W.2d 561 (1973).

Amendment of zoning ordinance must be made in accordance with comprehensive plan. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

19-906 Repealed. Laws 1967, c. 92, § 7.

19-907 Board of adjustment; appointment; restriction on powers.

Except as provided in section 19-912.01, the local legislative body shall provide for the appointment of a board of adjustment. Any actions taken by the board of adjustment shall not exceed the powers granted by section 19-910.

Source: Laws 1927, c. 43, § 7, p. 184; C.S.1929, § 19-907; R.S.1943, § 19-907; Laws 1975, LB 410, § 16; Laws 1978, LB 186, § 5; Laws 1998, LB 901, § 1.

19-908 Board of adjustment; members; term; vacancy; adopt rules; meetings; records; open to public.

The board of adjustment shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be appointed from the membership of the planning commission, and the loss of membership on the planning commission by such member shall also result in his or her immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment. After September 9, 1995, the first vacancy occurring on the board of adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city or village at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the board of adjustment shall reside outside of the corporate boundaries of the city or village but within its extraterritorial zoning jurisdiction. The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections 19-901 to 19-914. Meetings of the board shall be held at

the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Source: Laws 1927, c. 43, § 7, p. 184; C.S.1929, § 19-907; R.S.1943, § 19-908; Laws 1967, c. 92, § 5, p. 285; Laws 1975, LB 410, § 17; Laws 1995, LB 805, § 1.

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. South Maple Street Assn. v. Board of Adjustment of City of Chadron, 194 Neb. 118, 230 N.W.2d 471 (1975).

19-909 Board of adjustment; appeals to board; record on appeal; hearing; stays.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Source: Laws 1927, c. 43, § 7, p. 185; C.S.1929, § 19-907; R.S.1943, § 19-909.

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. South Maple Street Assn. v. Board of Adjustment of City of Chadron, 194 Neb. 118, 230 N.W.2d 471 (1975).

19-910 Board of adjustment; powers; jurisdiction on appeal; variance; when permitted.

(1) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only the following powers: (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section 19-929; (b) to hear and decide, in accordance

with the provisions of any zoning regulation, requests for interpretation of any map; and (c) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this section and sections 19-901, 19-903 to 19-904.01, and 19-908 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(2) No such variance shall be authorized by the board unless it finds that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this section, the board may, in conformity with sections 19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

Source: Laws 1927, c. 43, § 7, p. 185; C.S.1929, § 19-907; R.S.1943, § 19-910; Laws 1967, c. 92, § 6, p. 286; Laws 1969, c. 114, § 1, p. 526; Laws 1975, LB 410, § 18; Laws 1978, LB 186, § 6; Laws 2004, LB 973, § 1.

Cross References

For other zoning boards acting as a zoning board of adjustment for a municipality, see section 19-912.01.

Due to the similarity between section 14-411 and this section when Frank v. Russell, 160 Neb. 354, 70 N.W.2d 306 (1955), was decided, Frank is applicable to decisions rendered under both statutes. Eastroads, L.L.C. v. Omaha Zoning Bd. of Appeals, 261 Neb. 969, 628 N.W.2d 677 (2001).

The district court's granting of a zoning variance was not erroneous where the strict application of the subject zoning regulation would, because of the higher elevation of the movant's property, result in undue hardship, which is not of the type generally shared by other properties in the same zoning district and vicinity. Furthermore, the variance sought would not create a substantial detriment to the adjacent property, the character of the district would not be changed, and the variance would not produce a substantial detriment to the public good or substantially impair the intent of the zoning regulation. Barrett v. City of Bellevue, 242 Neb. 548, 495 N.W.2d 646 (1993).

Procedural rules detailed in statutes and city zoning ordinance need not be further adopted by a board of adjustment. South Maple Street Assn. v. Board of Adjustment of City of Chadron, 194 Neb. 118, 230 N.W.2d 471 (1975).

Variance from zoning ordinance requires concurring vote of four members of board of zoning adjustment. City of Imperial v. Raile, 187 Neb. 404, 191 N.W.2d 442 (1971).

Request for rezoning may be presented to board of adjustment. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

A variance should be granted only if strict application of the regulation, due to the unusual characteristics of the property existing at the time of the enactment of the regulation, would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner. Any grant of a variance must be supported by evidence relating to each of the four factors enumerated in this section. City of Battle Creek v. Madison Cty. Bd. of Adjust., 9 Neb. App. 223, 609 N.W.2d 706 (2000).

19-911 Board of adjustment; legislative body of village may act; exception; powers and duties.

Notwithstanding the provisions of sections 19-907 and 19-908, the legislative body of a village may, except as set forth in section 19-912.01, provide by ordinance that it shall constitute a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections 19-901 to 19-905 may provide that as such board of adjustment it may exercise only the powers granted to boards of adjustment by section 19-910. As such board of adjustment it shall adopt rules and procedures that are in harmony with sections 19-907 to 19-910, and shall have the powers and duties therein provided for the board of adjustment, and other parties shall have all the rights and privileges therein provided for. The concurring vote of two-thirds of the members of the legislative body acting as a board of adjustment shall decide any question upon which it is required to pass as such board.

Source: Laws 1927, c. 43, § 8, p. 186; C.S.1929, § 19-908; R.S.1943, § 19-911; Laws 1975, LB 410, § 19; Laws 1978, LB 186, § 7; Laws 1998, LB 901, § 2.

The city council of a first-class city is not authorized by this section to sit as a board of adjustment. Staley v. City of Blair, 206 Neb. 292, 292 N.W.2d 570 (1980).

City council may sit as a board of adjustment. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

19-912 Board of adjustment; appeal; procedure.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to the district court a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the court within fifteen days after the filing of the decision in the office of the board. Upon the filing of such petition a summons shall be issued and be served upon the board of adjustment, together with a copy of the petition. Return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of such summons, the board of adjustment shall file an answer to said petition which shall admit or deny the substantial averments of the petition, and shall state the contentions of the board with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing answer, the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Said appeal to the district court shall not stay

proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

Source: Laws 1927, c. 43, § 9, p. 186; C.S.1929, § 19-909; R.S.1943, § 19-912; Laws 1963, c. 89, § 3, p. 301.

There is nothing in this section which requires one to either seek and obtain a restraining order or forgo any challenge to a variance. On the contrary, this section merely provides that a challenger who wishes to incur the cost of obtaining a restraining order may do so in order to temporarily protect himself from the consequences of the variance during the pendency of the appeal. Bowman v. City of York, 240 Neb. 201, 482 N.W.2d 537 (1992).

Appeal allows a full review of both law and facts. City of Imperial v. Raile, 187 Neb. 404, 191 N.W.2d 442 (1971).

Appeal may be taken from order of board of adjustment permitting rezoning. Weber v. City of Grand Island, 165 Neb. 827, 87 N.W.2d 575 (1958).

An appeal to the courts from decision of city council is authorized. Kelley v. John, 162 Neb. 319, 75 N.W.2d 713 (1956).

Provision for appeal contemplates a review of facts as well as law. Frank v. Russell, 160 Neb. 354, 70 N.W.2d 306 (1955).

A city council, under a zoning ordinance, cannot restrict the use of property in an unreasonable or arbitrary manner. Coulthard v. Board of Adjustment of City of Neligh, 130 Neb. 543, 265 N.W. 530 (1936).

19-912.01 Zoning board of adjustment of a county; serve municipalities, when; board of zoning appeals.

The zoning board of adjustment of a county that has adopted a comprehensive development plan, as defined by section 23-114.02, and is enforcing zoning regulations based upon such a plan, shall, upon request of the governing body of a village or second-class city, serve as the zoning board of adjustment for such village or city of the second class in that county. A city of the first class may request that the county zoning board of adjustment of the county in which it is located serve as that city's zoning board of adjustment, and such county government shall comply with that request within ninety days. A municipality located in more than one county shall be served by request or otherwise only by the county zoning board of adjustment of the county in which the greatest area of the municipality is located, and the jurisdiction of such county zoning board of adjustment shall include all portions of the municipality and its area of extraterritorial control, regardless of county lines. In a county where there is a city of the primary class, the board of zoning appeals, created under section 23-174.09, may serve in the same capacity for all cities of the second class and villages in place of a zoning board of adjustment.

Source: Laws 1975, LB 317, § 5; Laws 1981, LB 298, § 4; R.S.1943, (1994), § 84-155; Laws 1998, LB 901, § 3.

Cross References

For provisions relating to boards of adjustment for cities of the first and second class and villages, see sections 19-907 to 19-912.

19-913 Zoning laws and regulations; enforcement; violations; penalties; actions.

The local legislative body may provide by ordinance for the enforcement of sections 19-901 to 19-915, and of any ordinance, regulation, or restriction made thereunder. A violation of such sections or of such ordinance or regulation is hereby declared to be a misdemeanor, and such local legislative body may provide for the punishment thereof by fine of not exceeding one hundred dollars for any one offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed thirty days. Each day such violation continues after notice of violation is given to the offender may be considered a

separate offense. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of said sections or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

Source: Laws 1927, c. 43, § 10, p. 187; C.S.1929, § 19-910; R.S.1943, § 19-913; Laws 1975, LB 410, § 20.

Injunction authorized in addition to other remedies for violation of zoning laws. City of Imperial v. Raile, 187 Neb. 404, 191 N.W.2d 442 (1971).

City may maintain action for mandatory injunction to compel removal of structure erected in violation of zoning ordinance. City of Beatrice v. Williams, 172 Neb. 889, 112 N.W.2d 16 (1961).

19-914 Zoning regulations; conflict with other laws; effect.

Whenever the regulations made under authority of sections 19-901 to 19-905 require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute, local ordinance or regulation, the provisions of the regulations made under authority of said sections shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such statute, local ordinance or regulation shall govern.

Source: Laws 1927, c. 43, § 11, p. 188; C.S.1929, § 19-911; R.S.1943, § 19-914.

19-915 Zoning regulations; changes; procedure; ratification.

(1) When any city of the first or second class or any village has enacted zoning regulations in accordance with statutory authority and as a part of such regulations has bounded and defined the various zoning or building districts with reference to a zoning map such zoning or building districts may from time to time, be changed, modified or terminated, or additional or different zoning or building districts may from time to time be created, changed, modified or terminated, by an appropriate amendatory action which describes the changed, modified, terminated or created zone or district or part thereof by legal description or metes and bounds, or by republishing a part only of the original zoning map, and without republishing the original zoning map as a part of the amendatory action and without setting forth and repealing the entire section or ordinance adopting the rezoning maps, or a part of the zoning map, as a part of the amendatory action, notwithstanding the provisions of section 16-404 or 17-614.

(2) When any city of the first or second class or any village has, prior to March 21, 1969, changed the boundaries of a zoning or building district

without compliance with section 16-404 or 17-614, any such amendments of the zoning ordinances shall stand as valid and subsisting amendments until repealed and the action of any such city or village in executing any such amendment is expressly ratified by the Legislature.

Source: Laws 1969, c. 108, § 1, p. 509; Laws 1975, LB 410, § 21.

19-916 Additions; subdivision or platting; procedure; rights and privileges of inhabitants; powers of legislative body; approval required; effect; filing and recording.

(1) The local legislative body shall have power by ordinance to provide the manner, plan, or method by which land within the corporate limits of any such municipality, or land within the area designated by a city of the first class pursuant to subsection (1) of section 16-902 or within the area designated by a city of the second class or village pursuant to subsection (1) of section 17-1002, may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across such land, and to compel the owners of any such land that are subdividing, platting, or laying out such land to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance with the ordinance as provided in sections 16-901 to 16-905 and sections 17-1001 to 17-1004. No addition shall have any validity, right, or privileges as an addition, and no plat of land or, in the absence of a plat, no instrument subdividing land within the corporate limits of any such municipality or of any land within the area designated by a city of the first class pursuant to subsection (1) of section 16-902 or within the area designated by a city of the second class or village pursuant to subsection (1) of section 17-1002, shall be recorded or have any force or effect, unless the plat or instrument is approved by the legislative body, or its designated agent, and the legislative body's or agent's approval is endorsed on such plat or instrument.

(2) The legislative body may designate by ordinance an employee of such city or village to approve further subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks.

(3) All additions laid out contiguous or adjacent to the corporate limits may be included within the corporate limits and become a part of such municipality for all purposes whatsoever if approved by the legislative body of the city or village under this subsection. The proprietor or proprietors of any land within the corporate limits of any city of the first or second class or village, or of any land contiguous or adjacent to the corporate limits, may lay out such land into lots, blocks, streets, avenues, alleys, and other grounds under the name of ..... Addition to the City or Village of ....., and shall cause an accurate map or plat thereof to be made out, designating explicitly the land so laid out and particularly describing the lots, blocks, streets, avenues, alleys, and other grounds belonging to such addition. The lots shall be designated by numbers, and streets, avenues, and other grounds, by names or numbers. Such plat shall be acknowledged before some officer authorized to take the acknowledgments of deeds, shall contain a dedication of the streets, alleys, and public grounds therein to the use and benefit of the public, and shall have appended a

survey made by some competent surveyor with a certificate attached, certifying that he or she has accurately surveyed such addition and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds are well and accurately staked off and marked. The addition may become part of the municipality at such time as the addition is approved by the legislative body if (a) after giving notice of the time and place of the hearing as provided in section 19-904, the planning commission and the legislative body both hold public hearings on the inclusion of the addition within the corporate limits and (b) the legislative body votes to approve the inclusion of the addition within the corporate boundaries of the municipality in a separate vote from the vote approving the addition. Such hearings shall be separate from the public hearings held regarding approval of the addition. If the legislative body includes the addition within the corporate limits, the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all the laws, ordinances, rules, and regulations of the municipality to which such land is an addition. When such map or plat is made out, acknowledged, and certified, and has been approved by the local legislative body, the map or plat shall be filed and recorded in the office of the register of deeds and county assessor of the county. If the legislative body includes the addition within the corporate limits, such map or plat shall be equivalent to a deed in fee simple absolute to the municipality from the proprietor of all streets, avenues, alleys, public squares, parks, and commons, and of such portion of the land as is therein set apart for public and municipal use, or is dedicated to charitable, religious, or educational purposes.

Source: Laws 1901, c. 18, § 6, p. 228; R.S.1913, § 4811; C.S.1922, § 3979; C.S.1929, § 16-108; R.S.1943, § 16-112; Laws 1967, c. 66, § 1, p. 215; Laws 1974, LB 757, § 3; R.R.S.1943, § 16-112; Laws 1975, LB 410, § 2; Laws 1983, LB 71, § 10; Laws 2001, LB 210, § 1; Laws 2009, LB495, § 9.

Annexation by city council resolution in compliance with a subdivision ordinance adopted by the city under section 19-916 constitutes a declaration of boundaries of the city by ordinance within the meaning of former section 79-801. The effective date of the city annexation ordinance is the date of the city council resolution of approval. Northwest High School Dist. No. 82 of Hall & Merrick Counties v. Hessel, 210 Neb. 219, 313 N.W.2d 656 (1981).

One of two methods of annexing territory to a city of the first class is provided by this section. State ex rel. City of Grand Island v. Tillman, 174 Neb. 23, 115 N.W.2d 796 (1962).

19-917 Additions; vacating; powers; procedure; costs.

Power is hereby given to such municipality through its governing body by proper ordinance therefor duly enacted to vacate any such existing plat and addition to the municipality or such part or parts thereof as such municipality may deem advantageous and best for its interests, and the power hereby granted shall be exercised by such municipality upon the petition of the owner or all the owners of lots or lands in such plat or addition. Such ordinance vacating such plat or addition shall specify whether, and, if any, what public highways, streets, alleys, and public grounds thereof are to be retained by such municipality; otherwise such ways, streets, and public grounds shall upon such vacation revert to the owner or owners of lots or lands abutting the same in proportion to the respective ownerships of such lots or grounds. In case of total or partial vacation of such plat or addition, the ordinance providing therefor shall be, at the cost of the owner or owners, certified to the office of the register of deeds and be there recorded by the owner or owners. Whereupon said officer shall note such total or partial vacation of such plat or addition by writing in

plain and legible letters upon such plat or portion thereof so vacated the word vacated, and also make on the same reference to the volume and page in which said ordinance of vacation is recorded; and the owner or owners of the lots and lands in a plat so vacated shall cause the same and the proportionate part of the abutting highway, streets, alleys and public grounds so vacated to be replatted and numbered by the city or county surveyor. When such replat so executed is acknowledged by such owner or owners and is recorded in the office of the register of deeds of such county such property so replatted may be conveyed and assessed by the numbers given in such replat.

Source: Laws 1901, c. 18, § 6, p. 228; R.S.1913, § 4812; C.S.1922, § 3980; C.S.1929, § 16-109; R.S.1943, § 16-113; Laws 1975, LB 410, § 3.

This section is applicable to quiet title of owner of adjoining lots when nominal street of platted addition vacated. Trahan v. Council Bluffs Steel Erection Co., 183 Neb. 170, 159 N.W.2d 207 (1968).

19-918 Additions; subdivision; plat of streets; duty of owner to obtain approval.

No owner of real estate within the corporate limits of such municipality shall be permitted to subdivide, plat, or lay out said real estate into blocks, lots, streets, or other portions of the same intended to be dedicated for public use, or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof of the governing body of such municipality or its agent designated pursuant to section 19-916. Any and all additions to be made to the municipality shall be made, so far as the same relate to the avenues, streets, and alleys therein, under and in accordance with the provisions of sections 19-916 to 19-918.

Source: Laws 1901, c. 18, § 51, p. 269; R.S.1913, § 4813; C.S.1922, § 3981; C.S.1929, § 16-110; R.S.1943, § 16-114; Laws 1967, c. 66, § 2, p. 217; R.R.S.1943, § 16-114; Laws 1975, LB 410, § 4; Laws 1983, LB 71, § 11.

The subdivision into lots and the filing of a plat, by the owner of lands adjacent to and outside the city limits, without the city's affirmative change of its boundaries, does not place such land within the city limits, even though city taxes are levied against it, and a court will enjoin such taxes in a collateral attack. Hemple v. City of Hastings, 79 Neb. 723, 113 N.W. 187 (1907).

19-919 Additions; subdivisions; plat; governing body; approve before recording; powers.

No plat of or instruments effecting the subdivision of real property described in section 19-918 shall be recorded or have any force and effect unless the same be approved by the governing body of such municipality or its agent designated pursuant to section 19-916. The governing body of such municipality shall have power, by ordinance, to provide the manner, plan, or method by which real property in any such area may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same; and to prohibit the sale or offering for sale of, and the construction of buildings and other improvements on, any lots or parts of real property not subdivided, platted, or laid out as required in sections 19-918 and 19-920.

Source: Laws 1967, c. 66, § 3, p. 217; R.R.S.1943, § 16-114.01; Laws 1975, LB 410, § 5; Laws 1983, LB 71, § 12.

19-920 Additions; subdivisions; conform to ordinances; streets and alleys; requirements.

The governing body shall have power to compel the owner of any real property described in section 19-918 in subdividing, platting, or laying out the same to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith.

Source: Laws 1967, c. 66, § 4, p. 217; R.R.S.1943, § 16-114.02; Laws 1975, LB 410, § 6.

19-921 Subdivision, defined; where applicable.

For the purposes of sections 16-901 to 16-905 and 19-916 to 19-920, in the area where the municipality has a comprehensive plan and has adopted subdivision regulations pursuant thereto, subdivision shall mean the division of lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be a subdivision when the smallest parcel created is more than ten acres in area.

Source: Laws 1973, LB 241, § 2; R.R.S.1943, § 16-114.03; Laws 1975, LB 410, § 7; Laws 1993, LB 208, § 5.

19-922 Legislative body of municipality; adopt building regulations; publish; reference to existing codes; ordinances open to public; ordinances to apply to entire municipal area.

The legislative body of any first- or second-class city or any village may adopt by ordinance, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building code, a plumbing code, an electrical code, a fire prevention code, or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing, or using of any building, structure, automobile trailer, house trailer, or cabin trailer. The local legislative body shall, before such ordinance takes effect, cause such ordinance setting forth the code to be published one time in book or pamphlet form or in a legal newspaper published in and of general circulation in the municipality or, if none is published in the municipality, in a legal newspaper of general circulation in the municipality. The legislative body may by ordinance, which shall have the force and effect of law, amend such code so adopted. For this purpose, the local legislative body may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form, by reference to such code, or portions thereof, alone without setting forth in such ordinance the conditions, provisions, limitations, or terms of such code. When such code or any such standard code, or portion thereof, shall be incorporated by reference into any ordinance pursuant to this section, it shall have the same force and effect as though it has been spread at large in such ordinance without further or additional publication. At least one copy of such code or such standard code, or portion thereof, shall be filed for use and examination by the public in the office of the clerk of such municipality prior to its adoption. The adoption of any such standard code by reference shall be construed to incorporate such amendments as may be made from time to time if one copy of such standard code so filed shall be at all times kept current in the office of the clerk of the municipality. Any code adopted and approved by the local legislative body as provided in this section and the building permit requirements or occupancy permit requirements imposed by any such code or by section 19-913 shall apply to all of the city or village and

within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Source: Laws 1975, LB 410, § 8; Laws 1986, LB 960, § 12; Laws 1987, LB 483, § 1.

19-923 Municipality; notify board of education; when; notice to military installation.

(1) In order to provide for orderly school planning and development, a municipality considering the adoption or amendment of a zoning ordinance or approval of the platting or replatting of any development of real estate shall notify the board of education of each school district in which the real estate, or some part thereof, to be affected by such a proposal lies, of the next regular meeting of the planning commission at which such proposal is to be considered and shall submit a copy of the proposal to the board of education at least ten days prior to such meeting.

(2) When a municipality is considering the adoption or amendment of a zoning ordinance or the approval of the platting or replatting of any development of real estate, the municipality shall notify any military installation which is located within the corporate boundary limits or the extraterritorial zoning jurisdiction of the municipality if the municipality has received a written request for such notification from the military installation. The municipality shall deliver the notification to the military installation at least ten days prior to the meeting of the planning commission at which the proposal is to be considered.

(3) The provisions of this section shall not apply to zoning, rezoning, or approval of plats by any city of the metropolitan or primary class, which has adopted a comprehensive subdivision ordinance pursuant to sections 14-115 and 14-116, or Chapter 15, articles 9 and 11. Plats of subdivisions approved by the agent of a municipality designated pursuant to section 19-916 shall not be subject to the notice requirements in this section.

Source: Laws 1963, c. 463, § 1, p. 1491; Laws 1969, c. 722, § 1, p. 2752; R.S.1943, (1981), § 79-4,151; Laws 1983, LB 71, § 14; Laws 2010, LB279, § 3.

19-924 Municipal planning; terms, defined.

For purposes of sections 19-924 to 19-933:

(1) Municipality or municipal shall mean or relate to cities of the first and second classes and villages;

(2) Mayor shall mean the chief executive of the municipality, whether the official designation of the office is mayor, chairperson, city manager, or otherwise; and

(3) Council shall mean the chief legislative body of the municipality.

Source: Laws 1937, c. 39, § 1, p. 176; C.S.Supp.,1941, § 18-2101; R.S. 1943, § 18-1301; Laws 1967, c. 85, § 1, p. 269; R.S.1943, (1983), § 18-1301; Laws 1993, LB 207, § 1.

Zoning for counties and municipalities are governed by different statutes, and the provisions to eliminate overlapping refer to municipalities only. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

City of first class has authority to carry out municipal planning. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

19-925 Municipal plan; planning commission; authorized.

Any municipality is hereby authorized and empowered to make, adopt, amend, extend, and carry out a municipal plan as provided in sections 19-924 to 19-933 and to create by ordinance a planning commission with the powers and duties set forth in such sections. The planning commission of a city shall be designated city planning commission or city plan commission, and the planning commission of a village shall be designated the village planning commission or village plan commission.

Source: Laws 1937, c. 39, § 2, p. 176; C.S.Supp.,1941, § 18-2102; R.S. 1943, (1983), § 18-1302; Laws 1993, LB 207, § 2.

19-926 Planning commission; members; term; removal; vacancies; alternate members.

(1) The planning commission shall consist of nine regular members who shall represent, insofar as is possible, the different professions or occupations in the municipality and shall be appointed by the mayor, by and with the approval of a majority vote of the members elected to the council or the village board. Two of the regular members may be residents of the area over which the municipality is authorized to exercise extraterritorial zoning and subdivision regulation. When there is a sufficient number of residents in the area over which the municipality exercises extraterritorial zoning and subdivision regulation, one regular member of the commission shall be a resident from such area. If it is determined by the city council or village board that a sufficient number of residents reside in the area subject to extraterritorial zoning or subdivision regulation, and no such resident is a regular member of the commission, the first available vacancy on the commission shall be filled by the appointment of such an individual. For purposes of this section, a sufficient number of residents shall mean: (a) For a village, two hundred residents; (b) for a city of the second class, five hundred residents; and (c) for a city of the first class, one thousand residents. A number of commissioners equal to a majority of the number of regular members appointed to the commission shall constitute a quorum for the transaction of any business. All regular members of the commission shall serve without compensation and shall hold no other municipal office except when appointed to serve on the board of adjustment as provided in section 19-908. The term of each regular member shall be three years, except that three regular members of the first commission to be so appointed shall serve for terms of one year, three for terms of two years, and three for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the council or village board, be removed by the mayor with the consent of a majority vote of the members elected to the council or village board for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the mayor.

(2) Notwithstanding the provisions of subsection (1) of this section, the planning commission for any city of the second class or village may have either five, seven, or nine regular members as the city council or village board of trustees establishes by ordinance. If a city or village planning commission has either five or seven regular members, approximately one-third of the regular

members of the first commission shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years.

(3) A city of the first or second class or a village may, by ordinance, provide for the appointment of one alternate member to the planning commission who shall be chosen by the mayor with the approval of a majority vote of the elected members of the council or village board. The alternate member shall serve without compensation and shall hold no other municipal office. The term of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the mayor with the approval of a majority vote of the elected members of the council or village board. The alternate member may attend any meeting and may serve as a voting and participating member of the commission at any time when less than the full number of regular commission members is present and capable of voting.

Source: Laws 1937, c. 39, § 3, p. 176; C.S.Supp.,1941, § 18-2103; R.S. 1943, § 18-1303; Laws 1975, LB 410, § 9; Laws 1978, LB 186, § 3; R.S.1943, (1983), § 18-1303; Laws 1988, LB 934, § 6; Laws 1995, LB 193, § 1.

19-927 Planning commission; organization; meetings; rules and regulations; records.

The commission shall elect its chairperson from its members and create and fill such other of its offices as it may determine. The term of the chairperson shall be one year, and he or she shall be eligible for reelection. The commission shall hold at least one regular meeting in each calendar quarter, except the municipal governing body may require the commission to meet more frequently and the chairperson of the commission may call for a meeting when necessary to deal with business pending before the commission. The commission shall adopt rules and regulations for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record.

Source: Laws 1937, c. 39, § 4, p. 177; C.S.Supp.,1941, § 18-2104; R.S. 1943, (1983), § 18-1304; Laws 1997, LB 426, § 1.

19-928 Planning commission; funds, equipment and accommodations; limit upon expenditures.

The council may provide the funds, equipment and accommodations necessary for the work of the commission, but the expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for that purpose by the council; and no expenditures nor agreements for expenditures shall be valid in excess of such amounts.

Source: Laws 1937, c. 39, § 5, p. 177; C.S.Supp.,1941, § 18-2105; R.S. 1943, § 19-928.

19-929 Planning commission; municipal governing body; powers and duties; appeal.

(1) Except as provided in sections 19-930 to 19-933, the planning commission shall (a) make and adopt plans for the physical development of the municipality, including any areas outside its boundaries which in the commission's judgment bear relation to the planning of such municipality and including a comprehensive development plan as defined by section 19-903, (b) prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning ordinance in cooperation with other interested municipal departments, and (c) consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the comprehensive development plan and its implemental programs. The commission may delegate authority to any such group to conduct studies and make surveys for the commission, make preliminary reports on its findings, and hold public hearings before submitting its final reports. The municipal governing body shall not take final action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, the annexation of territory, or zoning until it has received the recommendation of the planning commission if such commission in fact has been created and is existent. The governing body shall by ordinance set a reasonable time within which the recommendation from the planning commission is to be received. A recommendation from the planning commission shall not be required for subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks, if the governing body has designated, by ordinance, an agent pursuant to section 19-916.

(2) The commission may, with the consent of the governing body, in its own name (a) make and enter into contracts with public or private bodies, (b) receive contributions, bequests, gifts, or grant funds from public or private sources, (c) expend the funds appropriated to it by the municipality, (d) employ agents and employees, and (e) acquire, hold, and dispose of property.

The commission may on its own authority make arrangements consistent with its program, conduct or sponsor special studies or planning work for any public body or appropriate agency, receive grants, remuneration, or reimbursement for such studies or work, and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

(3) The commission may grant conditional uses or special exceptions to property owners for the use of their property if the municipal governing body has, through a zoning ordinance or special ordinance, generally authorized the commission to exercise such powers and has approved the standards and procedures adopted by the commission for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the zoning ordinance as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The power to grant conditional uses or special exceptions shall be the exclusive authority of the commission, except that the municipal governing body may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the

zoning ordinance. The municipal governing body may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and will promote the public interest. An appeal of a decision by the commission or municipal governing body regarding a conditional use or special exception shall be made to the district court.

Source: Laws 1937, c. 39, § 6, p. 177; C.S.Supp.,1941, § 18-2106; R.S. 1943, § 18-1306; Laws 1967, c. 85, § 2, p. 269; Laws 1978, LB 186, § 4; Laws 1983, LB 71, § 6; R.S.1943, (1983), § 18-1306; Laws 1993, LB 207, § 3; Laws 1993, LB 209, § 1; Laws 1994, LB 630, § 5; Laws 2004, LB 973, § 2.

A city of the first class is not required to obtain a recommendation from the planning commission before proceeding with annexation. City of Parkview v. City of Grand Island, 188 Neb. 267, 196 N.W.2d 197 (1972).

19-930 Interjurisdictional planning commission; assume powers and duties of planning commission; when.

(1) For any matter within the jurisdiction of a municipality's planning commission relating to that portion of the municipality's zoning jurisdiction as defined in section 16-901 or 17-1001 outside the corporate limits of the municipality which is within a county other than the county in which the municipality is located, the powers, duties, responsibilities, and functions of the planning commission of the municipality with regard to such matter shall be assumed by the municipality's interjurisdictional planning commission established under section 19-931 when the formation of such a commission is requested by either the municipality or the county within which the municipality is not located as provided in subsection (2) of this section.

(2) Any municipality exercising zoning jurisdiction as defined in section 16-901 or 17-1001 outside its corporate limits but within a county other than the county within which the municipality is located or the county within which such municipality is exercising such zoning jurisdiction may, by formal resolution of a majority of the voting members of its governing body, request the formation of an interjurisdictional planning commission to exercise the jurisdiction granted by sections 19-930 to 19-933. Such resolution shall be transmitted to the appropriate municipality or county and its receipt formally acknowledged.

Source: Laws 1993, LB 207, § 4.

19-931 Interjurisdictional planning commission; members; term; vacancies.

The interjurisdictional planning commission of a municipality shall consist of six members. Three members shall be chosen by the mayor of the municipality with the approval of the council from the membership of the municipality's planning commission. Three members shall be chosen by the county board of the county within which the municipality exercises zoning jurisdiction under the circumstances specified in section 19-930. The three members chosen by the county board shall be members of the county planning commission as described in section 23-114.01. Members of the interjurisdictional planning commission shall serve without compensation and without reimbursement for expenses incurred pursuant to carrying out sections 19-930 to 19-933 for terms of one year. Members shall hold office until their successors are appointed and

qualified. Vacancies shall be filled by appointment by the body which appointed the member creating the vacancy.

Source: Laws 1993, LB 207, § 5.

19-932 Interjurisdictional planning commission; creation; elimination.

A municipality exercising zoning jurisdiction under the circumstances set out in section 19-930 shall create an interjurisdictional planning commission by ordinance within sixty days after the formal passage of a resolution pursuant to subsection (2) of section 19-930. All matters filed with the municipality within ninety days after such date which are properly within the jurisdiction of the interjurisdictional planning commission shall, after the effective date of the ordinance, be referred to such commission until such time as both the municipality and the county agree by majority vote of each governing body to eliminate the interjurisdictional planning commission and transfer its jurisdiction to the planning commission of the municipality.

Source: Laws 1993, LB 207, § 6.

19-933 Sections; applicability.

The provisions of sections 19-930 to 19-932 shall not apply in a county within which the interjurisdictional planning commission would exercise jurisdiction if such county does not exercise the authority granted by section 23-114.

Source: Laws 1993, LB 207, § 7.

ARTICLE 10

HOUSING AUTHORITIES

Section

19-1001. Repealed. Laws 1969, c. 552, § 40.
19-1002. Repealed. Laws 1969, c. 552, § 40.
19-1003. Repealed. Laws 1969, c. 552, § 40.
19-1003.01. Repealed. Laws 1969, c. 552, § 40.
19-1004. Repealed. Laws 1969, c. 552, § 40.
19-1005. Repealed. Laws 1969, c. 552, § 40.
19-1006. Repealed. Laws 1969, c. 552, § 40.
19-1007. Repealed. Laws 1969, c. 552, § 40.
19-1008. Repealed. Laws 1969, c. 552, § 40.
19-1009. Repealed. Laws 1969, c. 552, § 40.
19-1009.01. Repealed. Laws 1969, c. 552, § 40.
19-1010. Repealed. Laws 1969, c. 552, § 40.
19-1011. Repealed. Laws 1969, c. 552, § 40.
19-1012. Repealed. Laws 1969, c. 552, § 40.
19-1013. Repealed. Laws 1969, c. 552, § 40.
19-1014. Repealed. Laws 1969, c. 552, § 40.
19-1015. Repealed. Laws 1969, c. 552, § 40.
19-1016. Repealed. Laws 1969, c. 552, § 40.
19-1017. Repealed. Laws 1969, c. 552, § 40.
19-1018. Repealed. Laws 1969, c. 552, § 40.
19-1019. Repealed. Laws 1969, c. 552, § 40.
19-1020. Repealed. Laws 1969, c. 552, § 40.
19-1021. Repealed. Laws 1969, c. 552, § 40.
19-1022. Repealed. Laws 1969, c. 552, § 40.
19-1023. Repealed. Laws 1969, c. 552, § 40.
19-1024. Repealed. Laws 1969, c. 552, § 40.
19-1025. Repealed. Laws 1969, c. 552, § 40.

19-1001 Repealed. Laws 1969, c. 552, § 40.

19-1002 Repealed. Laws 1969, c. 552, § 40.

19-1003 Repealed. Laws 1969, c. 552, § 40.

19-1003.01 Repealed. Laws 1969, c. 552, § 40.

19-1004 Repealed. Laws 1969, c. 552, § 40.

19-1005 Repealed. Laws 1969, c. 552, § 40.

19-1006 Repealed. Laws 1969, c. 552, § 40.

19-1007 Repealed. Laws 1969, c. 552, § 40.

19-1008 Repealed. Laws 1969, c. 552, § 40.

19-1009 Repealed. Laws 1969, c. 552, § 40.

19-1009.01 Repealed. Laws 1969, c. 552, § 40.

19-1010 Repealed. Laws 1969, c. 552, § 40.

19-1011 Repealed. Laws 1969, c. 552, § 40.

19-1012 Repealed. Laws 1969, c. 552, § 40.

19-1013 Repealed. Laws 1969, c. 552, § 40.

19-1014 Repealed. Laws 1969, c. 552, § 40.

19-1015 Repealed. Laws 1969, c. 552, § 40.

19-1016 Repealed. Laws 1969, c. 552, § 40.

19-1017 Repealed. Laws 1969, c. 552, § 40.

19-1018 Repealed. Laws 1969, c. 552, § 40.

19-1019 Repealed. Laws 1969, c. 552, § 40.

19-1020 Repealed. Laws 1969, c. 552, § 40.

19-1021 Repealed. Laws 1969, c. 552, § 40.

19-1022 Repealed. Laws 1969, c. 552, § 40.

19-1023 Repealed. Laws 1969, c. 552, § 40.

19-1024 Repealed. Laws 1969, c. 552, § 40.

19-1025 Repealed. Laws 1969, c. 552, § 40.

ARTICLE 11

TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATION

Section

Section
19-1104. Violations; penalty.

19-1101 City or village treasurer; report for fiscal year; publication.

It shall be the duty of the treasurer of each village or city having a population of not more than one hundred thousand to prepare and publish annually within sixty days following the close of its municipal fiscal year a statement of the receipts and expenditures by funds of the village or city for the preceding fiscal year. Not more than the legal rate provided for in section 33-141 shall be charged and paid for such publication.

Source: Laws 1919, c. 183, § 2, p. 410; C.S.1922, § 4377; C.S.1929, § 17-575; R.S.1943, § 19-1101; Laws 1959, c. 66, § 1, p. 292; Laws 1992, LB 415, § 2.

Cross References

City of the first class, receipts and expenditures, publication requirements, see section 16-722.

19-1102 City or village clerk; proceedings of council; publication; contents.

It shall be the duty of each village or city clerk in every village or city having a population of not more than one hundred thousand to prepare and publish the official proceedings of the village or city board, council, or commission within thirty days after any meeting of the board, council, or commission. The publication shall be in a newspaper of general circulation in the village or city, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in section 23-122.

Source: Laws 1919, c. 183, § 1, p. 410; C.S.1922, § 4376; C.S.1929, § 17-574; R.S.1943, § 19-1102; Laws 1975, LB 193, § 1; Laws 1992, LB 415, § 3.

19-1103 Reports and proceedings; how published; cost.

Publication under sections 19-1101 and 19-1102 shall be made in one legal newspaper of general circulation in such village or city. If no legal newspaper is published in the village or city, then such publication shall be made in one legal newspaper published or of general circulation within the county in which such village or city is located. The cost of publication shall be paid out of the general funds of such village or city.

Source: Laws 1919, c. 183, § 3, p. 410; C.S.1922, § 4378; C.S.1929, § 17-576; R.S.1943, § 19-1103; Laws 1986, LB 960, § 13.

19-1104 Violations; penalty.

Any village or city clerk, or treasurer, failing or neglecting to comply with the provisions of sections 19-1101 to 19-1103 shall be deemed guilty of a misde-

meanor and shall, upon conviction, be fined, not to exceed twenty-five dollars, and be liable, in addition to removal from office for such failure or neglect.

Source: Laws 1919, c. 183, § 4, p. 410; C.S.1922, § 4379; C.S.1929, § 17-577; R.S.1943, § 19-1104.

ARTICLE 12

PREVENTION OF NUISANCES

Section
19-1201. Repealed. Laws 1969, c. 115, § 2.

19-1201 Repealed. Laws 1969, c. 115, § 2.

ARTICLE 13

FUNDS

(Applicable to cities of the first or second class and villages.)

Section
19-1301. Sinking funds; gifts; authority to receive; real estate; management.
19-1302. Sinking funds; purposes; tax to establish; amount of levy; when authorized.
19-1303. Sinking fund; resolution to establish; contents; election; laws governing.
19-1304. Sinking funds; investments authorized; limitation upon use.
19-1305. Public utilities; extension and improvements; indebtedness; pledge of revenue; combined revenue bonds.
19-1306. Public utilities; plans and specifications; notice; contents; revenue bonds, sale; procedure; subsequent issuance of revenue bonds; procedure.
19-1307. Public utilities; combined revenue bonds; objections; submit to electors; effect.
19-1308. Sections, how construed.
19-1309. Public funds; all-purpose levy; maximum limit.
19-1310. Public funds; all-purpose levy; allocation.
19-1311. Public funds; all-purpose levy; length of time effective; abandonment.
19-1312. Public funds; all-purpose levy; certification.
19-1313. Repealed. Laws 1993, LB 141, § 1.

19-1301 Sinking funds; gifts; authority to receive; real estate; management.

All cities of the first and second class, and all villages, are hereby empowered to receive money or property by donation, bequest, gift, devise or otherwise for the benefit of any one or more of the public purposes for which sinking funds are established by the provisions of sections 19-1301 to 19-1304, as stipulated by the donor. The title to the money or property so donated shall vest in the local governing bodies of said cities or villages, or in their successors in office, who shall become the owners thereof in trust to the uses of said sinking fund or funds; *Provided,* if the donation be real estate, said local governing bodies may manage the same as in the case of real estate donated to their respective municipalities for municipal library purposes under the provisions of sections 51-215 and 51-216.

Source: Laws 1939, c. 12, § 1, p. 80; C.S.Supp.,1941, § 19-1301; R.S. 1943, § 19-1301.

19-1302 Sinking funds; purposes; tax to establish; amount of levy; when authorized.

The local governing body of any city of the first or second class or any village, subject to all the limitations set forth in sections 19-1301 to 19-1304, shall have

the power to levy a tax of not to exceed ten and five-tenths cents on each one hundred dollars in any one year upon the taxable value of all the taxable property within such municipality for a term of not to exceed ten years, in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of such municipality, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of any one or more of the following public improvements, including acquisition of any land incident to the making thereof: Municipal library; municipal auditorium or community house for social or recreational purposes; city or village hall; municipal public library, auditorium, or community house in a single building; municipal swimming pool and appurtenances thereto; municipal jail; municipal building to house equipment or personnel of a fire department, together with firefighting equipment or apparatus; municipal park; municipal cemetery; municipal medical clinic building, together with furnishings and equipment; or municipal hospital. No such city or village shall be authorized to levy the tax or to establish the sinking fund as provided in this section if, having bonded indebtedness, such city or village has been in default in the payment of interest thereon or principal thereof for a period of ten years prior to the date of the passage of the resolution providing for the submission of the proposition for establishment of the sinking fund as required in section 19-1303.

Source: Laws 1939, c. 12, § 2, p. 80; C.S.Supp.,1941, § 19-1302; R.S. 1943, § 19-1302; Laws 1953, c. 287, § 35, p. 951; Laws 1961, c. 59, § 1, p. 217; Laws 1967, c. 95, § 1, p. 292; Laws 1969, c. 145, § 26, p. 669; Laws 1979, LB 187, § 80; Laws 1992, LB 719A, § 80.

This section does not apply to creating a sinking fund for payment of interest and principal of bonds. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

19-1303 Sinking fund; resolution to establish; contents; election; laws governing.

Before any sinking fund or funds shall be established or before any annual tax shall be levied for planned municipal improvement mentioned in section 19-1302, by any such city or village, its local governing body shall declare its purpose by resolution to submit to the qualified electors of the city or village at the next general municipal election the proposition to provide such city or village with the specific municipal improvement planned for consummation under sections 19-1301 to 19-1304. Such resolution of submission shall, among other things, set forth a clear description of the improvement planned, the estimated cost according to the prevailing costs, the amount of annual levy over a definite period of years, not exceeding ten years, required to provide such cost, and the specific name or designation for the sinking fund sought to be established to carry out the planned improvement, together with a statement of the proposition for placement upon the ballot at such election. Notice of the submission of the proposition, together with a copy of the official ballot containing the same, shall be published in its entirety three successive weeks before the day of the election in a legal newspaper published in the municipality or, if no legal newspaper is published therein, in some legal newspaper published in the county in which such city or village is located and of general circulation. If no legal newspaper is published in the county, such notice shall

be published in some legal newspaper of general circulation in the county in which the municipality is located. No such sinking fund shall be established unless the same shall have been authorized by a majority or more of the legal votes of such city or village cast for or against the proposition. If less than a majority of the legal votes favor the establishment of the sinking fund, the planned improvement shall not be made, no annual tax shall be levied therefor, and no sinking fund or sinking funds shall be established in connection therewith, but such resolution of submission shall immediately be repealed. If the proposition shall carry at such election in the manner prescribed in this section, the local governing body and its successors in office shall proceed to do all things authorized under such resolution of submission but never inconsistent with sections 19-1301 to 19-1304. Provisions of the statutes of this state relating to election of officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, conduct of elections, manner of voting, counting of votes, records and certificates of elections, and recounts of votes, so far as applicable, shall apply to voting on the proposition under this section.

Source: Laws 1939, c. 12, § 3, p. 81; C.S.Supp.,1941, § 19-1303; R.S. 1943, § 19-1303; Laws 1961, c. 59, § 2, p. 217; Laws 1986, LB 960, § 14.

This section does not apply to creating a sinking fund for payment of interest and principal of bonds. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918 (1960).

19-1304 Sinking funds; investments authorized; limitation upon use.

All funds received by municipal treasurers, by donation or by tax levy, as hereinbefore provided, shall, as they accumulate, be immediately invested by said treasurer, with the written approval of the local governing body, in the manner provided in section 77-2341. Whenever investments of said sinking fund or funds are made, as aforesaid, the nature and character of the same shall be reported to the local governing body, and said investment report shall be made a matter of record by the municipal clerk in the proceedings of such local governing body. The sinking fund, or sinking funds, accumulated under the provisions of sections 19-1301 to 19-1304, shall constitute a special fund, or funds, for the purpose or purposes for which the same was authorized and shall not be used for any other purpose unless authorized by sixty percent of the qualified electors of said municipality voting at a general election favoring such change in the use of said sinking fund or sinking funds; *Provided*, that the question of the change in the use of said sinking fund or sinking funds, when it shall fail to carry, shall not be resubmitted in substance for a period of one year from and after the date of said election.

Source: Laws 1939, c. 12, § 4, p. 82; C.S.Supp.,1941, § 19-1304; R.S. 1943, § 19-1304.

19-1305 Public utilities; extension and improvements; indebtedness; pledge of revenue; combined revenue bonds.

Any city of the first or second class or any village in the State of Nebraska, which owns and operates public utilities consisting of a waterworks plant, water system, sanitary sewer system, gas plant, gas system, electric light and power plant or electric distribution system, may pay for extensions and improvements to any of said public utilities by issuing and selling its combined

revenue bonds and securing the payment thereof by pledging and hypothecating the revenue and earnings of any two or more of said public utilities and may enter into such contracts in connection therewith as may be necessary or proper. Such combined revenue bonds shall not be general obligations of the city or village issuing the same and no taxes shall be levied for their payment but said bonds shall be a lien only upon the revenue and earnings of the public utilities owned and operated by the municipality and which are pledged for their payment.

Source: Laws 1945, c. 38, § 1, p. 191; Laws 1963, c. 92, § 1, p. 315.

19-1306 Public utilities; plans and specifications; notice; contents; revenue bonds, sale; procedure; subsequent issuance of revenue bonds; procedure.

The governing body of such city or village shall first cause plans and specifications for said proposed extensions and improvements and an estimate of the cost thereof to be made by the city or village engineer or by a special engineer employed for that purpose. Such plans, specifications and estimate of cost, after being approved and adopted by the governing body, shall be filed with the city or village clerk and be open to public inspection. The governing body shall then, by resolution entered in the minutes of their proceedings, direct that public notice be given in regard thereto. This notice shall state: (1) The general nature of the improvements or extensions proposed to be made; (2) that the plans, specifications and estimate thereof are on file in the office of the city or village clerk and are open to public inspection; (3) the estimated cost thereof; (4) that it has proposed to pay for the same by combined revenue bonds; (5) the principal amount of said bonds which it proposes to issue; (6) the maximum rate of interest which such bonds will bear; (7) that the payment of said bonds will be a lien upon and will be secured by a pledge of the revenue and earnings of certain public utilities; (8) the names of the utilities whose revenue and earnings are to be so pledged; (9) that any qualified elector of the city or village may file written objections to the issuance of said bonds with the city or village clerk within twenty days after the first publication of said notice; (10) that if such objections are filed within said time by qualified electors of the city or village, equal in number to forty percent of the electors of the city or village who voted at the last preceding general municipal election, the bonds will not be issued unless the issuance of such bonds is otherwise authorized in accordance with law; and (11) that if such objections are not so filed by such percentage of such electors, the governing body of such city or village proposes to pass an ordinance authorizing the sale of said bonds and making such contracts with reference thereto as may be necessary or proper. Such notice shall be signed by the city or village clerk and be published three consecutive weeks in a legal newspaper published or of general circulation in such city or village. Once combined revenue bonds have been issued pursuant to this section or section 18-1101, the procedure outlined in this section shall not be required to issue additional combined revenue bonds unless an additional public utility not previously included is to be combined with the bonds contemplated to be issued.

Source: Laws 1945, c. 38, § 2, p. 192; Laws 1975, LB 446, § 2.

19-1307 Public utilities; combined revenue bonds; objections; submit to electors; effect.

If the electors of such city or village, equal in number to forty percent of the electors of said city or village voting at the last preceding general municipal election, file written objections to proposed issuance of combined revenue bonds with the city or village clerk within twenty days after the first publication of said notice, the governing body shall submit such proposition of issuing such bonds to the electors of such city or village at a special election called for that purpose or at a general city or village election, notice of which shall be given by publication in a legal newspaper published or of general circulation in such city or village three consecutive weeks. If a majority of the qualified electors of such city or village, voting upon the proposition, vote in favor of issuing such bonds, the governing body may issue and sell such combined revenue bonds and pledge, for the payment of same, the revenue and earnings of the public utilities owned and operated by the city or village, as proposed in such notice, and enter into such contracts in connection therewith as may be necessary or proper. Such bonds shall draw interest from and after the date of the issuance thereof. In the event the electors fail to approve the proposition by such majority vote, such proposition shall not be again submitted to the electors for their consideration until one year has elapsed from the date of said election.

Source: Laws 1945, c. 38, § 3, p. 193; Laws 1969, c. 51, § 72, p. 319.

19-1308 Sections, how construed.

Sections 19-1305 to 19-1308 are supplementary to existing statutes and confer upon and give to cities of the first and second class and villages powers not heretofore granted and sections 19-1305 to 19-1308 shall not be construed as repealing or amending any existing statute.

Source: Laws 1945, c. 38, § 4, p. 194.

19-1309 Public funds; all-purpose levy; maximum limit.

Notwithstanding provisions in the statutes of Nebraska to the contrary, for any fiscal year the governing body of any city of the first class, city of the second class, or village may decide to certify to the county clerk for collection one all-purpose levy required to be raised by taxation for all municipal purposes instead of certifying a schedule of levies for specific purposes added together. Subject to the limits in section 77-3442, the all-purpose levy shall not exceed an annual levy of eighty-seven and five-tenths cents on each one hundred dollars for cities of the first class and one dollar and five cents on each one hundred dollars for cities of the second class and villages upon the taxable valuation of all the taxable property in such city or village. Otherwise authorized extraordinary levies to service and pay bonded indebtedness of such municipalities may be made by such municipalities in addition to such all-purpose levy.

Source: Laws 1957, c. 47, § 1, p. 227; Laws 1959, c. 67, § 1, p. 293; Laws 1965, c. 83, § 1, p. 322; Laws 1967, c. 96, § 1, p. 293; Laws 1971, LB 845, § 1; Laws 1972, LB 1143, § 1; Laws 1979, LB 187, § 81; Laws 1992, LB 719A, § 81; Laws 1996, LB 1114, § 35.

19-1310 Public funds; all-purpose levy; allocation.

If the method provided in section 19-1309, is followed in municipal financing the municipalities shall allocate the amount so raised to the several departments of the municipality in its annual budget and appropriation ordinance, or

in other legal manner, as the governing body of such municipality shall deem wisest and best.

Source: Laws 1957, c. 47, § 2, p. 227; Laws 1967, c. 96, § 2, p. 294.

19-1311 Public funds; all-purpose levy; length of time effective; abandonment.

Should any of such municipalities elect to follow the method provided in section 19-1309, it shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.

Source: Laws 1957, c. 47, § 3, p. 227; Laws 1967, c. 96, § 3, p. 294.

19-1312 Public funds; all-purpose levy; certification.

If it is necessary to certify the amount to county officers for collection, the same shall be certified as a single amount for general fund purposes.

Source: Laws 1957, c. 47, § 4, p. 227; Laws 1967, c. 96, § 4, p. 294.

19-1313 Repealed. Laws 1993, LB 141, § 1.

ARTICLE 14

LIGHT, HEAT, AND ICE

(Applicable to all except cities of the metropolitan class.)

Section
19-1401. Municipal heat, light, and ice plants; construction; operation.
19-1402. Municipal heat, light, and ice plants; cost; how defrayed.
19-1403. Municipal heat, light, and ice plants; bonds; interest; amount; approval of electors; tax.
19-1404. Municipal heat, light, and ice plants; management; rates; service.
19-1405. Repealed. Laws 1976, LB 688, § 2.

19-1401 Municipal heat, light, and ice plants; construction; operation.

Primary cities, first-class cities, second-class cities, and villages shall have the power to purchase, construct, maintain and improve heating and lighting systems and ice plants for the use of their respective municipalities and the inhabitants thereof.

Source: Laws 1919, c. 181, § 1, p. 404; Laws 1921, c. 128, § 1, p. 538; C.S.1922, § 4396; C.S.1929, § 18-101; R.S.1943, § 19-1401.

City could not buy completely new power plant without an authorizing election. Nacke v. City of Hebron, 155 Neb. 739, 53 N.W.2d 564 (1952).

An action against village under declaratory judgment act alleging violation of above statute by the village board is not properly brought where members of such board are not made parties. Southern Nebraska Power Co. v. Village of Deshler, 130 Neb. 133, 264 N.W. 462 (1936).

Cities of the second class have power to purchase, construct, maintain, and improve lighting systems, but have neither express nor implied power to purchase and pay for them by pledge of future net earnings. Interstate Power Co. v. City of Ainsworth, 125 Neb. 419, 250 N.W. 649 (1933).

A city or village has power to construct and operate an electric light system for the purpose of furnishing lights and pumping water for the use of the city and its inhabitants. Bell v. City of David City, 94 Neb. 157, 142 N.W. 523 (1913).

The power of a city is not limited in constructing a plant to one costing not more than the amount of bonds that may be so issued. Village of Oshkosh v. Fairbanks, Morse & Co., 8 F.2d 329 (8th Cir. 1925).

19-1402 Municipal heat, light, and ice plants; cost; how defrayed.

The cost of such utilities may be defrayed by the levy of a tax of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year for a heating or

lighting plant and of not to exceed two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year for an ice plant, or when such tax is insufficient for the purpose, the cost of such utilities may be defrayed by the issuance of bonds of the municipality.

Source: Laws 1919, c. 181, § 2, p. 405; C.S.1922, § 4397; C.S.1929, § 18-102; R.S.1943, § 19-1402; Laws 1953, c. 287, § 36, p. 952; Laws 1979, LB 187, § 82; Laws 1992, LB 719A, § 82.

Two methods are provided of raising funds for a heating or lighting plant, one by a direct levy of a tax and the other by a bond issue, but this section does not provide specifically any method for raising funds to maintain and improve them. Interstate Power Co. v. City of Ainsworth, 125 Neb. 419, 250 N.W. 649 (1933).

Where a city of the second class has on hand sufficient available money it may use the same to pay the purchase price of a municipal lighting utility. The word ''may'' in the statute authorizing such city to defray the cost of a municipal lighting plant by means of a tax levy or a bond issue does not necessarily mean ''shall'' or exclude other methods. Carr v. Fenstermacher, 119 Neb. 172, 228 N.W. 114 (1929).

A city was required to levy a tax for the payment of a judgment for amount of cost of constructing two utility plants in excess of bonds the city was authorized to issue. Village of Oshkosh v. State of Nebraska ex rel. Fairbanks, Morse & Co., 20 F.2d 621 (8th Cir. 1927).

The power of a city is not limited to construct a plant to one costing not more than the amount of bonds that may be so issued. Village of Oshkosh v. Fairbanks, Morse & Co., 8 F.2d 329 (8th Cir. 1925).

19-1403 Municipal heat, light, and ice plants; bonds; interest; amount; approval of electors; tax.

The question of issuing bonds for any of the purposes mentioned in section 19-1401 shall be submitted to the electors at an election held for that purpose after not less than thirty days' notice thereof has been given (1) by publication in some newspaper published and of general circulation in such municipality or (2) if no newspaper is published therein, by posting in five or more public places therein. Such bonds may be issued only when a majority of the electors voting on the question favor their issuance. They shall bear interest, payable annually or semiannually, and shall be payable at any time the municipality may determine at the time of their issuance but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction or the purchase of a heating or lighting plant shall not exceed four percent of the taxable value of the assessed property and, for the construction or purchase of an ice plant, shall not exceed one percent of the taxable value of the assessed property within such municipality, as shown by the last annual assessment. The council or board shall levy annually a sufficient tax to maintain, operate, and extend any system or plant and to provide for the payment of the interest on and principal of any bonds that may have been or shall be issued as provided in this section.

Source: Laws 1919, c. 181, § 3, p. 405; Laws 1921, c. 128, § 2, p. 538; C.S.1922, § 4398; C.S.1929, § 18-103; R.S.1943, § 19-1403; Laws 1955, c. 59, § 1, p. 188; Laws 1969, c. 51, § 73, p. 320; Laws 1971, LB 534, § 24; Laws 1992, LB 719A, § 83.

This section referred to in connection with holding that an ordinance fixing rates for electrical energy supplied by city-owned plant is not subject to referendum. Hoover v. Carpenter, 188 Neb. 405, 197 N.W.2d 11 (1972).

An action against village under declaratory judgment act alleging violation of above statute by the village board is not properly brought where members of such board are not made parties. Southern Nebraska Power Co. v. Village of Deshler, 130 Neb. 133, 264 N.W. 462 (1936).

This section has no application to raising funds or issuing bonds to maintain or improve a light plant. Interstate Power Co. v. City of Ainsworth, 125 Neb. 419, 250 N.W. 649 (1933).

The procedure prescribed hereby for issuing bonds is not applicable where equipment for municipal lighting plant is paid for out of funds on hand and net earnings of plant. Carr v. Fenstermacher, 119 Neb. 172, 228 N.W. 114 (1929).

A writ of mandamus was issued compelling the Auditor of Public Accounts to register bonds, when issued within scope of general powers of a city to pay debt incurred for repair and restoration of light plant even though no previous appropriation was made for the debt. State ex rel. City of Tekamah v. Marsh, 108 Neb. 835, 189 N.W. 381 (1922).

The provisions of the city charter of cities having a population of from five thousand to twenty-five thousand inhabitants at the

time of the submission and election must govern and be complied with. Brownfield v. City of Kearney, 94 Neb. 419, 143 N.W. 475 (1913).

The power of a city is not limited in constructing a plant to one costing not more than the amount of bonds that may be so issued. Village of Oshkosh v. Fairbanks, Morse & Co., 8 F.2d 329 (8th Cir. 1925).

19-1404 Municipal heat, light, and ice plants; management; rates; service.

When any such utility shall have been established, the municipality shall provide by ordinance for the management thereof, the rates to be charged, and the manner of payment for service or for the product.

Source: Laws 1919, c. 181, § 4, p. 405; C.S.1922, § 4399; C.S.1929, § 18-104; R.S.1943, § 19-1404.

The duty of a city to fix reasonable rates for electricity furnished to consumers through a municipal lighting plant is not violated by a contract to purchase necessary equipment for it and to pay a portion of the purchase price out of its net earnings, where contract provided that such earnings should be based alone on lawful charges. Carr v. Fenstermacher, 119 Neb. 172, 228 N.W. 114 (1929).

19-1405 Repealed. Laws 1976, LB 688, § 2.

ARTICLE 15

INCOMPLETELY PERFORMED CONTRACTS

(Applicable to all except cities of the metropolitan class.)

Section
19-1501. Incompletely performed contracts; acceptance; tax levy; bond issue.
19-1502. Additional authority granted.

19-1501 Incompletely performed contracts; acceptance; tax levy; bond issue.

In all cases where a primary city, a city of the first or second class, or village has heretofore entered into a contract for paving or otherwise improving a street or streets therein, or for the construction or improvement of a system of waterworks or sanitary or storm sewers, and the contract has not been completed on account of any order or regulation issued by the United States or any board or agency thereof, such city or village may accept that part of the work which has been completed, levy special assessments and taxes, and issue bonds to pay the cost of the work so completed and accepted, in the same manner and on the same conditions as if said contract had been fully completed.

Source: Laws 1943, c. 40, § 1, p. 184; R.S.1943, § 19-1501.

19-1502 Additional authority granted.

Section 19-1501 shall be construed as granting additional authority and not as repealing any law now in force.

Source: Laws 1943, c. 40, § 2, p. 185; R.S.1943, § 19-1502.

ARTICLE 16

COMBINING OFFICES OF CITY CLERK AND CITY TREASURER

Section
19-1601. Transferred to section 16-318.01.

19-1601 Transferred to section 16-318.01.

ARTICLE 17
LAW ENFORCEMENT IN DEFENSE AREAS

Section
19-1701. Expiration of act.

19-1701 Expiration of act.

ARTICLE 18
CIVIL SERVICE ACT

Section
19-1801. Transferred to section 19-1827.
19-1802. Transferred to section 19-1828.
19-1803. Transferred to section 19-1829.
19-1803.01. Repealed. Laws 1985, LB 372, § 27.
19-1804. Transferred to section 19-1830.
19-1805. Repealed. Laws 1985, LB 372, § 27.
19-1806. Transferred to section 19-1831.
19-1807. Transferred to section 19-1832.
19-1808. Transferred to section 19-1833.
19-1809. Transferred to section 19-1834.
19-1810. Transferred to section 19-1835.
19-1811. Transferred to section 19-1836.
19-1812. Transferred to section 19-1837.
19-1813. Transferred to section 19-1838.
19-1814. Transferred to section 19-1839.
19-1815. Transferred to section 19-1840.
19-1816. Transferred to section 19-1841.
19-1817. Transferred to section 19-1842.
19-1818. Transferred to section 19-1843.
19-1819. Transferred to section 19-1844.
19-1820. Transferred to section 19-1845.
19-1821. Transferred to section 19-1846.
19-1822. Transferred to section 19-1847.
19-1823. Transferred to section 19-1826.
19-1824. Transferred to section 48-1209.01.
19-1825. Act, how cited.
19-1826. Terms, defined.
19-1827. Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.
19-1828. Application of act.
19-1829. Employees subject to act; appointment; promotion.
19-1830. Civil service commission; organization; meetings; appointment; discharge; duties of commission; enumeration; rules and regulations.
19-1831. Civil service; applicant for position; qualifications; fingerprints; when required; restrictions on release.
19-1832. Civil service; employees; discharge; demotion; grounds.
19-1833. Civil service; employees; discharge; demotion; procedure; investigation; appeal.
19-1834. Civil service; municipality provide facilities and assistance.
19-1835. Civil service; vacancies; procedure.
19-1836. Civil service; creation or elimination of positions.
19-1837. Civil service; employees; salaries; compliance with act.
19-1838. Civil service; leave of absence.
19-1839. Civil service commission; conduct of litigation; representation.
19-1840. Civil service; obstructing examinations.
19-1841. Civil service; political service disregarded.
19-1842. Municipality; duty to enact appropriate legislation; failure; effect.
19-1843. Municipality; duty to provide quarters and equipment; failure; effect.

Section
19-1844. Municipality; duty to create commission; failure; effect.
19-1845. Commission; duty to organize; rules and regulations; failure; effect.
19-1846. Municipality; duty to make appropriation.
19-1847. Violations; penalty.
19-1848. Merger of commissions; agreement; applicability of act; exceptions.

19-1801 Transferred to section 19-1827.

19-1802 Transferred to section 19-1828.

19-1803 Transferred to section 19-1829.

19-1803.01 Repealed. Laws 1985, LB 372, § 27.

19-1804 Transferred to section 19-1830.

19-1805 Repealed. Laws 1985, LB 372, § 27.

19-1806 Transferred to section 19-1831.

19-1807 Transferred to section 19-1832.

19-1808 Transferred to section 19-1833.

19-1809 Transferred to section 19-1834.

19-1810 Transferred to section 19-1835.

19-1811 Transferred to section 19-1836.

19-1812 Transferred to section 19-1837.

19-1813 Transferred to section 19-1838.

19-1814 Transferred to section 19-1839.

19-1815 Transferred to section 19-1840.

19-1816 Transferred to section 19-1841.

19-1817 Transferred to section 19-1842.

19-1818 Transferred to section 19-1843.

19-1819 Transferred to section 19-1844.

19-1820 Transferred to section 19-1845.

19-1821 Transferred to section 19-1846.

19-1822 Transferred to section 19-1847.

19-1823 Transferred to section 19-1826.

19-1824 Transferred to section 48-1209.01.

19-1825 Act, how cited.

Sections 19-1825 to 19-1848 shall be known and may be cited as the Civil Service Act.

Source: Laws 1985, LB 372, § 4; Laws 2010, LB943, § 1.

19-1826 Terms, defined.

As used in the Civil Service Act, unless the context otherwise requires:

(1) Commission shall mean a civil service commission created pursuant to the Civil Service Act, and commissioner shall mean a member of such commission;

(2) Appointing authority shall mean: (a) In a mayor and council form of government, the mayor with the approval of the council, except to the extent that the appointing authority is otherwise designated by ordinance to be the mayor or city administrator; (b) in a commission form of government, the mayor and city council or village board; (c) in a village form of government, the village board; and (d) in a city manager plan of government, the city manager;

(3) Appointment shall mean all means of selecting, appointing, or employing any person to hold any position or employment subject to civil service;

(4) Municipality shall mean all cities and villages specified in subsection (1) of section 19-1827 having full-time police officers or full-time firefighters;

(5) Governing body shall mean: (a) In a mayor and council form of government, the mayor and council; (b) in a commission form of government, the mayor and council or village board; (c) in a village form of government, the village board; and (d) in a city manager plan of government, the mayor and council;

(6) Full-time police officers shall mean police officers in positions which require certification by the Nebraska Law Enforcement Training Center, created pursuant to section 81-1402, who have the power of arrest, who are paid regularly by a municipality, and for whom law enforcement is a full-time career, but shall not include clerical, custodial, or maintenance personnel;

(7) Full-time firefighter shall mean duly appointed firefighters who are paid regularly by a municipality and for whom firefighting is a full-time career, but shall not include clerical, custodial, or maintenance personnel who are not engaged in fire suppression;

(8) Promotion or demotion shall mean changing from one position to another, accompanied by a corresponding change in current rate of pay;

(9) Position shall mean an individual job which is designated by an official title indicative of the nature of the work;

(10) Merged commission shall mean a civil service commission resulting from the merger of two or more commissions pursuant to section 19-1848;

(11) Agreement shall mean an agreement pursuant to the Interlocal Cooperation Act; and

(12) Existing commission shall mean a civil service commission of a city of the first class as it existed immediately prior to the effective creation of a merged commission.

Source: Laws 1943, c. 29, § 23, p. 138; R.S.1943, § 19-1823; Laws 1957, c. 48, § 7, p. 236; R.S.1943, (1983), § 19-1823; Laws 1985, LB 372, § 5; Laws 2010, LB943, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.

Fully paid fire department means a fire department having members paid regularly by city and devoting their whole time to firefighting. State ex rel. Retchless v. Cook, 181 Neb. 863, 152 N.W.2d 23 (1967).

By definition contained in this section, employee is required to devote his whole time to firefighting or law enforcement. Dlouhy v. City of Fremont, 175 Neb. 115, 120 N.W.2d 590 (1963).

19-1827 Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.

(1) There is hereby created, in cities in the State of Nebraska having a population of more than five thousand and having full-time police officers or full-time firefighters, a civil service commission, except in cities with a population in excess of forty thousand which have or may adopt a home rule charter pursuant to sections 2 to 5 of Article XI of the Constitution of this state. Any city or village having a population of five thousand or less may adopt the Civil Service Act and create a civil service commission by a vote of the electors of such city or village. If any city of the first class which established a civil service commission decreases in population to less than five thousand, as determined by the latest federal census, and continues to have full-time police officers or full-time firefighters, the civil service commission shall be continued for at least four years, and thereafter continued at the option of the local governing body of such city. The members of such commission shall be appointed by the appointing authority.

(2) The governing body shall by ordinance determine if the commission shall be comprised of three or five members. The members of the civil service commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such municipality for at least three years immediately preceding such appointment, and an elector of the county wherein such person resides. If the commission is comprised of three members, the term of office of such commissioners shall be six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. If the commission is comprised of five members, the term of office of such members shall be for five years, except that the first members of such commission shall be appointed for different terms, as follows: One to serve for a period of one year, one to serve for a period of two years, one to serve for a period of three years, one to serve for a period of four years, and one to serve for a period of five years. If the municipality determines by ordinance to change from a three-member commission to a five-member commission, or from a five-member commission to a three-member commission, the members of the commission serving before the effective date of such ordinance shall hold office until reappointed or their successors are appointed.

(3) Any member of the civil service commission may be removed from office for incompetency, dereliction of duty, malfeasance in office, or other good cause by the appointing authority, except that no member of the commission shall be removed until written charges have been preferred, due notice given such member, and a full hearing had before the appointing authority. Any member so removed shall have the right to appeal to the district court of the county in which such commission is located, which court shall hear and determine such appeal in a summary manner. Such an appeal shall be only upon the ground that such judgment or order of removal was not made in good

faith for cause, and the hearing on such appeal shall be confined to the determination of whether or not it was so made.

(4) The members of the civil service commission shall devote due time and attention to the performance of the duties specified and imposed upon them by the Civil Service Act. Two commissioners in a three-member commission and three commissioners in a five-member commission shall constitute a quorum for the transaction of business. Confirmation of the appointment or appointments of commissioners, made under subsection (1) of this section, by any other legislative body shall not be required. At the time of any appointment, not more than two commissioners of a three-member commission, or three commissioners of a five-member commission, including the one or ones to be appointed, shall be registered electors of the same political party.

Source: Laws 1943, c. 29, § 1, p. 125; R.S.1943, § 19-1801; Laws 1957, c. 48, § 1, p. 228; Laws 1963, c. 89, § 5, p. 304; Laws 1983, LB 291, § 1; R.S.1943, (1983), § 19-1801; Laws 1985, LB 372, § 6.

Procedure regulating discharge of city employee in classified civil service is governed by the Nebraska Civil Service Act. Wachtel v. Fremont Civil Service Commission, 190 Neb. 49, 206 N.W.2d 56 (1973).

This article prescribes civil service for cities having a full paid fire or police department. State ex rel. Retchless v. Cook, 181 Neb. 863, 152 N.W.2d 23 (1967).

Civil Service Act is applicable to all cities having a full paid fire or police department. Dlouhy v. City of Fremont, 175 Neb. 115, 120 N.W.2d 590 (1963).

19-1828 Application of act.

The Civil Service Act shall apply to all municipalities, as defined in section 19-1826, in the State of Nebraska specified in subsection (1) of section 19-1827. All present full-time firefighters and full-time police officers of such municipalities and future appointees to such full-time positions shall be subject to civil service.

Source: Laws 1943, c. 29, § 2, p. 127; R.S.1943, § 19-1802; Laws 1957, c. 48, § 2, p. 230; R.S.1943, (1983), § 19-1802; Laws 1985, LB 372, § 7.

19-1829 Employees subject to act; appointment; promotion.

The Civil Service Act shall only apply to full-time firefighters or full-time police officers of each municipality, including any paid full-time police or fire chief of such department. All appointments to and promotions in such department shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation. If the appointing authority fills a vacancy in a position subject to the Civil Service Act, the appointing authority shall consider factors including, but not limited to:

(1) The multiple job skills recently or currently being performed by the applicant which are necessary for the position;

(2) The knowledge, skills, and abilities of the applicant which are necessary for the position;

(3) The performance appraisal of any applicant who is already employed in the department, including any recent or pending disciplinary actions involving the employee;

(4) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;

(5) Required federal, state, or local certifications or licenses necessary for the position; and

(6) The qualifications of the applicants who are already employed in the department and have successfully completed all parts of the examination for the position. No person shall be reinstated in or transferred, suspended, or discharged from any such position or employment contrary to the Civil Service Act.

Source: Laws 1943, c. 29, § 3, p. 127; R.S.1943, § 19-1803; Laws 1957, c. 48, § 3, p. 230; Laws 1969, c. 116, § 1, p. 530; R.S.1943, (1983), § 19-1803; Laws 1985, LB 372, § 8.

Civil Service Act applies to all full paid employees of the fire or police department. Dlouhy v. City of Fremont, 175 Neb. 115, 120 N.W.2d 590 (1963).

Civil Service Act applies to cities of first class having home rule charters. Simpson v. City of Grand Island, 166 Neb. 393, 89 N.W.2d 117 (1958).

19-1830 Civil service commission; organization; meetings; appointment; discharge; duties of commission; enumeration; rules and regulations.

(1) Immediately after the appointment of the commission, and annually thereafter, the commission shall organize by electing one of its members chairperson. The commission shall hold meetings as may be required for the proper discharge of its duties. The commission shall appoint a secretary and a chief examiner who shall keep the records of the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe. The commission may merge the positions of secretary and chief examiner and appoint one person to perform the duties of both positions. If the municipality has a personnel officer, the commission shall appoint such personnel officer as secretary and chief examiner, if requested to do so by the appointing authority. The secretary and chief examiner shall be subject to suspension or discharge upon the vote of a majority of the appointed members of the commission.

(2) The commission shall adopt and promulgate procedural rules and regulations consistent with the Civil Service Act. Such rules and regulations shall provide in detail the manner in which examinations may be held and any other matters assigned by the appointing authority. At least one copy of the rules and regulations, and any amendments, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any amendments shall be given to each full-time firefighter and full-time police officer.

(3) The commission shall provide that all tests shall be practical and consist only of subjects which will fairly determine the capacity of persons who are to be examined to perform the duties of the position to which an appointment is to be made and may include, but not be limited to, tests of physical fitness and of manual skill and psychological testing.

(4) The commission shall provide, by the rules and regulations, for a credit of ten percent in favor of all applicants for an appointment under civil service who, in time of war or in any expedition of the armed forces of the United States, have served in and been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from the armed forces of the United States and who have equaled or exceeded the minimum qualifying standard established by the appointing authority. These

credits shall only apply to entry-level positions as defined by the appointing authority.

(5) The commission may conduct an investigation concerning and report upon all matters regarding the enforcement and effect of the Civil Service Act and the rules and regulations prescribed. The commission may inspect all institutions, departments, positions, and employments affected by such act to determine whether such act and all such rules and regulations are being obeyed. Such investigations may be conducted by the commission or by any commissioner designated by the commission for that purpose. The commission shall also make a like investigation on the written petition of a citizen, duly verified, stating that irregularities or abuses exist or setting forth, in concise language, the necessity for such an investigation. The commission may be represented in such investigations by the municipal attorney, if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission in any such investigation. In the course of such an investigation, the commission, designated commissioner, or chief examiner shall have the power to administer oaths, issue subpoenas to require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and to cause the deposition of witnesses, residing within or without the state, to be taken in the manner prescribed by law for like depositions in civil actions in the courts of this state. The oaths administered and subpoenas issued shall have the same force and effect as the oaths administered by a district judge in a judicial capacity and subpoenas issued by the district courts of Nebraska. The failure of any person so subpoenaed to comply shall be deemed a violation of the Civil Service Act and be punishable as such. No investigation shall be made pursuant to this section if there is a written accusation concerning the same subject matter against a person in the civil service. Such accusations shall be handled pursuant to section 19-1833.

(6) The commission shall provide that all hearings and investigations before the commission, designated commissioner, or chief examiner shall be governed by the Civil Service Act and the rules of practice and procedure to be adopted by the commission. In the conduct thereof, they shall not be bound by the technical rules of evidence. No informality in any proceedings or hearing or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission, except that no order, decision, rule, or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect unless it is concurred in by a majority of the appointed members of the commission, including the vote of any commissioner making the investigation.

(7) The commission shall establish and maintain a roster of officers and employees.

(8) The commission shall provide for, establish, and hold competitive tests to determine the relative qualifications of persons who seek employment in any position and, as a result thereof, establish eligible lists for the various positions.

(9) The commission shall make recommendations concerning a reduction-in-force policy to the governing body or city manager in a city manager plan of government. The governing body or city manager in a city manager plan of government shall consider such recommendations, but shall not be bound by

them in establishing a reduction-in-force policy. Prior to the adoption of a reduction-in-force policy, the governing body or, in the case of a city manager plan, the city manager and the governing body shall, after giving reasonable notice to each police officer and firefighter by first-class mail, conduct a public hearing.

(10) The governing body shall in all municipalities, except those with a city manager plan in which the city manager shall, adopt a reduction-in-force policy which shall consider factors including, but not limited to:

(a) The multiple job skills recently or currently being performed by the employee;

(b) The knowledge, skills, and abilities of the employee;

(c) The performance appraisal of the employee including any recent or pending disciplinary actions involving the employee;

(d) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;

(e) Required federal, state, or local certifications or licenses; and

(f) Seniority.

(11) The commission shall keep such records as may be necessary for the proper administration of the Civil Service Act.

Source: Laws 1943, c. 29, § 4, p. 127; R.S.1943, § 19-1804; Laws 1957, c. 48, § 4, p. 230; R.S.1943, (1983), § 19-1804; Laws 1985, LB 372, § 9; Laws 2005, LB 54, § 3.

The commission must timely make rules and regulations but absence of such does not prevent discharge for reasons set out in statute. Sailors v. City of Falls City, 190 Neb. 103, 206 N.W.2d 566 (1973).

19-1831 Civil service; applicant for position; qualifications; fingerprints; when required; restrictions on release.

(1) An applicant for a position of any kind under civil service shall be able to read and write the English language, meet the minimum job qualifications of the position as established by the appointing authority, and be of good moral character. An applicant shall be required to disclose his or her past employment history and his or her criminal record, if any, and submit a full set of his or her fingerprints and a written statement of permission authorizing the appointing authority to forward the fingerprints for identification. Prior to certifying to the appointing authority the names of the persons eligible for the position or positions, the commission shall validate the qualifications of such persons.

(2) The appointing authority shall require an applicant, as part of the application process, to submit a full set of his or her fingerprints along with written permission authorizing the appointing authority to forward the fingerprints to the Federal Bureau of Investigation through the Nebraska State Patrol, for identification. The fingerprint identification shall be solely for the purpose of confirming information provided by the applicant.

(3) Any fingerprints received by the commission or appointing authority pursuant to a request made under subsection (2) of this section and any information in the custody of the commission or appointing authority resulting from inquiries or investigations made with regard to those fingerprints initiated by the commission or appointing authority shall not be a public record within the meaning of sections 84-712 to 84-712.09 and shall be withheld from the

public by the lawful custodians of such fingerprints and information and shall only be released to those lawfully entitled to the possession of such fingerprints and information. Any member, officer, agent, or employee of the commission, appointing authority, or municipality who comes into possession of fingerprints and information gathered pursuant to subsection (2) of this section shall be an official within the meaning of section 84-712.09.

Source: Laws 1943, c. 29, § 6, p. 131; R.S.1943, § 19-1806; Laws 1963, c. 93, § 1, p. 317; Laws 1969, c. 116, § 3, p. 531; Laws 1974, LB 811, § 3; Laws 1977, LB 498, § 1; R.S.1943, (1983), § 19-1806; Laws 1985, LB 372, § 10; Laws 1997, LB 116, § 1.

19-1832 Civil service; employees; discharge; demotion; grounds.

The tenure of a person holding a position of employment under the Civil Service Act shall be only during good behavior. Any such person may be removed or discharged, suspended with or without pay, demoted, reduced in rank, or deprived of vacation, benefits, compensation, or other privileges, except pension benefits, for any of the following reasons:

(1) Incompetency, inefficiency, or inattention to or dereliction of duty;

(2) Dishonesty, prejudicial conduct, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, any act of omission or commission tending to injure the public service, any willful failure on the part of the employee to properly conduct himself or herself, or any willful violation of the Civil Service Act or the rules and regulations adopted pursuant to such act;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Drunkenness or the use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such an extent that the use interferes with the efficiency or mental or physical fitness of the employee or precludes the employee from properly performing the functions and duties of his or her position;

(5) Conviction of a felony or misdemeanor tending to injure the employee's ability to effectively perform the duties of his or her position; or

(6) Any other act or failure to act which, in the judgment of the civil service commissioners, is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

Source: Laws 1943, c. 29, § 7, p. 131; R.S.1943, § 19-1807; R.S.1943, (1983), § 19-1807; Laws 1985, LB 372, § 11.

An employee's acquittal on a criminal charge does not preclude an employer from terminating employment for the identical conduct that formed the basis for the criminal charge. Adkins & Webster v. North Platte Civil Service Comm., 206 Neb. 500, 293 N.W.2d 411 (1980).

The Civil Service Act, where applicable, provides that employees may be suspended or discharged for cause for any of the reasons listed herein. Cummings v. City of Falls City, 194 Neb. 759, 235 N.W.2d 627 (1975).

The Civil Service Act prohibits the suspension or discharge of employees for political or religious reasons but provides they may be suspended or discharged for any of the reasons listed herein. Sailors v. City of Falls City, 190 Neb. 103, 206 N.W.2d 566 (1973).

The tenure of an employee is only during good behavior. Ackerman v. Civil Service Commission, 177 Neb. 232, 128 N.W.2d 588 (1964).

19-1833 Civil service; employees; discharge; demotion; procedure; investigation; appeal.

(1) No person in the civil service who shall have been permanently appointed or inducted into civil service under the Civil Service Act shall be removed,

suspended, demoted, or discharged except for cause and then only upon the written accusation of the police or fire chief, appointing authority, or any citizen or taxpayer.

(2) The governing body of the municipality shall establish by ordinance procedures for acting upon such written accusations and the manner by which suspensions, demotions, removals, discharges, or other disciplinary actions may be imposed by the appointing authority. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer.

(3) Any person so removed, suspended, demoted, or discharged may, within ten days after being notified by the appointing authority of such removal, suspension, demotion, or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The governing body of the municipality shall establish procedures by ordinance consistent with this section by which the commission shall conduct such investigation. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer. Such procedures shall comply with minimum due process requirements. The commission may be represented in such investigation and hearing by the municipal attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission for any such investigation and hearing. The investigation shall be confined to the determination of the question of whether or not such removal, suspension, demotion, or discharge was made in good faith for cause which shall mean that the action was not arbitrary or capricious and was not made for political or religious reasons.

(4) After such investigation, the commission shall hold a public hearing after giving reasonable notice to the accused of the time and place of such hearing. Such hearing shall be held not less than ten or more than twenty days after filing of the written demand for an investigation and a decision shall be rendered no later than ten days after the hearing. At such hearing the accused shall be permitted to appear in person and by counsel and to present his or her defense. The commission may affirm the action taken if such action of the appointing authority is supported by a preponderance of the evidence. If it shall find that the removal, suspension, demotion, or discharge was made for political or religious reasons or was not made in good faith for cause, it shall order the immediate reinstatement or reemployment of such person in the position or employment from which such person was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission in its discretion so provides, be retroactive and entitle such person to compensation and restoration of benefits and privileges from the time of such removal, suspension, demotion, or discharge. The commission upon such hearing, in lieu of affirming the removal, suspension, demotion, or discharge, may modify the order of removal, suspension, demotion, or discharge by directing a suspension, with or without pay, for a given period and the subsequent restoration to duty

or demotion in position or pay. The findings of the commission shall be certified in writing to and enforced by the appointing authority.

(5) If such judgment or order be concurred in by the commission or a majority thereof, the accused or governing body may appeal to the district court. Such appeal shall be taken within forty-five days after the entry of such judgment or order by serving the commission with a written notice of appeal stating the grounds and demanding that a certified transcript of the record and all papers, on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify, and file such transcript with and deliver such papers to the district court. The district court shall proceed to hear and determine such appeal in a summary manner. The hearing shall be confined to the determination of whether or not the judgment or order of removal, discharge, demotion, or suspension made by the commission was made in good faith for cause which shall mean that the action of the commission was based upon a preponderance of the evidence, was not arbitrary or capricious, and was not made for political or religious reasons. No appeal to such court shall be taken except upon such ground or grounds.

If such appeal is taken by the governing body and the district court affirms the decision of the commission, the municipality shall pay to the employee court costs and reasonable attorney's fees incurred as a result of such appeal and as approved by the district court. If such appeal is taken by the governing body and the district court does not affirm the decision of the commission, the court may award court costs and reasonable attorney's fees to the employee as approved by the district court.

Source: Laws 1943, c. 29, § 8, p. 132; R.S.1943, § 19-1808; Laws 1957, c. 48, § 6, p. 234; Laws 1959, c. 65, § 2, p. 289; Laws 1969, c. 116, § 4, p. 531; R.S.1943, (1983), § 19-1808; Laws 1985, LB 372, § 12.

For the purposes of this section, the phrase in good faith for cause shall mean a commission's action which is based on competent evidence, neither arbitrary or capricious nor the result of political or religious reasons, and reasonably necessary for effectual and beneficial public service. In re Appeal of Levos, 214 Neb. 507, 335 N.W.2d 262 (1983).

Conclusive, as used in this section, does not refer to burden of proof nor the weight of the evidence but is synonymous with decisive, determinative, or definitive. Adkins & Webster v. North Platte Civil Service Comm., 206 Neb. 500, 293 N.W.2d 411 (1980).

The final determination of discharge, under this act, rests with the civil service commission. Adkins & Webster v. North Platte Civil Service Comm., 206 Neb. 500, 293 N.W.2d 411 (1980).

Upon written accusation before the commission either the appointing power may temporarily suspend or the commission may direct such suspension. Sailors v. City of Falls City, 190 Neb. 103, 206 N.W.2d 566 (1973).

Power to discharge city employee in classified civil service is lodged solely in Civil Service Commission. Wachtel v. Fremont Civil Service Commission, 190 Neb. 49, 206 N.W.2d 56 (1973).

Only issue on appeal from the civil service commission to district court is whether commission's order was made in good faith for cause. Fredrickson v. Albertsen, 183 Neb. 494, 161 N.W.2d 712 (1968).

An employee who is discharged may file with the civil service commission a written demand for an investigation. Ackerman v. Civil Service Commission, 177 Neb. 232, 128 N.W.2d 588 (1964).

Discharged employee may appeal to district court from action of civil service commission. Dlouhy v. City of Fremont, 175 Neb. 115, 120 N.W.2d 590 (1963).

Where fireman voluntarily abandoned his position, he lost all benefits under Civil Service Act. State ex rel. Schaub v. City of Scottsbluff, 169 Neb. 525, 100 N.W.2d 202 (1960).

Employee in classified civil service could not be discharged by city council. Simpson v. City of Grand Island, 166 Neb. 393, 89 N.W.2d 117 (1958).

19-1834 Civil service; municipality provide facilities and assistance.

The municipality shall afford the commission and its members and employees all reasonable facilities and assistance to inspect all books, papers, documents, and accounts applying or in any way appertaining to any and all positions and employments subject to civil service and shall produce such books, papers, documents, and accounts. All municipal officers and employees shall attend

and testify whenever required to do so by the commission, the accused, or the appointing authority.

Source: Laws 1943, c. 29, § 9, p. 133; R.S.1943, § 19-1809; R.S.1943, (1983), § 19-1809; Laws 1985, LB 372, § 13.

19-1835 Civil service; vacancies; procedure.

(1) Whenever a position subject to the Civil Service Act becomes vacant, the appointing authority shall make requisition upon the commission for the names and addresses of the persons eligible for appointment and may decline to fill such vacancy for an indefinite period.

(2) The commission, upon request of the appointing authority, shall establish and maintain a list, for a period of time established by the appointing authority, of those eligible for appointment to or promotion within the department. Such list shall be established and maintained through the open competitive examinations required by section 19-1829, with the time and date of any examination to be established by the appointing authority. Any person having satisfactorily passed the examination for any position shall be placed on the list of those eligible for appointment or promotion to such position.

(3) Upon the request of the appointing authority, the commission shall certify the names of the persons who are the three highest on the eligible list, following the most recent examination, and whose qualifications have been validated by the commission for the vacant position. If fewer than three names are on the eligible list the commission shall certify those that do appear. If the commission certifies fewer than three names for each vacancy to the appointing authority, the appointing authority may appoint one of such persons to fill the vacancy, may decline to fill the vacancy, or may order that another examination be held by the civil service commission.

(4) If a vacancy occurs and there is no eligible list for the position or if the commission has not certified persons from the eligible list, a temporary appointment may be made by the appointing authority. Such temporary appointment shall not continue for a period longer than four months. No person shall receive more than one temporary appointment or serve more than four months as a temporary appointee in any one fiscal year.

(5) To enable the appointing authority to exercise a choice in the filling of positions, no appointment, employment, or promotion in any position in the service shall be deemed complete until after the expiration of a period of three to six months' probationary service for firefighters and not less than six months nor more than one year after certification by the Nebraska Law Enforcement Training Center for police officers, as may be provided in the rules of the civil service commission, during which time the appointing authority may terminate the employment of the person appointed by it if, during the performance test thus afforded and upon an observation or consideration of the performance of duty, the appointing authority deems such person unfit or unsatisfactory for service in the department. The appointing authority may appoint one of the other persons certified by the commission and such person shall likewise enter upon such duties until some person is found who is fit for appointment, employment, or promotion for the probationary period provided and then the appointment, employment, or promotion shall be complete.

Source: Laws 1943, c. 29, § 10, p. 134; R.S.1943, § 19-1810; Laws 1967, c. 97, § 1, p. 295; R.S.1943, (1983), § 19-1810; Laws 1985, LB 372, § 14.

Civil service commission acted within bounds of its discretion in giving original entrance rather than promotion examination in selecting candidates for fire chief. Short v. Kissinger, 184 Neb. 491, 168 N.W.2d 917 (1969).

19-1836 Civil service; creation or elimination of positions.

All positions subject to the Civil Service Act shall be created or eliminated by the governing body of the municipality. The Civil Service Act shall not be construed to infringe upon the power and authority of (1) the governing body of the municipality to establish pursuant to section 16-310, 17-108, or 17-209 the salaries and compensation of all employees employed hereunder or (2) the city manager, pursuant to Chapter 19, article 6, to establish the salaries and compensation of employees within the compensation schedule or ranges established by the governing body for the positions.

Source: Laws 1943, c. 29, § 11, p. 135; R.S.1943, § 19-1811; R.S.1943, (1983), § 19-1811; Laws 1985, LB 372, § 15.

19-1837 Civil service; employees; salaries; compliance with act.

No treasurer, auditor, comptroller, or other officer or employee of any municipality subject to the Civil Service Act shall approve the payment of or be in any manner concerned in paying, auditing, or approving any salary, wage, or other compensation for services to any person subject to the jurisdiction and scope of the Civil Service Act unless the person to receive such salary, wage, or other compensation has been appointed or employed in compliance with such act.

Source: Laws 1943, c. 29, § 12, p. 135; R.S.1943, § 19-1812; R.S.1943, (1983), § 19-1812; Laws 1985, LB 372, § 16.

19-1838 Civil service; leave of absence.

A leave of absence, with or without pay, may be granted by the appointing authority to any person under civil service. The appointing authority shall give notice of such leave to the commission. All appointments for temporary employment resulting from such leaves of absence shall be made from the eligible list, if any, of the civil service.

Source: Laws 1943, c. 29, § 13, p. 136; R.S.1943, § 19-1813; R.S.1943, (1983), § 19-1813; Laws 1985, LB 372, § 17.

19-1839 Civil service commission; conduct of litigation; representation.

It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of the Civil Service Act and of the rules of the commission. The commission may be represented in such suits and all investigations pursuant to the Civil Service Act by the municipal attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by it in any particular case.

Source: Laws 1943, c. 29, § 14, p. 136; R.S.1943, § 19-1814; R.S.1943, (1983), § 19-1814; Laws 1985, LB 372, § 18.

19-1840 Civil service; obstructing examinations.

No commissioner or any other person shall by himself or herself or in cooperation with one or more persons (1) defeat, deceive, or obstruct any person in respect to the right of examination according to the rules and

regulations made pursuant to the Civil Service Act, (2) falsely mark, grade, estimate, or report upon the examination and standing of any person examined or certified in accordance with such act or aid in so doing, (3) make any false representation concerning the same or concerning the persons examined, (4) furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined or certified or to be examined or certified, or (5) persuade any other person or permit or aid in any manner any other person to impersonate him or her in connection with any examination, application, or request to be so examined.

Source: Laws 1943, c. 29, § 15, p. 136; R.S.1943, § 19-1815; R.S.1943, (1983), § 19-1815; Laws 1985, LB 372, § 19.

19-1841 Civil service; political service disregarded.

No person holding any position subject to civil service shall be under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever. No person shall be removed, reduced in position or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service, or promise or threaten to do so, for giving, withholding, or neglecting to make any contribution of money, services, or any other valuable thing for any political purpose.

Source: Laws 1943, c. 29, § 16, p. 136; R.S.1943, § 19-1816; R.S.1943, (1983), § 19-1816; Laws 1985, LB 372, § 20.

19-1842 Municipality; duty to enact appropriate legislation; failure; effect.

Any municipality subject to the Civil Service Act shall, after September 6, 1985, enact appropriate legislation for carrying into effect such act. The failure of the governing body of any such municipality to do so shall be a violation of the Civil Service Act and shall be punishable as such.

Source: Laws 1943, c. 29, § 17, p. 137; R.S.1943, § 19-1817; R.S.1943, (1983), § 19-1817; Laws 1985, LB 372, § 21.

19-1843 Municipality; duty to provide quarters and equipment; failure; effect.

The governing body of every municipality subject to the Civil Service Act shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated, lighted, and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such municipality subject to the Civil Service Act. Failure upon the part of the governing body to do so shall be a violation of the Civil Service Act and shall be punishable as such.

Source: Laws 1943, c. 29, § 18, p. 137; R.S.1943, § 19-1818; R.S.1943, (1983), § 19-1818; Laws 1985, LB 372, § 22.

19-1844 Municipality; duty to create commission; failure; effect.

Within ninety days after a municipality becomes subject to the Civil Service Act, it shall be the duty of the governing body of such municipality subject to such act to create a civil service commission, as provided in section 19-1827, and the failure upon the part of such governing body to do so shall be a violation of the Civil Service Act and shall be punishable as such.

Source: Laws 1943, c. 29, § 19, p. 137; R.S.1943, § 19-1819; R.S.1943, (1983), § 19-1819; Laws 1985, LB 372, § 23.

19-1845 Commission; duty to organize; rules and regulations; failure; effect.

It shall be the duty of each commission appointed subject to the Civil Service Act to immediately organize and adopt and promulgate procedural rules and regulations, consistent with the purpose of such act, to carry out such act. The failure upon the part of such commission or any individual member to do so shall be a violation of the Civil Service Act and shall be punishable as such.

Source: Laws 1943, c. 29, § 20, p. 137; R.S.1943, § 19-1820; R.S.1943, (1983), § 19-1820; Laws 1985, LB 372, § 24.

The commission must timely make rules and regulations but absence of such does not prevent discharge for reasons set out in statute. Sailors v. City of Falls City, 190 Neb. 103, 206 N.W.2d 566 (1973).

19-1846 Municipality; duty to make appropriation.

It shall be the duty of each municipality subject to the Civil Service Act to appropriate each fiscal year, from the general funds of such municipality, a sum of money sufficient to pay the necessary expenses involved in carrying out the purposes of such act, including, but not limited to, reasonable attorney's fees for any special counsel appointed by the commission when the municipal attorney is not authorized by the appointing authority to represent the commission. The appointing authority may establish the hourly or monthly rate of pay of such special counsel.

Source: Laws 1943, c. 29, § 21, p. 137; R.S.1943, § 19-1821; R.S.1943, (1983), § 19-1821; Laws 1985, LB 372, § 25.

19-1847 Violations; penalty.

Any person who shall willfully violate any of the provisions of the Civil Service Act shall be guilty of a Class IV misdemeanor.

Source: Laws 1943, c. 29, § 22, p. 138; R.S.1943, § 19-1822; R.S.1943, (1983), § 19-1822; Laws 1985, LB 372, § 26.

19-1848 Merger of commissions; agreement; applicability of act; exceptions.

(1) Any two or more cities of the first class which have civil service commissions may merge their commissions by an agreement.

(2) The agreement shall state the date of creation of the merged commission. Upon the date of creation of the merged commission, the existing commissions shall be dissolved without further action by the governing body. The dissolution of an existing commission and the resulting loss of authority by the members of the existing commissions shall not be deemed a removal from office under subsection (3) of section 19-1827. Members of the existing commissions are eligible for appointment to the merged commission.

(3) The Civil Service Act shall be applicable to a merged commission except as provided in the following provisions:

(a) A merged commission shall consist of three, five, seven, or nine members, as provided in the agreement;

(b) Each city participating in the agreement shall appoint at least one member to the merged commission;

(c) Each member of such merged commission shall be a resident of one of the cities participating in the agreement for at least three years immediately preceding his or her appointment;

(d) The term of office of each member of the merged commission shall be as provided in the agreement, except that such term shall not exceed six years. The agreement may provide for staggered terms of office for the initial members of the merged commission;

(e) At the time of appointment, not more than four members of a seven-member commission nor more than five members of a nine-member commission shall be of the same political party; and

(f) The appointing authority for purposes of appointing members to the merged commission shall be as defined in the act. The agreement shall provide for the appointing authority for the purpose of exercising all other powers of the appointing authority as described in the act.

Source: Laws 2010, LB943, § 3.

ARTICLE 19

MUNICIPAL BUDGET ACT

Section

19-1901 Repealed. Laws 1945, c. 36, § 1.

19-1902 Repealed. Laws 1945, c. 36, § 1.

19-1903 Repealed. Laws 1945, c. 36, § 1.

19-1904 Repealed. Laws 1945, c. 36, § 1.

19-1905 Repealed. Laws 1945, c. 36, § 1.

19-1906 Repealed. Laws 1945, c. 36, § 1.

19-1907 Repealed. Laws 1945, c. 36, § 1.

19-1908 Repealed. Laws 1945, c. 36, § 1.

19-1909 Repealed. Laws 1945, c. 36, § 1.

19-1910 Repealed. Laws 1945, c. 36, § 1.

19-1911 Repealed. Laws 1945, c. 36, § 1.

19-1912 Repealed. Laws 1945, c. 36, § 1.

19-1913 Repealed. Laws 1945, c. 36, § 1.

19-1914 Repealed. Laws 1945, c. 36, § 1.

19-1915 Repealed. Laws 1945, c. 36, § 1.

19-1916 Repealed. Laws 1945, c. 36, § 1.

19-1917 Repealed. Laws 1945, c. 36, § 1.

19-1918 Repealed. Laws 1945, c. 36, § 1.

19-1919 Repealed. Laws 1945, c. 36, § 1.

19-1920 Repealed. Laws 1945, c. 36, § 1.

19-1921 Repealed. Laws 1945, c. 36, § 1.

ARTICLE 20

MUNICIPAL RETIREMENT SYSTEM

Section
19-2001. Repealed. Laws 1971, LB 453, § 1.
19-2002. Repealed. Laws 1971, LB 453, § 1.
19-2003. Repealed. Laws 1971, LB 453, § 1.
19-2004. Repealed. Laws 1971, LB 453, § 1.
19-2005. Repealed. Laws 1971, LB 453, § 1.
19-2006. Repealed. Laws 1971, LB 453, § 1.
19-2007. Repealed. Laws 1971, LB 453, § 1.
19-2008. Repealed. Laws 1971, LB 453, § 1.
19-2009. Repealed. Laws 1971, LB 453, § 1.
19-2010. Repealed. Laws 1971, LB 453, § 1.
19-2011. Repealed. Laws 1971, LB 453, § 1.
19-2012. Repealed. Laws 1971, LB 453, § 1.
19-2013. Repealed. Laws 1971, LB 453, § 1.
19-2014. Repealed. Laws 1971, LB 453, § 1.
19-2015. Repealed. Laws 1971, LB 453, § 1.
19-2016. Repealed. Laws 1971, LB 453, § 1.
19-2017. Repealed. Laws 1971, LB 453, § 1.
19-2018. Repealed. Laws 1971, LB 453, § 1.
19-2019. Repealed. Laws 1971, LB 453, § 1.
19-2020. Repealed. Laws 1971, LB 453, § 1.
19-2021. Repealed. Laws 1971, LB 453, § 1.
19-2022. Repealed. Laws 1971, LB 453, § 1.
19-2023. Repealed. Laws 1971, LB 453, § 1.
19-2024. Repealed. Laws 1971, LB 453, § 1.
19-2025. Repealed. Laws 1971, LB 453, § 1.

Section
19-2026. Repealed. Laws 1971, LB 453, § 1.
19-2027. Repealed. Laws 1971, LB 453, § 1.
19-2028. Repealed. Laws 1971, LB 453, § 1.
19-2029. Repealed. Laws 1971, LB 453, § 1.
19-2030. Repealed. Laws 1971, LB 453, § 1.
19-2031. Repealed. Laws 1971, LB 453, § 1.
19-2032. Repealed. Laws 1971, LB 453, § 1.
19-2033. Repealed. Laws 1971, LB 453, § 1.
19-2034. Repealed. Laws 1971, LB 453, § 1.
19-2035. Repealed. Laws 1971, LB 453, § 1.
19-2035.01. Repealed. Laws 1971, LB 453, § 1.
19-2036. Repealed. Laws 1971, LB 453, § 1.
19-2037. Repealed. Laws 1971, LB 453, § 1.
19-2038. Repealed. Laws 1971, LB 453, § 1.
19-2039. Repealed. Laws 1971, LB 453, § 1.
19-2040. Repealed. Laws 1971, LB 453, § 1.
19-2041. Repealed. Laws 1971, LB 453, § 1.
19-2042. Repealed. Laws 1971, LB 453, § 1.
19-2043. Repealed. Laws 1971, LB 453, § 1.
19-2044. Repealed. Laws 1971, LB 453, § 1.
19-2045. Repealed. Laws 1971, LB 453, § 1.
19-2046. Repealed. Laws 1971, LB 453, § 1.
19-2047. Repealed. Laws 1971, LB 453, § 1.
19-2048. Repealed. Laws 1971, LB 453, § 1.
19-2049. Repealed. Laws 1971, LB 453, § 1.
19-2050. Repealed. Laws 1971, LB 453, § 1.
19-2051. Repealed. Laws 1971, LB 453, § 1.
19-2052. Repealed. Laws 1971, LB 453, § 1.
19-2053. Repealed. Laws 1971, LB 453, § 1.
19-2054. Repealed. Laws 1971, LB 453, § 1.
19-2055. Repealed. Laws 1971, LB 453, § 1.
19-2056. Repealed. Laws 1971, LB 453, § 1.
19-2057. Repealed. Laws 1971, LB 453, § 1.

19-2001 Repealed. Laws 1971, LB 453, § 1.

19-2002 Repealed. Laws 1971, LB 453, § 1.

19-2003 Repealed. Laws 1971, LB 453, § 1.

19-2004 Repealed. Laws 1971, LB 453, § 1.

19-2005 Repealed. Laws 1971, LB 453, § 1.

19-2006 Repealed. Laws 1971, LB 453, § 1.

19-2007 Repealed. Laws 1971, LB 453, § 1.

19-2008 Repealed. Laws 1971, LB 453, § 1.

19-2009 Repealed. Laws 1971, LB 453, § 1.

19-2010 Repealed. Laws 1971, LB 453, § 1.

19-2011 Repealed. Laws 1971, LB 453, § 1.

19-2012 Repealed. Laws 1971, LB 453, § 1.

19-2013 Repealed. Laws 1971, LB 453, § 1.

19-2014 Repealed. Laws 1971, LB 453, § 1.

19-2015 Repealed. Laws 1971, LB 453, § 1.

19-2016 Repealed. Laws 1971, LB 453, § 1.

19-2017 Repealed. Laws 1971, LB 453, § 1.

19-2018 Repealed. Laws 1971, LB 453, § 1.

19-2019 Repealed. Laws 1971, LB 453, § 1.

19-2020 Repealed. Laws 1971, LB 453, § 1.

19-2021 Repealed. Laws 1971, LB 453, § 1.

19-2022 Repealed. Laws 1971, LB 453, § 1.

19-2023 Repealed. Laws 1971, LB 453, § 1.

19-2024 Repealed. Laws 1971, LB 453, § 1.

19-2025 Repealed. Laws 1971, LB 453, § 1.

19-2026 Repealed. Laws 1971, LB 453, § 1.

19-2027 Repealed. Laws 1971, LB 453, § 1.

19-2028 Repealed. Laws 1971, LB 453, § 1.

19-2029 Repealed. Laws 1971, LB 453, § 1.

19-2030 Repealed. Laws 1971, LB 453, § 1.

19-2031 Repealed. Laws 1971, LB 453, § 1.

19-2032 Repealed. Laws 1971, LB 453, § 1.

19-2033 Repealed. Laws 1971, LB 453, § 1.

19-2034 Repealed. Laws 1971, LB 453, § 1.

19-2035 Repealed. Laws 1971, LB 453, § 1.

19-2035.01 Repealed. Laws 1971, LB 453, § 1.

19-2036 Repealed. Laws 1971, LB 453, § 1.

19-2037 Repealed. Laws 1971, LB 453, § 1.

19-2038 Repealed. Laws 1971, LB 453, § 1.

19-2039 Repealed. Laws 1971, LB 453, § 1.

19-2040 Repealed. Laws 1971, LB 453, § 1.

19-2041 Repealed. Laws 1971, LB 453, § 1.

19-2042 Repealed. Laws 1971, LB 453, § 1.

19-2043 Repealed. Laws 1971, LB 453, § 1.

19-2044 Repealed. Laws 1971, LB 453, § 1.

19-2045 Repealed. Laws 1971, LB 453, § 1.

19-2046 Repealed. Laws 1971, LB 453, § 1.

19-2047 Repealed. Laws 1971, LB 453, § 1.

19-2048 Repealed. Laws 1971, LB 453, § 1.

19-2049 Repealed. Laws 1971, LB 453, § 1.

19-2050 Repealed. Laws 1971, LB 453, § 1.

19-2051 Repealed. Laws 1971, LB 453, § 1.

19-2052 Repealed. Laws 1971, LB 453, § 1.

19-2053 Repealed. Laws 1971, LB 453, § 1.

19-2054 Repealed. Laws 1971, LB 453, § 1.

19-2055 Repealed. Laws 1971, LB 453, § 1.

19-2056 Repealed. Laws 1971, LB 453, § 1.

19-2057 Repealed. Laws 1971, LB 453, § 1.

ARTICLE 21

GARBAGE DISPOSAL

(Applicable to cities of the first or second class and villages.)

Section

19-2101 Garbage disposal plants, systems and solid waste disposal areas; construction and maintenance; acquisition; eminent domain.

Cities of the first class, cities of the second class and villages shall have the power to purchase, construct, maintain and improve garbage disposal plants, systems or solid waste disposal areas, and purchase equipment for the operation thereof, for the use of their respective municipalities and the inhabitants thereof, and are hereby authorized and empowered to lease or to take land in fee within their corporate limits or without their corporate limits by donation,

gift, devise, purchase or appropriation for rights-of-way and for construction and operation of such a disposal plant, system or solid waste disposal area.

Source: Laws 1947, c. 54, § 1, p. 183; Laws 1961, c. 60, § 1, p. 219; Laws 1969, c. 117, § 1, p. 533.

19-2102 Garbage disposal plants, systems and solid waste disposal areas; tax; when authorized.

The cost thereof may be defrayed by the levy of a tax not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year or, when such tax is insufficient for such purpose, by the issuance of bonds of the municipality.

Source: Laws 1947, c. 54, § 2, p. 183; Laws 1953, c. 287, § 37, p. 952; Laws 1979, LB 187, § 83; Laws 1992, LB 719A, § 84.

19-2103 Garbage disposal plants, systems and solid waste disposal areas; issuance of bonds; limitation on amount.

The question of issuing bonds for the purpose herein contemplated shall be submitted to the electors at any election held for that purpose, after not less than thirty days' notice thereof shall have been given by publication in some newspaper published and of general circulation in such municipality or, if no newspaper is published therein, then by posting in five or more public places therein. Such bonds may be issued only when a majority of the electors voting on the question approve their issuance. The bonds shall bear interest payable annually or semiannually, and shall be payable at any time the municipality may determine at the time of their issuance, but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction, installation or purchase of a garbage disposal plant, system or solid waste disposal area shall not exceed five percent of the taxable value of the property within such municipality as shown by the last annual assessment.

Source: Laws 1947, c. 54, § 3, p. 183; Laws 1969, c. 117, § 2, p. 534; Laws 1969, c. 51, § 74, p. 321.

19-2104 Garbage disposal plants, systems and solid waste disposal areas; tax levy to pay bonds.

The council or board shall levy annually a sufficient tax to maintain and operate such system, plant or solid waste disposal area and to provide for the payment of the interest on and principal of any bonds that may have been issued as herein provided.

Source: Laws 1947, c. 54, § 4, p. 184; Laws 1969, c. 117, § 3, p. 534.

19-2105 Garbage disposal plants, systems and solid waste disposal areas; contracts.

The council or board of such municipality may also make and enter into a contract or contracts with any person, firm or corporation for the construction, maintenance or operation of a garbage disposal plant, system or solid waste disposal area.

Source: Laws 1947, c. 54, § 5, p. 184; Laws 1969, c. 117, § 4, p. 535.

19-2106 Garbage disposal; management and operation; rates and charges; collections; penalties.

When such system shall have been established, the municipality may provide by ordinance for the management and operation thereof, the rates to be charged for such service, including collection and disposal, the manner of payment and collection thereof and prescribe penalties for the violation of such ordinance, and do whatever is necessary to protect the general health in the matter of removal and disposal of garbage.

Source: Laws 1947, c. 54, § 6, p. 184; Laws 1972, LB 893, § 1.

19-2107 Repealed. Laws 1992, LB 1257, § 105.

19-2108 Repealed. Laws 1981, LB 497, § 1.

19-2109 Repealed. Laws 1981, LB 497, § 1.

19-2110 Repealed. Laws 1981, LB 497, § 1.

19-2111 Garbage disposal; construction of section; existing facilities; zoning.

Nothing in section 19-2101 shall be construed so as to apply to or affect existing garbage disposal facilities or existing county zoning.

Source: Laws 1961, c. 60, § 6, p. 221; Laws 1992, LB 1257, § 66.

19-2112 Repealed. Laws 1992, LB 1257, § 105.

19-2113 Repealed. Laws 1992, LB 1257, § 105.

ARTICLE 22

CORRECTION OF CORPORATE LIMITS

(Applicable to cities of the first or second class and villages.)

Section

19-2201 Error in platting; corporate limits; city council or board of trustees; resolution; contents.

When any part of a city of the first or second class or village shall have been platted (1) the plat having been recorded with the register of deeds of the proper county for more than ten years; (2) the streets and alleys having been dedicated to the public and such city or village having accepted such dedication by maintenance and use of the said streets and alleys, and the inhabitants of that part of such city or village having been subject to taxation including the levy of such city or village and having had the right of franchise in all the elections of such city or village for a period of more than ten years; and (3) such part of such city or village is contiguous and adjacent to such corporate city or village or a properly annexed addition thereto; but, when there is error in the platting thereof or the proceeding to annex the part of such city or village which renders the annexation ineffectual or where there is a total lack of an

attempted annexation of record, the council or board of trustees of such city or village may by resolution correct the corporate limits, if adopted by a two-thirds vote of all members of such council or board of trustees. The resolution shall describe the part of such city or village in general terms, direct the proper officers of the city or village to make application to the district court of the county in which such territory lies for the correction and reestablishment of the corporate limits of such city or village. The resolution, and the vote thereon, shall be spread upon the records of the council or board.

Source: Laws 1955, c. 60, § 1, p. 190.

19-2202 Error in platting; application; district court; contents.

The application presented to the district court of the county in which the territory lies shall: (1) Contain a recital of the resolution of the council or board of trustees for correction and reestablishment of the corporate limits and the vote thereon; (2) set forth the name of the plat or plats, the date of record, the book and page of the record book in which such plat or plats have been recorded, and the book and page of the record in which the original charter and annexations, if any there be, are recorded; (3) describe in general terms the area contained within the corporate limits and the territory affected by the corrections and reestablishment sought; (4) set forth the streets and alleys of such area which are maintained or used; and (5) be supported by exhibits consisting of a certificate of the county treasurer of the county in which the territory lies showing the years for which the real estate and the property therein situated shall have been subject to the tax levy of such city or village and a certificate of the city or village clerk or other officer having custody of the sign-in registers for elections of the city or village in which the territory lies showing the years during which the inhabitants thereof enjoyed the right of franchise in the elections of such city or village. The application shall pray for an order of the district court correcting and reestablishing the corporate limits of the city or village to include such territory.

Source: Laws 1955, c. 60, § 2, p. 190; Laws 1997, LB 764, § 3.

19-2203 Error in platting; application; order to show cause; contents; publication.

If it shall appear to the judge of the district court that such application is properly filed, he or she shall make an order directing all persons owning real estate or having an interest in real estate situated in such part of such city or village, giving the name of the plat as recorded as well as a general description of the territory affected by the proposed correction and reestablishment of corporate limits, to appear before him or her at a time and place to be specified, not less than four and not more than ten weeks from the time of making such order, to show cause why a decree correcting and reestablishing the corporate limits of such city or village should not be entered. The notice of such order to show cause shall be made by publication in a legal newspaper published in such city or village if there is any printed in such city or village and, if there is not, in some legal newspaper printed in the county having general circulation in such city or village. If no legal newspaper is printed in the county, such notice shall be published in a legal newspaper having general circulation in such city or village. The notice shall be published four consecutive weeks in such newspaper and shall contain a summary statement of the

object and prayer of the application, mention the court where it is filed, and notify the persons interested when they are required to appear and show cause why such decree should not be entered.

Source: Laws 1955, c. 60, § 3, p. 191; Laws 1986, LB 960, § 15.

19-2204 Error in platting; application; district court; hearing; order; appeal.

If the court finds that the allegations of the application are true and that the conditions set forth in section 19-2201 exist, a decree shall be entered correcting any errors or omissions in the platting and annexation of the territory, reestablishing the corporate limits of the city or village, and barring any future challenge of the validity of the proceedings. A certified copy of the decree shall be recorded in the office of the register of deeds of the county in which the territory lies. Appeals may be taken from the district court to the Court of Appeals as in other civil actions.

Source: Laws 1955, c. 60, § 4, p. 192; Laws 1991, LB 732, § 23.

ARTICLE 23

PARKING METERS

(Applicable to cities of the first or second class and villages.)

Section
19-2301. Parking meters; acquisition, erection, maintenance, operation; ordinance.
19-2302. Revenue; disposition.
19-2303. Terms, defined.
19-2304. Regulation and control of parking vehicles; other means.

19-2301 Parking meters; acquisition, erection, maintenance, operation; ordinance.

The governing body of any city of the first class, city of the second class, or village may enact ordinances providing for the acquisition, establishment, erection, maintenance, and operation of a system of parking meters or other similar mechanical devices requiring a reasonable deposit from those who park vehicles for stipulated periods of time in certain areas of such a city or village in which the congestion of vehicular traffic is such that the public convenience and safety require such regulation.

Source: Laws 1955, c. 61, § 1, p. 193.

First-class city could regulate parking on city street. Vap v. City of McCook, 178 Neb. 844, 136 N.W.2d 220 (1965).

19-2302 Revenue; disposition.

The proceeds derived from the use of the parking meters or other similar mechanical devices, referred to in sections 19-2301 to 19-2304, shall be placed in the traffic and safety fund and shall be used by such a city or village referred to in section 19-2301; first, for the purpose of the acquisition, establishment, erection, maintenance, and operation of the system; second, for the purpose of making the system effective; and third, for the expenses incurred by and throughout such a city or village in the regulation and limitation of vehicular parking, traffic relating to parking, traffic safety devices, signs, signals, markings, policing, lights, traffic surveys, and safety programs.

Source: Laws 1955, c. 61, § 2, p. 193.

19-2303 Terms, defined.

As used in sections 19-2301 to 19-2304, unless the context otherwise requires: Proceeds shall mean any money collected from or by reason of parking meters or other similar mechanical devices installed by any city of the first or second class or village, including revenue received by reason of any schedule of accelerated charges, to be fixed by ordinance. Accelerated charges may include, but need not be limited to, charges fixed by ordinance for parking in controlled or regulated areas without payment in advance of required parking fees or payments, but shall not include judicially imposed fines and penalties.

Source: Laws 1955, c. 61, § 3, p. 193.

19-2304 Regulation and control of parking vehicles; other means.

Nothing contained in sections 19-2301 to 19-2304 shall prohibit the governing body of any city of the first class, city of the second class, or village from employing any and all other ways and means to regulate and control vehicular parking in such a city or village either in conjunction with a system of meters or devices or exclusive and independent thereof.

Source: Laws 1955, c. 61, § 4, p. 193.

ARTICLE 24

MUNICIPAL IMPROVEMENTS

(Applicable to cities of the first or second class and villages.)

Section

19-2401 Municipal improvements; combination of projects; notice; allocation of cost.

(1) Any city of the first or second class or village when constructing any municipal improvement or public works may combine two or more similar pending projects although authorized by separate ordinances and located in separate improvement districts for the purpose of advertising for bids for the construction of such projects, and for the further purpose of awarding one contract for the construction of such two or more similar pending projects.

(2) The published notice may set forth the engineer's lump-sum estimate of the total cost for the aggregate of all work to be performed in the combined districts and shall (a) enumerate the estimated quantities of work to be done in each separate district; and (b) call for an aggregate bid on all work to be performed in the combined districts, broken down in such a manner as will accurately reflect unit prices for such estimated quantities, so that, notwithstanding that such a submitted aggregate or alternate aggregate bid may be accepted, the actual cost of the construction of each of such projects may be allocated by any such city or village to the improvement district in which it is located for the purpose of levying any authorized special assessments to defray, in whole or in part, such cost of construction of such projects.

(3) Any such city or village may also request alternate aggregate bids for such projects.

Source: Laws 1957, c. 50, § 1, p. 239; Laws 1963, c. 94, § 1, p. 318; Laws 1969, c. 118, § 1, p. 535.

Notice to affected property owners is not required when a city creates a water district under this section. Purdy v. City of York, 243 Neb. 593, 500 N.W.2d 841 (1993).

19-2402 Water service; sanitary sewer service; extension districts; ordinance; contents.

(1) Whenever the city council of any city of the first or second class or the board of trustees of a village deems it necessary and advisable to extend municipal water service or municipal sanitary sewer service to territory beyond the existing systems, such municipal officials may, by ordinance, create a district or districts to be known as sanitary sewer extension districts or water extension districts for such purposes, and such district or districts may include properties within the corporate limits of the municipality and the extraterritorial zoning jurisdiction as established pursuant to section 16-902 or 17-1002.

(2) The owners of lots and lands abutting upon a street, avenue, or alley, or part thereof, may petition the council or board to create a sanitary sewer extension district or a water extension district. The petition shall be signed by owners representing at least two-thirds of the front footage abutting upon the street, avenue, or alley, or part thereof, within the proposed district, which will become subject to an assessment for the cost of the improvement.

(3) If creation of the district is not initiated by petition, a vote of at least three-fourths of all the members of the council or board shall be required to adopt the ordinance creating the district.

(4) Such ordinance shall state the size and kind of sewer mains or water mains proposed to be constructed in such district and shall designate the location and terminal points thereof. Such ordinance shall also refer to the plans and specifications for such utility extensions which shall have been made and filed with the municipal clerk by the municipal engineer prior to the introduction of the ordinance, and the city or village engineer at the time of filing such plans and specifications shall make and file an estimate of the total cost of the proposed utility extension. The ordinance shall also state the outer boundaries of the district or districts in which it is proposed to make special assessments.

(5) Upon creation of an extension district, whether by vote of the governing body or by petition, the council or board shall order the sewer extension main or water extension main laid and, to the extent of special benefit, assess the cost thereof against the property which abuts upon the street, avenue, or alley, or part thereof, which is located in the district.

Source: Laws 1961, c. 63, § 1, p. 247; Laws 2001, LB 222, § 3; Laws 2002, LB 649, § 1.

Water extension districts established pursuant to this section must consist of territory beyond the existing municipal water system. Garden Dev. Co. v. City of Hastings, 231 Neb. 477, 436 N.W.2d 832 (1989).

Ordinance creating sanitary sewer extension district was void for failure to state the outer boundaries of the district; either a course or a distance was in error. Christensen v. City of Tekamah, 230 Neb. 576, 432 N.W.2d 798 (1988).

A water extension district is an area of land or contiguous tracts of land located apart and outside and served by an existing municipal water system, wherein water extension mains are to be constructed and service extended. Matzke v. City of Seward, 193 Neb. 211, 226 N.W.2d 340 (1975).

Special assessments are charges imposed by law on land to defray the expense of a local municipal improvement on the theory that the property owner has received special benefits therefrom in excess of the benefits accrued to people generally, and a property owner who attacks a special assessment as void has the burden of establishing its invalidity. Midwest Development Corp. v. City of Norfolk, 192 Neb. 475, 222 N.W.2d 566 (1974).

19-2403 Water service; sanitary sewer service; extension districts; connection compelled; penalty; assessments.

(1) When the extension of the sewer or water service involved in an extension district created pursuant to section 19-2402 is completed, the municipality shall compel all proper connections of occupied properties in the district with the extension and may provide a penalty for failure to comply with regulations of the municipality pertaining to the district.

(2) In case any property owner neglects or fails, for ten days after notice, either by personal service or by publication in some newspaper published and of general circulation in the municipality, to comply with municipal regulations pertaining to municipal water service or municipal sanitary service extensions or to make connections of his or her property with such utility service, the city council or board of trustees may cause the same to be done, assess the cost

thereof against the property, and collect the same in the manner provided for the collection of general municipal taxes.

Source: Laws 1961, c. 63, § 2, p. 248; Laws 1969, c. 51, § 75, p. 321; Laws 2002, LB 649, § 2.

19-2404 Sanitary sewer extension mains; water extension mains; assessments; maturity; interest; rate.

(1) Except as provided in subsection (2) of this section, the assessment of special taxes for sanitary sewer extension mains or water extension mains in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 19-2405. The first installment becomes delinquent fifty days after the making of such levy. Subsequent installments become delinquent on the anniversary date of the levy. Each installment, except the first, shall draw interest at the rate set by the city council or board of trustees from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is collected and paid. Such special taxes shall be collected and enforced as in the case of general municipal taxes and shall be a lien on such real estate from and after the date of the levy. If three or more of such installments become delinquent and unpaid on the same property, the city council or the board of trustees may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time in a legal newspaper of general circulation published in the municipality or, if none is published in such municipality, in a legal newspaper of general circulation in the municipality. After the fixed date such future installments shall be deemed to be delinquent and the municipality may proceed to enforce and collect the total amount due including all future installments.

(2) If the city or village incurs no new indebtedness pursuant to section 19-2405 for any water service extension or sanitary sewer extension in a district, the assessment of special taxes for such improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council or board of trustees determines at the time of making the levy to be reasonable and fair.

Source: Laws 1961, c. 63, § 3, p. 249; Laws 1969, c. 51, § 76, p. 322; Laws 1980, LB 655, § 1; Laws 1980, LB 933, § 23; Laws 1981, LB 167, § 24; Laws 1986, LB 960, § 16; Laws 2005, LB 161, § 9.

19-2405 Water service; sanitary sewer service; extension districts; bonds; interest; issuance.

For the purpose of paying the cost of any such water service extension or sanitary sewer service extension, in any such district, the city council or board of trustees may, by ordinance, cause bonds of the municipality to be issued, called district water service extension bonds of district No. .... or district sanitary sewer service extension bonds of district No. ...., payable in not

exceeding twenty years from date and to bear interest payable annually or semiannually with interest coupons attached. The ordinance effectuating the issuance of such bonds shall provide that the special tax and assessments shall constitute a sinking fund for the payment of such bonds and interest. If a written protest, signed by owners of the property located in the improvement district and representing a majority of the front footage which may become subject to assessment for the cost of the improvement, is filed with the municipal clerk within three days before the date of the meeting for the consideration of such ordinance, such ordinance shall not be passed. The entire cost of such water extension mains or sanitary sewer extension mains in any such street, avenue, or alley may be chargeable to the private property therein and may be paid by the owner of such property within fifty days from the levy of such special taxes and assessments, and thereupon such property shall be exempt from any lien for the special taxes and assessments. The bonds shall not be sold for less than their par value. If the assessment or any part thereof fails or for any reason is invalid, the governing body of the municipality may, without further notice, make such other and further assessments on the lots and lands as may be required to collect from the lots and lands the cost of the improvement, properly chargeable as provided in this section. In lieu of such general obligation bonds, the municipality may issue revenue bonds as provided in section 18-502, to pay all or part of the cost of the construction of such improvement.

Source: Laws 1961, c. 63, § 4, p. 249; Laws 1969, c. 51, § 77, p. 323; Laws 2005, LB 161, § 10.

19-2406 Water service; sanitary sewer service; extension districts; warrants; interest; issuance; contractor; interest.

For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and council or the chairman and board of trustees, as the case may be, 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 sum not exceeding ninety-five percent of the cost thereof and upon the completion and acceptance of the work issue a final warrant for the balance due the contractor, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold as provided in section 19-2405, and which shall bear interest at such rate as the mayor and council or chairman and board of trustees, as the case may be, shall order. The city or village shall pay to the contractor interest at the rate of eight 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 by the governing body, and running until the date that the warrant is tendered to the contractor. Said warrants shall be registered in the manner provided for the registration of other warrants, and called and paid whenever there are funds available for that purpose in the manner provided for the calling and paying of other warrants. For the purpose of paying said warrants and the interest thereon from the time of their registration until paid, the special assessments hereinbefore provided for shall be kept as they are paid and collected in a fund to be designated as the sewer and water service extension fund.

Source: Laws 1961, c. 63, § 5, p. 250; Laws 1969, c. 51, § 78, p. 323; Laws 1974, LB 636, § 7.

19-2407 Water service; sanitary sewer service; extension districts; special taxes; levy; collection.

Special taxes may be levied by the mayor and council or chairman and board of trustees, as the case may be, for the purpose of paying the cost of constructing extension water mains or sanitary service connections, as provided in sections 19-2402 to 19-2407. Such tax shall be levied on the real property lying and being within the utility main district in which such extension mains may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the mayor and council, or chairman and board of trustees, as the case may be, sitting as a board of equalization after notice to property owners, as provided in other cases of special assessment. After the mayor and council, or chairman and board of trustees, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be made according to the front footage of the lots or real estate within such utility district, or according to such other rule as the board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All such taxes shall be collected in the same manner as general municipal taxes and shall be subject to the same penalty.

Source: Laws 1961, c. 63, § 6, p. 250.

19-2408 Combined improvements; legislative intent.

The Legislature finds that it is advantageous to cities of the first class, cities of the second class, and villages and to the inhabitants thereof to authorize such cities and villages to make various street improvements and install water mains and sewer lines as a single project when the aggregate cost of the individual improvement does not exceed fifty thousand dollars and the aggregate cost of all improvements in a single project does not exceed two hundred thousand dollars, in lieu of the cities and villages making such improvements as separate projects.

Source: Laws 1961, c. 64, § 1, p. 252; Laws 2003, LB 52, § 2.

19-2409 Combined improvements; authorized.

Any city of the first class, city of the second class, or village may pave, repave, macadamize, gravel, curb, and gutter streets, avenues, or alleys and do any grading or work incidental in connection therewith and install water mains and sewer lines, either sanitary or storm or a combination sewer, in any improvement district or make any one, or a combination, of the above improvements, as a single project by following the Combined Improvement Act, if the total estimated costs do not exceed the dollar limitations in section 19-2408.

Source: Laws 1961, c. 64, § 2, p. 252; Laws 2003, LB 52, § 3.

19-2410 Combined improvements; petition; contents; authority of governing body.

Whenever a petition, signed by sixty percent of the owners of all real property in the proposed improvement district, is presented to the city council or board of trustees of the village setting forth (1) the property to be included in the improvement district, (2) the improvement or improvements authorized by the Combined Improvement Act which they desire made in such district in reason-

able detail and stating the location of each, and (3) an estimate of the cost of the improvement, which estimate does not exceed the dollar limitations in section 19-2408, the city council or board of trustees of the village shall cause the petition to be examined and the estimate of cost of the improvement verified. If the petition is found correct, the city council or board of trustees of the village shall by ordinance create an improvement district consecutively numbered, known as Improvement District No. . . . ., and cause the improvements to be made if such can be done within such dollar limitations.

Source: Laws 1961, c. 64, § 3, p. 252; Laws 2003, LB 52, § 4.

19-2411 Combined improvements; district; creation; notice; objections.

The city council or board of trustees of a village may without petition create an improvement district and cause one or more of the improvements specified in section 19-2409 to be made in the district. The ordinance shall designate the property included within the district or the outer boundaries thereof, the improvement or improvements to be made in the district, and the total estimated cost of the improvements, which shall not exceed the dollar limitations in section 19-2408. After passage, approval, and publication of the ordinance the city or village clerk shall cause notice of the creation of such district to be published for two consecutive weeks in a newspaper published or of general circulation in the city or village, or in lieu of publication cause such notice to be served personally or by certified mail on all owners of real property located within the district. If a majority of the owners of all the real property in the district file written objections to the creation of the district with the city or village clerk within twenty days after the first publication of such notice or within twenty days after the date of mailing or service of written notice on the property owners in the district, the city or village shall not proceed further and shall repeal such ordinance. If no such objections are filed, the city shall proceed with making the improvements.

Source: Laws 1961, c. 64, § 4, p. 253; Laws 2003, LB 52, § 5.

19-2412 Combined improvements; contract; bids; warrants; payment; interest.

The contract shall be let and the improvements made in the same manner as required for street improvements. The city council or board of trustees of the village may direct the improvements to be made under a single contract or that separate bids be taken for the street improvement, installation of water mains and installation of sewers, but the aggregate of said contracts shall not exceed the estimate as shown in the ordinance creating the district. For the purpose of making partial payment as the work progresses warrants may be issued by the mayor and city council or the board of trustees of the village upon certificate of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project in an amount not exceeding ninety-five percent of the cost thereof, which warrants shall be redeemed and paid from the amounts received on the special assessments or from the sale of bonds issued to pay the cost of the project as provided in section 19-2414. The city or village shall pay to the contractor interest, at the rate of eight 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 by the

governing body and running until the date that the warrant is tendered to the contractor.

Source: Laws 1961, c. 64, § 5, p. 254; Laws 1975, LB 112, § 4.

19-2413 Combined improvements; acceptance; special assessments; levy; maturity.

On the completion and acceptance of the improvement or improvements, the mayor and city council or the board of trustees of the village may cause special assessments to be levied against the property in the district specially benefited by the improvement or improvements to the extent that said property is specially benefited in the manner and form provided for levying special assessments for street improvements under the provisions of sections 17-509 to 17-515, and the special assessments shall mature and bear interest the same as provided for special assessments for paving.

Source: Laws 1961, c. 64, § 6, p. 254.

19-2414 Combined improvements; acceptance; bonds; interest; issuance; maturity; proceeds; disposition.

After the completion and acceptance of the improvement or improvements, the city or village may issue and sell its negotiable coupon bonds to be known as public improvement bonds in an amount not exceeding the balance of the unpaid cost of the improvement or improvements. The bonds shall be payable in not to exceed twenty years from date and bear interest payable annually or semiannually. All money collected from the special assessments shall be placed in a sinking fund to pay the cost of the improvement or improvements and the bonds issued under the Combined Improvement Act.

Source: Laws 1961, c. 64, § 7, p. 254; Laws 1969, c. 51, § 79, p. 324; Laws 2003, LB 52, § 6.

19-2415 Combined improvements; act, how cited.

Sections 19-2408 to 19-2415 shall be known and may be cited as the Combined Improvement Act.

Source: Laws 1961, c. 64, § 9, p. 255; Laws 2003, LB 52, § 7.

19-2416 Limited street improvement district; creation; purpose; ordinance; notice; procedure.

The governing body of any city of the first or second class or of any village may by ordinance create a limited street improvement district for the sole purpose of grading, curbing and guttering any unpaved street or streets or curbing and guttering any paved or unpaved street or streets in the city or village and each district shall be designated as Street Grading, Curbing and Guttering District No. .... or as Curbing and Guttering District No. ...., as the case may be. The mayor or chairman of the board of trustees and clerk shall, after the passage, approval and publication of such ordinance, publish notice of the creation of any such district or districts one time each week for three weeks in a daily or weekly newspaper of general circulation in the city or village. After the passage, approval and publication of such ordinance and the publication of such notice, the procedure of the mayor and council or chairman

and board of trustees in reference to such improvement shall be in accordance with the applicable provisions of sections 16-620 to 16-655 or 17-508 to 17-520.

Source: Laws 1961, c. 65, § 1, p. 255; Laws 1963, c. 89, § 8, p. 306; Laws 1965, c. 56, § 2, p. 263.

19-2417 Sidewalks; construct, replace, repair; districts; contract.

The mayor and council of any city of the first class or second class or the board of trustees of any village shall have the power to construct, replace, repair, or otherwise improve sidewalks within such city or village. Whenever the mayor and council of a city or board of trustees of a village shall by resolution passed by a three-fourths vote of all members of such council or board of trustees determine the necessity for sidewalk improvements, the mayor and council or board of trustees shall by ordinance create a sidewalk district, and shall cause such improvements to be made, and shall contract therefor.

Source: Laws 1965, c. 80, § 1, p. 316.

19-2418 Sidewalks; construct, replace, repair; districts; assessments; payment.

The mayor and council or board of trustees shall levy assessments on the lots and parcels of land abutting on or adjacent to the sidewalk improvements especially benefited thereby in such district in proportion to the benefits, to pay the cost of such improvement. All assessments shall be a lien on the property on which levied from the date of the levy until paid. The assessment of the special tax, for the sidewalk improvement, shall be levied at one time and shall become delinquent as follows: One-seventh of the total assessment shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at the rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the same shall become delinquent; and after the same shall become delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special taxes. All such assessments shall be made and collected in accordance with the procedure established for paving assessments for the particular city or village.

Source: Laws 1965, c. 80, § 2, p. 316; Laws 1980, LB 933, § 24; Laws 1981, LB 167, § 25.

19-2419 Sidewalks; construct, replace, repair; districts; bonds; general obligation; interest; payment.

For the purpose of paying the cost of sidewalk improvements in any sidewalk district, the mayor and council or board of trustees shall have the power and may, by ordinance, cause to be issued bonds of the city or village, to be called Sidewalk Bonds of District No. . . . ., payable in not exceeding six years from date, and to bear interest annually or semiannually, with interest coupons attached. Such bonds shall be general obligations of the city or village, with principal and interest payable from a fund made up of the special assessments collected and supplemented by transfers from the general fund to make up any

deficiency in the collection of the special assessments. For the purpose of making partial payments as the work progresses, warrants bearing interest may be issued by the mayor and council, or the board of trustees, upon certificate of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project, in a sum not exceeding ninety-five percent of the cost thereof, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold as aforesaid. The city or village shall pay to the contractor interest, at the rate of eight 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 by the governing body and running until the date that the warrant is tendered to the contractor.

Source: Laws 1965, c. 80, § 3, p. 317; Laws 1969, c. 51, § 80, p. 324; Laws 1975, LB 112, § 5.

19-2420 Sewage and water facilities; acquire by gift or purchase from federal government; rates.

A city of the first or second class may acquire by gift or purchase from the federal government or any agency thereof sewer lines and sewage disposal systems, waterworks, and water distribution systems, whether within or without the corporate limits, and operate and extend the same, even though such system or systems are or may be and continue to be wholly disconnected and separate from any such utility system already belonging to such city, when, in the judgment of the mayor and council of such a city not having a board of public works or of its board of public works in such a city having such board, it is beneficial to any such city to do so. For the purpose of acquiring, maintaining, operating, and extending any such system any such city of the first or second class may use funds from any sewer, water or electrical system presently owned and operated by it, without prior appropriation of such funds, and any other funds lawfully available for such purpose.

Rates charged for the use of any system or works so acquired shall be reasonable and based on cost properly allocable to the customers of any such system.

Source: Laws 1967, c. 88, § 1, p. 277.

19-2421 Leases authorized; term; option to purchase.

The mayor and council of any city of the first or second class and the chairman and board of trustees of any village, in addition to other powers granted by law, may enter into contracts for lease of real or personal property for any purpose for which the city or village is authorized by law to purchase property or construct improvements. Such leases shall not be restricted to a single year, and may provide for the purchase of the property in installment payments.

Source: Laws 1969, c. 110, § 1, p. 518.

19-2422 Special assessment; appeal; district court; powers; tried de novo.

Any owner of real property who feels aggrieved by the levy of any special assessment by any city of the first or second class or village may appeal from such assessment, both as to the validity and amount thereof, to the district court of the county where such assessed real property is located. The issues on

such appeal shall be tried de novo. The district court may affirm, modify, or vacate the special assessment, or may remand the case to the local board of equalization for rehearing.

Source: Laws 1975, LB 468, § 1.

This section provides a taxpayer with a means by which his or her constitutional challenges to a special tax assessment can be fairly and fully adjudicated. Francis v. City of Columbus, 267 Neb. 553, 676 N.W.2d 346 (2004).

Plaintiffs did not waive their right to contest the assessment for a sanitary sewer extension district by failing to file notice of appeal within 10 days of the levy. Plaintiffs attacked the formation of the district, not the amount of assessments that have been levied against their property. A special assessment is subject to collateral attack for a fundamental defect. Christensen v. City of Tekamah, 230 Neb. 576, 432 N.W.2d 798 (1988).

A landowner's right to challenge the validity and amount of a special assessment pursuant to this section is not waived when such landowner attains a deferral of payment of the assessment, pursuant to sections 19-2425 to 19-2431. Brown v. City of York, 227 Neb. 183, 416 N.W.2d 574 (1987).

19-2423 Special assessment; notice of appeal; time; bond; costs.

The owner appealing shall, within ten days from the levy of such special assessment, file a notice of appeal with the city or village clerk, and shall post a bond in the amount of two hundred dollars conditioned that such appeal shall be prosecuted without delay and the appellant shall pay all costs charged against him.

Source: Laws 1975, LB 468, § 2.

Plaintiffs did not waive their right to contest the assessment for a sanitary sewer extension district by failing to file notice of appeal within 10 days of the levy. Plaintiffs attacked the formation of the district, not the amount of assessments that have been levied against their property. A special assessment is subject to collateral attack for a fundamental defect. Christensen v. City of Tekamah, 230 Neb. 576, 432 N.W.2d 798 (1988).

19-2424 City or village clerk; prepare transcript; cost; indigent appellant.

(1) Upon the request of the owner appealing a special assessment and the payment by him or her of the estimated cost of preparation of the transcript to the city or village clerk or such clerk's designee, the city or village clerk shall cause a complete transcript of the proceedings before such city or village to be prepared. The cost of preparing the transcript shall be calculated in the same manner as the calculation of the fee for a court reporter for the preparation of a bill of exceptions as specified by rules of practice prescribed by the Supreme Court. At such time as the completed transcript is provided to the appellant, the appellant shall pay the amount of the cost of preparation which is in excess of the estimated cost already paid or shall receive a refund of any amount in excess of the actual cost. An appellant determined to be indigent shall not be required to pay any costs associated with such transcript preparation.

(2) For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family. Indigency shall be determined by the court having jurisdiction over the appeal upon motion of the appellant. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as the appellant's income, the availability to the appellant of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances.

Source: Laws 1975, LB 468, § 3; Laws 2009, LB441, § 5.

19-2425 Special assessment; file petition on appeal and transcript with district court; time.

The appellant shall file his petition on appeal in the district court, together with a transcript of the proceedings before such city or village, within thirty days from the date of the levy of such special assessment.

Source: Laws 1975, LB 468, § 4.

A landowner's right to challenge the validity and amount of a special assessment pursuant to section 19-2422 is not waived when such landowner attains a deferral of payment of the assessment, pursuant to sections 19-2425 to 19-2431. Brown v. City of York, 227 Neb. 183, 416 N.W.2d 574 (1987).

19-2426 Irrigation or drainage ditch, canal, or lateral; wall, enclose, or cover; procedure.

Any first- or second-class city or village may wall, enclose, or cover in a manner that will not restrict or impair the intended purpose, function, or operation of a segment of any irrigation or drainage ditch, canal, or lateral, whether on public or private property, which lies within the corporate limits of such city or village, and for this purpose may acquire and hold land or an interest in land. Nothing in this section shall be construed to authorize the taking of property without payment of compensation when required by law. Such city or village may undertake and finance a project authorized by this section either independently or jointly with any person owning or operating such irrigation ditch, canal, or lateral; *Provided*, that if such project is undertaken independently, the owner or operator of such irrigation ditch, canal, or lateral shall approve the design of the project prior to any construction.

Source: Laws 1979, LB 13, § 1.

19-2427 Improvement district; adjacent land; how treated; assessments.

Supplemental to any existing law on the subject, any first- or second-class city or village may include land adjacent to such city or village when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The city council or board of trustees shall have power to assess, to the extent of special benefits, the costs of such improvements upon the properties found especially benefited thereby, except as provided in sections 19-2428 to 19-2431.

Source: Laws 1979, LB 136, § 4; Laws 1983, LB 94, § 4; Laws 1987, LB 679, § 1.

19-2428 Improvement district; land within agricultural use zone; how treated.

(1) Whenever the governing body of a city of the first or second class or village creates an improvement district as specified in section 19-2427 which includes land adjacent to such city or village and such adjacent land is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments pursuant to sections 19-2428 to 19-2431.

(2) For purposes of sections 19-2428 to 19-2431:

(a) Agricultural use means the use of land as described in section 77-1359, so that incidental use of the land for nonagricultural or nonhorticultural purposes shall not disqualify the land; and

(b) Agricultural use zone means designation of any land predominantly for agricultural or horticultural use by any political subdivision pursuant to sections 19-924 to 19-933, Chapter 14, article 4, Chapter 15, article 9, Chapter 16,

article 9, Chapter 17, article 10, or Chapter 23, article 1. The primary objective of the agricultural use zoning shall be to preserve and protect agricultural activities and the potential for the agricultural, horticultural, or open use of land. Uses to be allowed on such lands include primarily agricultural-related or horticultural-related uses, and nonagricultural or nonhorticultural industrial, commercial, or residential uses allowed on such lands shall be restricted so that they do not conflict with or detract from this objective.

Source: Laws 1983, LB 94, § 5; Laws 1987, LB 679, § 2; Laws 2006, LB 808, § 5.

19-2429 Agricultural land within improvement district; deferral of special assessment; procedure.

(1) Any owner of record title eligible for the deferral granted by section 19-2428 shall, to secure such assessment, make application to the city council or board of trustees of any city of the first or second class or village within ninety days after creation of an improvement district as specified in section 19-2427 which includes land adjacent to such city or village which is within an agricultural use zone and is used exclusively for agricultural use.

(2) Any owner of record title who makes application for the deferral provided by sections 19-2428 to 19-2431 shall notify the county register of deeds of such application in writing prior to approval by the city council or board of trustees.

(3) The city council or board of trustees shall approve the application of any owner of record title upon determination that the property (a) is within an agricultural use zone and is used exclusively for agricultural use and (b) the owner has complied with subsection (2) of this section.

Source: Laws 1983, LB 94, § 6; Laws 1987, LB 679, § 3.

19-2430 Agricultural land within improvement district; deferral of special assessment; termination; when.

The deferral provided for in sections 19-2428 to 19-2431 shall be terminated upon any of the following events:

(1) Notification by the owner of record title to the city council or board of trustees to remove such deferral;

(2) Sale or transfer to a new owner who does not make a new application within sixty days of the sale or transfer, except as provided in subdivision (3) of this section;

(3) Transfer by reason of death of a former owner to a new owner who does not make application within one hundred twenty-five days of the transfer;

(4) The land is no longer being used as agricultural land; or

(5) Change of zoning to other than an agricultural zone.

Source: Laws 1983, LB 94, § 7.

19-2431 Agricultural land within improvement district; payment of special assessments; when; interest; lien.

(1) Whenever property which has received a deferral pursuant to sections 19-2428 to 19-2431 becomes disqualified for such deferral, the owner of record title of such property shall pay to the city or village an amount equal to the total amount of special assessments which would have been assessed against such

property, to the extent of special benefits, had such deferral not been granted. Interest upon the special assessments shall be deferred and shall accrue from the time the property becomes disqualified for deferral. The interest rate shall be the same as was charged to other property owners within the special assessment district in question and amortized over a term to coincide with the original amortization period.

(2) In cases where the deferral provided by sections 19-2428 to 19-2431 is terminated as a result of a sale or transfer described in subdivision (2) or (3) of section 19-2430, the lien for assessments and interest shall attach as of the day preceding such sale or transfer.

Source: Laws 1983, LB 94, § 8; Laws 1989, LB 106, § 1.

19-2432 Special assessment; division or subdivision of land; reapportionment; procedure; notice; hearing; aggrieved owner; appeal; governing body; duties.

(1) Whenever a tract of land against which a special assessment has been levied is divided or subdivided by any platting, replatting, or other form of division creating separate lots or tracts, the governing body of any city of the first class, city of the second class, or village which has levied such special assessments may (a) on application of the owner of any part of the tract or (b) on its own motion, determine the apportionment of such special assessment remaining unpaid among the various lots and parcels in the tract resulting from the division or subdivision. Any such reapportionment shall be on such fair and equitable terms as the governing body shall determine after notice and hearing on the reapportionment. No reapportionment of a special assessment shall be done on a tract of land if a tax sale certificate has been issued for such tract or if the special assessment being reapportioned is delinquent.

(2) Notice of hearing on the reapportionment shall be given by publication one time in a newspaper published or of general circulation in the city or village not less than ten days prior to the hearing. Notice of the hearing shall be sent by mail to the owners of record title of each lot or parcel affected by any proposed or determined reapportionment in the same manner as is required under section 25-520.01.

(3) In making the determination as to reapportionment, the governing body shall take into consideration its own requirements as to security for payment of the amounts owing and may, if determined appropriate, allocate based upon either front footage or square footage or other such method or reapportionment as may be determined appropriate based upon the facts and circumstances. No such reapportionment shall result in a reduction or remittance of the total amount originally assessed and then remaining outstanding and unpaid. Notice of the reapportionment when determined shall be sent by mail to the owners of record title of each lot or parcel affected by the reapportionment.

(4) Any notice required under this section may be waived in writing by any owner of any lot or parcel affected by any reapportionment.

(5) Any owner of real property who feels aggrieved by the reapportionment of any special assessment under this section may appeal such reapportionment in the same manner as applies for appeals from special assessments under sections 19-2422 to 19-2425, but only matters related to such reapportionment shall be considered upon any such appeal.

(6) The governing body shall file notice of any reapportionment of a special assessment with the county treasurer of the county where the lot or parcel is located.

Source: Laws 2011, LB309, § 1.

ARTICLE 25
INDUSTRIAL AREAS

Section
19-2501. Transferred to section 13-1111.
19-2501.01. Transferred to section 13-1112.
19-2502. Transferred to section 13-1113.
19-2503. Transferred to section 13-1114.
19-2504. Transferred to section 13-1115.
19-2505. Transferred to section 13-1116.
19-2506. Transferred to section 13-1118.
19-2507. Transferred to section 13-1117.
19-2508. Repealed. Laws 1979, LB 217, § 9.
19-2509. Transferred to section 13-1119.
19-2510. Transferred to section 13-1120.
19-2511. Transferred to section 13-1121.

19-2501 Transferred to section 13-1111.

19-2501.01 Transferred to section 13-1112.

19-2502 Transferred to section 13-1113.

19-2503 Transferred to section 13-1114.

19-2504 Transferred to section 13-1115.

19-2505 Transferred to section 13-1116.

19-2506 Transferred to section 13-1118.

19-2507 Transferred to section 13-1117.

19-2508 Repealed. Laws 1979, LB 217, § 9.

19-2509 Transferred to section 13-1119.

19-2510 Transferred to section 13-1120.

19-2511 Transferred to section 13-1121.

ARTICLE 26
URBAN REDEVELOPMENT

Section
19-2601. Transferred to section 18-2101.
19-2602. Transferred to section 18-2102.
19-2602.01. Transferred to section 18-2102.01.
19-2603. Transferred to section 18-2103.
19-2604. Transferred to section 18-2104.
19-2605. Transferred to section 18-2105.
19-2606. Transferred to section 18-2106.
19-2607. Transferred to section 18-2107.
19-2608. Transferred to section 18-2108.

Section
19-2609. Transferred to section 18-2109.
19-2610. Transferred to section 18-2110.
19-2611. Transferred to section 18-2111.
19-2612. Transferred to section 18-2112.
19-2613. Transferred to section 18-2113.
19-2614. Transferred to section 18-2114.
19-2615. Transferred to section 18-2115.
19-2616. Transferred to section 18-2116.
19-2617. Transferred to section 18-2117.
19-2618. Transferred to section 18-2118.
19-2619. Transferred to section 18-2119.
19-2620. Transferred to section 18-2120.
19-2621. Transferred to section 18-2121.
19-2622. Transferred to section 18-2122.
19-2623. Transferred to section 18-2123.
19-2624. Transferred to section 18-2124.
19-2625. Transferred to section 18-2125.
19-2626. Transferred to section 18-2126.
19-2627. Transferred to section 18-2127.
19-2628. Transferred to section 18-2128.
19-2629. Transferred to section 18-2129.
19-2630. Transferred to section 18-2130.
19-2631. Transferred to section 18-2131.
19-2632. Transferred to section 18-2132.
19-2633. Transferred to section 18-2133.
19-2634. Transferred to section 18-2134.
19-2635. Transferred to section 18-2135.
19-2636. Transferred to section 18-2136.
19-2637. Transferred to section 18-2137.
19-2638. Transferred to section 18-2138.
19-2639. Transferred to section 18-2139.
19-2640. Transferred to section 18-2140.
19-2641. Transferred to section 18-2141.
19-2642. Transferred to section 18-2142.
19-2643. Transferred to section 18-2143.
19-2644. Transferred to section 18-2144.

19-2601 Transferred to section 18-2101.

19-2602 Transferred to section 18-2102.

19-2602.01 Transferred to section 18-2102.01.

19-2603 Transferred to section 18-2103.

19-2604 Transferred to section 18-2104.

19-2605 Transferred to section 18-2105.

19-2606 Transferred to section 18-2106.

19-2607 Transferred to section 18-2107.

19-2608 Transferred to section 18-2108.

19-2609 Transferred to section 18-2109.

19-2610 Transferred to section 18-2110.

19-2611 Transferred to section 18-2111.

19-2612 Transferred to section 18-2112.

19-2613 Transferred to section 18-2113.

19-2614 Transferred to section 18-2114.

19-2615 Transferred to section 18-2115.

19-2616 Transferred to section 18-2116.

19-2617 Transferred to section 18-2117.

19-2618 Transferred to section 18-2118.

19-2619 Transferred to section 18-2119.

19-2620 Transferred to section 18-2120.

19-2621 Transferred to section 18-2121.

19-2622 Transferred to section 18-2122.

19-2623 Transferred to section 18-2123.

19-2624 Transferred to section 18-2124.

19-2625 Transferred to section 18-2125.

19-2626 Transferred to section 18-2126.

19-2627 Transferred to section 18-2127.

19-2628 Transferred to section 18-2128.

19-2629 Transferred to section 18-2129.

19-2630 Transferred to section 18-2130.

19-2631 Transferred to section 18-2131.

19-2632 Transferred to section 18-2132.

19-2633 Transferred to section 18-2133.

19-2634 Transferred to section 18-2134.

19-2635 Transferred to section 18-2135.

19-2636 Transferred to section 18-2136.

19-2637 Transferred to section 18-2137.

19-2638 Transferred to section 18-2138.

19-2639 Transferred to section 18-2139.

19-2640 Transferred to section 18-2140.

19-2641 Transferred to section 18-2141.

19-2642 Transferred to section 18-2142.

19-2643 Transferred to section 18-2143.

19-2644 Transferred to section 18-2144.

ARTICLE 27
PUBLIC UTILITY SERVICE

(a) CONTRACTS

(Applicable to cities of the first or second class.)

Section
19-2701. Public utilities; service outside city; authorization; limitation on length of contracts.

(b) DISCONTINUANCE OF SERVICE

(Applicable to all cities.)

19-2702. Transferred to section 70-1605.
19-2703. Transferred to section 70-1602.
19-2704. Transferred to section 70-1606.
19-2705. Transferred to section 70-1607.
19-2706. Transferred to section 70-1608.
19-2707. Repealed. Laws 1988, LB 792, § 16.
19-2708. Transferred to section 70-1609.
19-2709. Transferred to section 70-1610.
19-2710. Transferred to section 70-1611.
19-2711. Transferred to section 70-1612.
19-2712. Repealed. Laws 1988, LB 792, § 16.
19-2713. Transferred to section 70-1613.
19-2714. Transferred to section 70-1614.
19-2715. Transferred to section 70-1615.

(c) DISCONTINUANCE OF SERVICE

(Applicable to all villages.)

19-2716. Transferred to section 70-1603.
19-2717. Transferred to section 70-1604.

(a) CONTRACTS

(Applicable to cities of the first or second class.)

19-2701 Public utilities; service outside city; authorization; limitation on length of contracts.

A city of the first or second class may enter into a contract or contracts to sell electric, water, or sewer service to persons beyond the corporate limits of such a city when, in the judgment of the mayor and council of such a city not having a board of public works or of its board of public works in such a city having such board, it is beneficial to any such city to do so. No such contract shall run for a period in excess of twenty-five years. Such a city is hereby authorized and empowered to enter into contracts for the furnishing of electric service to persons, firms, associations, and corporations beyond the corporate limits of such a city.

Source: Laws 1909, c. 19, § 1, p. 186; R.S.1913, §§ 4959, 4960; C.S.1922, §§ 4128, 4129; Laws 1929, c. 43, § 2, p. 188; C.S.1929, §§ 16-657, 16-658; R.S.1943, § 16-685; Laws 1947, c. 26, § 4, p. 130; R.R.S.1943, § 16-685; Laws 1957, c. 53, § 1, p. 262.

City was given power to contract for the sale of water outside the city limits. Burger v. City of Beatrice, 181 Neb. 213, 147 N.W.2d 784 (1967).

The provisions of this section were modified by legislative act creating the Nebraska Power Review Board. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

(b) DISCONTINUANCE OF SERVICE
(Applicable to all cities.)

19-2702 Transferred to section 70-1605.

19-2703 Transferred to section 70-1602.

19-2704 Transferred to section 70-1606.

19-2705 Transferred to section 70-1607.

19-2706 Transferred to section 70-1608.

19-2707 Repealed. Laws 1988, LB 792, § 16.

19-2708 Transferred to section 70-1609.

19-2709 Transferred to section 70-1610.

19-2710 Transferred to section 70-1611.

19-2711 Transferred to section 70-1612.

19-2712 Repealed. Laws 1988, LB 792, § 16.

19-2713 Transferred to section 70-1613.

19-2714 Transferred to section 70-1614.

19-2715 Transferred to section 70-1615.

(c) DISCONTINUANCE OF SERVICE
(Applicable to all villages.)

19-2716 Transferred to section 70-1603.

19-2717 Transferred to section 70-1604.

ARTICLE 28
WIRED TELEVISION AND RADIO SYSTEMS

Section
19-2801. Repealed. Laws 1969, c. 119, § 6.
19-2802. Repealed. Laws 1969, c. 119, § 6.
19-2803. Repealed. Laws 1969, c. 119, § 6.
19-2804. Repealed. Laws 1969, c. 119, § 6.

19-2801 Repealed. Laws 1969, c. 119, § 6.

19-2802 Repealed. Laws 1969, c. 119, § 6.

19-2803 Repealed. Laws 1969, c. 119, § 6.

19-2804 Repealed. Laws 1969, c. 119, § 6.

ARTICLE 29

NEBRASKA MUNICIPAL AUDITING LAW

(Applicable to cities of the first or second class and villages.)

Section
19-2901. Act, how cited.
19-2902. Terms, defined.
19-2903. Annual audit; independent accountant; when completed and reported; villages, waiver; public utility or other enterprise; separate audit and account.
19-2904. Annual audit; contents.
19-2905. Annual audit report; supplemental report; copies; filing; public records; retain for five years.
19-2906. Accountant; prohibited disclosures; penalty.
19-2907. Annual audit; failure or refusal of municipality; mandamus; damages; notice; State Treasurer; withhold distribution of funds.
19-2908. Sections, how construed; failure to comply, effect on taxes levied.
19-2909. Audit; expense; payment.

19-2901 Act, how cited.

Sections 19-2901 to 19-2909 may be cited as the Nebraska Municipal Auditing Law.

Source: Laws 1959, c. 69, § 1, p. 296.

19-2902 Terms, defined.

For purposes of the Nebraska Municipal Auditing Law, unless the context otherwise requires:

(1) Municipality or municipalities shall mean and include all incorporated cities of the first class, cities of the second class, and villages in this state;

(2) Municipal authority shall mean the city council, board of trustees of a village, or any other body or officer having authority to levy taxes, make appropriations, or approve claims for any municipality;

(3) Accountant shall mean a duly licensed public accountant or certified public accountant who otherwise is not an employee of or connected in any way with the municipality involved;

(4) Annual audit report shall mean the written report of the accountant and all appended statements and schedules relating thereto presenting or recording the findings of an examination or audit of the financial transactions, affairs, or financial condition of a municipality and its proprietary functions for the fiscal year immediately prior to the making of such annual report; and

(5) Fiscal year shall mean the fiscal year for the particular municipality involved or the fiscal year established in section 18-2804 for a proprietary function if different than the municipal fiscal year.

Source: Laws 1959, c. 69, § 2, p. 296; Laws 1993, LB 734, § 29.

19-2903 Annual audit; independent accountant; when completed and reported; villages, waiver; public utility or other enterprise; separate audit and account.

The municipal authorities of each municipality shall cause an audit of the municipality's accounts to be made by a recognized independent and qualified

accountant as expeditiously as possible following the close of the fiscal year for such municipality and to cover all financial transactions and affairs of the municipality for such preceding fiscal year. Such audit shall be made on a cash or accrual method at the discretion of the municipality. Such audit shall be completed and the annual audit report made by such accountant shall be submitted within six months after the close of the fiscal year in any event, unless an extension of time shall be granted by a written resolution adopted by the municipal authorities. A village may request a waiver of the audit requirement subject to the requirements of subdivision (4) of section 84-304. If a municipality other than a village owns or operates any type of public utility or other enterprise which substantially generates its own revenue, that phase of the affairs of such municipality shall be audited separately from the other functions of such municipality and the result shall appear separately in the annual audit report made by the accountant to the municipality and such audit shall be on an accrual basis and shall contain statements and materials which conform to generally accepted accounting principles. Any municipality, other than a village, operating its utilities through a board of public works may provide for an entirely separate audit, on an accrual basis, of such operations and report and by a different accountant than the one making the general audit. A village which is required to conduct an audit under subdivision (4) of section 84-304 and which owns or operates any type of public utility or other enterprise which substantially generates its own revenue shall have that phase of the village's affairs reported separately from the other functions of such village, the result of the audit shall appear separately in the annual audit report made by the accountant to the village, and the audit shall be on a cash or accrual basis at the discretion of the village.

Source: Laws 1959, c. 69, § 3, p. 296; Laws 1971, LB 682, § 1; Laws 1975, LB 446, § 3; Laws 1976, LB 776, § 1; Laws 1977, LB 152, § 1; Laws 2002, LB 568, § 6.

19-2904 Annual audit; contents.

The annual audit report shall set forth, insofar as possible, the financial position and results of financial operations for each fund or group of accounts of the municipality. When the accrual method is selected for the annual audit report, such report shall be in accordance with generally accepted accounting principles. The annual audit report shall also include the professional opinion of the accountant with respect to the financial statements, or, if an opinion cannot be expressed, a declaration that the accountant is unable to express such an opinion with an explanation of the reasons why he cannot do so.

Source: Laws 1959, c. 69, § 4, p. 297; Laws 1977, LB 152, § 2.

19-2905 Annual audit report; supplemental report; copies; filing; public records; retain for five years.

At least three copies of such annual audit report shall be properly signed and attested by the accountant; two copies shall be filed with the clerk of the municipality involved and one copy shall be filed with the Auditor of Public Accounts. The copy of the annual audit report submitted to the Auditor of Public Accounts shall be accompanied by a supplemental report, if appropriate, by the accountant making the audit identifying any illegal acts or indications of illegal acts discovered as a result of the audit.

The annual audit report filed, together with any accompanying comment or explanation, shall become a part of the public records of the clerk of the municipality involved and shall at all times thereafter be open and subject to public inspection. The copies filed with the auditor shall be kept as a part of the public records in that office for at least five years and shall at all times be subject to public inspection.

Source: Laws 1959, c. 69, § 5, p. 297; Laws 1969, c. 93, § 2, p. 459; Laws 1975, LB 446, § 4; Laws 1992, LB 1115, § 1; Laws 2002, LB 568, § 7.

19-2906 Accountant; prohibited disclosures; penalty.

It shall be unlawful for an accountant making any municipal audit to make any disclosure of the result of any examination of any municipal account except in the report to the municipality audited. Any violation of this section shall constitute a Class III misdemeanor, and upon conviction thereof, the offender shall be ordered to pay the costs of prosecution. This section shall not apply to an accountant reporting illegal acts or indications of illegal acts found during a municipal audit to an appropriate law enforcement official or governmental oversight body.

Source: Laws 1959, c. 69, § 6, p. 297; Laws 1992, LB 1115, § 2.

19-2907 Annual audit; failure or refusal of municipality; mandamus; damages; notice; State Treasurer; withhold distribution of funds.

Should any municipality fail or refuse to cause such annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, then and in such event, any resident taxpayer may make a written demand on the governing body of such municipality to commence such annual audit within thirty days, and if such demand is ignored, a mandamus action may be instituted by any taxpayer or taxpayers residing in such municipality against the then municipal authorities of such municipality requiring the municipality to proceed forthwith to cause such audit to be made, and if such action is decided in favor of the taxpayer or taxpayers instituting the same, the then municipal authorities of such municipality shall be personally, and jointly and severally, liable for the costs of such action, including a reasonable attorney fee to be allowed by the court for the attorney employed by the taxpayer or taxpayers and who prosecuted the action. Upon a failure, refusal, or neglect to cause such annual audit to be made as required by sections 19-2903 and 19-2904, and a failure to file a copy thereof with the Auditor of Public Accounts as required by section 19-2905, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such city or village, notify the State Treasurer of such failure to file a copy with the Auditor of Public Accounts. The State Treasurer shall, upon receipt of such notice, withhold distribution of all money to which such city or village may be entitled under the provisions of sections 39-2511 to 39-2520, until such annual audit shall have been made and have been filed with the Auditor of Public Accounts. If such annual audit is not filed within a period of six months from the time of the order and notice of delinquency given by the Auditor of Public Accounts to the State Treasurer, the amount so withheld shall be distributed to the other cities and villages in the county where such delinquent city is located. Upon compliance with the law requiring annual

audits, the delinquent city or village shall again become entitled to distribution of all money to which it is entitled from the State Treasurer beginning with the date of such compliance.

Source: Laws 1959, c. 69, § 7, p. 298; Laws 1969, c. 93, § 3, p. 460.

19-2908 Sections, how construed; failure to comply, effect on taxes levied.

The provisions of sections 19-2901 to 19-2909 shall not be construed to relieve any officer of any duties now required by law of him with relation to public accounts of a municipality or the disbursement of public funds of the same. Failure of the municipality to comply with any provisions of sections 19-2901 to 19-2909 shall not affect the legality of taxes levied for any of the funds of such municipality or any special assessments levied in connection with public improvements.

Source: Laws 1959, c. 69, § 8, p. 298.

19-2909 Audit; expense; payment.

The expenses of the audit required in sections 19-2901 to 19-2909 shall be paid by the municipal authorities of the municipality involved from appropriate municipal funds; *Provided,* that if any municipality has completed its annual budget and passed its appropriation ordinance before March 30, 1959, then such expenses may be paid from the general fund of such municipality for the first annual audit made under the provisions of sections 19-2901 to 19-2909.

Source: Laws 1959, c. 69, § 9, p. 298.

ARTICLE 30

MUNICIPAL ELECTIONS

(Applicable to cities of the first or second class and villages.)

Section
19-3001. Repealed. Laws 2004, LB 927, § 3.
19-3002. Repealed. Laws 2004, LB 927, § 3.
19-3003. Repealed. Laws 2004, LB 927, § 3.
19-3004. Repealed. Laws 1974, LB 897, § 15.
19-3005. Repealed. Laws 2004, LB 927, § 3.
19-3006. Repealed. Laws 2004, LB 927, § 3.
19-3007. Repealed. Laws 1969, c. 257, § 44.
19-3007.01. Repealed. Laws 2004, LB 927, § 3.
19-3008. Repealed. Laws 1969, c. 257, § 44.
19-3009. Repealed. Laws 1969, c. 257, § 44.
19-3010. Repealed. Laws 1969, c. 257, § 44.
19-3011. Repealed. Laws 2004, LB 927, § 3.
19-3012. Repealed. Laws 2004, LB 927, § 3.
19-3013. Repealed. Laws 2004, LB 927, § 3.
19-3014. Repealed. Laws 2004, LB 927, § 3.
19-3015. Repealed. Laws 2004, LB 927, § 3.
19-3016. Repealed. Laws 2004, LB 927, § 3.
19-3017. Repealed. Laws 2004, LB 927, § 3.
19-3018. Repealed. Laws 2004, LB 927, § 3.
19-3019. Repealed. Laws 2004, LB 927, § 3.
19-3020. Repealed. Laws 2004, LB 927, § 3.
19-3021. Repealed. Laws 2004, LB 927, § 3.
19-3022. Repealed. Laws 2004, LB 927, § 3.
19-3023. Repealed. Laws 2004, LB 927, § 3.
19-3024. Repealed. Laws 2004, LB 927, § 3.

Section

19-3001 Repealed. Laws 2004, LB 927, § 3.

19-3002 Repealed. Laws 2004, LB 927, § 3.

19-3003 Repealed. Laws 2004, LB 927, § 3.

19-3004 Repealed. Laws 1974, LB 897, § 15.

19-3005 Repealed. Laws 2004, LB 927, § 3.

19-3006 Repealed. Laws 2004, LB 927, § 3.

19-3007 Repealed. Laws 1969, c. 257, § 44.

19-3007.01 Repealed. Laws 2004, LB 927, § 3.

19-3008 Repealed. Laws 1969, c. 257, § 44.

19-3009 Repealed. Laws 1969, c. 257, § 44.

19-3010 Repealed. Laws 1969, c. 257, § 44.

19-3011 Repealed. Laws 2004, LB 927, § 3.

19-3012 Repealed. Laws 2004, LB 927, § 3.

19-3013 Repealed. Laws 2004, LB 927, § 3.

19-3014 Repealed. Laws 2004, LB 927, § 3.

19-3015 Repealed. Laws 2004, LB 927, § 3.

19-3016 Repealed. Laws 2004, LB 927, § 3.

19-3017 Repealed. Laws 2004, LB 927, § 3.

19-3018 Repealed. Laws 2004, LB 927, § 3.

19-3019 Repealed. Laws 2004, LB 927, § 3.

19-3020 Repealed. Laws 2004, LB 927, § 3.

19-3021 Repealed. Laws 2004, LB 927, § 3.

19-3022 Repealed. Laws 2004, LB 927, § 3.

19-3023 Repealed. Laws 2004, LB 927, § 3.

19-3024 Repealed. Laws 2004, LB 927, § 3.

19-3025 Repealed. Laws 2004, LB 927, § 3.

19-3026 Repealed. Laws 2004, LB 927, § 3.

19-3027 Repealed. Laws 2004, LB 927, § 3.

19-3028 Repealed. Laws 2004, LB 927, § 3.

19-3029 Repealed. Laws 2004, LB 927, § 3.

19-3030 Repealed. Laws 2004, LB 927, § 3.

19-3031 Repealed. Laws 2004, LB 927, § 3.

19-3032 Repealed. Laws 2004, LB 927, § 3.

19-3033 Repealed. Laws 1975, LB 453, § 16.

19-3034 Repealed. Laws 2004, LB 927, § 3.

19-3035 Repealed. Laws 1973, LB 561, § 11.

19-3036 Repealed. Laws 1973, LB 561, § 11.

19-3037 Repealed. Laws 2004, LB 927, § 3.

19-3038 Repealed. Laws 1973, LB 561, § 11.

19-3039 Repealed. Laws 1973, LB 561, § 11.

19-3040 Repealed. Laws 2004, LB 927, § 3.

19-3041 Repealed. Laws 2004, LB 927, § 3.

19-3042 Repealed. Laws 2004, LB 927, § 3.

19-3043 Repealed. Laws 2004, LB 927, § 3.

19-3044 Repealed. Laws 2004, LB 927, § 3.

19-3045 Repealed. Laws 2004, LB 927, § 3.

19-3046 Repealed. Laws 2004, LB 927, § 3.

19-3047 Repealed. Laws 2004, LB 927, § 3.

19-3048 Repealed. Laws 2004, LB 927, § 3.

19-3049 Repealed. Laws 2004, LB 927, § 3.

19-3050 Repealed. Laws 2004, LB 927, § 3.

19-3051 Repealed. Laws 2004, LB 927, § 3.

19-3052 Annexation of territory; redistricting; when.

(1) For purposes of this section, municipality shall mean any city of the first or second class or village which elects members of its governing board by districts.

(2) Any municipality which annexes territory and thereby brings sufficient new residents into such municipality so as to require that election districts be redrawn to maintain substantial population equality between districts shall redistrict its election districts so that such districts are substantially equal in population within one hundred and eighty days after the effective date of the ordinance annexing the territory. Such redistricting shall create election districts which are substantially equal in population as determined by the most recent federal decennial census.

(3) No municipality which proposes to annex territory and thereby bring new residents into the municipality shall annex such territory unless the redistricting required by subsection (2) of this section will be accomplished at least eighty days prior to the next primary election in which candidates for the governing body of the municipality are nominated.

(4)(a) No city of the first or second class shall annex any territory during the period from eighty days prior to any primary election in which candidates for the governing body of the city are nominated until the date of the general election of the same year if such annexation would bring sufficient new residents into such city so as to require that election districts be redrawn to maintain substantial population equality between districts.

(b) No village shall annex any territory during the period eighty days prior to the election at which members of the governing body of the village are chosen until the date of such election if such annexation would bring sufficient new residents into such village so as to require that election districts be redrawn to maintain substantial population equality between districts.

(5)(a) No proposed annexation by a municipality shall be restricted or governed by this section unless such annexation would bring sufficient new residents into such municipality so as to require the election districts of the municipality to be redrawn to maintain substantial population equality between districts.

(b) Nothing in this section shall be construed to require a municipality to redraw the boundaries of its election districts following an annexation unless such annexation brought sufficient new residents into such municipality so as to require such redistricting to maintain substantial population equality between districts.

(c) For the purposes of this section only, a municipal annexation shall be held to have brought sufficient new residents into such municipality so as to require that its election districts be redrawn to maintain substantial population equality

between districts if, following such annexation, the total range of deviation from the mean population of each election district, according to the most recent federal decennial census, exceeds ten percent.

Source: Laws 1994, LB 630, § 1.

ARTICLE 31

MUNICIPAL VACANCIES

(Applicable to cities of the first or second class and villages.)

Section
19-3101. City council or board of trustees; vacancy; when.

19-3101 City council or board of trustees; vacancy; when.

In all cities of the first and second classes and villages regardless of the form of government, in addition to the events listed in section 32-560 and any other reasons for a vacancy provided by law, after notice and a hearing, a vacancy on the city council or board of trustees shall exist if a member is absent from more than five consecutive regular meetings of the council or board unless the absences are excused by a majority vote of the remaining members.

Source: Laws 2002, LB 1054, § 1.

ARTICLE 32

DEFECTIVE PUBLIC PLACES

Section
19-3201. Repealed. Laws 1969, c. 138, § 28.

19-3201 Repealed. Laws 1969, c. 138, § 28.

ARTICLE 33

OFFSTREET PARKING

(Applicable to cities of the primary, first, or second class.)

(a) OFFSTREET PARKING DISTRICT ACT

Section
19-3301. Act, how cited.
19-3302. Terms, defined.
19-3303. Districts authorized; powers.
19-3304. Notice; given or posted by whom.
19-3305. Proceedings, taxes or assessments levied, bonds issued; validity.
19-3306. Procedure authorized.
19-3307. Remedies not exclusive.
19-3308. Curative clauses; cumulative.
19-3309. Alternative authority and procedure.
19-3310. Sections, liberally construed.
19-3311. Offstreet parking facilities; authorized; powers; home rule charter provisions excepted; limitations; duties of city council.
19-3312. Proposed districts; boundaries; notice; objections; hearing.
19-3313. Objections to formation of district; percentage required; effect; designation of district.
19-3314. Costs; special assessment; notice; contents; appeal.
19-3315. Taxes and assessments; purpose; procedure; notice; hearing.
19-3315.01. Taxes, assessments, and revenue; use; notice; protest.
19-3316. Assessments; delinquent; interest; notice; lien; payment.
19-3317. Bonds, authorized; interest; rate; funding; terms; warrants.

(a) OFFSTREET PARKING DISTRICT ACT

19-3301 Act, how cited.

Sections 19-3301 to 19-3326 shall be known and may be cited as the Offstreet Parking District Act.

Source: Laws 1967, c. 60, § 1, p. 198; R.S.Supp.,1967, § 16-812; Laws 1969, c. 88, § 1, p. 437; Laws 1997, LB 746, § 2.

19-3302 Terms, defined.

As used in sections 19-3301 to 19-3326, unless the context otherwise requires:

Offstreet parking facilities includes parking lots, garages, buildings and multifloor buildings for the parking of motor vehicles.

Source: Laws 1967, c. 60, § 2, p. 198; R.S.Supp.,1967, § 16-813; Laws 1969, c. 88, § 2, p. 437.

19-3303 Districts authorized; powers.

In addition to matters specifically elsewhere set forth in sections 19-3301 to 19-3326, such sections authorize and include the following:

(1) The formation of offstreet parking districts;

(2) The acquisition of lands, property and rights-of-way necessary or convenient for use as offstreet parking facilities;

(3) The acquisition of lands, property and rights-of-way necessary or convenient for the opening, widening, straightening or extending of streets or alleys necessary or convenient for ingress to and egress from any offstreet parking facility;

(4) The acquisition by condemnation, purchase or gift of property or any interest therein. Any lands or property necessary or convenient for offstreet parking facilities may be acquired in fee simple by condemnation or otherwise;

(5) The improvement of any acquired lands by the construction thereon of garages or other buildings, including multifloor buildings, or improvements necessary or convenient for offstreet parking facilities including paying from revenue received pursuant to sections 19-3301 to 19-3326 all or a portion of the cost of a covered or uncovered mall to be constructed in a street or alley

pursuant to city authority to construct such improvements in connection with paving and street improvements;

(6) The improvement of parking places and any alleys, streets or ways necessary or convenient for ingress to or egress from offstreet parking facilities;

(7) The issuance, sale and payment of bonds to pay the cost and expense of any acquisition or improvement authorized by sections 19-3301 to 19-3326;

(8) The administration, maintenance, operation and repair of such offstreet parking facilities, including the maintenance of parking meters thereon;

(9) The collection of fees or charges to pay all or any part of the cost of improving, repairing, maintaining or operating offstreet parking facilities and of acquiring and improving offstreet parking facilities;

(10) The employment of engineers, attorneys and other persons necessary or convenient for the doing of any acts authorized by sections 19-3301 to 19-3326; and

(11) The doing of all acts and things necessary or convenient for the accomplishment of the purpose of sections 19-3301 to 19-3326. The enumeration of specific authority in sections 19-3301 to 19-3326 does not limit in any way the general authority granted by sections 19-3301 to 19-3326.

Source: Laws 1967, c. 60, § 3, p. 198; R.S.Supp.,1967, § 16-814; Laws 1969, c. 88, § 3, p. 438; Laws 1972, LB 1430, § 1.

19-3304 Notice; given or posted by whom.

Whenever any notice is to be given or posted pursuant to the provisions of sections 19-3301 to 19-3326 and the officer to give or post notice is not designated, the notice shall be given or posted by the city engineer. Any notice or posting shall not be invalidated because given or done by an officer other than those whose duty it is to give the notice or perform the posting.

Source: Laws 1967, c. 60, § 4, p. 200; R.S.Supp.,1967, § 16-815; Laws 1969, c. 88, § 4, p. 439.

19-3305 Proceedings, taxes or assessments levied, bonds issued; validity.

Any proceedings taken, taxes or assessments levied or bonds issued pursuant to sections 19-3301 to 19-3326 shall not be held invalid for failure to comply with the provisions of sections 19-3301 to 19-3326.

Source: Laws 1967, c. 60, § 5, p. 200; R.S.Supp.,1967, § 16-816; Laws 1969, c. 88, § 5, p. 439.

19-3306 Procedure authorized.

Any procedure not expressly set forth in sections 19-3301 to 19-3326 but deemed necessary or convenient to carry out any of its purposes is authorized.

Source: Laws 1967, c. 60, § 6, p. 200; R.S.Supp.,1967, § 16-817; Laws 1969, c. 88, § 6, p. 440.

19-3307 Remedies not exclusive.

The remedies provided in sections 19-3301 to 19-3326 for the enforcement of taxes or assessments levied or bonds issued pursuant to the provisions of

sections 19-3301 to 19-3326 are not exclusive and additional remedies may be provided at any time.

Source: Laws 1967, c. 60, § 7, p. 200; R.S.Supp.,1967, § 16-818; Laws 1969, c. 88, § 7, p. 440.

19-3308 Curative clauses; cumulative.

The curative clauses of sections 19-3301 to 19-3326 are cumulative and each is to be given full effect.

Source: Laws 1967, c. 60, § 8, p. 200; R.S.Supp.,1967, § 16-819; Laws 1969, c. 88, § 8, p. 440.

19-3309 Alternative authority and procedure.

Sections 19-3301 to 19-3326 do not affect any other law relating to the same or any similar subject but provide an alternative authority and procedure for the subject to which they relate. When proceeding under sections 19-3301 to 19-3326, their provisions only need be followed.

Source: Laws 1967, c. 60, § 9, p. 200; R.S.Supp.,1967, § 16-820; Laws 1969, c. 88, § 9, p. 440.

19-3310 Sections, liberally construed.

Sections 19-3301 to 19-3326 shall be liberally construed.

Source: Laws 1967, c. 60, § 10, p. 200; R.S.Supp.,1967, § 16-821; Laws 1969, c. 88, § 10, p. 440.

19-3311 Offstreet parking facilities; authorized; powers; home rule charter provisions excepted; limitations; duties of city council.

Notwithstanding the provisions of any home rule charter and in addition to the powers set out in sections 15-269 to 15-276 and 16-801 to 16-811, any city of the primary, first or second class in Nebraska is hereby authorized to own, purchase, construct, equip, lease, either as lessee or lessor, or operate within such city, offstreet parking facilities for the use of the general public and to refund bonds of the city issued pursuant to sections 19-3301 to 19-3326, or in a city of the first class to refund outstanding bonds issued to purchase, construct, equip or operate such offstreet parking facilities pursuant to sections 16-801 to 16-811. Except as otherwise provided in any home rule charter, the grant of power herein does not include power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in furnishing of any service other than of parking motor vehicles as provided in sections 19-3301 to 19-3326. Any such city shall have the authority to acquire by grant, contract, purchase or through condemnation, as provided by law or by any home rule charter for such acquisition, all real or personal property, including a site or sites on which to construct such offstreet parking facility, necessary or convenient in carrying out of this grant of power; *Provided,* that property now used or hereafter acquired for public offstreet motor vehicle parking by a private operator shall not be subject to condemnation. Before any such city may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication once each week for not less than thirty days, inviting application for private ownership and operation of offstreet parking facilities, which notice shall fix a date for a

public hearing on any application received. If no application or applications have been received or if received, the same have been disapproved by the governing body of such city after a public hearing concerning such applications, then such city may proceed in the exercise of the powers herein granted. The procedure to condemn property shall be exercised in the manner set forth in sections 76-701 to 76-724, except as to properties specifically excluded by section 76-703, and as to which sections 19-701 to 19-707 are applicable. The duties set forth for the mayor and city council in sections 19-3312 to 19-3325 shall be the duties and responsibilities of the city council in any city which by law or by home rule charter has exclusively vested all legislative powers of the city in such council.

Source: Laws 1967, c. 60, § 11, p. 200; R.S.Supp.,1967, § 16-822; Laws 1969, c. 88, § 11, p. 440; Laws 1973, LB 540, § 1; Laws 1975, LB 564, § 1.

19-3312 Proposed districts; boundaries; notice; objections; hearing.

The mayor and city council may fix and establish by resolution pursuant to the provisions of sections 19-3301 to 19-3326 the boundaries of a proposed district, which boundaries shall include all the land in the district which in the opinion of the mayor and city council will be specially benefited thereby. Notice of the time and place of a hearing before the city council on the creation of such district and of protests and objections to the creation of the district as set forth in the notice shall be given by publication one time each week for not less than three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall set forth in addition the proposed boundaries of the district and the engineer's estimate of the sum of money to be expended in the acquisition of property and the construction of the offstreet parking facility. Not later than the hour set for the hearing any owner or any person interested in any real estate within the proposed district may severally or with other owners file with the city clerk written objections to the thing proposed to be done, the extent of the proposed district, or both, and every person so interested shall have a right to protest on any grounds and to object to his real estate being included in the district, and at such hearing all objections and protests shall be heard and passed upon by the mayor and city council.

Source: Laws 1967, c. 60, § 12, p. 201; R.S.Supp.,1967, § 16-823; Laws 1969, c. 88, § 12, p. 441.

19-3313 Objections to formation of district; percentage required; effect; designation of district.

If the owners of the record title representing more than fifty percent of the taxable valuation of all of the taxable real property included in such proposed district or districts and who were such owners at the time the notice of hearing on objections to the creation of the district was first published file with the city clerk within twenty days of the first publication of the notice written objections to the formation of the district, such district shall not be formed. If objections are not filed by owners of such fifty percent of the taxable valuation of all of the taxable real property and if the mayor and city council find, after considering any other protests and objections that may be filed and after considering the evidence presented at the hearing, that the public health, welfare, convenience,

or necessity requires the formation of such an offstreet parking district and facilities, then such district shall be formed by ordinance. If the mayor and city council find that the boundaries as set forth in the resolution and notice include land which should not be included, then the ordinance shall fix the boundaries of the district so as to exclude such land. Each district formed pursuant to this section shall be numbered and the designation of the district shall be called, using appropriate numbers, Vehicle Offstreet Parking District No. .... of the City of ....., Nebraska. The ordinance creating the district need not designate the exact location of the proposed offstreet parking facility but shall designate the engineer's estimate of the sum of money to be expended in the acquisition of property and construction of such offstreet parking facility or the share of such project as will be borne by the district. The total cost and expenses shall include:

(1) The amounts estimated to be paid for the property to be acquired;

(2) All costs and expenses in construction of the offstreet parking facility;

(3) All engineering expense; and

(4) The estimated expense of issuing and selling bonds and all other expenses which the city would not have except for the creation of such offstreet parking district.

Source: Laws 1967, c. 60, § 13, p. 202; R.S.Supp.,1967, § 16-824; Laws 1969, c. 88, § 13, p. 442; Laws 1979, LB 187, § 85; Laws 1992, LB 719A, § 85.

19-3314 Costs; special assessment; notice; contents; appeal.

In the ordinance creating the district, the mayor and city council shall provide that in addition to the levy of taxes and pledge of revenue all or a portion of the cost of acquisition, including construction, maintenance, repair, and reconstruction of any offstreet parking facility may be paid for by special assessment against the real estate located in such district in proportion to the special benefit of each parcel of real estate. The amounts of such special assessments shall be determined by the mayor and city council sitting as a board of equalization. Notice of a hearing on any special assessments to be levied under section 19-3315 shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to determine any objection or protest by landowners in the district as to the amount of assessment made against their land. An appeal by writ of error or direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts of such city as now provided by law.

Source: Laws 1967, c. 60, § 14, p. 203; R.S.Supp.,1967, § 16-825; Laws 1969, c. 88, § 14, p. 443; Laws 1972, LB 1430, § 2; Laws 1973, LB 540, § 1.

19-3315 Taxes and assessments; purpose; procedure; notice; hearing.

The mayor and city council may by resolution levy and assess taxes and assessments as follows:

(1) A property tax within any district of not to exceed thirty-five cents on each one hundred dollars of taxable valuation of taxable property within such district subject to section 77-3443 to pay all or any part of the cost to improve, repair, maintain, reconstruct, operate, or acquire any offstreet parking facility and to pay principal and interest on any bonds issued for an offstreet parking facility for such district. Such tax shall be levied and collected at the same time and under the same provisions as the regular general city tax. The taxes collected from any district shall be used only for the benefit of such district. For purposes of subsection (2) of section 77-3443, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district;

(2) A special assessment against the real property located in such district to the extent of the special benefit thereto for the purpose of paying all or any part of the total costs and expenses of acquisition, including construction, of an offstreet parking facility in such district. The special assessment shall be levied as provided in section 19-3314. In the event that subsequent to the levy of assessments the use of any parcel of land changes so that, had the new use existed at the time of making such levy, the assessment on such parcel would have been higher than the assessment actually made, an additional assessment may be made on such parcel by the mayor and city council taking into consideration the new and changed use of the property. The total amount of assessments levied under this subdivision shall not exceed the total costs and expenses of acquiring a facility defined in section 19-3313. The levy of an additional assessment shall not reduce or affect in any manner the assessments previously levied. Additional assessments shall be levied as provided in section 19-3314, except that published notice may be omitted if notice is personally served on the owner at least twenty days prior to the date of hearing. All assessments levied under this subdivision shall constitute a sinking fund for the payment of principal and interest on bonds issued for such facility as provided by section 19-3317 until such bonds and interest are fully paid; and

(3) A special assessment against the real property located in such district to the extent of special benefit thereto for the purpose of paying all or any part of the costs of maintenance, repair, and reconstruction of such offstreet parking facility in the district. The mayor and city council may levy such assessments under either of the following methods: (a) The mayor and city council may, not more frequently than annually, determine the costs of maintenance, repair, and reconstruction of such facility and such costs shall be assessed to the real property located in such district as provided by section 19-3314. At the hearing on such assessments, objections may be made to the total costs and the proposed allocation of such costs among the parcels of real property in such district; or (b) after notice is given to the owners as provided in section 19-3314, the mayor and city council may establish and may change from time to time the percentage of such costs of maintenance, repair, and reconstruction which each parcel of real property in any district shall pay. Thereafter, the mayor and city council shall annually determine the total amount of such costs for each period since costs were last assessed and shall after a hearing assess such costs to the real property in the district in accordance with the percentages previously established or as established at such hearing. Notice of such

hearing shall be given as provided in section 19-3314 and shall state the total cost and percentage to be assessed to each parcel of real property. Unless written objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages shall be deemed to have been waived and assessments shall be levied as stated in such notice unless the mayor and city council reduce any assessment. At such hearing, the assessment percentage for the assessment of costs in the future may be changed.

Source: Laws 1967, c. 60, § 15, p. 203; R.S.Supp.,1967, § 16-826; Laws 1969, c. 88, § 15, p. 444; Laws 1973, LB 540, § 3; Laws 1975, LB 564, § 2; Laws 1979, LB 187, § 86; Laws 1992, LB 719A, § 86; Laws 1997, LB 269, § 21; Laws 2002, LB 994, § 3.

19-3315.01 Taxes, assessments, and revenue; use; notice; protest.

(1) In addition to uses otherwise authorized in the Offstreet Parking District Act, any money available from taxes or assessments levied pursuant to section 19-3315 or revenue derived from the operation of an offstreet parking facility may be used in the district for any one or more of the following purposes as determined by a vote of the majority of the city council:

(a) Improvement of any public place or facility, including landscaping, physical improvements for decoration or security purposes, and plantings;

(b) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, foundations, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(c) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below the ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement;

(d) Creation and implementation of a plan for improving the general architectural design of public areas;

(e) Development of any public activities and promotion of public events, including the management, promotion, and advocacy of retail trade activities or other promotional activities;

(f) Maintenance, repair, and reconstruction of any publicly owned improvements or facilities;

(g) The creation by ordinance and operation of a revolving loan fund for the purpose of providing financing upon appropriate terms and conditions for capital improvements to privately owned facilities, subject to the following conditions:

(i) No loan from such fund shall exceed an amount equivalent to forty-nine percent of the total cost of the improvements to be financed by the loan;

(ii) The city shall require and receive appropriate security to guarantee the repayment of the loan; and

(iii) The proposed improvements to be financed shall serve to foster the purposes of the act, promote economic activity, or contribute to the public health, safety, and welfare;

(h) Any other project or undertaking for the betterment of the public facilities, whether the project is capital or noncapital in nature;

(i) Enforcement of parking regulations and the provision of security; and

(j) Employing or contracting for personnel, including administrators, for any improvement program under the act, and providing for any service as may be necessary or proper to carry out the purposes of the act.

(2) If any part of the revenue from fees and charges on the use of an offstreet parking facility or from onstreet parking meters within the district has been dedicated for the payment of principal or interest on bonds issued pursuant to section 19-3317 or has been pledged as security for such bonds, such revenue shall not be used for the purposes set forth in subsection (1) of this section until such time as such bonds have been fully paid or sufficient revenue has been placed in the sinking fund to guarantee such repayment.

(3) If the city council proposes to exercise the authority granted by subsection (1) of this section for any one or more of the purposes set forth in such subsection within the boundaries of a district in existence prior to September 13, 1997, the city clerk shall give notice of the council's intention to exercise such authority by publishing notice of such intent in a newspaper of general circulation in the city once a week for two consecutive weeks. The notice shall describe the proposed new uses for district revenue and shall specify the time for hearing objections to such uses, which time shall be at least fifteen days after the date of publication of the notice. The clerk shall accept written protests or objections to the approval of the proposed new uses of district revenue. If the owners of real property representing more than fifty percent of the actual valuation of all real property in the district file a written protest or objection within twenty days after the date of publication of the notice, district revenue shall not be applied to such uses.

Source: Laws 1997, LB 746, § 1.

19-3316 Assessments; delinquent; interest; notice; lien; payment.

Special assessments levied pursuant to section 19-3315 shall become due in fifty days after the date of such levy and shall become delinquent in one or more installments over a period of not to exceed twenty years, in such manner as the mayor and city council shall determine at the time of making the levy. The first installment may become delinquent in fifty days after the date of levy if so specified by the mayor and the city council. Each of such installments shall draw interest before due date of not more than the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and after delinquency at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, as the mayor and city council shall determine at the time the levy shall be made, except that any installment may be paid within fifty days of the date of such levy without interest being charged thereon. If three or more of such installments become delinquent and unpaid on the same property, the mayor and city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon such fixed date. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper of general circulation published in the city or, if none is

published in the city, a legal newspaper of general circulation in such city. After the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments. Except as otherwise provided, all special assessments levied under section 19-3315 shall be liens on the property and shall be certified for collection and be collected in the same manner as special assessments made for improvements in street improvement districts in the city are collected.

Source: Laws 1967, c. 60, § 16, p. 204; R.S.Supp.,1967, § 16-827; Laws 1969, c. 88, § 16, p. 444; Laws 1973, LB 540, § 4; Laws 1980, LB 933, § 25; Laws 1981, LB 167, § 26; Laws 1986, LB 960, § 17.

19-3317 Bonds, authorized; interest; rate; funding; terms; warrants.

For the purpose of paying the cost of such offstreet parking facility, or any portion thereof or to refund all or a portion of any outstanding bonds of the city authorized to be refunded by sections 19-3301 to 19-3326, the mayor and city council shall have power and may, by ordinance, cause to be issued general obligation bonds of the city, to be called Offstreet Parking Bonds of the City of . . . . . , Nebraska, payable in not exceeding twenty years from date and bearing interest, payable either annually or semiannually, not exceeding a rate of twelve percent per annum with interest coupons attached. In such cases they shall also provide that special taxes levied within the district pursuant to section 19-3315 shall constitute a sinking fund for the payment of such bonds and the mayor and city council may, in the ordinance, pledge all or any part of the revenue from fees and charges on the use of the parking facility or fees and charges from onstreet parking meters within the district not already pledged as security for such bonds. There shall be levied upon all the taxable property in such city a tax which, together with such sinking fund derived from special assessments and other revenue pledged for the payment of the bonds and interest thereon, shall be sufficient to meet payments of interest and principal as the same become due. All such bonds shall bear such date or dates, mature at such time or times, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, and at such place or places within or without the State of Nebraska as such ordinance may provide. No proceedings for the issuance of bonds of any city shall be required other than those required by the provisions of sections 19-3301 to 19-3326. Such bonds may be issued either before or after the completion of the acquisition or construction of the offstreet parking facility, as the mayor and city council may determine best. For the purpose of paying costs of an offstreet parking facility prior to issuance of bonds, warrants may be issued by the mayor and city council upon such terms as the mayor and city council may determine, which warrants shall be redeemed and paid upon the sale of bonds authorized in this section.

Source: Laws 1967, c. 63, § 1, p. 212; Laws 1967, c. 60, § 17, p. 205; R.S.Supp.,1967, § 16-828; Laws 1969, c. 88, § 17, p. 445; Laws 1972, LB 1430, § 3; Laws 1973, LB 540, § 5; Laws 1981, LB 392, § 1.

19-3318 Proposed offstreet parking district; petition; contents; signers; requisite number.

The owners of the record title of any real property within a given area in any city of the first or second class representing fifty-five percent of the total taxable valuation of all of the taxable real property within the proposed district to be formed, which district must consist of contiguous lands and lots, may petition the mayor and city council to create a vehicle offstreet parking district by ordinance, which district shall be consecutively numbered, and to acquire property and construct an offstreet parking facility thereon as provided in the Offstreet Parking District Act. For purposes of the act, property separated by streets or alleys shall be deemed to be contiguous.

The petition shall contain:

(1) A general description of the exterior boundaries of the proposed district;

(2) A general statement of the estimated amount of money involved in the acquisition of the land and property and construction of the facility;

(3) A general description of the improvements proposed to be made or constructed; and

(4) A statement that the petition is filed pursuant to this section.

The petition may consist of any number of separate instruments, but a description of the real property represented by each petitioner shall be included either opposite the signature or by separate instrument.

When the petition is filed, the city clerk shall check or cause it to be checked. If it is signed by qualified signers representing the required percentage of the total taxable valuation, the clerk shall make a certificate to that effect and present the petition and certificate to the mayor and city council.

Source: Laws 1967, c. 60, § 18, p. 206; R.S.Supp.,1967, § 16-829; Laws 1969, c. 88, § 18, p. 447; Laws 1979, LB 187, § 87; Laws 1992, LB 719A, § 87.

19-3319 Petition; notice; protest.

When such petition is presented to the mayor and city council it shall be the duty of the mayor and city council to proceed as provided in sections 19-3312 and 19-3313 as upon the passage of a resolution for the creation of an offstreet parking district. The same procedure for publication of notice and objections to the creation of the district shall apply.

Source: Laws 1967, c. 60, § 19, p. 206; R.S.Supp.,1967, § 16-830; Laws 1969, c. 88, § 19, p. 448.

19-3320 District boundaries; change; notice; contents.

Whether the ordinance creating the offstreet parking district is passed on the initiative of the council or on the petition of landowners, the council shall not change the boundaries, except after notice of intention to do so given by the clerk by one insertion in the newspaper in which the ordinance and notice were published. The notice shall describe the proposed change and specify the time for hearing objections, which shall be at least fifteen days after publication of the notice.

Source: Laws 1967, c. 60, § 20, p. 207; R.S.Supp.,1967, § 16-831; Laws 1969, c. 88, § 20, p. 448.

19-3321 District boundaries; additional land; notice; mailing; protest; number required; effect.

If the change proposed is to include additional land in the district, the clerk also shall mail a copy of the notice to each person to whom land in the area proposed to be added is assessed as shown in the office of the register of deeds or the county clerk at such person's last-known address. The notice shall be mailed by certified mail at least fifteen days prior to the time set for hearing objections. If the boundaries are changed, objection or protest made by owners of lands excluded by the change shall not be counted in computing a protest but written objection or protest made by owners of the remaining assessable land in the district, including assessable land added by the change and filed with the clerk not later than the time set for hearing, objecting to the proposed change shall be included in computing the protest. If owners of real property representing more than fifty percent of the taxable valuation of all real property in such new proposed district after the change of boundaries file a written protest within twenty days after the notice is published in such newspaper, then such district may not be changed.

Source: Laws 1967, c. 60, § 21, p. 207; R.S.Supp.,1967, § 16-832; Laws 1969, c. 88, § 21, p. 448; Laws 1979, LB 187, § 88; Laws 1992, LB 719A, § 88.

19-3322 District; land not included.

Any land which in the judgment of the mayor and city council will not be benefited shall not be included in the district.

Source: Laws 1967, c. 60, § 22, p. 207; R.S.Supp.,1967, § 16-833; Laws 1969, c. 88, § 22, p. 449.

19-3323 Termination of proceedings for creation or change of district by protest; effect.

If the proceedings for the creation of an original offstreet parking district or for an offstreet parking district under which the boundaries have been changed, are terminated by a protest to the council, a proceeding under the provisions of sections 19-3301 to 19-3326 for the same or substantially the same acquisition and improvement shall not be commenced within one year thereafter, except on petitions signed by owners of the record title representing a majority of the total land area in the district.

Source: Laws 1967, c. 60, § 23, p. 208; R.S.Supp.,1967, § 16-834; Laws 1969, c. 88, § 23, p. 449.

19-3324 Protest or objection; withdrawal; effect.

Any protest or objection made pursuant to the provisions of sections 19-3301 to 19-3326 or any signature to such objection or protest may be withdrawn by a written withdrawal signed by the person or persons who signed the protest or objection or who affixed the signature to be withdrawn and filed with the clerk at any time prior to the determination of the mayor and city council as to whether or not a protest exists. Any protest, objection or signature withdrawn shall not be counted in computing the protest.

Source: Laws 1967, c. 60, § 24, p. 208; R.S.Supp.,1967, § 16-835; Laws 1969, c. 88, § 24, p. 449.

19-3325 Objection or protest; estoppel.

Proceedings under sections 19-3301 to 19-3326 shall not be attacked after the hearing upon any grounds not stated in an objection or protest filed pursuant to the provisions of sections 19-3301 to 19-3326. Any owner of real estate or person interested in any real estate within the district is estopped to attack the proceedings upon any ground not stated in the protest filed by him pursuant to the provisions of sections 19-3301 to 19-3326.

Source: Laws 1967, c. 60, § 25, p. 208; R.S.Supp.,1967, § 16-836; Laws 1969, c. 88, § 25, p. 450.

19-3326 Issuance of bonds; certificate by city clerk; annual taxes; collection.

(1) After the issuance of bonds hereunder by a city of the first or second class, a certificate shall be issued by the city clerk certifying the same to the county treasurer of the county in which such city is located and the annual taxes within the district shall be handled in the same manner and collected in the same manner as intersection bonds for street paving in the cities of the first class or second class in Nebraska and to be paid to the city for use as provided by sections 19-3301 to 19-3326.

(2) After the issuance of bonds hereunder by a city of the primary class, a certificate shall be issued by the city clerk. Taxes shall be handled and collected as otherwise provided by law or by home rule charter for such city and those taxes paid to the city shall be used as provided in sections 19-3301 to 19-3327.

Source: Laws 1967, c. 60, § 26, p. 208; R.S.Supp.,1967, § 16-837; Laws 1969, c. 88, § 26, p. 450; Laws 1975, LB 564, § 3.

(b) MISCELLANEOUS

19-3327 Offstreet parking; additional authority; notice; hearing; written objections; resolution; procedure.

Any city of the primary, first, or second class, after the creation of an offstreet parking district pursuant to the Offstreet Parking District Act, shall have the power to own, purchase, construct, equip, lease, or operate within such city any offstreet parking facility in addition to any offstreet parking facility contemplated at the time of the creation of the district if the mayor and city council are of the opinion that the district will be benefited thereby. Whenever the city council deems it advisable to own, purchase, construct, equip, lease, or operate such additional facility, the council shall by resolution set forth the engineer's estimate of the sum of money to be expended in the acquisition of property and the construction of the offstreet parking facility and a description of the facility to be constructed, and if such resolution proposes to acquire by grant, contract, purchase, or through condemnation any offstreet parking facility, the resolution shall state the price and conditions and how such facility shall be acquired, and if assessments are to be levied, the resolution shall state the proposed boundaries of the area in the district in which the special assessments shall be levied. Notice of the time and place of a hearing before the city council on such resolution shall be given by publication one time each week for two weeks in a daily or weekly newspaper of general circulation published in the city. The publication shall contain the entire resolution. The last publication shall not be less than five days nor more than two weeks prior to the date set for such hearing. Not later than the hour set for the hearing, any owner or any person

interested in any real property within the proposed area may file with the city clerk written objections to the resolution, the extent of the proposed area, or both, and every person so interested shall have a right to protest on any grounds and to object to his or her real property being included in the area. At such hearing all objections and protests shall be heard and passed upon by the mayor and city council. If the owners of record title representing more than sixty percent of the taxable valuation of all of the taxable real property included in such proposed area and who were such owners at the time the notice of hearing on objections to the creation of the facility was first published file a petition with the city clerk within three days of the date set for the hearing, such resolution shall not be passed.

Source: Laws 1973, LB 540, § 6; Laws 1975, LB 564, § 4; Laws 1979, LB 187, § 89; Laws 1992, LB 719A, § 89.

Cross References

Downtown improvement and parking districts, see section 19-4038.
Offstreet Parking District Act, see section 19-3301.

ARTICLE 34

DOWNTOWN IMPROVEMENT AND PARKING DISTRICT ACT OF 1969

Section
19-3401. Repealed. Laws 1979, LB 251, § 26.
19-3402. Repealed. Laws 1979, LB 251, § 26.
19-3403. Repealed. Laws 1979, LB 251, § 26.
19-3404. Repealed. Laws 1979, LB 251, § 26.
19-3405. Repealed. Laws 1979, LB 251, § 26.
19-3406. Repealed. Laws 1979, LB 251, § 26.
19-3407. Repealed. Laws 1979, LB 251, § 26.
19-3408. Repealed. Laws 1979, LB 251, § 26.
19-3409. Repealed. Laws 1979, LB 251, § 26.
19-3410. Repealed. Laws 1979, LB 251, § 26.
19-3411. Repealed. Laws 1979, LB 251, § 26.
19-3412. Repealed. Laws 1979, LB 251, § 26.
19-3413. Repealed. Laws 1979, LB 251, § 26.
19-3414. Repealed. Laws 1979, LB 251, § 26.
19-3415. Repealed. Laws 1979, LB 251, § 26.
19-3416. Repealed. Laws 1979, LB 251, § 26.
19-3417. Repealed. Laws 1979, LB 251, § 26.
19-3418. Repealed. Laws 1979, LB 251, § 26.
19-3419. Repealed. Laws 1979, LB 251, § 26.
19-3420. Repealed. Laws 1979, LB 251, § 26.

19-3401 Repealed. Laws 1979, LB 251, § 26.

19-3402 Repealed. Laws 1979, LB 251, § 26.

19-3403 Repealed. Laws 1979, LB 251, § 26.

19-3404 Repealed. Laws 1979, LB 251, § 26.

19-3405 Repealed. Laws 1979, LB 251, § 26.

19-3406 Repealed. Laws 1979, LB 251, § 26.

19-3407 Repealed. Laws 1979, LB 251, § 26.

19-3408 Repealed. Laws 1979, LB 251, § 26.

19-3409 Repealed. Laws 1979, LB 251, § 26.

19-3410 Repealed. Laws 1979, LB 251, § 26.

19-3411 Repealed. Laws 1979, LB 251, § 26.

19-3412 Repealed. Laws 1979, LB 251, § 26.

19-3413 Repealed. Laws 1979, LB 251, § 26.

19-3414 Repealed. Laws 1979, LB 251, § 26.

19-3415 Repealed. Laws 1979, LB 251, § 26.

19-3416 Repealed. Laws 1979, LB 251, § 26.

19-3417 Repealed. Laws 1979, LB 251, § 26.

19-3418 Repealed. Laws 1979, LB 251, § 26.

19-3419 Repealed. Laws 1979, LB 251, § 26.

19-3420 Repealed. Laws 1979, LB 251, § 26.

ARTICLE 35

PENSION PLANS

(Applicable to cities of the first or second class and villages.)

Section
19-3501. Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.

19-3501 Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities; reports.

(1) The governing body of cities of the first and second classes and villages may, by appropriate ordinance or proper resolution, establish a pension plan designed and intended for the benefit of the regularly employed or appointed full-time employees of the city. Any recognized method of funding a pension plan may be employed. The plan shall be established by appropriate ordinance or proper resolution, which may provide for mandatory contribution by the employee. The city may also contribute, in addition to any amounts contributed by the employee, amounts to be used for the purpose of funding employee past service benefits. Any two or more cities of the first and second classes and villages may jointly establish such a pension plan by adoption of appropriate ordinances or resolutions. Such a pension plan may be integrated with old age and survivors insurance, otherwise generally known as social security.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the clerk of a city or village with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form

prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city or village clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the city council or village board shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of each report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

(3) Subsection (1) of this section shall not apply to firefighters or police officers who are included under an existing pension or retirement system established by the municipality employing such firefighters or police officers or the Legislature. If a city of the first class decreases in population to less than five thousand, as determined by the latest federal census, any police officer or firefighter employed by such city on or prior to the date such city becomes a city of the second class shall retain the level of benefits established by the Legislature for police officers or firefighters employed by a city of the first class on the date such city becomes a city of the second class.

Source: Laws 1957, c. 26, § 1, p. 180; Laws 1963, c. 63, § 10, p. 262; Laws 1967, c. 98, § 1, p. 297; R.S.Supp.,1967, § 16-328; Laws 1969, c. 79, § 1, p. 410; Laws 1974, LB 1002, § 1; Laws 1983, LB 291, § 2; Laws 1989, LB 145, § 1; Laws 1998, LB 1191, § 21; Laws 1999, LB 795, § 9; Laws 2011, LB474, § 9.

ARTICLE 36
UNATTENDED CHILD IN MOTOR VEHICLE

Section
19-3601. Repealed. Laws 1983, LB 1, § 1.

19-3601 Repealed. Laws 1983, LB 1, § 1.

ARTICLE 37
ORDINANCES
(Applicable to cities of the first or second class and villages.)

Section
19-3701. Ordinances; effective date.

19-3701 Ordinances; effective date.

All ordinances for the government of any city of the first or second class or of any village, adopted by the voters of said city after submission to them by either initiative or referendum petition shall become immediately effective thereafter; but no ordinance for the government of any such city or village except as provided in sections 16-405 and 17-613, which has been adopted by such city or village without submission to the voters of such city or village, shall go into effect until fifteen days after the passage of such ordinance.

Source: Laws 1897, c. 32, § 12, p. 234; R.S.1913, § 5237; Laws 1915, c. 96, § 1, p. 238; C.S.1922, § 4436; C.S.1929, § 18-512; R.S.1943, § 18-130; Laws 1971, LB 282, § 3.

Cross References

For other provisions applicable to ordinances of cities of the first and second class and villages, see sections 16-247, 16-403 to 16-405, 17-613 to 17-616, and 19-604.

Immediate publication of notice of creation of paving district was proper. Freeman v. City of Neligh, 155 Neb. 651, 53 N.W.2d 67 (1952).

The provisions of this section that ''no ordinance for the government of any city shall go into effect until thirty days after the passage of the same'' does not apply to issuing a liquor license. Enos v. Hanff, 98 Neb. 245, 152 N.W. 397 (1915).

An ordinance adopted by the voters under the initiative statute does not ''go into effect'' until thirty days after it is adopted. Eyre v. Doerr, 97 Neb. 562, 150 N.W. 625 (1915).

ARTICLE 38
POLICE SERVICES
(Applicable to cities of the first or second class and villages.)

Section
19-3801. Contract with county board for police services; sheriff; powers; duties.
19-3802. Villages; cancel contract with county; effect.
19-3803. Villages; contract; cost; negotiated.
19-3804. State and federal grants; expend.

19-3801 Contract with county board for police services; sheriff; powers; duties.

Any city of the first or second class or any village may, under the provisions of the Interlocal Cooperation Act or Joint Public Agency Act, enter into a contract with the county board of its county for police services to be provided by the county sheriff. The county board shall enter into such a contract when requested by a village to do so. Whenever any such contract has been entered

into, the sheriff shall, in addition to his or her other powers and duties, have all the powers and duties of peace officers within and for the city or village so contracting.

Source: Laws 1971, LB 594, § 1; Laws 1999, LB 87, § 65.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

19-3802 Villages; cancel contract with county; effect.

Any village entering into a contract pursuant to section 19-3801 may serve notice of its intention to cancel such contract after such contract has been in force for one year. Upon cancellation, such village shall provide its own police services.

Source: Laws 1971, LB 594, § 2.

19-3803 Villages; contract; cost; negotiated.

The cost to any village under a contract entered into pursuant to sections 19-3801 to 19-3804 shall be negotiated and included as a part of the formal contract entered into and agreed to by both parties.

Source: Laws 1971, LB 594, § 3; Laws 1977, LB 57, § 1.

19-3804 State and federal grants; expend.

Any county providing, or city or village receiving, police services pursuant to sections 19-3801 to 19-3804 may receive and expend for the purposes of sections 19-3801 to 19-3804 any available state or federal grants.

Source: Laws 1971, LB 594, § 4.

ARTICLE 39

NEBRASKA PUBLIC TRANSPORTATION ACT OF 1975

Section
19-3901. Transferred to section 13-1201.
19-3902. Transferred to section 13-1202.
19-3903. Transferred to section 13-1203.
19-3904. Transferred to section 13-1204.
19-3905. Transferred to section 13-1205.
19-3906. Transferred to section 13-1206.
19-3907. Transferred to section 13-1207.
19-3908. Transferred to section 13-1208.
19-3909. Transferred to section 13-1209.
19-3909.01. Transferred to section 13-1210.
19-3910. Transferred to section 13-1211.
19-3911. Transferred to section 13-1212.

19-3901 Transferred to section 13-1201.

19-3902 Transferred to section 13-1202.

19-3903 Transferred to section 13-1203.

19-3904 Transferred to section 13-1204.

19-3905 Transferred to section 13-1205.

19-3906 Transferred to section 13-1206.

19-3907 Transferred to section 13-1207.

19-3908 Transferred to section 13-1208.

19-3909 Transferred to section 13-1209.

19-3909.01 Transferred to section 13-1210.

19-3910 Transferred to section 13-1211.

19-3911 Transferred to section 13-1212.

ARTICLE 40

BUSINESS IMPROVEMENT DISTRICTS

(Applicable to all cities.)

Section

Section
19-4036. Disestablished district; assets; disposition.
19-4037. Funds and grants; use.
19-4038. Districts created prior to May 23, 1979; governed by sections.

19-4001 Repealed. Laws 1979, LB 251, § 26.

19-4002 Repealed. Laws 1979, LB 251, § 26.

19-4003 Repealed. Laws 1979, LB 251, § 26.

19-4004 Repealed. Laws 1979, LB 251, § 26.

19-4005 Repealed. Laws 1979, LB 251, § 26.

19-4006 Repealed. Laws 1979, LB 251, § 26.

19-4007 Repealed. Laws 1979, LB 251, § 26.

19-4008 Repealed. Laws 1979, LB 251, § 26.

19-4009 Repealed. Laws 1979, LB 251, § 26.

19-4010 Repealed. Laws 1979, LB 251, § 26.

19-4011 Repealed. Laws 1979, LB 251, § 26.

19-4012 Repealed. Laws 1979, LB 251, § 26.

19-4013 Repealed. Laws 1979, LB 251, § 26.

19-4014 Repealed. Laws 1979, LB 251, § 26.

19-4015 Act, how cited.

Sections 19-4015 to 19-4038 shall be known and may be cited as the Business Improvement District Act.

Source: Laws 1979, LB 251, § 1.

19-4016 Sections, how construed.

Sections 19-4015 to 19-4038 provide a separate and additional method, authority, and procedure for the matters to which it relates and does not affect any other law relating to the same or similar subject. When proceeding under sections 19-4015 to 19-4038, their provisions only need be followed.

Source: Laws 1979, LB 251, § 2.

19-4017 Sections; purpose.

Cities of the metropolitan, primary, first, and second class in the state at present have business areas in need of improvement and development, but lack the funds with which to provide and maintain such improvements. The purpose of sections 19-4015 to 19-4038 is to provide a means by which such cities may raise the necessary funds to be used for the purpose of providing and maintaining the improvements authorized by sections 19-4015 to 19-4038.

Source: Laws 1979, LB 251, § 3.

19-4017.01 Terms, defined.

As used in sections 19-4015 to 19-4038, unless the context otherwise requires:

(1) Record owner shall mean the fee owner of real property as shown in the records of the register of deeds office in the county in which the business area is located. A contract purchaser of real property shall be considered the record owner for purposes of sections 19-4015 to 19-4038 and the only person entitled to petition pursuant to section 19-4028 or protest pursuant to section 19-4027, if the contract is recorded in the register of deeds office in the county in which the business area is located;

(2) Assessable unit shall mean front foot, square foot, equivalent front foot, or other unit of assessment established under the proposed method of assessment set forth in the resolution of intention to create a business improvement district; and

(3) Space shall mean the square foot space wherein customers, patients, clients, or other invitees are received and space from time to time used or available for use in connection with a business or profession of a user, excepting all space owned or used by political subdivisions.

Source: Laws 1983, LB 22, § 1.

19-4018 Cities; business improvement district; special assessment; business license and occupation tax; use of proceeds.

Pursuant to sections 19-4015 to 19-4038 cities of the metropolitan, primary, first, or second class may impose (1) a special assessment upon the property within a business improvement district in the city or (2) a general business license and occupation tax on businesses and users of space within a business improvement district. The proceeds or other available funds may be used for the purposes stated in section 19-4019.

Source: Laws 1979, LB 251, § 4.

19-4019 Available funds; uses; enumerated.

Any money available under section 19-4018 may be used for any one or more of the following purposes:

(1) The acquisition, construction, maintenance, and operation of public offstreet parking facilities for the benefit of the district area;

(2) Improvement of any public place or facility in the district area, including landscaping, physical improvements for decoration or security purposes, and plantings;

(3) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(4) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the district area;

(5) Creation and implementation of a plan for improving the general architectural design of public areas in the district;

(6) The development of any public activities and promotion of public events, including the management and promotion and advocacy of retail trade activities or other promotional activities, in the district area;

(7) Maintenance, repair, and reconstruction of any improvements or facilities authorized by the Business Improvement District Act;

(8) Any other project or undertaking for the betterment of the public facilities in the district area, whether the project be capital or noncapital in nature;

(9) Enforcement of parking regulations and the provision of security within the district area; and

(10) Employing or contracting for personnel, including administrators for any improvement program under the act, and providing for any service as may be necessary or proper to carry out the purposes of the act.

Source: Laws 1979, LB 251, § 5; Laws 1989, LB 194, § 1.

19-4020 Business improvement district; created; location.

A business improvement district may be created as provided by sections 19-4015 to 19-4038 and shall be within the boundaries of an established business area of the city zoned for business, public, or commercial purposes.

Source: Laws 1979, LB 251, § 6; Laws 1983, LB 22, § 2.

19-4021 Business improvement board; membership; powers; duties.

The mayor, with the approval of the city council, shall appoint a business improvement board consisting of property owners, residents, business operators, or users of space within the business area to be improved. The boundaries of the business area shall be declared by resolution of the city council at or prior to the time of the appointment of the board. The board shall make recommendations to the city council for the establishment of a plan or plans for improvements in the business area. If it is found that the improvements to be included in one business area offer benefits that cannot be equitably assessed together under sections 19-4015 to 19-4038, more than one business improvement district as part of the same development plan for that business area may be proposed. The board may make recommendations to the city as to the use of any occupation tax funds collected, and may administer such funds if so directed by the mayor and city council.

Source: Laws 1979, LB 251, § 7; Laws 1983, LB 22, § 3.

19-4022 Board; members; terms; vacancy.

The board shall consist of five or more members to serve such terms as the city council, by resolution, determines. The mayor, with the approval of the city council, shall fill any vacancy for the term vacated. A board member may serve more than one term. The board shall select from its members a chairperson and a secretary.

Source: Laws 1979, LB 251, § 8.

19-4023 Utility facility within district; construct or alter; approval required; when.

All public utilities or private companies having franchises for utilities from the city shall, before constructing any new utility facility valued in excess of five

thousand dollars or substantially improving or changing existing facilities within a business improvement district, obtain approval of the mayor and city council after the mayor and city council have obtained written comments from the business improvement board to coordinate the business improvement district plan.

Source: Laws 1979, LB 251, § 9.

19-4024 Business improvement district; creation by city council; resolution of intention; contents; tax or assessment; basis.

Upon receiving the recommendation from the business improvement board, the city council, after receipt of recommendations from the planning commission if the city has a planning commission, may create one or more business improvement districts by adopting a resolution of intention to establish a district or districts. The resolution shall contain the following information:

(1) A description of the boundaries of any proposed district;

(2) The time and place of a hearing to be held by the city council to consider establishment of a district or districts;

(3) The proposed public facilities and improvements to be made or maintained within any such district; and

(4) The proposed or estimated costs for improvements and facilities within any district, and the method by which the revenue shall be raised. If a special assessment is proposed, the resolution also shall state the proposed method of assessment.

The notice of intention shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Source: Laws 1979, LB 251, § 10; Laws 1983, LB 22, § 4.

The proper time for a choice as to what method of special assessment is to be used, if such is the route decided upon, is at the time of adoption of the creating ordinance, as set forth in section 19-4029. North Star Lodge #227, A.F. & A.M. v. City of Lincoln, 212 Neb. 236, 322 N.W.2d 419 (1982).

19-4025 Notice of hearing; manner given.

A notice of hearing under sections 19-4015 to 19-4038 shall be given by (1) one publication of the resolution of intention in a newspaper of general circulation in the city and (2) mailing a complete copy of the resolution of intention to each owner of taxable property as shown on the latest tax rolls of the county treasurer for such county. If an occupation tax is to be imposed, a copy of the resolution of intention shall also be mailed to each user of space in the proposed district. Publication and mailing shall be completed at least ten days prior to the time of hearing.

Source: Laws 1979, LB 251, § 11; Laws 1983, LB 22, § 5.

19-4026 Hearing to create a district; call by petition.

In the event that the city council has not acted to call a hearing to create a district as provided in sections 19-4015 to 19-4038, it shall do so when presented with a petition signed by the record owners of thirty percent of the

assessable front footage in a business area or by the users of thirty percent of space in a business area.

Source: Laws 1979, LB 251, § 12; Laws 1983, LB 22, § 6.

19-4027 Hearing; city council; duties; protest; effect.

Whenever a hearing is held under the provisions of sections 19-4015 to 19-4038, the city council shall:

(1) Hear all protests and receive evidence for or against the proposed action;

(2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and

(3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the proposed district. If an occupation tax is to be used, proceedings shall terminate if protest is made by over fifty percent of the users of space in the proposed district.

Source: Laws 1979, LB 251, § 13; Laws 1983, LB 22, § 7.

Publicly owned property is exempt from general purpose taxation, but it is not exempt from special assessment taxation. Therefore, publicly owned front feet are not excluded in making the computations concerning assessable front footage. Lessees are not ''owners'' for purposes of protest under this section. Easley v. City of Lincoln, 213 Neb. 450, 330 N.W.2d 130 (1983).

The term ''assessable unit'' contained herein is not synonymous with the term ''front foot''; it refers, rather, to a delineation of the resulting assessments on a lot or parcel basis. North Star Lodge #227, A.F. & A.M. v. City of Lincoln, 212 Neb. 236, 322 N.W.2d 419 (1982).

19-4028 Proposed district; boundary amendment; hearing continued.

If the city council decides to change the boundaries of the proposed district, the hearing shall be continued to a time at least fifteen days after such decision and the notice shall be given as prescribed in section 19-4026, showing the boundary amendments, but no new or additional resolution of intention shall be required.

Source: Laws 1979, LB 251, § 14; Laws 1983, LB 22, § 8.

19-4029 City council; ordinance to establish district; when; contents.

The city council, following the hearing, may establish or reject any proposed district or districts. If the city council decides to establish any district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The number, date, and title of the resolution of intention pursuant to which it was adopted;

(2) The time and place the hearing was held concerning the formation of such district;

(3) A statement that a business improvement district has been established;

(4) The purposes of the district, and the public improvements and facilities to be included in such district;

(5) The description of the boundaries of such district;

(6) A statement that the businesses and professions in the area established by the ordinance shall be subject to the general business occupation tax or that the

real property in the area will be subject to the special assessment authorized by sections 19-4015 to 19-4038;

(7) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed; and

(8) Any penalties to be imposed for failure to pay the tax or special assessment.

Source: Laws 1979, LB 251, § 15; Laws 1983, LB 22, § 9.

19-4030 Business improvement district; special assessment; purpose; notice; appeal; lien.

A city may levy a special assessment against the real estate located in such district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of performing any authorized work, except maintenance, repair, and reconstruction costs, within such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under sections 19-4015 to 19-4038 shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law. All special assessments levied under sections 19-4015 to 19-4038 shall be liens on the property and shall be certified for collection and collected in the same manner as special assessments for improvements and street improvement districts of the city are collected.

Source: Laws 1979, LB 251, § 16; Laws 1983, LB 22, § 10.

19-4031 District; general business occupation tax; purpose; notice; appeal; collection; basis.

(1) In addition to or in place of the special assessments authorized by sections 19-4015 to 19-4038, a city may levy a general business occupation tax upon the businesses and users of space within a district established for acquiring, constructing, maintaining or operating public offstreet parking facilities and providing in connection therewith other public improvements and facilities authorized by sections 19-4015 to 19-4038, for the purpose of paying all or any part of the total cost and expenses of any authorized improvement or facility within such district. Notice of a hearing on any such tax levied under sections 19-4015 to 19-4038 shall be given to the businesses and users of space of such

districts, and appeals may be taken, all in the manner provided in section 19-4030.

(2) For the purposes of the tax to be imposed under this section, the city council may make a reasonable classification of businesses or users of space. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance.

Source: Laws 1979, LB 251, § 17; Laws 1983, LB 22, § 11.

19-4032 District; additional assessment or levy; when; procedure.

If, subsequent to the levy of taxes or assessments, the use of any parcel of land shall change so that, had the new use existed at the time of making such levy, the assessment or levy on such parcel would have been higher than the levy or assessment actually made, an additional assessment or levy may be made on such parcel by the city council taking into consideration the new and changed use of the property. Reassessments or changes in the rate of levy of assessments or taxes may be made by the city council after notice and hearing as provided in section 19-4030. The city council shall adopt a resolution of intention to change the rate of levy at least fifteen days prior to the hearing required for changes. This resolution shall specify the proposed change and shall give the time and place of the hearing.

Source: Laws 1979, LB 251, § 18.

19-4033 Assessments or taxes; limitations; effect.

The total amount of assessments or general business occupation taxes levied under sections 19-4015 to 19-4038 shall not exceed the total costs and expenses of performing the authorized work. The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied. The assessments or taxes levied must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose.

Source: Laws 1979, LB 251, § 19; Laws 1983, LB 22, § 12.

19-4034 Business improvement district; special assessment or business tax; maintenance, repair, or reconstruction; levy; procedure.

A city may levy a general business occupation tax, or a special assessment against the real estate located in a district to the extent of special benefit to such real estate, for the purpose of paying all or any part of the cost of maintenance, repair, and reconstruction, including utility costs of any improvement or facility in the district. Districts created for taxation or assessment of maintenance, repair, and reconstruction costs, including utility costs of improvements or facilities which are authorized by sections 19-4015 to 19-4038, but which were not acquired or constructed pursuant to sections 19-4015 to 19-4038, may be taxed or assessed as provided in sections 19-4015 to 19-4038. Any occupation tax levied under this section shall be limited to those improvements and facilities authorized by section 19-4030. The city council may levy such taxes or assessments under either of the following methods:

(1) The city council, sitting as a board of equalization, may, not more frequently than annually, determine the costs of maintenance or repair, and reconstruction, of a facility. Such costs shall be either assessed to the real estate located in such district in accordance with the proposed method of assessment, or taxed against the businesses and users of space in the district, whichever may be applicable as determined by the ordinance creating the district. However, if the city council finds that the method of assessment proposed in the ordinance creating the district does not provide a fair and equitable method of apportioning such costs, then it may assess the costs under such method as the city council finds to be fair and equitable. At the hearing on such taxes or assessments, objections may be made to the total cost and the proposed allocation of such costs among the parcels of real estate or businesses in such district; or

(2) After notice is given to the owners or businesses as provided in section 19-4030 the city council may establish and may change from time to time, the percentage of such costs for maintenance, repair, and reconstruction which each parcel of real estate or each business or user of space in any district shall pay. The city council shall annually determine the total amount of such costs for each period since costs were last taxed or assessed, and shall, after a hearing, tax or assess such costs to the real estate in the district in accordance with the percentages previously established at such hearing. Notice of such hearing shall be given as provided in section 19-4030 and shall state the total costs and percentage to be taxed or assessed to each parcel of real estate. Unless objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages should be deemed to have been waived and the assessments shall be levied as stated in such notice except that the city council may reduce any assessment percentage.

Source: Laws 1979, LB 251, § 20; Laws 1983, LB 22, § 13.

19-4035 District; disestablish; procedure.

The city council may disestablish a district by ordinance after a hearing before the city council. The city council shall adopt a resolution of intention to disestablish the area at least fifteen days prior to the hearing required by this section. The resolution shall give the time and place of the hearing.

Source: Laws 1979, LB 251, § 21.

19-4036 Disestablished district; assets; disposition.

Upon disestablishment of a district, any proceeds of the tax or the assessment, or assets acquired with such proceeds, shall be subject to disposition as the city council shall determine.

Source: Laws 1979, LB 251, § 22.

19-4037 Funds and grants; use.

The city is authorized to receive, administer, and disburse donated funds or grants of federal or state funds for the purposes of and in the manner authorized by sections 19-4015 to 19-4038.

Source: Laws 1979, LB 251, § 23.

19-4038 Districts created prior to May 23, 1979; governed by sections.

Any business improvement district or any downtown improvement and parking district created prior to May 23, 1979, pursuant to sections 19-3401 to 19-3420 or 19-4001 to 19-4014, shall continue in existence and shall hereafter be governed by sections 19-4015 to 19-4038.

Source: Laws 1979, LB 251, § 24.

ARTICLE 41

DISPOSAL SITES

(Applicable to cities of the metropolitan, primary, or first class.)

Section

19-4101 Repealed. Laws 1992, LB 1257, § 105.

19-4102 Repealed. Laws 1992, LB 1257, § 105.

19-4103 Repealed. Laws 1992, LB 1257, § 105.

19-4104 Repealed. Laws 1992, LB 1257, § 105.

19-4105 Repealed. Laws 1992, LB 1257, § 105.

19-4106 Repealed. Laws 1992, LB 1257, § 105.

19-4107 Repealed. Laws 1992, LB 1257, § 105.

19-4108 Repealed. Laws 1992, LB 1257, § 105.

19-4109 Repealed. Laws 1992, LB 1257, § 105.

19-4110 Repealed. Laws 1992, LB 1257, § 105.

19-4111 Repealed. Laws 1992, LB 1257, § 105.

19-4112 Repealed. Laws 1992, LB 1257, § 105.

19-4113 Repealed. Laws 1992, LB 1257, § 105.

19-4114 Repealed. Laws 1992, LB 1257, § 105.

19-4115 Repealed. Laws 1992, LB 1257, § 105.

19-4116 Repealed. Laws 1992, LB 1257, § 105.

19-4117 Repealed. Laws 1992, LB 1257, § 105.

19-4118 Repealed. Laws 1992, LB 1257, § 105.

19-4119 Repealed. Laws 1992, LB 1257, § 105.

19-4119.01 Repealed. Laws 1992, LB 1257, § 105.

19-4120 Repealed. Laws 1992, LB 1257, § 105.

19-4121 Repealed. Laws 1992, LB 1257, § 105.

ARTICLE 42

RECALL PROCEDURES

Section

19-4201 Repealed. Laws 1984, LB 975, § 14.

19-4202 Repealed. Laws 1984, LB 975, § 14.

19-4203 Repealed. Laws 1984, LB 975, § 14.

19-4204 Repealed. Laws 1984, LB 975, § 14.

19-4205 Repealed. Laws 1984, LB 975, § 14.

19-4206 Repealed. Laws 1984, LB 975, § 14.

19-4207 Repealed. Laws 1984, LB 975, § 14.

19-4208 Repealed. Laws 1984, LB 975, § 14.

19-4209 Repealed. Laws 1984, LB 975, § 14.

19-4210 Repealed. Laws 1984, LB 975, § 14.

19-4211 Repealed. Laws 1984, LB 975, § 14.

ARTICLE 43

PUBLIC STREETS AND SIDEWALKS

(Applicable to all cities.)

Section
19-4301. Public streets and sidewalks; sale of services or goods; permitted; closure; conditions.

19-4301 Public streets and sidewalks; sale of services or goods; permitted; closure; conditions.

(1) The city council of any city may permit the public streets and sidewalks within such city to be occupied and used under a lease, license, or other permission by a person, business, or others for the sale of services or goods and may permit the placement of nonpermanent sidewalk cafes, tables, chairs, benches, and other temporary improvements from which such sales can be transacted on the public streets and sidewalks.

(2) In addition to subsection (1) of this section, the city council of any city of the primary class may permit public streets and sidewalks to be closed and a fee to be charged for access to such streets and sidewalks if the following conditions have been met:

(a) The person seeking such permission is a tax-exempt nonprofit or charitable organization exempt from taxation by the federal government;

(b) The event for which a street or sidewalk is to be closed is conducted by and for the benefit of such nonprofit or charitable organization; and

(c) The nonprofit or charitable organization has obtained written consent to close such street or sidewalk for the duration of the permitted event from all of the owners of any land or lots abutting on the street or sidewalk to be closed.

Source: Laws 1980, LB 848, § 23; Laws 1990, LB 1076, § 1.

ARTICLE 44

PLANNED UNIT DEVELOPMENT

(Applicable to cities of the metropolitan, primary, or first class.)

Section
19-4401. Transferred to section 18-3001.

19-4401 Transferred to section 18-3001.

ARTICLE 45

SPECIAL ASSESSMENTS

(Applicable to cities of the metropolitan, primary, or first class.)

Section
19-4501. Transferred to section 18-1216.

19-4501 Transferred to section 18-1216.

ARTICLE 46

MUNICIPAL NATURAL GAS

(Applicable to all except cities of the metropolitan class.)

(a) MUNICIPAL NATURAL GAS REGULATION ACT

Section
19-4601. Repealed. Laws 2003, LB 790, § 77.
19-4602. Repealed. Laws 2003, LB 790, § 77.
19-4603. Repealed. Laws 2003, LB 790, § 77.
19-4603.01. Repealed. Laws 2003, LB 790, § 77.
19-4604. Repealed. Laws 2003, LB 790, § 77.
19-4605. Repealed. Laws 2003, LB 790, § 77.
19-4606. Repealed. Laws 2003, LB 790, § 77.
19-4607. Repealed. Laws 2003, LB 790, § 77.
19-4608. Repealed. Laws 2003, LB 790, § 77.
19-4609. Repealed. Laws 2003, LB 790, § 77.
19-4610. Repealed. Laws 2003, LB 790, § 77.
19-4611. Repealed. Laws 2003, LB 790, § 77.
19-4612. Repealed. Laws 2003, LB 790, § 77.
19-4613. Repealed. Laws 2003, LB 790, § 77.
19-4614. Repealed. Laws 2003, LB 790, § 77.
19-4615. Repealed. Laws 2003, LB 790, § 77.
19-4616. Repealed. Laws 2003, LB 790, § 77.
19-4617. Repealed. Laws 2003, LB 790, § 77.
19-4618. Repealed. Laws 2003, LB 790, § 77.
19-4618.01. Repealed. Laws 2003, LB 790, § 77.
19-4618.02. Repealed. Laws 2003, LB 790, § 77.
19-4618.03. Repealed. Laws 2003, LB 790, § 77.
19-4618.04. Repealed. Laws 2003, LB 790, § 77.
19-4619. Repealed. Laws 2003, LB 790, § 77.
19-4620. Repealed. Laws 2003, LB 790, § 77.
19-4621. Repealed. Laws 2003, LB 790, § 77.
19-4622. Repealed. Laws 2003, LB 790, § 77.
19-4623. Repealed. Laws 2003, LB 790, § 77.

(b) MUNICIPAL NATURAL GAS SYSTEM CONDEMNATION ACT

19-4624. Act, how cited.
19-4625. Eminent domain authorized.
19-4626. Act; applicability.
19-4627. Terms, defined.
19-4628. Resolution of intent.
19-4629. Resolution of intent; contents.
19-4630. Resolution of intent; public hearing.
19-4631. Condemnation motion.
19-4632. Court of condemnation; establishment.
19-4633. Court of condemnation; procedure.
19-4634. Court of condemnation; powers and duties; costs.
19-4635. Court of condemnation; finding of value; procedure; appeal; abandonment; when.
19-4636. Appeal.
19-4637. Voter approval.
19-4638. Voter approval; effect.
19-4639. Voter approval; time restrictions.
19-4640. Bonds authorized.
19-4641. Condemnation; relinquishment authorized.
19-4642. Contract authorized.
19-4643. Contract; contents.
19-4644. Contract; review by Public Service Commission.
19-4645. Contract; effect.

(a) MUNICIPAL NATURAL GAS REGULATION ACT

19-4601 Repealed. Laws 2003, LB 790, § 77.

19-4602 Repealed. Laws 2003, LB 790, § 77.

19-4603 Repealed. Laws 2003, LB 790, § 77.

19-4603.01 Repealed. Laws 2003, LB 790, § 77.

19-4604 Repealed. Laws 2003, LB 790, § 77.

19-4605 Repealed. Laws 2003, LB 790, § 77.

19-4606 Repealed. Laws 2003, LB 790, § 77.

19-4607 Repealed. Laws 2003, LB 790, § 77.

19-4608 Repealed. Laws 2003, LB 790, § 77.

19-4609 Repealed. Laws 2003, LB 790, § 77.

19-4610 Repealed. Laws 2003, LB 790, § 77.

19-4611 Repealed. Laws 2003, LB 790, § 77.

19-4612 Repealed. Laws 2003, LB 790, § 77.

19-4613 Repealed. Laws 2003, LB 790, § 77.

19-4614 Repealed. Laws 2003, LB 790, § 77.

19-4615 Repealed. Laws 2003, LB 790, § 77.

19-4616 Repealed. Laws 2003, LB 790, § 77.

19-4617 Repealed. Laws 2003, LB 790, § 77.

19-4618 Repealed. Laws 2003, LB 790, § 77.

19-4618.01 Repealed. Laws 2003, LB 790, § 77.

19-4618.02 Repealed. Laws 2003, LB 790, § 77.

19-4618.03 Repealed. Laws 2003, LB 790, § 77.

19-4618.04 Repealed. Laws 2003, LB 790, § 77.

19-4619 Repealed. Laws 2003, LB 790, § 77.

19-4620 Repealed. Laws 2003, LB 790, § 77.

19-4621 Repealed. Laws 2003, LB 790, § 77.

19-4622 Repealed. Laws 2003, LB 790, § 77.

19-4623 Repealed. Laws 2003, LB 790, § 77.

(b) MUNICIPAL NATURAL GAS SYSTEM CONDEMNATION ACT

19-4624 Act, how cited.

Sections 19-4624 to 19-4645 shall be known and may be cited as the Municipal Natural Gas System Condemnation Act.

Source: Laws 2002, LB 384, § 1.

19-4625 Eminent domain authorized.

A city may acquire and appropriate a gas system through the exercise of the power of eminent domain if such power is exercised in the manner specified in and subject to the Municipal Natural Gas System Condemnation Act.

Source: Laws 2002, LB 384, § 2.

19-4626 Act; applicability.

(1) A city may condemn the property of a utility which constitutes a portion of a gas system without complying with the Municipal Natural Gas System Condemnation Act if the condemnation is necessary for the public purpose of acquiring an easement or right-of-way across the property of the utility or is for the purpose of acquiring a portion of the gas system for a public use unrelated to the provision of natural gas service.

(2) Nothing in the act shall be construed to govern or affect the manner in which a city which owns and operates its own gas system condemns the property of a utility when such property is brought within the corporate boundaries of the city by annexation.

Source: Laws 2002, LB 384, § 3.

19-4627 Terms, defined.

For purposes of the Municipal Natural Gas System Condemnation Act:

(1) City means a city of the primary class, city of the first class, city of the second class, or village;

(2) Commission means the Public Service Commission;

(3) Gas system means all or any portion of a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, located or operating within or partly within and partly without a city, together with real and personal property needed or useful in connection therewith, if the main part of the works, plant, or system is located within the city; and

(4) Utility means an investor-owned utility owning, maintaining, and operating a gas system within a city.

Source: Laws 2002, LB 384, § 4.

19-4628 Resolution of intent.

A city proposing to acquire a gas system through the exercise of the power of eminent domain shall initiate the process by ordering the preparation of a resolution of intent to pursue condemnation of the gas system in accordance with the requirements of the Municipal Natural Gas System Condemnation Act by a vote of a majority of the members of the governing body of the city.

Source: Laws 2002, LB 384, § 5.

19-4629 Resolution of intent; contents.

(1) The resolution of intent shall describe the property subject to the proposed condemnation, including the types of property and facilities to be subject to the condemnation and the extent and amount of property to be appropriated. The resolution of intent shall set forth one or more of the following:

(a) A description of the acts and omissions of the utility regarding natural gas safety which the city believes have created or may create a material threat to the health and safety of the public in the city and a description of the nature of the threat;

(b) A description of the acts and omissions of the utility regarding the terms, conditions, and quality of natural gas service to natural gas ratepayers in the city which the city believes fail to meet generally accepted standards of customer service within the natural gas industry;

(c) A comparison of the rates for natural gas charged by the utility to ratepayers in the city and of the rates charged to similarly situated ratepayers in comparably sized cities in Nebraska and neighboring states which are served by the same or different utilities, which comparison the city believes shows that the rates charged in the city are excessive; or

(d) A description of recent or contemporaneous events or disclosures regarding the utility, including, but not limited to, changes in ownership, corporate structure, financial stability, or debt rating or any other factor which the city believes indicates financial instability in the utility which may materially impair its ability to maintain appropriate levels of safety and consumer service in the city.

(2) If the resolution of intent contains provisions as set out in subdivision (1)(a) or (b) of this section, the resolution shall describe the efforts by the city to inform the utility of the utility's acts or omissions regarding safety or service and shall describe the opportunities afforded the utility to remedy the stated defects.

(3) The resolution of intent shall not contain any provision regarding nor make any references to any expected or anticipated revenue to be derived by the city in consequence of the city's condemnation or operation of the gas system.

Source: Laws 2002, LB 384, § 6.

19-4630 Resolution of intent; public hearing.

(1) The resolution of intent to pursue condemnation shall be presented to the governing body of the city at a regular meeting of such governing body. At that meeting the governing body may adopt the resolution of intent and, if it does so, shall set a time at least forty-five days after the date of the meeting at which the resolution of intent was adopted at which time the governing body of the city shall hold a public hearing.

(2) At the public hearing, the sole item of business to be conducted shall be the public hearing on the resolution of intent at which the public shall be permitted to comment on the proposed condemnation, the utility shall be permitted to respond to the statements set out in the resolution of intent and any comments made at the public hearing, and the governing body may act as provided in section 19-4631.

(3) The clerk of the city shall transmit a copy of the resolution of intent and notice of the date and time of the public hearing to the utility by United States

registered mail with signature confirmation within seven days after the meeting at which the resolution of intent was adopted. At least thirty days prior to the public hearing, the city shall publish notice of the time and place of the public hearing and a summary of the resolution of intent in a legal newspaper published in or of general circulation in the city.

(4) The utility may present to the city a description of portions of the gas system which (a) are not described as part of the gas system being condemned by the city and (b) are served through the town border station of the city. The utility may require the city to include in its description of the gas system being condemned any or all of those portions of the system if the proposed condemnation would sever those portions of the system from the utility's distribution facilities and would require the utility to create new infrastructure to link these portions to its existing delivery system outside the city. If the utility chooses to require the city to include additional portions of the gas system in the description of the property being condemned, it shall do so prior to the adjournment of the public hearing.

Source: Laws 2002, LB 384, § 7.

19-4631 Condemnation motion.

After the public hearing provided for in section 19-4630, the governing body of the city, by majority vote of its members, may vote to exercise the power of eminent domain and condemn the gas system or such portion thereof as described in the motion. The motion shall identify fully and accurately the property subject to the condemnation.

Source: Laws 2002, LB 384, § 8.

19-4632 Court of condemnation; establishment.

Following the adoption of the motion, including an override of any veto, if necessary, the clerk of the city shall transmit to the Chief Justice of the Supreme Court notice of the decision of the city to pursue condemnation of the gas system. The Supreme Court shall, within thirty days after the receipt of such notice, appoint three judges of the district court from three of the judicial districts of the state to constitute a court of condemnation to ascertain and find the value of the gas system being taken. The Supreme Court shall enter an order requiring the judges to attend as a court of condemnation at the county seat of the county in which the city is located, within such time as may be stated in the order, except upon stipulation by all necessary parties as to the value of the gas system filed with the Supreme Court prior to such date. The judges shall attend as ordered and at the first meeting shall select a presiding judge, organize, and proceed with the court's duties. The court may adjourn from time to time and shall fix a time for the appearance before it of all such corporations or persons as the court may deem necessary to be made parties to such condemnation proceedings or which the city or the utility may desire to have made a party to the proceedings. If such time of appearance shall occur after any proceedings have begun, the proceedings shall be reviewed by the court, as it may direct, to give all parties full opportunity to be heard. All corporations or persons, including all mortgagees, bondholders, trustees for bondholders, leaseholders, or other parties or persons claiming any interest in or lien upon the gas system, may be made parties to the proceedings. All parties shall be served with notice of the proceedings and the time and place of the

meeting of the court of condemnation in the same manner and for such length of time as the service of a summons in cases begun in the district court, either by personal service or service by publication, and actual personal service of notice within or without the state shall supersede the necessity of notice by publication.

Source: Laws 2002, LB 384, § 9.

19-4633 Court of condemnation; procedure.

In all proceedings before it, the court of condemnation shall appoint a reporter of its proceedings who shall report and preserve all evidence introduced before it. The clerk of the district court, in the county where the city is located, shall attend upon the court of condemnation and perform the duties of the clerk thereof, as the court of condemnation may direct. The sheriff of the county or any of his or her deputies shall attend upon the court and shall have power to serve summonses, subpoenas, and all other orders or papers ordered to be served by the court. In case of a vacancy on the court, the vacancy shall be filled by the Supreme Court if the vacancy occurs while the Supreme Court is in session, and if it occurs while the Supreme Court is not in session, then by the Chief Justice. The judges constituting the court of condemnation shall be paid by the city a per diem for their services in an amount to be established by rule of the Supreme Court and the city shall pay their necessary traveling expenses, accommodation bills, and all other necessary expenses incurred while in attendance upon the sittings of the court of condemnation, with reimbursement for expenses to be made as provided in sections 81-1174 to 81-1177. The city shall pay the reporter that is appointed by the court the amount that is set by the court. The sheriff shall serve all summonses, subpoenas, or other orders or papers ordered issued or served by the court of condemnation at the same rate and compensation for which he or she serves like papers issued by the district court, but shall account to the county for all compensation as required of him or her under the law governing his or her duties as sheriff.

Source: Laws 2002, LB 384, § 10.

19-4634 Court of condemnation; powers and duties; costs.

(1) In ascertaining the value of the gas system, the court of condemnation shall have full power to summon witnesses, administer oaths, take evidence, order the taking of depositions, and require the production of any and all books and papers deemed necessary for a full investigation and ascertainment of the value of any portion of the gas system. When part of the gas system appropriated under the Municipal Natural Gas System Condemnation Act extends beyond the territory within which the city exercising the power of eminent domain has a right to operate the gas system, the court of condemnation, in determining the damages caused by the appropriation, shall take into consideration the fact that the portion of the gas system beyond that territory is being detached and not appropriated by the city, and the court of condemnation shall award damages by reason of the detachment and the destruction in value and usefulness of the detached and unappropriated property as it will remain and be left after the detachment and appropriation. The court shall have all the necessary powers and perform all the necessary duties in the condemnation and ascertainment of the value and in making an award of the value of the gas system.

(2) The court of condemnation shall have power to apportion the costs of the proceedings before it between the city and the utility and the city shall provide for and pay the costs as ordered by the court. The city shall make provisions for the necessary funds and expenses to carry on the proceedings of the court while the proceedings are in progress. If the governing body of the city elects to abandon the condemnation proceedings, the city shall pay all the costs made before the court.

(3) If the services of expert witnesses or attorneys are secured by the utility, their fees or compensation as billed to the utility are to be taxed and paid as costs by the city to the extent that the court determines that the fees and compensation sought (a) reflect the prevailing industry or professional charges for such services in cases of the size involved in the condemnation and (b) were reasonably necessary to a just and accurate determination of the value of the gas system. The costs of any appeal shall be adjudged against the party defeated in the appeal in the same degree and manner as is done under the general court practice relating to appellate proceedings.

Source: Laws 2002, LB 384, § 11.

19-4635 Court of condemnation; finding of value; procedure; appeal; abandonment; when.

(1) Upon the determination and filing of a finding of the value of the gas system by the court of condemnation, the city shall have the right and power, by resolution adopted by a majority of the members of its governing body, to elect to abandon the proceedings to acquire the gas system by the exercise of the power of eminent domain.

(2) If the city (a) does not elect to abandon within ninety days after the finding and filing of value or (b) formally notifies the utility by United States registered mail with signature confirmation that its governing body has voted to proceed with the condemnation, the utility owning the gas system may appeal from the finding of value and award by the court of condemnation to the district court.

(3) The appeal shall be made by filing with the city clerk within twenty days after (a) the expiration of the time given the city to exercise its rights of abandonment or (b) the date of the receipt of the notice of the city's intent to proceed with condemnation, a bond to be approved by the court of condemnation, conditioned for the payment of all costs which may be made on any appeal, and by filing in the district court, within ninety days after such bond is filed, a transcript of the proceedings before the court of condemnation, including the evidence taken before it, certified by the clerk, reporter, and judges of the court of condemnation. The appeal in the district court shall be tried and determined upon the pleadings, proceedings, and evidence in the transcript.

(4) Notwithstanding the provisions of subsection (1) of this section, the city may abandon the proceedings to acquire the gas system by the exercise of the power of eminent domain at any time prior to taking physical possession of the gas system.

Source: Laws 2002, LB 384, § 12.

19-4636 Appeal.

Upon the hearing of the appeal in the district court, judgment shall be pronounced, as in ordinary cases, for the value of the gas system. The city or utility may appeal the judgment to the Supreme Court. All actions and proceedings under the Municipal Natural Gas System Condemnation Act which are heard by the district court or the Supreme Court shall be expedited for hearing and decision by the appropriate court as soon as the issues and parties are properly before such court. Such proceedings and actions shall be preferred over all other civil cases irrespective of their position on the calendar.

Source: Laws 2002, LB 384, § 13.

19-4637 Voter approval.

(1) A city shall not appropriate a gas system through the exercise of the power of eminent domain without the approval of the registered voters of the city as provided in the Municipal Natural Gas System Condemnation Act.

(2) At such time as (a) the court of condemnation has finally determined the value of the gas system and no appeal has been perfected to the district court from that determination by the city or the utility, (b) the district court has pronounced its final judgment on the value of the gas system, and neither the utility or city has perfected an appeal to the Supreme Court from such judgment, or (c) the Supreme Court has pronounced its final judgment on the value of the gas system, the governing body of the city may submit to the registered voters of the city at any general or special city election the question of whether the city should acquire the gas system by the exercise of the power of eminent domain at the price established by the court of condemnation, the district court, or the Supreme Court as the case may be. The ballot language shall describe the property to be acquired and the interest in the property being sought and shall recite the cost of the acquisition as adjudged by the court establishing the value of the gas system. The ballot question shall be in the following form:

Shall the city of (name of city) acquire by the exercise of the power of eminent domain the gas system currently owned by (name of utility) at a total cost of (set out the total dollar amount to be awarded to the utility as determined by the court of condemnation, the district court, or the Supreme Court as the case may be): . . .Yes . . .No

(3) The city shall submit the question to the registered voters in the manner prescribed in the Election Act. The question may be placed before the registered voters of the city at any general or special city election called for the purpose and may be submitted in connection with any city special election called for any other purpose. The votes cast on the question shall be canvassed and the result found and declared as prescribed in the Election Act.

Source: Laws 2002, LB 384, § 14.

Cross References

Election Act, see section 32-101.

19-4638 Voter approval; effect.

If the election at which the question is submitted is a special election and sixty percent of the votes cast upon such proposition are in favor, or if the election at which the question is submitted is a general election and a majority of the votes cast upon such proposition are in favor, then the officer possessing

the power and duty to ascertain and declare the result of the election shall certify the result immediately to the governing body of the city. The governing body of the city may then proceed to tender the amount of the value and award made by the court of condemnation, district court, or the Supreme Court to the utility owning the gas system and shall have the right and power to take immediate possession of the gas system upon the tender.

Source: Laws 2002, LB 384, § 15.

19-4639 Voter approval; time restrictions.

If the governing body of the city abandons proceedings for the acquisition of the gas system at any time prior to taking possession of the gas system or the issue of acquiring the gas system by the exercise of the power of eminent domain has been submitted to and not approved by the registered voters of the city, the city shall not initiate a new proceeding for the acquisition of the gas system until twenty-four months have elapsed after the date proceedings were abandoned or after the date of the election at which the question was not approved by the registered voters of the city.

Source: Laws 2002, LB 384, § 16.

19-4640 Bonds authorized.

Following (1) the completion or dismissal of all appeals and upon a final judgment being pronounced in the case and (2) the approval of the voters to condemn the gas system at the election provided for in section 19-4637, the governing body of the city may issue and sell bonds of the city to pay the amount of the value of the gas system set out in the award and any other obligations of the city arising from the condemnation including, but not limited to, acquisitions costs, fees, court costs, and related expenses. Such bonds may be issued and sold without an additional vote of the registered voters of the city.

Source: Laws 2002, LB 384, § 17.

19-4641 Condemnation; relinquishment authorized.

If a utility proposes to (1) construct a gas system in a city for the first time, (2) within an eighteen-month period, reconstruct or renovate a portion of a gas system in a city or expand the gas system in a city over an area equivalent to twenty percent or more of the area of the city being served by the utility, or (3) within an eighteen-month period, construct new facilities, improvements, or upgrades to an existing gas system to enhance service to customers or increase efficiency if the costs of making such improvements equal or exceed twenty percent of the estimated net depreciated cost of the gas system in the city prior to the addition of such improvements, the city may enter into a binding and enforceable contract as provided in sections 19-4642 to 19-4645 with the utility to relinquish its right to condemn the gas system for an expressed period of time or for a period of time determinable by formula set out in the contract.

Source: Laws 2002, LB 384, § 18.

19-4642 Contract authorized.

If the utility seeks to pursue a qualifying project as specified in section 19-4641, it may negotiate a contract with the city in which the city, in consideration of the utility's promise to provide, expand, or improve natural

gas service to the citizens of the city at reasonable rates, with safeguards for public health and safety, and with appropriate standards for service, agrees to relinquish its right to condemn the gas system for a period of time sufficient to enable the utility to recover the reasonable costs of the project, but not to exceed such period.

Source: Laws 2002, LB 384, § 19.

19-4643 Contract; contents.

A contract entered into under section 19-4641 shall include provisions specifying:

(1) The nature of the qualifying project and the costs involved in its completion;

(2) The standards of safety to be applied to the gas system during the construction and following the completion of the project;

(3) Any terms and conditions of natural gas service to customers in the city deemed material to the contract by the city and the utility;

(4) The period of time necessary for the utility to recover the reasonable cost of the project, during which time the city relinquishes its right to condemn the gas system expressed either as a set period of time or as a period of time to expire upon the occurrence of a specified condition; and

(5) Any other provisions agreed by the city and the utility to be material to the contract.

Source: Laws 2002, LB 384, § 20.

19-4644 Contract; review by Public Service Commission.

(1) A city and a utility shall not formally enter into a contract under section 19-4641 until the contract has been reviewed and approved by the commission.

(2) Upon completion of negotiations for the contract, the city and utility shall jointly submit the contract for review by the commission.

(3) The commission shall, following the submission of the contract and any supporting documentation requested by the commission, schedule a public hearing to be convened in the city at which the city and utility may present any additional information and respond to questions or inquiries by the commission and at which the public may comment upon the terms and conditions of the contract. The hearing may be recessed and reconvened in the city or at any other location at the discretion of the commission.

(4) The commission shall review the contract to determine (a) the accuracy of its factual representations and calculations, (b) the reasonableness of its terms and conditions, (c) that the disclosure of material information by the city or utility regarding the contract has been full, complete, accurate, and mutual, and (d) that the contract will, if entered into, further the public interest of the city in adequate and safe natural gas service.

(5) Following its review, the commission shall, within one hundred twenty days after the date of the submission to it of the contract, approve the contract, recommend amendments to the contract to conform it to the requirements of sections 19-4641 to 19-4645, or deny approval of the contract. If the commission recommends amendments, the city and utility may adopt the amendments or renegotiate provisions of the contract and submit the amended contract for

additional commission review. If the commission recommends amendments or denies approval of the contract, the city and utility may stipulate to additional time beyond the one hundred twenty days for the commission to further review amendments to or renegotiate provisions of the contract.

(6) When the commission approves the contract, the city and utility may formally enter into the contract.

(7) The commission may adopt and promulgate any rules or regulations necessary for the administration of its duties and responsibilities pursuant to sections 19-4641 to 19-4645.

Source: Laws 2002, LB 384, § 21.

19-4645 Contract; effect.

(1) Except as provided in subsection (2) or (3) of this section, a contract between a city and a utility entered into under sections 19-4641 to 19-4645 shall bar the city from initiating condemnation proceedings during the period provided for in the contract.

(2) If the utility, by act or omission, breaches the contract, the city may pursue action in the district court of the county in which the city is located to have the court determine whether a material breach has occurred. If the court determines that a material breach has occurred, the city may initiate proceedings to condemn the gas system notwithstanding that the term of relinquishment set out in the contract has not expired.

(3) Except upon the express written approval of the city, the utility may not assign or transfer its interest in the contract to an independent third party.

Source: Laws 2002, LB 384, § 22.

ARTICLE 47

BASEBALL

Section
19-4701. City of metropolitan or primary class; powers.

19-4701 City of metropolitan or primary class; powers.

A city of the metropolitan or primary class may acquire, purchase, and operate a professional baseball organization.

Source: Laws 1991, LB 795, § 9.

ARTICLE 48

CODE ENFORCEMENT

(Applicable to cities of the metropolitan, primary, or first class.)

Section
19-4801. Transferred to section 18-1757.

19-4801 Transferred to section 18-1757.

ARTICLE 49

JUDICIAL PROCEEDINGS

(Applicable to cities of the first or second class and villages.)

Section
19-4901. Judicial proceedings; bond not required.

19-4901 Judicial proceedings; bond not required.

No bond for costs, appeal, supersedeas, injunction, or attachment shall be required of any city of the first class, city of the second class, or village or of any officer, member of any board or commission, head of any department, agent, or employee of such city or village in any proceeding or court action in which such city, village, officer, board or commission member, department head, agent, or employee is a party litigant in its, his, or her official capacity.

Source: Laws 2001, LB 104, § 1.

ARTICLE 50

ANNEXATION

(Applicable to cities of the first or second class and villages.)

Section
19-5001. Written notice of proposed annexation; manner; contents; liability; limitation on action.

19-5001 Written notice of proposed annexation; manner; contents; liability; limitation on action.

(1) A city of the first or second class or village shall provide written notice of a proposed annexation to the owners of property within the area proposed for annexation in the manner set out in this section.

(2) Initial notice of the proposed annexation shall be sent to the owners of property within the area proposed for annexation by regular United States mail, postage prepaid, to the address of each owner of such property as it appears in the records of the office of the register of deeds or as the address is determined from another official source, postmarked at least ten working days prior to the planning commission's public hearing on the proposed change with a certified letter to the clerk of any sanitary and improvement district if the annexation includes property located within the boundaries of such district. Such notice shall describe the area proposed for annexation, including a map showing the boundaries of the area proposed for annexation, and shall contain the date, time, and location of the planning commission's hearing and how further information regarding the annexation can be obtained, including the telephone number of the pertinent city or village official and an electronic mail or Internet address if available.

(3) A second notice of the proposed annexation shall be sent to the same owners of property who were provided with notice under subsection (2) of this section. Such notice shall be sent by regular United States mail, postage prepaid, to the owner's address as it appears in the records of the office of the register of deeds or as the address is determined from another official source, postmarked at least ten working days prior to the public hearing of the city council or village board on the annexation. Such notice shall describe the area

proposed for annexation, including a map showing the boundaries of the area proposed for annexation, and shall contain the date, time, and location of the hearing and how further information regarding the annexation can be obtained, including the telephone number of the pertinent city or village official and an electronic mail or Internet address if available.

(4) No additional or further notice beyond that required by subsections (2) and (3) of this section shall be necessary if the scheduled public hearing by the planning commission or city council or village board on the proposed annexation is adjourned, continued, or postponed until a later date.

(5) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city of the first or second class or village to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made. No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date after the formal acceptance or rejection of the annexation by the city council or village board.

(6) Except for a willful or deliberate failure to cause notice to be given, the city of the first or second class or village and its employees shall not be liable for any damage to any person resulting from failure to cause notice to be given as required by this section if a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council or village board.

(7) For purposes of this section, owner means the owner of a piece of property as indicated on the records of the office of the register of deeds as provided to or made available to the city of the first or second class or village no earlier than the last business day before the twenty-fifth day preceding the public hearing by the planning commission on the annexation proposed for the subject property.

Source: Laws 2009, LB495, § 1.

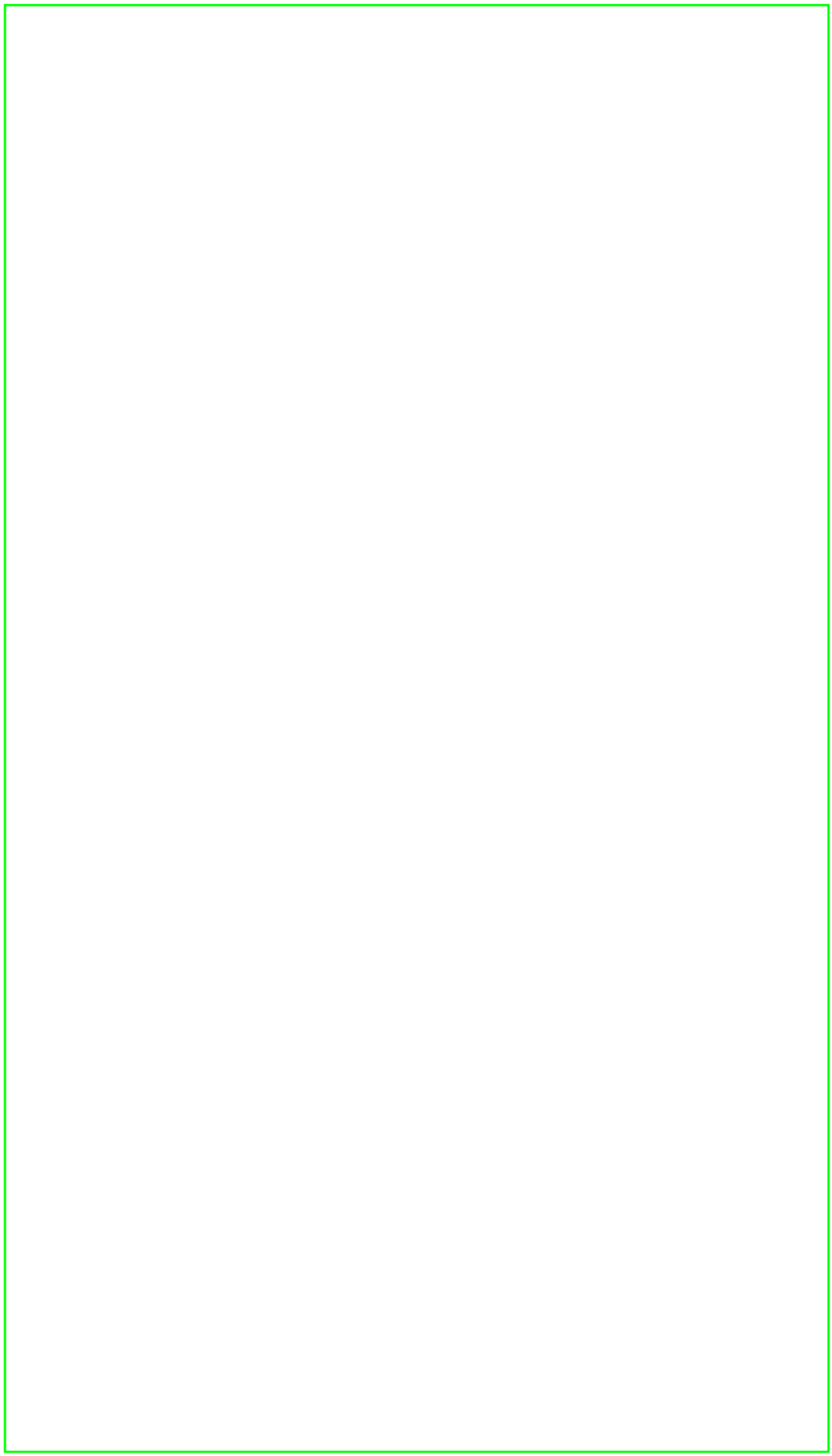
ARTICLE 51
INVESTMENT OF PUBLIC ENDOWMENT FUNDS
(Applicable to cities of more than 5,000 population.)

Section
19-5101. Investment of public endowment funds; manner.

19-5101 Investment of public endowment funds; manner.

Pursuant to Article XI, section 1, of the Constitution of Nebraska, the Legislature authorizes the investment of public endowment funds by any city having a population of more than five thousand inhabitants in the manner required of a prudent investor who shall act with care, skill, and diligence under the prevailing circumstance and in such investments as the governing body of such city, acting in a fiduciary capacity for the exclusive purpose of protecting and benefiting such investment, may determine.

Source: Laws 2009, LB402, § 3.



CHAPTER 20
CIVIL RIGHTS

Article.
1. Individual Rights.
   (a) General Provisions. 20-101 to 20-125.
   (b) Persons with Disabilities. 20-126 to 20-131.04.
   (c) Public Accommodations. 20-132 to 20-143.
   (d) Free Flow of Information Act. 20-144 to 20-147.
   (e) Civil Remedies. 20-148.
   (f) Consumer Information. 20-149.
   (g) Interpreters. 20-150 to 20-159.
   (h) Political Activities. 20-160.
   (i) Persons with Developmental Disabilities and Mentally Ill Individuals. 20-161 to 20-166.
   (j) Human Immunodeficiency Virus. 20-167 to 20-169.
   (k) Mother Breast-Feed Child. 20-170.
2. Rights of Privacy. 20-201 to 20-211.
3. Housing. 20-301 to 20-344.
4. Rights of the Terminally Ill. 20-401 to 20-416.
5. Racial Profiling. 20-501 to 20-506.

ARTICLE 1
INDIVIDUAL RIGHTS

Cross References

Age Discrimination in Employment Act, see section 48-1001.
Equal Opportunity Commission, see sections 48-1116 and 48-1117.
Equal Opportunity in Education Act, Nebraska, see section 79-2,114.
Equal Opportunity in Postsecondary Education Act, Nebraska, see section 85-9,166.
Fair Employment Practice Act, Nebraska, see section 48-1125.

(a) GENERAL PROVISIONS

Section
20-101. Repealed. Laws 1969, c. 120, § 25.
20-102. Repealed. Laws 1969, c. 120, § 25.
20-103. Repealed. Laws 1969, c. 120, § 25.
20-104. Repealed. Laws 1969, c. 120, § 25.
20-105. Transferred to section 20-302.
20-106. Transferred to section 20-310.
20-107. Transferred to section 20-318.
20-108. Repealed. Laws 1991, LB 825, § 53.
20-109. Transferred to section 20-321.
20-110. Transferred to section 20-322.
20-111. Repealed. Laws 1973, LB 112, § 13.
20-112. Transferred to section 20-324.
20-113. Protection of civil rights; incorporated cities; ordinances; county; resolutions; powers; jurisdiction; revocation of liquor license, when.
20-113.01. Legislative findings.
20-114. Repealed. Laws 1991, LB 825, § 53.
20-115. Repealed. Laws 1991, LB 825, § 53.
20-116. Repealed. Laws 1991, LB 825, § 53.
20-117. Repealed. Laws 1991, LB 825, § 53.
20-118. Repealed. Laws 1991, LB 825, § 53.
20-119. Repealed. Laws 1991, LB 825, § 53.
20-120. Repealed. Laws 1991, LB 825, § 53.

(a) GENERAL PROVISIONS

20-101 Repealed. Laws 1969, c. 120, § 25.

20-102 Repealed. Laws 1969, c. 120, § 25.

20-103 Repealed. Laws 1969, c. 120, § 25.

20-104 Repealed. Laws 1969, c. 120, § 25.

20-105 Transferred to section 20-302.

20-106 Transferred to section 20-310.

20-107 Transferred to section 20-318.

20-108 Repealed. Laws 1991, LB 825, § 53.

20-109 Transferred to section 20-321.

20-110 Transferred to section 20-322.

20-111 Repealed. Laws 1973, LB 112, § 13.

20-112 Transferred to section 20-324.

20-113 Protection of civil rights; incorporated cities; ordinances; county; resolutions; powers; jurisdiction; revocation of liquor license, when.

Any incorporated city may enact ordinances and any county may adopt resolutions which are substantially equivalent to the Age Discrimination in

Employment Act, the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, and sections 20-126 to 20-143 and 48-1219 to 48-1227 or which are more comprehensive than such acts and sections in the protection of civil rights. No such ordinance or resolution shall place a duty or liability on any person, other than an employer, employment agency, or labor organization, for acts similar to those prohibited by section 48-1115. Such ordinance or resolution may include authority for a local agency to seek an award of damages or other equitable relief on behalf of the complainant by the filing of a petition in the district court in the county with appropriate jurisdiction. The local agency shall have within its authority jurisdiction substantially equivalent to or more comprehensive than the Equal Opportunity Commission or other enforcement agencies provided under such acts and sections and shall have authority to order backpay and other equitable relief or to enforce such orders or relief in the district court with appropriate jurisdiction. Certified copies of such ordinances or resolutions shall be transmitted to the commission. When the commission determines that any such city or county has enacted an ordinance or adopted a resolution that is substantially equivalent to such acts and sections or is more comprehensive than such acts and sections in the protection of civil rights and has established a local agency to administer such ordinance or resolution, the commission may thereafter refer all complaints arising in such city or county to the appropriate local agency. All complaints arising within a city shall be referred to the appropriate agency in such city when both the city and the county in which the city is located have established agencies pursuant to this section. When the commission refers a complaint to a local agency, it shall take no further action on such complaint if the local agency proceeds promptly to handle such complaint pursuant to the local ordinance or resolution. If the commission determines that a local agency is not handling a complaint with reasonable promptness or that the protection of the rights of the parties or the interests of justice require such action, the commission may regain jurisdiction of the complaint and proceed to handle it in the same manner as other complaints which are not referred to local agencies. In cases of conflict between this section and section 20-332, for complaints subject to the Nebraska Fair Housing Act, section 20-332 shall control.

Any club which has been issued a license by the Nebraska Liquor Control Commission to sell, serve, or dispense alcoholic liquor shall have that license revoked if the club discriminates because of race, color, religion, sex, familial status as defined in section 20-311, handicap as defined in section 20-313, or national origin in the sale, serving, or dispensing of alcoholic liquor to any person who is a guest of a member of such club. The procedure for revocation shall be as prescribed in sections 53-134.04, 53-1,115, and 53-1,116.

Source: Laws 1969, c. 120, § 9, p. 544; Laws 1974, LB 681, § 1; Laws 1979, LB 438, § 2; Laws 1991, LB 344, § 1; Laws 1991, LB 825, § 46; Laws 2007, LB265, § 2.

Cross References

Age Discrimination in Employment Act, see section 48-1001.
Nebraska Fair Employment Practice Act, see section 48-1125.
Nebraska Fair Housing Act, see section 20-301.

20-113.01 Legislative findings.

In order to declare the intent of the present Legislature and to effect the original intent of sections 18-1724 and 20-113, the Legislature finds that civil

rights are a local as well as state concern and the Legislature desires to provide for the local enforcement and enactment of civil rights legislation concurrent with the authority of the State of Nebraska.

Source: Laws 1979, LB 438, § 1.

20-114 Repealed. Laws 1991, LB 825, § 53.

20-115 Repealed. Laws 1991, LB 825, § 53.

20-116 Repealed. Laws 1991, LB 825, § 53.

20-117 Repealed. Laws 1991, LB 825, § 53.

20-118 Repealed. Laws 1991, LB 825, § 53.

20-119 Repealed. Laws 1991, LB 825, § 53.

20-120 Repealed. Laws 1991, LB 825, § 53.

20-121 Transferred to section 20-344.

20-122 Transferred to section 20-132.

20-123 Intent, purpose, public policy; freedom of speech.

It is the intent, purpose, and public policy to protect, preserve, and perpetuate the constitutional right to freely speak, write, and publish on all lawful subjects, including the right to make a comprehensive distribution of such printed materials, either commercial or noncommercial, by using the most effective lawful means or methods, and being responsible for any damages.

Source: Laws 1969, c. 120, § 19, p. 550.

20-124 Interference; restraint of freedoms; penalty.

Any individual, corporation, or municipality that attempts to interfere with or restrain the exercise of the freedoms referred to in sections 20-123 and 20-132, either by ordinance or otherwise, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one hundred dollars, or be imprisoned for a period not exceeding six months, or be both so fined and imprisoned, and shall stand committed until such fine and costs of prosecution are paid. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

Source: Laws 1969, c. 120, § 20, p. 551.

While injunctive relief for interference with first amendment right to free speech can be granted, the facts herein do not support such relief. Hartford v. Womens Services, P.C., 239 Neb. 540, 477 N.W.2d 161 (1991).

20-125 Transferred to section 20-301.

(b) PERSONS WITH DISABILITIES

20-126 Statement of policy.

It is the policy of this state to encourage and enable blind, visually handicapped, hearing-impaired, or physically disabled persons to participate fully in

the social and economic life of the state and to engage in remunerative employment.

Source: Laws 1971, LB 496, § 1; R.S.Supp.,1971, § 43-633; Laws 1980, LB 932, § 1; Laws 1997, LB 254, § 2.

This section setting forth a general policy to employ the blind and visually handicapped does not require the employment of firemen with visual defects where the disability would prevent the performance of the work involved. McCrea v. Cunningham, 202 Neb. 638, 277 N.W.2d 52 (1979).

20-126.01 Physically disabled person, defined.

For purposes of sections 20-126 to 20-131, physically disabled person means a person with a physical disability other than hearing impairment, blindness, or visual handicap.

Source: Laws 1997, LB 254, § 1; Laws 2008, LB806, § 5.

20-127 Rights enumerated.

(1) A blind, visually handicapped, deaf or hard of hearing, or physically disabled person has the same right as any other person to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) A blind, visually handicapped, deaf or hard of hearing, or physically disabled person is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(3) A totally or partially blind person, deaf or hard of hearing person, or physically disabled person has the right to be accompanied by a service animal, especially trained for the purpose, and a bona fide trainer of a service animal has the right to be accompanied by such animal in training in any of the places listed in subsection (2) of this section without being required to pay an extra charge for the service animal. Such person shall be liable for any damage done to the premises or facilities or to any person by such animal.

(4) A totally or partially blind person has the right to make use of a white cane in any of the places listed in subsection (2) of this section.

Source: Laws 1971, LB 496, § 2; R.S.Supp.,1971, § 43-634; Laws 1980, LB 932, § 2; Laws 1997, LB 254, § 3; Laws 2003, LB 667, § 1; Laws 2008, LB806, § 6.

This section is a penal statute, and it must be strictly construed. By the inclusion of the phrase ''and other places to which the general public is invited'' in subsection (2) of this section, the Legislature evidenced its intent that this statute should apply whenever the general public is invited to a given place at a given time. Softball fields are ''places to which the general public is invited'' under subsection (2). This section is not limited by considerations of safety. Loewenstein v. Amateur Softball Assn., 227 Neb. 454, 418 N.W.2d 231 (1988).

20-128 Pedestrian using cane or service animal; driver of vehicle; duties; violation; damages.

In addition to the provisions of sections 28-1313 and 28-1314, the driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color or using a service animal or a hearing-impaired or physically disabled pedestrian who is using a service

animal shall take all necessary precautions to avoid injury to such pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian. A totally or partially blind pedestrian not carrying such a cane or using a service animal or a hearing-impaired or physically disabled pedestrian not using a service animal in any of the places, accommodations, or conveyances listed in section 20-127 shall have all of the rights and privileges conferred by law upon other persons, and the failure of a totally or partially blind pedestrian to carry such a cane or to use a service animal or the failure of a hearing-impaired or physically disabled pedestrian to use a service animal in any such places, accommodations, or conveyances does not constitute and is not evidence of contributory negligence.

Source: Laws 1971, LB 496, § 3; R.S.Supp.,1971, § 43-635; Laws 1978, LB 748, § 2; Laws 1980, LB 932, § 3; Laws 1997, LB 254, § 4; Laws 2008, LB806, § 7.

20-129 Denying or interfering with admittance to public facilities; penalty.

(1) Any person or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a totally or partially blind, deaf or hard of hearing, or physically disabled person under section 20-127 or sections 20-131.01 to 20-131.04 is guilty of a Class III misdemeanor.

(2) Any person or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a bona fide trainer of a service animal when training such animal under section 20-127 is guilty of a Class III misdemeanor.

Source: Laws 1971, LB 496, § 4; R.S.Supp.,1971, § 43-636; Laws 1975, LB 83, § 5; Laws 1977, LB 40, § 76; Laws 1980, LB 932, § 4; Laws 1997, LB 254, § 5; Laws 2003, LB 667, § 2; Laws 2008, LB806, § 8.

20-130 White Cane Safety Day; proclamation; Governor issue.

Each year, the Governor shall take suitable public notice of October 15 as White Cane Safety Day. He shall issue a proclamation in which he:

(1) Comments upon the significance of the white cane;

(2) Calls upon the citizens of the state to observe the provisions of sections 20-126 to 20-131 and to take precautions necessary to the safety of the disabled;

(3) Reminds the citizens of the state of the policies with respect to the disabled set forth in sections 20-126 to 20-131 and urges the citizens to cooperate in giving effect to them; and

(4) Emphasizes the need of the citizens to be aware of the presence of disabled persons in the community and to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort, and other places to which the public is invited, and to offer assistance to disabled persons upon appropriate occasions.

Source: Laws 1971, LB 496, § 5; R.S.Supp.,1971, § 43-637.

20-131 Employment by state and political subdivisions; policy.

It is the policy of this state that persons with disabilities shall be employed by the state, the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as persons without disabilities as required by the Nebraska Fair Employment Practice Act.

Source: Laws 1971, LB 496, § 6; R.S.Supp.,1971, § 43-638; Laws 1993, LB 360, § 1.

Cross References

Nebraska Fair Employment Practice Act, see section 48-1125.

This section setting forth the policy of the state to employ the blind and visually handicapped does not require the employment of firemen with visual handicaps where that disability would prevent the performance of the work involved. McCrea v. Cunningham, 202 Neb. 638, 277 N.W.2d 52 (1979).

20-131.01 Full and equal enjoyment of housing accommodations; statement of policy.

It is the intent of the Legislature that blind persons, visually handicapped persons, hearing-impaired persons, and other physically disabled persons shall be entitled to full and equal access to all housing accommodations offered for rent, lease, or compensation in this state.

Source: Laws 1975, LB 83, § 1; Laws 1980, LB 932, § 5.

20-131.02 Housing accommodations; terms, defined.

For purposes of sections 20-131.01 to 20-131.04, unless the context otherwise requires:

(1) Housing accommodations means any real property which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings. Housing accommodations does not include any single-family residence in which the owner lives and in which any room is rented, leased, or provided for compensation to persons other than the owner or primary tenant; and

(2) Physically disabled person means a person with a physical disability other than hearing impairment, blindness, or visual handicap.

Source: Laws 1975, LB 83, § 2; Laws 1997, LB 254, § 6; Laws 2008, LB806, § 9.

20-131.03 Housing accommodations; modification; not required.

Nothing in sections 20-131.01 to 20-131.04 shall require any person who rents, leases, or provides housing accommodations for compensation to modify such person's property in any way to accommodate the special needs of any lessee.

Source: Laws 1975, LB 83, § 3.

20-131.04 Service animal; access to housing accommodations; terms and conditions.

Every totally or partially blind person, hearing-impaired person, or physically disabled person who has a service animal or obtains a service animal shall have full and equal access to all housing accommodations with such animal as prescribed in sections 20-131.01 to 20-131.04. Such person shall not be required to pay extra compensation for such animal. Such person shall be liable

for any damage done to such premises by such animal. Any person who rents, leases, or provides housing accommodations for compensation to any totally or partially blind person, hearing-impaired person, or physically disabled person who has or obtains a service animal shall not charge an additional deposit for such animal.

Source: Laws 1975, LB 83, § 4; Laws 1980, LB 932, § 6; Laws 1997, LB 254, § 7; Laws 2008, LB806, § 10.

(c) PUBLIC ACCOMMODATIONS

20-132 Full and equal enjoyment of accommodations.

All persons within this state shall be entitled to a full and equal enjoyment of any place of public accommodation, as defined in sections 20-132 to 20-143, without discrimination or segregation on the grounds of race, color, sex, religion, national origin, or ancestry.

Source: Laws 1969, c. 120, § 18, p. 550; R.R.S.1943, § 20-122; Laws 1973, LB 112, § 1.

20-133 Places of public accommodation, defined.

As used in sections 20-132 to 20-143, unless the context otherwise requires, places of public accommodation shall mean all places or businesses offering or holding out to the general public goods, services, privileges, facilities, advantages, and accommodations for the peace, comfort, health, welfare, and safety of the general public and such public places providing food, shelter, recreation, and amusement including, but not limited to:

(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment;

(3) Any gasoline station, including all facilities located on the premises of such station and made available to the patrons thereof;

(4) Any motion picture house, theatre, concert hall, sports arena, stadium, or other place of exhibition or entertainment;

(5) Any public facility owned, operated, or managed by or on behalf of this state or any agency or subdivision thereof, or any public corporation, and any such facility supported in whole or in part by public funds; and

(6) Any establishment which is physically located within the premises of any establishment otherwise covered by this section or within the premises of which is physically located any such covered establishment and which holds itself out as serving patrons of such covered establishment.

Source: Laws 1973, LB 112, § 2.

20-134 Discriminatory practices; violation; penalty.

Any person who directly or indirectly refuses, withholds from, denies, or attempts to refuse, withhold, or deny, to any other person any of the accommodations, advantages, facilities, services, or privileges, or who segregates any person in a place of public accommodation on the basis of race, creed, color, sex, religion, national origin, or ancestry, shall be guilty of discriminatory practice and shall be subject to the penalties of sections 20-132 to 20-143.

Source: Laws 1973, LB 112, § 3; Laws 1974, LB 681, § 2.

20-135 Prohibited acts; violation; penalty.

Any person who aids, abets, incites, compels, or coerces any activity prohibited by the provisions of sections 20-132 to 20-143, or who attempts to do so, shall be guilty of discriminatory practice and shall be subject to the penalties of sections 20-132 to 20-143.

Source: Laws 1973, LB 112, § 4.

20-136 Retaliation; discrimination; violation; penalty.

Retaliation or discrimination, in any manner, against any person who has opposed any activity prohibited by the provisions of sections 20-132 to 20-143 or who has testified, assisted, or participated in any manner in any investigation, proceeding, or hearing conducted pursuant to sections 20-132 to 20-143 shall be discriminatory practice and shall be punishable according to the provisions of sections 20-132 to 20-143.

Source: Laws 1973, LB 112, § 5.

20-137 Religious preference; not violation of discriminatory practice.

Any place of public accommodation owned by or operated on behalf of a religious corporation, association, or society which gives preference in the use of such place to members of the same faith as that of the administering body shall not be guilty of discriminatory practice.

Source: Laws 1973, LB 112, § 6.

20-138 Private club or establishment not open to public; applicability of sections.

The provisions of sections 20-132 to 20-143 shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishments are made available to the customers or patrons of an establishment within the scope of section 20-133.

Source: Laws 1973, LB 112, § 7.

20-139 Nebraska Fair Housing Act, free speech, and public accommodations law; administered by Equal Opportunity Commission; powers.

The Nebraska Fair Housing Act and sections 20-123, 20-124, and 20-132 to 20-143 shall be administered by the Equal Opportunity Commission, except that the State Fire Marshal shall administer the act and sections as they relate to accessibility standards and specifications set forth in sections 81-5,147 and 81-5,148. The county attorneys are granted the authority to enforce such act and sections 20-123, 20-124, and 20-132 to 20-143 and shall possess the same powers and duties with respect thereto as the commission. If a complaint is filed with the county attorney, the commission shall be notified. Powers granted

to and duties imposed upon the commission pursuant to such act and sections shall be in addition to the provisions of the Nebraska Fair Employment Practice Act and shall not be construed to amend or restrict those provisions. In carrying out the Nebraska Fair Housing Act and sections 20-123, 20-124, and 20-132 to 20-143, the commission shall have the power to:

(1) Seek to eliminate and prevent discrimination in places of public accommodation because of race, color, sex, religion, national origin, familial status as defined in section 20-311, handicap as defined in section 20-313, or ancestry;

(2) Effectuate the purposes of sections 20-132 to 20-143 by conference, conciliation, and persuasion so that persons may be guaranteed their civil rights and goodwill may be fostered;

(3) Formulate policies to effectuate the purposes of sections 20-132 to 20-143 and make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes;

(4) Adopt and promulgate rules and regulations to carry out the powers granted by the Nebraska Fair Housing Act and sections 20-123, 20-124, and 20-132 to 20-143, subject to the provisions of the Administrative Procedure Act. The commission shall, not later than one hundred eighty days after September 6, 1991, issue draft rules and regulations to implement subsection (3) of section 20-336, which regulations may incorporate regulations of the Department of Housing and Urban Development as applicable;

(5) Designate one or more members of the commission or a member of the commission staff to conduct investigations of any complaint alleging discrimination because of race, color, sex, religion, national origin, familial status, handicap, or ancestry, attempt to resolve such complaint by conference, conciliation, and persuasion, and conduct such conciliation meetings and conferences as are deemed necessary to resolve a particular complaint, which meetings shall be held in the county in which the complaint arose;

(6) Determine that probable cause exists for crediting the allegations of a complaint;

(7) Determine that a complaint cannot be resolved by conference, conciliation, or persuasion, such determination to be made only at a meeting where a quorum is present;

(8) Dismiss a complaint when it is determined there is not probable cause to credit the allegations;

(9) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith require for examination any books or papers relating to any matter under investigation or in question before the commission; and

(10) Issue publications and the results of studies and research which will tend to promote goodwill and minimize or eliminate discrimination because of race, color, sex, religion, national origin, familial status, handicap, or ancestry.

Source: Laws 1973, LB 112, § 8; Laws 1991, LB 825, § 47; Laws 1998, LB 1073, § 4; Laws 2002, LB 93, § 2.

Cross References

Administrative Procedure Act, see section 84-920.
Nebraska Fair Employment Practice Act, see section 48-1125.
Nebraska Fair Housing Act, see section 20-301.

20-140 Unlawful discriminatory practice; complaint; file with commission; contents; resolution of complaint; confidential; violation; penalty.

Any person claiming to be aggrieved by an unlawful discriminatory practice may by himself, his agent, or his attorney file with the commission a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The Attorney General shall, in like manner, make, sign, and file such complaint.

After the filing of such complaint, the commission shall furnish the person named in the complaint with a copy of the charge and make an investigation of such charge, but such charge shall not be made public by the commission. If the commission determines after such investigation that there is reasonable cause to believe that the charge is true, the commission shall endeavor to eliminate any such alleged unlawful practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during or as a part of such endeavors may be made public by the commission without the written consent of the parties or used as evidence in a subsequent proceeding except as provided in subsection (2) of section 20-141. Any officer or employee of the commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars or imprisoned not more than thirty days.

Source: Laws 1973, LB 112, § 9.

Cross References

For provisions of Equal Opportunity Commission, see sections 48-1116 and 48-1117.

20-141 Failure to eliminate unlawful practice by conference, conciliation, and persuasion; written notice; hearing; procedure.

(1) In case of failure to eliminate any unlawful practice by informal methods of conference, conciliation, and persuasion, the commission shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, requiring the person named in the complaint, hereinafter referred to as respondent, to answer the charges of the complaint at a public hearing, at a time and place to be specified in the notice. The place of the hearing shall be in the county in which the alleged discrimination occurred.

(2) The case in support of the complaint shall be presented before the commission by an attorney on the staff of the Attorney General, and the investigator who made the investigation shall not participate in the hearings except as a witness, nor shall he participate in the deliberation of the commission in the case. Evidence concerning endeavors at conciliation may be included.

(3) The respondent may file a written verified answer to the complaint and appear at the hearing with or without counsel, submit testimony, and compel the appearance of witnesses and records in his behalf. At the discretion of the commission, the complainant may be allowed to intervene and present testimony in person or by counsel. The commission may reasonably and fairly amend any complaint either prior to or during the hearing in accordance with facts developed by the investigation or adduced in evidence at the hearing, and the

respondent may amend his answer in the same manner. The testimony taken at the hearing shall be under oath and be transcribed.

(4) If, upon all the evidence at the hearing, the commission finds that a respondent has engaged in an unlawful discriminatory practice as defined in sections 20-132 to 20-143, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice and to take such affirmative action, including, but not limited to, the extension of full, equal, and unsegregated accommodations, advantages, facilities, and privileges to all persons as in the judgment of the commission will effectuate the purposes of sections 20-132 to 20-143, including a requirement for a report of the manner of compliance.

(5) If, upon all the evidence, the commission finds that a respondent has not engaged in any unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the complaint as to the respondent. A copy of the order shall be delivered in all cases to the Attorney General and such other public officers as the commission deems proper.

(6) The commission shall establish rules of practice to govern, expedite, and effectuate the procedure set forth in this section and its own actions thereunder. Any complaint filed pursuant to this section must be so filed within ten days after the alleged act of discrimination and the complainant shall give written notice of the filing of the complaint and furnish a copy thereof to the party complained against.

Source: Laws 1973, LB 112, § 10.

Cross References

For provisions of Equal Opportunity Commission, see sections 48-1116 and 48-1117.

20-142 Appeal; procedure; attorney's fees; failure to appeal; effect.

(1) Any party to a proceeding before the commission aggrieved by any decision and order of the commission and directly affected thereby may appeal the decision and order, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) In any action or proceeding under sections 20-132 to 20-143, wherein an appeal is lodged in the district court, the court in its discretion may allow the prevailing party reasonable attorney's fees as part of the costs.

(3) If no proceeding to obtain judicial review is instituted by a respondent within thirty days from the service of an order of the commission, the commission may obtain a decree of the court for the enforcement of such order upon showing that the respondent is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

Source: Laws 1973, LB 112, § 11; Laws 1988, LB 352, § 20.

Cross References

Administrative Procedure Act, see section 84-920.
For provisions of Equal Opportunity Commission, see sections 48-1116 and 48-1117.

20-143 Violations; penalty.

Any person or place of public accommodation who or which shall willfully resist, prevent, impede, or interfere with the commission or any of its members or representatives in the performance of duty under sections 20-132 to 20-143, or shall willfully violate an order of the commission shall, upon conviction thereof, be imprisoned in the county jail for not more than thirty days, or be fined not more than one hundred dollars, or be both so fined and imprisoned. Procedure for the review of an order of the commission shall not be deemed to be such willful conduct.

Source: Laws 1973, LB 112, § 12.

(d) FREE FLOW OF INFORMATION ACT

20-144 Finding by Legislature.

The Legislature finds:

(1) That the policy of the State of Nebraska is to insure the free flow of news and other information to the public, and that those who gather, write, or edit information for the public or disseminate information to the public may perform these vital functions only in a free and unfettered atmosphere;

(2) That such persons shall not be inhibited, directly or indirectly, by governmental restraint or sanction imposed by governmental process, but rather that they shall be encouraged to gather, write, edit, or disseminate news or other information vigorously so that the public may be fully informed;

(3) That compelling such persons to disclose a source of information or disclose unpublished information is contrary to the public interest and inhibits the free flow of information to the public;

(4) That there is an urgent need to provide effective measures to halt and prevent this inhibition;

(5) That the obstruction of the free flow of information through any medium of communication to the public affects interstate commerce; and

(6) That sections 20-144 to 20-147 are necessary to insure the free flow of information and to implement the first and fourteenth amendments and Article I, section 5, of the United States Constitution, and the Nebraska Constitution.

Source: Laws 1973, LB 380, § 1.

20-145 Terms, defined.

For purposes of the Free Flow of Information Act, unless the context otherwise requires:

(1) Federal or state proceeding shall include any proceeding or investigation before or by any federal or state judicial, legislative, executive, or administrative body;

(2) Medium of communication shall include, but not be limited to, any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system;

(3) Information shall include any written, audio, oral, or pictorial news or other material;

(4) Published or broadcast information shall mean any information disseminated to the public by the person from whom disclosure is sought;

(5) Unpublished or nonbroadcast information shall include information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and shall include, but not be limited to, all notes, outtakes, photographs, film, tapes, or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published or broadcast information based upon or related to such material has been disseminated;

(6) Processing shall include compiling, storing, transferring, handling, and editing of information; and

(7) Person shall mean any individual, partnership, limited liability company, corporation, association, or other legal entity existing under or authorized by the law of the United States, any state or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

Source: Laws 1973, LB 380, § 2; Laws 1993, LB 121, § 146.

20-146 Procuring, gathering, writing, editing, or disseminating news or other information; not required to disclose to courts or public.

No person engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public shall be required to disclose in any federal or state proceeding:

(1) The source of any published or unpublished, broadcast or nonbroadcast information obtained in the gathering, receiving, or processing of information for any medium of communication to the public; or

(2) Any unpublished or nonbroadcast information obtained or prepared in gathering, receiving, or processing of information for any medium of communication to the public.

Source: Laws 1973, LB 380, § 3.

20-147 Act, how cited.

Sections 20-144 to 20-147 shall be known and may be cited as the Free Flow of Information Act.

Source: Laws 1973, LB 380, § 4.

(e) CIVIL REMEDIES

20-148 Deprivation of constitutional and statutory rights, privileges, or immunities; redress.

(1) Any person or company, as defined in section 49-801, except any political subdivision, who subjects or causes to be subjected any citizen of this state or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the United States Constitution or the Constitution and laws of the State of Nebraska, shall be liable to such injured person in a civil action or other proper proceeding for redress brought by such injured person.

(2) The remedies provided by this section shall be in addition to any other remedy provided by Chapter 20, article 1, and shall not be interpreted as denying any person the right of seeking other proper remedies provided thereunder.

Source: Laws 1977, LB 66, § 1.

The applicable statute of limitations for Nebraska Fair Employment Practice Act claims brought pursuant to this section shall be measured by section 48-1118. Adkins v. Burlington Northern Santa Fe RR. Co., 260 Neb. 156, 615 N.W.2d 469 (2000).

This section does not modify the eligibility criteria under sections 48-1001 et seq. and 48-1101 et seq. Steier v. Crosier Fathers of Hastings, 242 Neb. 16, 492 N.W.2d 870 (1992).

This section does not constitute a waiver of sovereign immunity by the State of Nebraska for actions brought in federal court under 42 U.S.C. 1983 (1982). Patteson v. Johnson, 219 Neb. 852, 367 N.W.2d 123 (1985).

This section does not waive the sovereign immunity of the State of Nebraska as to actions brought in federal court under 42 U.S.C. section 1983 (1982) to protect rights under the contract clause (article I, section 10, of the U.S. Constitution) and property interests protected under the fourteenth amendment to the U.S. Constitution. Wiseman v. Keller, 218 Neb. 717, 358 N.W.2d 768 (1984).

This section provides a private cause of action for private acts of discrimination by private employers and does not apply to individuals acting in their capacities as public officials. Cole v. Isherwood, 11 Neb. App. 44, 642 N.W.2d 524 (2002).

This section provides a private cause of action for private acts of discrimination by private employers; it does not apply to individuals acting in their capacities as public officials. Cole v. Clarke, 8 Neb. App. 614, 598 N.W.2d 768 (1999).

(f) CONSUMER INFORMATION

20-149 Consumer reporting agency; furnish information to consumer; duty; violation; penalty.

Any consumer reporting agency doing business in this state which is required to furnish information to a consumer pursuant to 15 U.S.C. 1681g to 1681j as they exist on August 26, 1983, shall, upon the request of the consumer and at a reasonable charge, provide the consumer with a typewritten or photostatic copy of any consumer report, investigative report, or any credit report or other file information which it has on file or has prepared concerning such consumer, if such consumer has complied with 15 U.S.C. 1681h as it exists on August 26, 1983. If such report uses a code to convey information about the consumer, the consumer shall be provided with a key to such code. For the purposes of this section, the definitions found in 15 U.S.C. 1681a as it exists on August 26, 1983, shall apply. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1983, LB 197, § 1.

Cross References

Credit Report Protection Act, see section 8-2601.

(g) INTERPRETERS

20-150 Legislative findings; licensed interpreters; qualified educational interpreters; legislative intent.

(1) The Legislature hereby finds and declares that it is the policy of the State of Nebraska to secure the rights of deaf and hard of hearing persons who cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of state agencies and law enforcement personnel unless interpreters are available to assist them. State agencies and law enforcement personnel shall appoint licensed interpreters as provided in sections 20-150 to 20-159, except that courts and probation officials shall appoint interpreters as provided in sections 20-150 to 20-159 and 25-2401 to 25-2407 and public school districts and educational units shall appoint qualified educational interpreters.

(2) It is the intent of the Legislature that by June 30, 2007, the Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. Prior to June 30, 2007, the commission shall (a) develop licensed interpreter guidelines for distribution, (b) develop training to implement the guidelines,

(c) adopt and promulgate rules and regulations to implement the guidelines and requirements for licensed interpreters, and (d) develop a roster of interpreters as required in section 71-4728.

(3) It is the intent of the Legislature to assure that qualified educational interpreters are provided to deaf and hard of hearing children in kindergarten-through-grade-twelve public school districts and educational service units. Prior to September 1, 1998, the State Department of Education, in cooperation with the Commission for the Deaf and Hard of Hearing, shall develop qualified educational interpreter guidelines for distribution as well as a training program to implement the guidelines. By September 1, 2000, the State Department of Education shall adopt and promulgate rules and regulations to implement the guidelines and requirements for qualified educational interpreters, and such rules and regulations shall apply to all qualified educational interpreters employed for the 2001-02 school year and all school years thereafter.

Source: Laws 1987, LB 376, § 1; Laws 1997, LB 851, § 1; Laws 2002, LB 22, § 1; Laws 2006, LB 87, § 1.

Cross References

Legal proceedings, use of interpreters, see section 25-2401 et seq.

20-151 Terms, defined.

For purposes of sections 20-150 to 20-159, unless the context otherwise requires:

(1) Appointing authority means the state agency or law enforcement personnel required to provide a licensed interpreter pursuant to sections 20-150 to 20-159;

(2) Auxiliary aid includes, but is not limited to, sign language interpreters, oral interpreters, tactile interpreters, other interpreters, notetakers, transcription services, written materials, assistive listening devices, assisted listening systems, videotext displays, and other visual delivery systems;

(3) Deaf or hard of hearing person means a person whose hearing impairment, with or without amplification, is so severe that he or she may have difficulty in auditorily processing spoken language without the use of an interpreter or a person with a fluctuating or permanent hearing loss which may adversely affect the ability to understand spoken language without the use of an interpreter or other auxiliary aid;

(4) Intermediary interpreter means any person, including any deaf or hard of hearing person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language in order to facilitate communication between a deaf or hard of hearing person and an interpreter;

(5) Licensed interpreter means a person who demonstrates proficiencies in interpretation or transliteration as required by the rules and regulations adopted and promulgated by the Commission for the Deaf and Hard of Hearing pursuant to subsection (2) of section 20-150 and who holds a license issued by the commission pursuant to section 20-156;

(6) Oral interpreter means a person who interprets language through facial expression, body language, and mouthing;

(7) State agency means any state entity which receives appropriations from the Legislature and includes the Legislature, legislative committees, executive

agencies, courts, and probation officials but does not include political subdivisions; and

(8) Tactile interpreter means a person who interprets for a deaf-blind person. The degree of deafness and blindness will determine the mode of communication to be used for each person.

Source: Laws 1987, LB 376, § 2; Laws 1997, LB 851, § 2; Laws 2002, LB 22, § 2; Laws 2006, LB 87, § 2.

20-152 Deaf or hard of hearing person; arrest; right to interpreter; use of statements.

Whenever a deaf or hard of hearing person is arrested and taken into custody for an alleged violation of state law or local ordinance, the appointing authority shall procure a licensed interpreter for any interrogation, warning, notification of rights, or taking of a statement, unless otherwise waived. No arrested deaf or hard of hearing person otherwise eligible for release shall be held in custody solely to await the arrival of a licensed interpreter. A licensed interpreter shall be provided as soon as possible. No written or oral answer, statement, or admission made by a deaf or hard of hearing person in reply to a question of any law enforcement officer or any other person having a prosecutorial function may be used against the deaf or hard of hearing person in any criminal proceeding unless (1) the statement was made or elicited through a licensed interpreter and was made knowingly, voluntarily, and intelligently or (2) the deaf or hard of hearing person waives his or her right to an interpreter and the waiver and statement were made knowingly, voluntarily, and intelligently. The right of a deaf or hard of hearing person to an interpreter may be waived only in writing. The failure to provide a licensed interpreter pursuant to this section shall not be a defense to prosecution for the violation for which the deaf or hard of hearing person was arrested.

Source: Laws 1987, LB 376, § 3; Laws 1997, LB 851, § 3; Laws 2002, LB 22, § 3.

20-153 Proceedings; interpreter provided; when.

(1) For any proceeding before an appointing authority including any court at which a deaf or hard of hearing person is subpoenaed or requested in writing to attend, the appointing authority shall obtain a licensed interpreter to interpret the proceedings to the deaf or hard of hearing person and to interpret his or her testimony or statements.

(2) Whenever any state agency uses the services of a qualified interpreter, as defined in federal law, to comply with sections 42 U.S.C. 12102, 12131, and 12132, and any regulations adopted thereunder, as such sections and regulations existed on July 20, 2002, the state agency shall obtain a licensed interpreter to act as a qualified interpreter for such purposes.

Source: Laws 1987, LB 376, § 4; Laws 1997, LB 851, § 4; Laws 2002, LB 22, § 4.

20-154 Appointment of additional interpreters.

If a licensed interpreter appointed under section 20-153 is not able to provide effective communication with a deaf or hard of hearing person, the appointing authority shall obtain another licensed interpreter. An oral interpreter shall be

provided upon request of a deaf or hard of hearing person who chooses not to communicate in sign language. If an interpreter is unable to render a satisfactory interpretation, the appointing authority shall then obtain an intermediary interpreter to assist the appointed interpreter. The appointing authority shall ensure that any interpreter is properly situated so as to permit effective communication with the deaf or hard of hearing person and full participation of the deaf or hard of hearing person in the proceeding.

Source: Laws 1987, LB 376, § 5; Laws 1997, LB 851, § 5; Laws 2002, LB 22, § 5.

20-155 Proof of hearing impairment.

When an appointing authority has reason to believe that a person is not deaf or hard of hearing or is not dependent on an interpreter to ensure receptive or expressive communication, the appointing authority may require the person to furnish reasonable proof of his or her need for an interpreter.

Source: Laws 1987, LB 376, § 6; Laws 1997, LB 851, § 6.

20-155.01 Interpreter; oath required.

In any proceeding in which a deaf or hard of hearing person is testifying under oath or affirmation, the interpreter shall take an oath or affirmation that he or she will make a true interpretation of the proceeding in an understandable manner to the best of his or her ability.

Source: Laws 1987, LB 376, § 8; R.S.1943, (1991), § 20-157; Laws 1997, LB 851, § 7.

20-156 Commission; interpreters; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized.

(1) The Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. The commission shall create the Interpreter Review Board pursuant to section 71-4728.05 to set policies, standards, and procedures for evaluation and licensing of interpreters. The commission may recognize evaluation and certification programs as a means to carry out the duty of evaluating interpreters' skills. The commission may define and establish different levels or types of licensure to reflect different levels of proficiency and different specialty areas.

(2) The commission shall establish and charge reasonable fees for licensure of interpreters, including applications, initial competency assessments, renewals, modifications, record keeping, approval, conduct, and sponsorship of continuing education, and assessment of continuing competency pursuant to sections 20-150 to 20-159. All fees collected pursuant to this section by the commission shall be remitted to the State Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

(3) The commission shall prepare and maintain a roster of licensed interpreters as provided by section 71-4728. Nothing in sections 20-150 to 20-159 shall be construed to prevent any appointing authority from contracting with a licensed interpreter on a full-time employment basis.

(4) The commission may deny, refuse to renew, limit, revoke, suspend, or take other disciplinary actions against a license when the applicant or licensee

is found to have violated any provision of sections 20-150 to 20-159 or 71-4728 to 71-4732, or any rule or regulation of the commission adopted and promulgated pursuant to such sections, including rules and regulations governing unprofessional conduct. The Interpreter Review Board shall investigate complaints regarding the use of interpreters by any appointing authority, or the providing of interpreting services by any interpreter, alleged to be in violation of sections 20-150 to 20-159 or rules and regulations of the commission. The commission shall notify in writing an appointing authority determined to be employing interpreters in violation of sections 20-150 to 20-159 or rules and regulations of the commission and shall monitor such appointing authority to prevent future violations.

(5) Any decision of the commission pursuant to this section shall be subject to review according to the Administrative Procedure Act.

(6) After June 30, 2007, any person providing interpreting services pursuant to sections 20-150 to 20-159 without a license issued pursuant to this section may be restrained by temporary and permanent injunctions.

Source: Laws 1987, LB 376, § 7; Laws 1997, LB 752, § 78; Laws 1997, LB 851, § 8; Laws 2002, LB 22, § 6; Laws 2006, LB 87, § 3; Laws 2010, LB706, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

20-157 Transferred to section 20-155.01.

20-158 Interpreter; privilege applicable.

Whenever a deaf or hard of hearing person communicates through an interpreter under circumstances in which the communication would otherwise be privileged, the privilege shall apply to the interpreter as well.

Source: Laws 1987, LB 376, § 9; Laws 1997, LB 851, § 9.

20-159 Fees authorized.

A licensed interpreter appointed pursuant to sections 20-150 to 20-159 is entitled to a fee for professional services and other relevant expenses as approved by the governing body of the appointing authority. When the licensed interpreter is appointed by a court, the fee shall be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose or from funds, including grant money, made available to the Supreme Court for such purpose. When the licensed interpreter is appointed by an appointing authority other than a court, the fee shall be paid out of funds available to the governing body of the appointing authority.

Source: Laws 1987, LB 376, § 10; Laws 1997, LB 851, § 10; Laws 1999, LB 54, § 2; Laws 2002, LB 22, § 7; Laws 2011, LB669, § 1.

(h) POLITICAL ACTIVITIES

20-160 Employees of state or political subdivisions; prohibited from political activities during office hours, while performing official duties, or while wearing a uniform.

Unless specifically restricted by a federal law or any other state law, no employee of the state or any political subdivision thereof, as defined in subdivi-

sion (2) of section 13-702, shall be prohibited from participating in political activities except during office hours or when otherwise engaged in the performance of his or her official duties. No such employee shall engage in any political activity while wearing a uniform required by the state or any political subdivision thereof.

Source: Laws 1977, LB 398, § 1; R.S.1943, (1983), § 23-3001.

Cross References

For other provisions relating to prohibited political activities, see section 81-1315.

(i) PERSONS WITH DEVELOPMENTAL DISABILITIES AND MENTALLY ILL INDIVIDUALS

20-161 Sections; purpose.

The purpose of sections 20-161 to 20-166 is to protect the legal and human rights of persons with developmental disabilities or mentally ill individuals by providing access to certain records of a person with developmental disabilities or of a mentally ill individual by the officially designated protection and advocacy system for the developmentally disabled and mentally ill in this state.

Source: Laws 1988, LB 697, § 1.

20-162 Terms, defined.

For purposes of sections 20-161 to 20-166, unless the context otherwise requires:

(1) Complaint shall mean any oral or written allegation by a person with a developmental disability or a mentally ill individual, the parent or guardian of such persons, a state agency, or any other responsible named individual or entity to the effect that the person with developmental disabilities or the mentally ill individual is being subjected to injury or deprivation with regard to his or her health, safety, welfare, rights, or level of care;

(2) Developmental disability shall mean a severe chronic mental or physical disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended;

(3) Facility for mentally ill individuals shall mean any place within Nebraska where a mentally ill individual is an inpatient or a resident and that is organized to provide treatment, shelter, food, care, or supervision including, but not limited to, those facilities described in the Health Care Facility Licensure Act and sections 71-1901 to 71-1916, 83-107.01, and 83-108;

(4) Facility for persons with developmental disabilities shall mean a facility or a specified portion of a facility designed primarily for the delivery of one or more services to persons with one or more developmental disabilities including, but not limited to, those facilities described in the Health Care Facility Licensure Act and sections 71-1901 to 71-1916, 83-107.01, and 83-108 whenever a person with a developmental disability is residing in such facility;

(5) Mentally ill individual shall mean an individual who has a significant mental illness or emotional impairment as determined by a mental health professional qualified under the laws, rules, and regulations of this state and who is an inpatient or resident in a facility for mentally ill individuals;

(6) Protection and advocacy system shall mean the entity designated pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended;

(7) Records shall mean all information and data obtained, collected, or maintained by a facility for persons with developmental disabilities or a facility for mentally ill individuals in the course of providing services to such persons which are reasonably related to the complaint to be investigated; and

(8) Services for persons with developmental disabilities shall mean services as defined in the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended.

Source: Laws 1988, LB 697, § 2; Laws 2000, LB 819, § 63; Laws 2006, LB 994, § 50.

Cross References

Health Care Facility Licensure Act, see section 71-401.

20-163 Person with developmental disabilities; access to records; conditions.

For the purpose of protecting the human and legal rights of a person with developmental disabilities, the protection and advocacy system shall be granted access to the records, by any person or entity having possession or control of such records, of a person with developmental disabilities who resides in a facility for persons with developmental disabilities if (1) a complaint has been received by the protection and advocacy system from the legal guardian of such person or (2) a complaint has been received by the protection and advocacy system from or on behalf of such person and such person does not have a legal guardian or the state or the designee of the state is the legal guardian of such person.

Source: Laws 1988, LB 697, § 3.

20-164 Mentally ill individual; access to records; conditions.

(1) For the purpose of protecting the human and legal rights of a mentally ill individual or with respect to matters which occur within ninety days after the date of the discharge of such individual from a facility for mentally ill individuals, the protection and advocacy system shall be granted access to the records, by any person or entity having possession or control of such records, of:

(a) Any mentally ill individual who is a client of the protection and advocacy system if such individual or the legal guardian, conservator, or other legal representative of such individual has authorized the protection and advocacy system to have such access; and

(b) Any mentally ill individual:

(i) Who by reason of the mental or physical condition of such individual is unable to authorize the protection and advocacy system to have such access;

(ii) Who does not have a legal guardian, conservator, or other legal representative or for whom the legal guardian is this state; and

(iii) With respect to whom a complaint has been received by the protection and advocacy system or with respect to whom there is probable cause to believe that such individual has been subject to injury or deprivation with regard to his or her health, safety, welfare, rights, or level of care.

(2) The protection and advocacy system may not disclose information from such records to the mentally ill individual who is the subject of the information if disclosure of such information to such individual would be detrimental to such individual's health or if a court pursuant to section 71-961 orders that the records not be disclosed.

Source: Laws 1988, LB 697, § 4; Laws 2004, LB 1083, § 84.

20-165 Records; redisclosure; conditions.

No record nor the contents of any record which identify or can be readily associated with the identity of the subject of the record shall be redisclosed by the protection and advocacy system without the specific written authorization of the subject or the subject's legally authorized representative. The protection and advocacy system shall provide seven days' advance written notice to the facility from which the records were received of its intent to redisclose such records, during which time the facility may seek to judicially enjoin such disclosure on the grounds that such disclosure is contrary to the interests of the subject of the record. Seven days' advance written notice to the facility shall not be required if redisclosure of such records is to an entity with legal authority to act to protect the legal and human rights of the subject of such records.

Source: Laws 1988, LB 697, § 5.

20-166 Protection and advocacy system; pursuit of administrative remedies; when required.

(1) Prior to instituting any legal action in a federal or state court on behalf of a mentally ill individual or a person with developmental disabilities, the protection and advocacy system shall exhaust in a timely manner all administrative remedies when appropriate. If, in pursuing administrative remedies, the system determines that any matter with respect to such individual will not be resolved within a reasonable time, the system may pursue alternative remedies, including the initiation of legal action.

(2) Subsection (1) of this section shall not apply to any legal action instituted to prevent or eliminate imminent serious harm to a mentally ill individual or a person with developmental disabilities.

Source: Laws 1988, LB 697, § 6.

(j) HUMAN IMMUNODEFICIENCY VIRUS

20-167 Discrimination; legislative intent; state agencies; duties.

It is the intent of the Legislature that no person should be discriminated against on the basis of having taken a human immunodeficiency virus antibody or antigen test.

Each agency of state government shall examine policies and practices within its jurisdiction that may intentionally or unintentionally result in discrimination against a person who has taken a human immunodeficiency virus antibody or antigen test or who has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex to ascertain the extent and types of discrimination that may exist. Each agency shall identify proposed changes in statutes or agency rules and regulations to remedy discrimination. Each agency shall report its findings to the Legislature on or before December 1, 1988.

Source: Laws 1988, LB 1012, § 13.

20-168 Employment, dwelling, school district, place of public accommodation; discrimination prohibited; civil action; authorized.

(1) An employer shall not (a) refuse to hire an individual, (b) discharge an individual, or (c) otherwise discriminate against an individual with respect to compensation or terms, conditions, or privileges of employment on the basis that the individual is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(2) A seller or lessor shall not refuse to sell or lease a dwelling as defined in section 20-310 to an individual on the basis that the individual, a member of the individual's family, or a person who will be residing with the individual is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(3) A school district shall not deny admission to a student on the basis that the student is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(4) A place of public accommodation as defined in section 20-133 shall not deny equal access to such public accommodation on the basis that the individual is suffering or is suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome.

(5) Any individual who has been discriminated against in violation of this section may file a civil action to enforce this section in the district court of the county where the discrimination is alleged to have occurred. The remedy granted by this subsection shall be in addition to any other remedy provided by law and shall not be interpreted as denying any other remedy provided by law.

Source: Laws 1990, LB 465, § 1; Laws 1991, LB 825, § 48.

20-169 Individual; threat to health or safety; unable to perform duties; effect.

Actions otherwise prohibited by subsections (1) and (3) of section 20-168 shall not constitute a violation of the requirements of such section if the individual suffering from or suspected of suffering from human immunodeficiency virus infection or acquired immunodeficiency syndrome poses a direct threat to the health or safety of himself, herself, or other individuals or is unable to perform the duties of the job he or she is applying for or is employed to perform.

Source: Laws 1990, LB 465, § 2.

(k) MOTHER BREAST-FEED CHILD

20-170 Mother; right to breast-feed child.

Notwithstanding any other provision of law, a mother may breast-feed her child in any public or private location where the mother is otherwise authorized to be.

Source: Laws 2011, LB197, § 1.

ARTICLE 2
RIGHTS OF PRIVACY

Cross References

Wiretaps, procedures, see sections 86-271 to 86-2,115.

Section
20-201. Right of privacy; legislative intent.
20-202. Invasion of privacy; exploitation of a person for advertising or commercial purposes; situations; not applicable.
20-203. Invasion of privacy; trespass or intrude upon a person's solitude.
20-204. Invasion of privacy; place person before public in false light.
20-205. Publication or intrusion; not actionable; when.
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20-201 Right of privacy; legislative intent.

It is the intention of the Legislature to provide a right of privacy as described and limited by sections 20-201 to 20-211 and 25-840.01, and to give to any natural person a legal remedy in the event of violation of the right.

Source: Laws 1979, LB 394, § 1.

20-202 Invasion of privacy; exploitation of a person for advertising or commercial purposes; situations; not applicable.

Any person, firm, or corporation that exploits a natural person, name, picture, portrait, or personality for advertising or commercial purposes shall be liable for invasion of privacy. The provisions of this section shall not apply to:

(1) The publication, printing, display, or use of the name or likeness of any person in any printed, broadcast, telecast, or other news medium or publication as part of any bona fide news report or presentation or noncommercial advertisement having a current or historical public interest and when such name or likeness is not used for commercial advertising purposes;

(2) The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property when such person has consented to the use of his or her name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof so long as such use does not differ materially in kind, extent, or duration from that authorized by the consent as fairly construed; or

(3) Any photograph of a person solely as a member of the public when such person is not named or otherwise identified in or in connection with the use of such photograph.

Source: Laws 1979, LB 394, § 2.

Invasion of privacy under this section typically applies to cases in which a photograph or other likeness of a person is distributed without that person's consent for commercial gain. Wilkinson v. Methodist, Richard Young Hosp., 259 Neb. 745, 612 N.W.2d 213 (2000).

Conduct to which one consents cannot constitute an invasion of privacy. Miller v. American Sports Co., 237 Neb. 676, 467 N.W.2d 653 (1991).

20-203 Invasion of privacy; trespass or intrude upon a person's solitude.

Any person, firm, or corporation that trespasses or intrudes upon any natural person in his or her place of solitude or seclusion, if the intrusion would be highly offensive to a reasonable person, shall be liable for invasion of privacy.

Source: Laws 1979, LB 394, § 3.

An invasion of privacy pursuant to this section is one consisting solely of an intentional interference with the plaintiff's interest in solitude or seclusion, either as to his or her person or private affairs or concerns, of a kind that would be highly offensive to a reasonable person. Whipps Land & Cattle Co. v. Level 3 Communications, 265 Neb. 472, 658 N.W.2d 258 (2003).

Trespassing onto real property, without more, is not the form or magnitude of interference into a person's solitude or seclusion that would rise to the level of being highly offensive to a reasonable person, such as might be actionable under this section. Whipps Land & Cattle Co. v. Level 3 Communications, 265 Neb. 472, 658 N.W.2d 258 (2003).

The accusation of drug use at the workplace, without more, is not the form of interference into a person's solitude or seclusion that would rise to the level of being highly offensive to a reasonable person, such as might be actionable under this section. Polinski v. Sky Harbor Air Serv., 263 Neb. 406, 640 N.W.2d 391 (2002).

Operation of model airplane airfield was not type of intrusion that this section was designed to protect people from. Kaiser v. Western R/C Flyers, 239 Neb. 624, 477 N.W.2d 557 (1991).

In an action for invasion of privacy, the damages that a plaintiff may recover are (1) general damages for harm to the plaintiff's interest in privacy which resulted from the invasion; (2) damages for mental suffering; (3) special damages; and (4) if none of these are proven, nominal damages. Sabrina W. v. Willman, 4 Neb. App. 149, 540 N.W.2d 364 (1995).

20-204 Invasion of privacy; place person before public in false light.

Any person, firm, or corporation which gives publicity to a matter concerning a natural person that places that person before the public in a false light is subject to liability for invasion of privacy, if:

(1) The false light in which the other was placed would be highly offensive to a reasonable person; and

(2) The actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Source: Laws 1979, LB 394, § 4.

In order to recover for invasion of privacy under this section, the matter must be communicated to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. Wilkinson v. Methodist, Richard Young Hosp., 259 Neb. 745, 612 N.W.2d 213 (2000).

Essential to a false light invasion of privacy claim is that the publicized matter be false. Schoneweis v. Dando, 231 Neb. 180, 435 N.W.2d 666 (1989).

The gravamen of conduct made actionable by this section is the dissemination of offending material to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. Schoneweis v. Dando, 231 Neb. 180, 435 N.W.2d 666 (1989).

Truth is a defense to a false light privacy claim. Wadman v. State, 1 Neb. App. 839, 510 N.W.2d 426 (1993).

20-205 Publication or intrusion; not actionable; when.

Any publication or intrusion otherwise actionable under section 20-202, 20-203, or 20-204 shall be justified and not actionable under sections 20-201 to 20-211 and 25-840.01 if the subject of such publication or intrusion expressly or by implication consents to the publicity or intrusion so long as such publication or intrusion does not differ materially in kind, extent, or duration from that implicitly or expressly authorized by the consent as fairly construed. If such person is a minor, such consent may be given by a parent or guardian. If the subject of the alleged invasion of privacy is deceased, such consent may be given by the surviving spouse, if any, or by the personal representative.

Source: Laws 1979, LB 394, § 5.

20-206 Right of privacy; defenses and privileges.

In addition to any defenses and privileges created in sections 20-201 to 20-211 and 25-840.01, the statutory right of privacy created in sections 20-201 to 20-211 and 25-840.01 shall be subject to the following defenses and privileges:

(1) All applicable federal and Nebraska statutory and constitutional defenses;

(2) As to communications alleged to constitute an invasion of privacy, the defense that the communication was made under circumstances that would give rise to an applicable qualified or absolute privilege according to the law of defamation; and

(3) All applicable, qualified, and absolute privileges and defenses in the common law of privacy in this state and other states.

Source: Laws 1979, LB 394, § 6.

20-207 Invasion of privacy; action; nonassignable.

The action for invasion of privacy created by sections 20-201 to 20-211 and 25-840.01 shall be personal to the subject of the invasion and shall in no case be assignable.

Source: Laws 1979, LB 394, § 7.

20-208 Invasion of privacy; death of subject; effect.

The right of action for invasion of privacy created by sections 20-201 to 20-211 and 25-840.01, with the single exception of the action arising out of exploitation of a person's name or likeness in section 20-202, shall not be deemed to survive the death of the subject of any such invasion of privacy.

Source: Laws 1979, LB 394, § 8.

20-209 Libel, slander, or invasion of privacy; one cause of action.

No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication, exhibition, or utterance, such as any one issue of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

Source: Laws 1979, LB 394, § 9.

Cross References

Defamatory statements, civil actions authorized, see sections 25-839 to 25-840.02.

20-210 Judgment; bar against other actions.

A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication, exhibition, or utterance as described in section 20-209 shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication, exhibition, or utterance.

Source: Laws 1979, LB 394, § 10.

20-211 Invasion of privacy; statute of limitations.

An action for invasion of privacy must be brought within one year of the date the cause of action arose.

Source: Laws 1979, LB 394, § 11.

ARTICLE 3

HOUSING

Cross References

Housing accommodations, blind, visually impaired, hearing impaired, and otherwise physically disabled, see sections 20-131.01 to 20-131.04.

Section

20-301 Act, how cited.

Sections 20-301 to 20-344 shall be known and may be cited as the Nebraska Fair Housing Act.

Source: Laws 1969, c. 120, § 23, p. 553; R.S.1943, (1987), § 20-125; Laws 1991, LB 825, § 2.

20-302 Civil rights; policy of state.

It is the policy of the State of Nebraska that there shall be no discrimination in the acquisition, ownership, possession, or enjoyment of housing throughout the State of Nebraska in accordance with Article I, section 25, of the Constitution of Nebraska.

Source: Laws 1969, c. 120, § 1, p. 539; R.S.1943, (1987), § 20-105; Laws 1991, LB 825, § 3.

20-303 Definitions, where found.

For purposes of the Nebraska Fair Housing Act, the definitions found in sections 20-304 to 20-317 shall be used.

Source: Laws 1991, LB 825, § 4.

20-304 Aggrieved person, defined.

Aggrieved person shall include any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that he or she will be injured by a discriminatory housing practice that is about to occur.

Source: Laws 1991, LB 825, § 5.

20-305 Commission, defined.

Commission shall mean the Equal Opportunity Commission.

Source: Laws 1991, LB 825, § 6.

20-306 Complainant, defined.

Complainant shall mean the person, including the commission, who files a complaint under section 20-326.

Source: Laws 1991, LB 825, § 7.

20-307 Conciliation, defined.

Conciliation shall mean the attempted resolution of issues raised by a complaint or by the investigation of a complaint through informal negotiations involving the aggrieved person, the respondent, and the commission.

Source: Laws 1991, LB 825, § 8.

20-308 Conciliation agreement, defined.

Conciliation agreement shall mean a written agreement setting forth the resolution of the issues in conciliation.

Source: Laws 1991, LB 825, § 9.

20-309 Discriminatory housing practice, defined.

Discriminatory housing practice shall mean an act that is unlawful under section 20-318, 20-319, 20-320, 20-321, or 20-344.

Source: Laws 1991, LB 825, § 10.

20-310 Dwelling, defined.

Dwelling shall mean any building, structure, or portion thereof which is occupied as or designed or intended for occupancy as a residence for one or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Source: Laws 1969, c. 120, § 2, p. 539; R.S.1943, (1987), § 20-106; Laws 1991, LB 825, § 11.

20-311 Familial status, defined.

Familial status shall mean one or more minors being domiciled with:

(1) A parent or another person having legal custody of such individual; or

(2) The designee of a parent or other person having legal custody, with the written permission of the parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any minor.

Source: Laws 1991, LB 825, § 12.

20-312 Family, defined.

Family shall include a single individual.

Source: Laws 1991, LB 825, § 13.

20-313 Handicap, defined.

Handicap shall mean, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment.

Handicap shall not include current, illegal use of or addiction to a controlled substance as defined in section 28-401.

Source: Laws 1991, LB 825, § 14.

20-314 Person, defined.

Person shall include one or more individuals, corporations, partnerships, limited liability companies, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

Source: Laws 1991, LB 825, § 15; Laws 1993, LB 121, § 147.

20-315 Rent, defined.

Rent shall include lease, sublease, let, and otherwise grant for consideration the right to occupy premises not owned by the occupant.

Source: Laws 1991, LB 825, § 16.

20-316 Respondent, defined.

Respondent shall mean:

(1) The person or other entity accused in a complaint of a discriminatory housing practice; and

(2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 20-326.

Source: Laws 1991, LB 825, § 17.

20-317 Restrictive covenant, defined.

Restrictive covenant shall mean any specification limiting the transfer, rental, or lease of any housing because of race, creed, religion, color, national origin, sex, handicap, familial status, or ancestry.

Source: Laws 1991, LB 825, § 18.

20-318 Unlawful acts enumerated.

Except as exempted by section 20-322, it shall be unlawful to:

(1) Refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of or otherwise make unavailable or deny, refuse to show, or refuse to receive and transmit an offer for a dwelling to any person because of race, color, religion, national origin, familial status, or sex;

(2) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection therewith because of race, color, religion, national origin, familial status, or sex;

(3) Make, print, publish, or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, national origin, handicap, familial status, or sex or an intention to make any such preference, limitation, or discrimination;

(4) Represent to any person because of race, color, religion, national origin, handicap, familial status, or sex that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

(5) Cause to be made any written or oral inquiry or record concerning the race, color, religion, national origin, handicap, familial status, or sex of a person seeking to purchase, rent, or lease any housing;

(6) Include in any transfer, sale, rental, or lease of housing any restrictive covenants or honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to housing;

(7) Discharge or demote an employee or agent or discriminate in the compensation of such employee or agent because of such employee's or agent's compliance with the Nebraska Fair Housing Act; and

(8) Induce or attempt to induce, for profit, any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, handicap, familial status, or sex.

Source: Laws 1969, c. 120, § 3, p. 540; Laws 1979, LB 80, § 64; R.S.1943, (1987), § 20-107; Laws 1991, LB 825, § 19.

20-319 Handicapped person; discriminatory practices prohibited; design and construction standards; enforcement of act.

(1) Except as exempted by section 20-322, it shall be unlawful to:

(a) Discriminate in the sale or rental of or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of:

(i) The buyer or renter;

(ii) Any person associated with the buyer or renter; or

(iii) A person residing in or intending to reside in the dwelling after it is so sold, rented, or made available; or

(b) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with a dwelling because of a handicap of:

(i) Such person;

(ii) Any person associated with such person; or

(iii) A person residing in or intending to reside in the dwelling after it is so sold, rented, or made available.

(2) For purposes of this section, discrimination shall include:

(a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises, except that in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford the handicapped person equal opportunity to use and enjoy a dwelling; and

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after September 1, 1991, a failure to design and construct the dwellings in such a manner that:

(i) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;

(ii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) All premises within the dwellings contain the following features of adaptive design:

(A) An accessible route into and through the dwelling;

(B) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(C) Reinforcements in bathroom walls to allow later installation of grab bars; and

(D) Kitchens and bathrooms such that a handicapped person in a wheelchair can maneuver about the space.

(3) Compliance with the appropriate requirements of the American National Standards Institute standard for buildings and facilities providing accessibility

and usability for physically handicapped people, ANSI A117.1, shall satisfy the requirements of subdivision (2)(c)(iii) of this section.

(4)(a) If a political subdivision has incorporated into its laws the design and construction requirements set forth in subdivision (2)(c) of this section, compliance with such laws shall be deemed to satisfy the requirements.

(b) A political subdivision may review and approve new constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements are met.

(c) The commission shall encourage but may not require political subdivisions to include in their existing procedures for the review and approval of new constructed covered multifamily dwellings determinations as to whether the design and construction of the dwellings are consistent with the design and construction requirements and shall provide technical assistance to political subdivisions and other persons to implement the requirements.

(d) Nothing in this section shall be construed to require the commission to review or approve the plans, designs, or construction of all covered multifamily dwellings to determine whether the design and construction of the dwellings are consistent with the design and construction requirements.

(5)(a) Nothing in subsection (4) of this section shall be construed to affect the authority and responsibility of the commission or a local agency certified pursuant to section 20-332 to receive and process complaints or otherwise engage in enforcement activities under the Nebraska Fair Housing Act.

(b) Determinations by the commission or a political subdivision under subdivision (4)(a) or (b) of this section shall not be conclusive in enforcement proceedings under the act.

(6) For purposes of this section, covered multifamily dwellings shall mean:

(a) Buildings consisting of four or more units if such buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of four or more units.

(7) Nothing in this section shall be construed to invalidate or limit any law of a political subdivision or other jurisdiction in which this section is effective that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this section.

(8) Nothing in this section shall require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Source: Laws 1991, LB 825, § 20; Laws 1998, LB 1073, § 5.

20-320 Transaction related to residential real estate; discriminatory practices prohibited.

(1) It shall be unlawful for any person or other entity whose business includes engaging in transactions related to residential real estate to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) For purposes of this section, transaction related to residential real estate shall mean any of the following:

(a) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) Secured by residential real estate; or

(b) The selling, brokering, or appraising of residential real property.

(3) Nothing in this section shall prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Source: Laws 1991, LB 825, § 21.

20-321 Multiple listing service; other service, organization, or facility; discriminatory practices prohibited.

It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against any person in the terms or conditions of such access, membership, or participation on account of race, color, religion, national origin, handicap, familial status, or sex.

Source: Laws 1969, c. 120, § 5, p. 542; Laws 1979, LB 80, § 66; R.S.1943, (1987), § 20-109; Laws 1991, LB 825, § 22.

20-322 Religious organization, private home, private club, or housing for older persons; restricting use not prohibited; local restrictions; how treated; controlled substances; illegal activities; effect.

(1) Nothing in the Nebraska Fair Housing Act shall prohibit a religious organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of a dwelling which it owns or operates for other than commercial purposes to persons of the same religion or from giving preferences to such persons unless membership in such religion is restricted on account of race, color, national origin, handicap, familial status, or sex.

(2) Nothing in the act shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than commercial purposes, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(3) Nothing in the act shall prohibit or limit the right of any person or his or her authorized representative to refuse to rent a room or rooms in his or her own home for any reason or for no reason or to change tenants in his or her own home as often as desired, except that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or family within his or her own home.

(4)(a) Nothing in the act shall limit the applicability of any reasonable local restrictions regarding the maximum number of occupants permitted to occupy a dwelling, and nothing in the act regarding familial status shall apply with respect to housing for older persons.

(b) For purposes of this subsection, housing for older persons shall mean housing:

(i) Provided under any state program that the commission determines is specifically designed and operated to assist elderly persons as defined in the program;

(ii) Intended for and solely occupied by persons sixty-two years of age or older; or

(iii) Intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subdivision, the commission shall develop regulations which require at least the following factors:

(A) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;

(B) That at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

(C) The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(c) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(i) Persons residing in the housing as of September 6, 1991, who do not meet the age requirements of subdivision (b)(ii) or (iii) of this subsection if succeeding occupants of the housing meet the age requirements; or

(ii) Unoccupied units if the units are reserved for occupancy by persons who meet the age requirements.

(5) Nothing in the act shall prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 28-401.

Source: Laws 1969, c. 120, § 6, p. 542; Laws 1979, LB 80, § 67; R.S.1943, (1987), § 20-110; Laws 1991, LB 825, § 23.

20-323 Affirmative action required; cooperation with commission.

All executive departments, state agencies, and independent instrumentalities exercising essential public functions, including any state agency having regulatory or supervisory authority over financial institutions, shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of the Nebraska Fair Housing Act and shall cooperate with the commission to further such purposes.

Source: Laws 1991, LB 825, § 24.

20-324 Equal Opportunity Commission; educational and conciliatory activities; programs of compliance and enforcement.

The commission shall conduct such educational and conciliatory activities as in the commission's judgment will further the purposes of the Nebraska Fair Housing Act. The commission shall call conferences of persons in the housing

industry and other interested persons to acquaint them with the act and suggested means of implementing it and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. The commission shall consult with local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their locality and whether and how local enforcement programs might be utilized to combat such discrimination in connection with or in place of the commission's enforcement of the act. The commission shall issue reports on such conferences and consultations as it deems appropriate.

Source: Laws 1969, c. 120, § 8, p. 543; R.S.1943, (1987), § 20-112; Laws 1991, LB 825, § 25.

20-325 Commission; duties.

The commission shall:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the state;

(2) Publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Legislature to be submitted electronically:

(a) Specifying the nature and extent of progress made statewide in eliminating discriminatory housing practices and furthering the purposes of the Nebraska Fair Housing Act, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(b) Containing tabulations of the number of instances and the reasons therefor in the preceding year in which:

(i) Investigations have not been completed as required by subdivision (1)(b) of section 20-326;

(ii) Determinations have not been made within the time specified in section 20-333; and

(iii) Hearings have not been commenced or findings and conclusions have not been made as required by section 20-337;

(3) Cooperate with and render technical assistance to state, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) Electronically submit an annual report to the Legislature and make available to the public data on the age, race, color, religion, national origin, handicap, familial status, and sex of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of programs administered by the commission. In order to develop the data to be included and made available to the public under this subdivision, the commission shall, without regard to any other provision of law, collect such information relating to those characteristics as the commission determines to be necessary or appropriate;

(5) Adopt and promulgate rules and regulations, subject to the approval of the members of the commission, regarding the investigative and conciliation pro-

cess that provide for testing standards, fundamental due process, and notice to the parties of their rights and responsibilities; and

(6) Have authority to enter into agreements with the United States Department of Housing and Urban Development in cooperative agreements under the Fair Housing Assistance Program. The commission shall further have the authority to enter into agreements with testing organizations to assist in investigative activities. The commission shall not enter into any agreements under which compensation to the testing organization is partially or wholly based on the number of conciliations, settlements, and reasonable cause determinations.

Source: Laws 1991, LB 825, § 26; Laws 2005, LB 361, § 25; Laws 2012, LB782, § 20.
Operative date July 19, 2012.

20-326 Discriminatory housing practice; complaint; procedure; investigation.

(1)(a)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging such discriminatory housing practice. The commission, on its own initiative, may also file such a complaint.

(ii) The complaint shall be in writing and shall contain such information and be in such form as the commission requires.

(iii) The commission may also investigate housing practices to determine whether a complaint should be brought under this section.

(b) Upon the filing of a complaint:

(i) The commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under the Nebraska Fair Housing Act;

(ii) The commission shall, not later than ten days after such filing or the identification of an additional respondent under subsection (2) of this section, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under the act, together with a copy of the original complaint;

(iii) Each respondent may file, not later than ten days after receipt of notice from the commission, an answer to the complaint; and

(iv) Unless it is impracticable to do so, the commission shall investigate the alleged discriminatory housing practice and complete such investigation within one hundred days after the filing of the complaint or, when the commission takes further action under section 20-332 with respect to a complaint, within one hundred days after the commencement of such further action.

(c) If the commission is unable to complete the investigation within one hundred days after the filing of the complaint or after the commencement of such further action, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(d) Complaints and answers shall be under oath and may be reasonably and fairly amended at any time.

(2)(a) A person who is not named as a respondent in a complaint but who is identified as a respondent in the course of investigation may be joined as an

additional or substitute respondent upon written notice under subdivision (1)(b)(ii) of this section to such person from the commission.

(b) The notice shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

Source: Laws 1991, LB 825, § 27; Laws 2004, LB 625, § 1; Laws 2005, LB 361, § 26.

20-327 Complaint; conciliation; conciliation agreement; effect.

(1) During the period beginning with the filing of the complaint and ending with the issuance of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to the complaint.

(2) A conciliation agreement shall be an agreement between the complainant and the respondent and shall be subject to the approval of the members of the commission, which approval may not be delegated.

(3) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the commission.

(4) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(5) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of the Nebraska Fair Housing Act.

(6) A conciliation agreement between a respondent and complainant which has been approved by the commission shall not be deemed an adjudication that the respondent has committed a discriminatory housing practice nor shall the conciliation agreement be the subject of an order for relief under section 20-337, unless the conciliation agreement is entered after an adjudication pursuant to an administrative proceeding or a civil action pursuant to state or federal law in which the respondent was found to have committed a discriminatory housing practice.

Source: Laws 1991, LB 825, § 28; Laws 2005, LB 361, § 27.

20-328 Final investigative report; contents; amendment.

(1) At the end of each investigation of a complaint, the commission shall prepare a final investigative report containing:

(a) The names and dates of contacts with witnesses;

(b) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(c) A summary description of other pertinent records;

(d) A summary of witness statements; and

(e) Answers to interrogatories.

(2) A final investigative report may be amended if additional evidence is later discovered.

Source: Laws 1991, LB 825, § 29.

20-329 Conciliation agreement; breach; civil action authorized.

Whenever the commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the commission shall refer the matter to the Attorney General for filing of a civil action under section 20-343 for the enforcement of such agreement.

Source: Laws 1991, LB 825, § 30.

20-330 Conciliation proceedings; investigations; restrictions on use of information.

(1) Except as provided in subsection (5) of section 20-327, nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under the Nebraska Fair Housing Act without the written consent of the persons concerned. All records compiled in the course of conciliation activities shall be exempt from public release. The commission may release any fully executed conciliation agreement.

(2)(a) Notwithstanding subsection (1) of this section, the commission shall make available to the aggrieved person and the respondent, upon request, following the completion of an investigation, information derived from an investigation and any final investigative report relating to that investigation.

(b) The commission's release of information pursuant to subdivision (2)(a) of this section is subject to the federal Privacy Act of 1974, Public Law 93-579, as such act existed on January 1, 2005, and any other state or federal laws limiting the release of confidential information obtained in the course of an investigation under the Nebraska Fair Housing Act.

(3) Notwithstanding subsections (1) and (2) of this section, materials in the investigative file shall be disclosed to the complainant and respondent to the extent reasonably necessary to further the investigation or conciliation discussions.

Source: Laws 1991, LB 825, § 31; Laws 2004, LB 625, § 2; Laws 2005, LB 361, § 28.

20-331 Temporary or preliminary relief; other proceedings; actions authorized.

(1) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of the Nebraska Fair Housing Act, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with sections 25-1062 to 25-1080. The commencement of a civil action under this section shall not affect the initiation or continuation of administrative proceedings under this section and section 20-336.

(2) Whenever the commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsection (1) or (3) of section 20-343 or for proceedings by any governmental licensing or supervisory authorities, the commission shall transmit the information upon

which such belief is based to the Attorney General or to such authorities, as the case may be.

Source: Laws 1991, LB 825, § 32.

20-332 Complaint; referral to local agency; procedure; certification of local agency.

(1) Whenever a complaint alleges a discriminatory housing practice (a) within the jurisdiction of a local agency in an incorporated city or a county and (b) as to which the agency has been certified by the commission under this section, the commission shall refer the complaint to that agency before taking any action with respect to the complaint.

(2) After a referral is made, the commission shall take no further action with respect to such complaint without the consent of the agency unless:

(a) The agency has failed to commence proceedings with respect to the complaint before the end of the thirtieth day after the date of such referral;

(b) The agency, having so commenced proceedings, fails to carry forward the proceedings with reasonable promptness; or

(c) The commission determines that the agency no longer qualifies for certification under this section with respect to the relevant jurisdiction.

(3)(a) The commission may certify a local agency under this section only if the commission determines that the following are substantially equivalent to those created by and under the Nebraska Fair Housing Act:

(i) The substantive rights protected by the agency in the jurisdiction with respect to which certification is to be made;

(ii) The procedures followed by the agency;

(iii) The remedies available to the agency; and

(iv) The availability of judicial review of the agency's action.

(b) Before making such certification, the commission shall take into account the current practices and past performance, if any, of the agency.

Source: Laws 1991, LB 825, § 33.

20-333 Commission; discriminatory housing practice; determination; charge; contents; service; referral to Attorney General; dismissal of complaint.

(1)(a) The commission shall, within one hundred days after the filing of the complaint or after the commencement of further action under section 20-332, determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur unless it is impracticable to do so or unless the commission has approved a conciliation agreement with respect to the complaint. If the commission is unable to make the determination within one hundred days after the filing of the complaint or after the commencement of such further action, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(b)(i) If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided in subdivision (iii) of this subdivision, immediately issue a charge on behalf of the aggrieved person, for further proceedings under sections 20-335 to 20-340.

(ii) Such charge shall consist of a short and plain statement of the facts upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, shall be based on the final investigative report, and need not be limited to the facts or grounds alleged in the complaint filed under section 20-326.

(iii) If the commission determines that the matter involves the legality of any state or local zoning or other land-use law or ordinance, the commission shall immediately refer the matter to the Attorney General for appropriate action under section 20-343 instead of issuing such charge.

(c) If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each such dismissal.

(d) The commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the filing of a civil action commenced by the aggrieved party under state or federal law seeking relief with respect to that discriminatory housing practice.

(2) After the commission issues a charge under this section, the commission shall cause a copy of the charge, together with information as to how to make an election under section 20-335 and the effect of such an election, to be served:

(a) On each respondent named in the charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless such an election is made; and

(b) On each aggrieved person on whose behalf the complaint was filed.

Source: Laws 1991, LB 825, § 34.

20-334 Commission; subpoenas; discovery orders; violations; penalty.

(1) The commission may issue subpoenas and order discovery in aid of investigations and hearings under the Nebraska Fair Housing Act. The subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the district court.

(2) Witnesses summoned by a subpoena shall be entitled to the same witness and mileage fees as witnesses in proceedings in district court. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, when a party is unable to pay the fees, by the commission.

(3)(a) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (1) of this section shall be guilty of a Class I misdemeanor.

(b) Any person shall be guilty of a Class I misdemeanor who, with intent to mislead another person in any proceeding under the act:

(i) Makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (1) of this section;

(ii) Willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(iii) Willfully mutilates, alters, or by any other means falsifies any documentary evidence.

Source: Laws 1991, LB 825, § 35.

20-335 Civil action in lieu of hearing; election authorized.

When a charge is issued under section 20-333, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action under section 20-340 in lieu of a hearing under section 20-336. The election must be made not later than twenty days after service has been made under section 20-333. The person making the election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates.

Source: Laws 1991, LB 825, § 36.

20-336 Commission; hearings; hearing officer; appearance; discovery; discontinuance of proceedings; when.

(1) If an election is not made under section 20-335 with respect to a charge issued under section 20-333, the commission shall provide an opportunity for a hearing on the record with respect to the charge. The commission shall delegate the conduct of a hearing under this section to a hearing officer. The hearing officer shall meet the qualifications of a judge of the district court prescribed in section 24-301 or any successor statute. The hearing officer shall be appointed by the commission pursuant to rules and regulations promulgated by the commission. The hearing officer shall conduct the hearing at a place in the vicinity of the place where the discriminatory housing practice is alleged to have occurred or to be about to occur.

(2) At the hearing each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 20-334. Any aggrieved person may intervene as a party in the proceeding. The rules of evidence shall apply to the presentation of evidence in such hearing as they would in a civil action in district court.

(3)(a) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible consistent with the need of all parties to obtain relevant evidence.

(b) A hearing under this section shall be conducted as expeditiously and inexpensively as possible consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(4) Any resolution of a charge before issuance of a final order under section 20-337 shall require the consent of the aggrieved person on whose behalf the charge is issued.

(5) A hearing officer may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the filing of a civil action by the aggrieved party under state or federal law seeking relief with respect to that discriminatory housing practice.

Source: Laws 1991, LB 825, § 37.

20-337 Hearing officer; powers and duties; civil penalties; order; effect.

(1) The hearing officer shall commence the hearing no later than one hundred twenty days following the issuance of the charge unless it is impracticable to do so. If the hearing officer is unable to commence the hearing within one hundred twenty days, he or she shall notify the commission, the aggrieved person on whose behalf the charge was issued, and the respondent in writing of the reasons for not doing so.

(2) The hearing officer shall make findings of fact and conclusions of law within sixty days after the end of the hearing unless it is impracticable to do so. If the hearing officer is unable to make findings of fact and conclusions of law within such period or any succeeding sixty-day period thereafter, he or she shall notify the commission, the aggrieved person on whose behalf the charge was issued, and the respondent in writing of the reasons for not doing so.

(3)(a) If the hearing officer finds that a respondent has engaged or is about to engage in a discriminatory housing practice, he or she shall promptly issue an order for such relief as may be appropriate which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief.

(b) Subject to subdivision (c) of this subsection, the order may, to vindicate the public interest, assess a civil penalty against the respondent:

(i) In an amount not exceeding ten thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice or if subdivision (ii) or (iii) of this subdivision does not apply;

(ii) In an amount not exceeding twenty-five thousand dollars if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the issuance of the current charge; or

(iii) In an amount not exceeding fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the issuance of the current charge.

(c) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties set forth in subdivisions (b)(ii) and (iii) of this subsection may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, not later than thirty days after the date of the issuance of the order or, if the order is judicially reviewed, thirty days after the order is in substance affirmed upon such review:

(a) Send copies of the findings of fact, conclusions of law, and the order to that governmental agency; and

(b) Recommend to that governmental agency appropriate disciplinary action, including, when appropriate, the suspension or revocation of the license of the respondent.

(6) In the case of an order against a respondent against whom another order was issued under this section within the preceding five years, the commission shall send a copy of each such order to the Attorney General.

(7) If the hearing officer finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, he or she shall enter an order dismissing the charge. The commission shall make public disclosure of each such dismissal.

Source: Laws 1991, LB 825, § 38.

20-338 Finding, conclusion, or order; review; final order; service.

(1) The commission may review any finding, conclusion, or order issued under section 20-337. The review shall be completed not later than thirty days after the finding, conclusion, or order is so issued or the finding, conclusion, or order will become final.

(2) The commission shall cause the findings of fact and conclusions of law made with respect to any final order for relief, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

Source: Laws 1991, LB 825, § 39.

20-339 Appeal; enforcement of hearing officer's order; procedure.

(1) Any party aggrieved by a final order granting or denying in whole or in part the relief sought may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act, except that venue of the proceeding shall be in the county in which the discriminatory housing practice is alleged to have occurred.

(2)(a) The commission may petition the district court for the county in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the hearing officer and for appropriate temporary relief or restraining order.

(b) The commission shall file in court with the petition the record in the proceeding. A copy of such petition shall be transmitted by the clerk of the court to the parties to the proceeding before the hearing officer.

(3)(a) Upon the filing of a petition under subsection (1) or (2) of this section, the court may:

(i) Grant to the petitioner or any other party such temporary relief, restraining order, or other order as the court deems just and proper;

(ii) Affirm, modify, or set aside the order, in whole or in part, or remand the order for further proceedings; and

(iii) Enforce the order to the extent that the order is affirmed or modified.

(b) Any party to the proceeding before the hearing officer may intervene in the district court.

(c) An objection not made before the hearing officer shall not be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(4) If no appeal is filed before the expiration of forty-five days after the date the hearing officer's order is entered, the hearing officer's findings of fact and order shall be conclusive in connection with any petition for enforcement:

(a) Which is filed by the commission under subsection (2) of this section after the end of such forty-fifth day; or

(b) Under subsection (5) of this section.

(5) If before the expiration of sixty days after the date the hearing officer's order is entered no appeal has been filed and the commission has not sought enforcement of the order under subsection (2) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the district court for the county in which the discriminatory housing practice is alleged to have occurred.

(6) The district court in which a petition for enforcement is filed under subsection (2) or (5) of this section shall enter a decree enforcing the order. The clerk of the court shall transmit a copy of such decree to the commission, the respondent named in the petition, and any other parties to the proceeding before the hearing officer.

Source: Laws 1991, LB 825, § 40.

Cross References

Administrative Procedure Act, see section 84-920.

20-340 Civil action in lieu of hearing; relief authorized.

(1) If an election is made under section 20-335 to have the claims asserted in the charge decided in a civil action, the commission shall authorize, and not later than thirty days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in the appropriate district court seeking relief under this section.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right.

(3) In a civil action under this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 20-342. Any relief so granted that would accrue to an aggrieved person in such a civil action shall also accrue to that aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

Source: Laws 1991, LB 825, § 41.

The 30-day limitation of this section is mandatory and not directory. State, Neb. Equal Opportunity Com'n ex rel. Minter v. Jensen, 259 Neb. 275, 609 N.W.2d 362 (2000).

20-341 Attorney's fees and costs; when allowed.

In any administrative proceeding brought under section 20-336, any court proceeding arising from such a proceeding, or any civil action under section 20-340, the hearing officer or the court, as the case may be, may allow the prevailing party, other than the state, reasonable attorney's fees and costs. The state shall be liable for such fees and costs to the same extent as a private person.

Source: Laws 1991, LB 825, § 42.

20-342 Statute of limitations; civil action; rights and duties of parties; remedies allowed; attorney's fees and costs.

(1)(a)(i) An aggrieved person may commence a civil action in an appropriate district court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under section 20-327, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(ii) The computation of such two-year period shall not include any time during which an administrative proceeding under section 20-336 is pending with respect to a complaint or charge under the Nebraska Fair Housing Act based upon such discriminatory housing practice. This subdivision shall not apply to actions arising from a breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this section whether or not a complaint has been filed under section 20-326 and without regard to the status of any such complaint, but if the commission or a local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) An aggrieved person may not commence a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the commission if a hearing officer has commenced a hearing on the record under section 20-336 with respect to such charge.

(2) Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may, if in the opinion of the court the person is financially unable to bear the costs of an action:

(a) Appoint an attorney for the person; or

(b) Authorize the commencement or continuation of a civil action under subsection (1) of this section without the payment of fees, costs, or security.

(3)(a) In a civil action under subsection (1) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual damages and, subject to subsection (4) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate.

(b) In a civil action under subsection (1) of this section, the court may allow the prevailing party, other than the state, reasonable attorney's fees and costs. The state shall be liable for such fees and costs to the same extent as a private person.

(4) Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the filing of a complaint with the commission or a civil action under the act.

(5) Upon timely application, the Attorney General may intervene in the civil action if the Attorney General certifies that the case is of general public

importance. Upon intervention the Attorney General may obtain such relief as would be available under section 20-343.

Source: Laws 1991, LB 825, § 43.

20-343 Attorney General; civil action; powers and duties; relief authorized; intervention; when permitted.

(1) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by the Nebraska Fair Housing Act or that any group of persons has been denied any of the rights granted by the act and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate district court.

(2)(a) The Attorney General may commence a civil action in any appropriate district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the commission under section 20-337. The action may be commenced not later than the expiration of eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(b) The Attorney General may commence a civil action in any appropriate district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the commission under section 20-329. The action may be commenced not later than the expiration of ninety days after the referral of the alleged breach under such section.

(3) The Attorney General, on behalf of the commission or other party at whose request a subpoena is issued under section 20-334, may enforce the subpoena in appropriate proceedings in the district court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(4)(a) In a civil action under subsection (1) or (2) of this section, the court:

(i) May award such temporary relief, including a permanent or temporary injunction, a restraining order, or any other order against the person responsible for a violation of the act as is necessary to assure the full enjoyment of the rights granted by the act;

(ii) May award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(iii) May, to vindicate the public interest, assess a civil penalty against the respondent:

(A) In an amount not exceeding fifty thousand dollars for a first violation; and

(B) In an amount not exceeding one hundred thousand dollars for any subsequent violation.

(b) In a civil action under this section, the court may allow the prevailing party, other than the state, reasonable attorney's fees and costs. The state shall be liable for such fees and costs to the same extent as a private person.

(5) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (1) or (2) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which

such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 20-342.

Source: Laws 1991, LB 825, § 44.

20-344 Violations; penalty.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of enjoyment of or on account of the person having exercised or enjoyed or having aided and encouraged any other person in the exercise of benefits and rights guaranteed by the Nebraska Fair Housing Act. Any person who violates this section shall be guilty of a Class I misdemeanor.

Source: Laws 1969, c. 120, § 17, p. 550; R.S.1943, (1987), § 20-121; Laws 1991, LB 825, § 45.

ARTICLE 4

RIGHTS OF THE TERMINALLY ILL

Section

20-401 Act, how cited.

Sections 20-401 to 20-416 shall be known and may be cited as the Rights of the Terminally Ill Act.

Source: Laws 1992, LB 671, § 1.

20-402 Statement of policy.

(1) The Legislature recognizes the common-law right and a constitutionally protected liberty interest for people to direct their medical treatment. The exercise of such right and liberty interest is subject to certain state interests in preserving life, preventing homicide and suicide, protecting dependent third parties, and maintaining the integrity of the medical profession. The Legislature adopts the Rights of the Terminally Ill Act to provide one means, by use of the declaration described in the act, for people to exercise their rights. Unjustifiable violation of a patient's direction shall be a civil cause of action maintainable by the patient or the patient's next of kin. Remedy in law and equity may be granted by a court of competent jurisdiction.

(2) It is the public policy of this state that no existing right be terminated or restricted by the Rights of the Terminally Ill Act.

Source: Laws 1992, LB 671, § 2.

20-403 Definitions.

For purposes of the Rights of the Terminally Ill Act, unless the context otherwise requires:

(1) Adult shall mean any person who is nineteen years of age or older or who is or has been married;

(2) Attending physician shall mean the physician who has primary responsibility for the treatment and care of the patient;

(3) Declaration shall mean a writing executed in accordance with the requirements of subsection (1) of section 20-404;

(4) Health care provider shall mean a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession;

(5) Life-sustaining treatment shall mean any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying or maintain the qualified patient in a persistent vegetative state;

(6) Persistent vegetative state shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(7) Person shall mean an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity;

(8) Physician shall mean an individual licensed to practice medicine in this state;

(9) Qualified patient shall mean an adult who has executed a declaration and who has been determined by the attending physician to be in a terminal condition or a persistent vegetative state;

(10) State shall mean a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States; and

(11) Terminal condition shall mean an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.

Source: Laws 1992, LB 671, § 3; Laws 1993, LB 121, § 148.

20-404 Declaration relating to use of life-sustaining treatment.

(1) An adult of sound mind may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant or another person at the declarant's direction and witnessed by two adults or a notary public. No more than one witness to a declaration shall be an administrator or employee of a health care provider who is caring for or treating the declarant, and no witness shall be an employee of a life or health insurance provider for the declarant. The restrictions upon who may witness the signing shall not apply to a notary public.

(2) A declaration directing a physician to withhold or withdraw life-sustaining treatment may, but need not, be in the form provided in this subsection.

DECLARATION

If I should lapse into a persistent vegetative state or have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Rights of the Terminally Ill Act, to withhold or withdraw life sustaining treatment that is not necessary for my comfort or to alleviate pain.

Signed this .... day of ..... .

Signature .....

Address .....

The declarant voluntarily signed this writing in my presence.

Witness .....

Address .....

Witness .....

Address .....

Or

The declarant voluntarily signed this writing in my presence.

..... Notary Public

(3) A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, shall promptly so advise the declarant.

Source: Laws 1992, LB 671, § 4.

20-405 When declaration operative.

A declaration shall become operative when (1) it is communicated to the attending physician, (2) the declarant is determined by the attending physician to be in a terminal condition or in a persistent vegetative state, (3) the declarant is determined by the attending physician to be unable to make decisions regarding administration of life-sustaining treatment, and (4) the attending physician has notified a reasonably available member of the declarant's immediate family or guardian, if any, of his or her diagnosis and of the intent to invoke the patient's declaration. When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the transfer requirements of section 20-409.

Source: Laws 1992, LB 671, § 5.

20-406 Revocation of declaration.

(1) A declarant may revoke a declaration at any time and in any manner without regard to the declarant's mental or physical condition. A revocation shall be effective upon its communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

(2) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

Source: Laws 1992, LB 671, § 6.

20-407 Recording determination of terminal condition and declaration.

When the attending physician has knowledge of a declaration and, after personal examination, has determined that a declarant is in a terminal condition or in a persistent vegetative state, the attending physician shall record the diagnosis, determination, and the terms of the declaration, in writing, in the declarant's medical record.

Source: Laws 1992, LB 671, § 7.

20-408 Treatment of qualified patients.

(1) A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.

(2) The Rights of the Terminally Ill Act shall not affect the responsibility of the attending physician or other health care provider to provide treatment, including nutrition and hydration, for a patient's comfort care or alleviation of pain.

(3) Life-sustaining treatment shall not be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

Source: Laws 1992, LB 671, § 8.

20-409 Transfer of patients.

An attending physician or other health care provider who is unwilling to comply with the Rights of the Terminally Ill Act shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so.

Source: Laws 1992, LB 671, § 9.

20-410 Immunities.

(1) A physician or other health care provider shall not be subject to civil or criminal liability or discipline for unprofessional conduct for giving effect to a declaration in the absence of knowledge of the revocation of a declaration.

(2) A physician or other health care provider whose action under the Rights of the Terminally Ill Act is in accord with reasonable medical standards shall not be subject to criminal or civil liability, or discipline for unprofessional conduct, with respect to that action.

Source: Laws 1992, LB 671, § 10.

20-411 Penalties.

(1) A physician or other health care provider who willfully fails to transfer the care of a patient in accordance with section 20-409 shall be guilty of a Class I misdemeanor.

(2) A physician who willfully fails to record a determination of terminal condition or persistent vegetative state or the terms of a declaration in accordance with section 20-407 shall be guilty of a Class I misdemeanor.

(3) An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another individual without the declarant's consent or who

falsifies or forges a revocation of the declaration of another individual shall be guilty of a Class I misdemeanor.

(4) An individual who falsifies or forges the declaration of another individual or willfully conceals or withholds personal knowledge of a revocation under section 20-406 shall be guilty of a Class I misdemeanor.

(5) A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services shall be guilty of a Class I misdemeanor.

(6) A person who coerces or fraudulently induces an individual to execute a declaration shall be guilty of a Class I misdemeanor.

(7) The penalties provided in this section shall not displace any sanction applicable under other law.

Source: Laws 1992, LB 671, § 11.

20-412 Miscellaneous provisions.

(1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with the Rights of the Terminally Ill Act shall not constitute, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to section 20-404 shall not affect the sale, procurement, or issuance of a policy of life insurance or annuity or affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity shall not be legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term to the contrary.

(3) No person shall prohibit or require the execution of a declaration as a condition to being insured for or receiving health care services. No insurance company or health care provider shall charge a higher or lower rate for signers of declarations under the act as opposed to nonsigners.

(4) The act shall create no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(5) The act shall not affect the right of a patient to make decisions regarding use of life-sustaining treatment so long as the patient is able to do so or impair or supersede a right or responsibility that a person has to effect the withholding or withdrawal of medical care.

(6) The act shall not require a physician or other health care provider to take action contrary to reasonable medical standards.

(7) The act shall not confer any new rights regarding the provision or rejection of any specific medical treatment and shall not alter any existing laws concerning homicide, suicide, or assisted suicide. Nothing in the act shall be construed to condone, authorize, or approve homicide, suicide, or assisted suicide.

Source: Laws 1992, LB 671, § 12.

20-413 When health care provider may presume validity of declaration.

In the absence of knowledge to the contrary, a physician or other health care provider may assume that a declaration complies with the Rights of the Terminally Ill Act and is valid.

Source: Laws 1992, LB 671, § 13.

20-414 Recognition of declaration executed in another state.

A declaration executed in another state in compliance with the law of that state or of this state shall be valid for purposes of the Rights of the Terminally Ill Act.

Source: Laws 1992, LB 671, § 14.

20-415 Effect of previous declaration.

An instrument executed anywhere before July 15, 1992, which substantially complies with subsection (1) of section 20-404 shall be effective under the Rights of the Terminally Ill Act.

Source: Laws 1992, LB 671, § 15.

20-416 Uniformity of application and construction.

The Rights of the Terminally Ill Act shall be applied and liberally construed so as to effectuate its general purposes.

Source: Laws 1992, LB 671, § 16.

ARTICLE 5
RACIAL PROFILING

Section
20-501. Racial profiling; legislative intent.
20-502. Racial profiling prohibited.
20-503. Terms, defined.
20-504. Written policy; records maintained; immunity.
20-505. Forms authorized.
20-506. Racial Profiling Advisory Committee; created; members; duties.

20-501 Racial profiling; legislative intent.

Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated. Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

Source: Laws 2001, LB 593, § 1.

20-502 Racial profiling prohibited.

(1) No member of the Nebraska State Patrol or a county sheriff's office, officer of a city or village police department, or member of any other law enforcement agency in this state shall engage in racial profiling. The disparate treatment of an individual whose motor vehicle has been stopped by a law enforcement officer is inconsistent with this policy.

(2) Racial profiling shall not be used to justify the detention of an individual or to conduct a motor vehicle stop.

Source: Laws 2001, LB 593, § 2.

20-503 Terms, defined.

For purposes of sections 20-501 to 20-506:

(1) Disparate treatment means differential treatment of persons on the basis of race, color, or national origin;

(2) Motor vehicle stop means any stop of a motor vehicle, except for a stop of a motor truck, truck-tractor, semitrailer, trailer, or towed vehicle at a state weighing station; and

(3) Racial profiling means detaining an individual or conducting a motor vehicle stop based upon disparate treatment of an individual.

Source: Laws 2001, LB 593, § 3; Laws 2004, LB 1162, § 1.

20-504 Written policy; records maintained; immunity.

(1) On or before January 1, 2002, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall adopt a written policy that prohibits the detention of any person or a motor vehicle stop when such action is motivated by racial profiling and the action would constitute a violation of the civil rights of the person.

(2) With respect to a motor vehicle stop, on and after January 1, 2002, and until January 1, 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall record and retain the following information using the form developed and promulgated pursuant to section 20-505:

(a) The number of motor vehicle stops;

(b) The characteristics of race or ethnicity of the person stopped. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop and the information shall not be required to be provided by the person stopped;

(c) If the stop is for a law violation, the nature of the alleged law violation that resulted in the motor vehicle stop;

(d) Whether a warning or citation was issued, an arrest made, or a search conducted as a result of the motor vehicle stop. Search does not include a search incident to arrest or an inventory search; and

(e) Any additional information that the Nebraska State Patrol, the county sheriffs, all city and village police departments, or any other law enforcement agency in this state, as the case may be, deems appropriate.

(3) The Nebraska Commission on Law Enforcement and Criminal Justice may develop a uniform system for receiving allegations of racial profiling. The Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall provide to the commission (a) a copy of each allegation of racial profiling received and (b) written notification of the review and disposition of such allegation. No information revealing the identity of the law enforcement officer involved in the stop shall be used, transmitted, or disclosed in violation of any collective-bargaining agreement provision or personnel rule under which such law enforcement officer is employed. No information revealing the identity of the complainant shall be used, transmitted, or disclosed in the form alleging racial profiling.

(4) Any law enforcement officer who in good faith records information on a motor vehicle stop pursuant to this section shall not be held civilly liable for the act of recording such information unless the law enforcement officer's conduct was unreasonable or reckless or in some way contrary to law.

(5) On or before October 1, 2002, and annually thereafter until January 1, 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and all other law enforcement agencies in this state shall provide to the commission, in such form as the commission prescribes, a summary report of the information recorded pursuant to subsection (2) of this section.

(6) On and after January 1, 2002, and until April 1, 2014, the commission may, within the limits of its existing appropriations, provide for a review of the prevalence and disposition of motor vehicle stops based on racial profiling and allegations reported pursuant to this section. The results of such review shall be reported annually to the Governor and the Legislature beginning on or before April 1, 2004, until April 1, 2014. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2001, LB 593, § 4; Laws 2004, LB 1162, § 2; Laws 2006, LB 1113, § 19; Laws 2010, LB746, § 1; Laws 2012, LB782, § 21. Operative date July 19, 2012.

20-505 Forms authorized.

On or before January 1, 2002, the Nebraska Commission on Law Enforcement and Criminal Justice, the Superintendent of Law Enforcement and Public Safety, the Attorney General, and the State Court Administrator may adopt and promulgate: (1) A form, in printed or electronic format, to be used by a law enforcement officer when making a motor vehicle stop to record personal identifying information about the operator of such motor vehicle, the location of the stop, the reason for the stop, and any other information that is required to be recorded pursuant to subsection (2) of section 20-504 and (2) a form, in printed or electronic format, to be used to report an allegation of racial profiling by a law enforcement officer.

Source: Laws 2001, LB 593, § 5.

20-506 Racial Profiling Advisory Committee; created; members; duties.

(1) The Racial Profiling Advisory Committee is created.

(2)(a) The committee shall consist of:

(i) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, who also shall be the chairperson of the committee;

(ii) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(iii) The director of the Commission on Latino-Americans or his or her designee; and

(iv) The executive director of the Commission on Indian Affairs or his or her designee.

(b) The committee shall also consist of the following persons, each appointed by the Governor from a list of three names submitted to the Governor for each position:

(i) A representative of the Fraternal Order of Police;

(ii) A representative of the Nebraska County Sheriffs Association;

(iii) A representative of the Police Officers Association of Nebraska;

(iv) A representative of the American Civil Liberties Union of Nebraska;

(v) A representative of the AFL-CIO;

(vi) A representative of the Police Chiefs Association of Nebraska;

(vii) A representative of the Nebraska branches of the National Association for the Advancement of Colored People; and

(viii) A representative of the Nebraska State Bar Association appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet semiannually at a time and place to be fixed by the committee. Special meetings may be called by the chairperson or at the request of two or more members of the committee.

(4) The committee shall advise the executive director of the commission in the conduct of his or her duties regarding the review required pursuant to subsection (6) of section 20-504, provide an analysis of the review, and make policy recommendations with respect to racial profiling.

Source: Laws 2004, LB 1162, § 5; Laws 2010, LB746, § 2.

CHAPTER 21
CORPORATIONS AND OTHER COMPANIES

Article.

Article.
- (k) Sale of Assets. 21-19,125, 21-19,126.
- (l) Distributions. 21-19,127, 21-19,128.
- (m) Dissolution. 21-19,129 to 21-19,145.
- (n) Foreign Corporations. 21-19,146 to 21-19,164.
- (o) Records and Reports. 21-19,165 to 21-19,172.
- (p) Publication. 21-19,173.
- (q) Transition Provisions. 21-19,174 to 21-19,177.

20. Business Corporation Act.
- (a) General Provisions. 21-2001 to 21-2016.
- (b) Incorporation. 21-2017 to 21-2023.
- (c) Purposes and Powers. 21-2024 to 21-2027.
- (d) Name. 21-2028 to 21-2030.
- (e) Office and Agent. 21-2031 to 21-2034.
- (f) Shares and Distributions. 21-2035 to 21-2050.
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- (h) Directors and Officers. 21-2078 to 21-20,115.
- (i) Amendment of Articles of Incorporation and Bylaws. 21-20,116 to 21-20,127.
- (j) Merger and Share Exchange. 21-20,128 to 21-20,134.
- (k) Sale of Assets. 21-20,135 to 21-20,136.
- (l) Dissenters' Rights. 21-20,137 to 21-20,150.
- (m) Dissolution. 21-20,151 to 21-20,167.
- (n) Foreign Corporations. 21-20,168 to 21-20,181.03.
- (o) Records and Reports. 21-20,182 to 21-20,188.
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21. Nebraska Business Development Corporation Act. 21-2101 to 21-2117.
22. Professional Corporations. 21-2201 to 21-2223.
23. Nebraska Industrial Development Corporation Act. 21-2301 to 21-2318.
24. Shareholders Protection Act. 21-2401 to 21-2453.
25. Name Protection. 21-2501 to 21-2508.
26. Limited Liability Companies. 21-2601 to 21-2654.
27. Foreign Trade Zones. 21-2701 to 21-2703.
28. Religious Associations. 21-2801 to 21-2803.
29. Nebraska Limited Cooperative Association Act.
- Part 1 - General Provisions. 21-2901 to 21-2916.
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- Part 6 - Marketing Contracts. 21-2949 to 21-2952.
- Part 7 - Directors and Officers. 21-2953 to 21-2975.
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- Part 11 - Dissolution. 21-2984 to 21-2996.
- Part 12 - Actions By Members. 21-2997 to 21-29,101.
- Part 13 - Foreign Cooperatives. 21-29,102 to 21-29,109.
- Part 14 - Amendment of Articles of Organization or Bylaws. 21-29,110 to 21-29,116.
- Part 15 - Conversion, Merger, and Consolidation. 21-29,117 to 21-29,128.
- Part 16 - Disposition of Assets. 21-29,129 to 21-29,131.
- Part 17 - Miscellaneous Provisions. 21-29,132 to 21-29,134.

Cross References

Constitutional provisions:

Bonus, Legislature cannot grant, see Article III, section 18, Constitution of Nebraska.
Credit of state, never given or loaned to, see Article XIII, section 3, Constitution of Nebraska.
Donation of state lands prohibited, see Article III, section 21, Constitution of Nebraska.
Franchises, granting to, prohibited, see Article III, section 18, Constitution of Nebraska.
Organization and control, by general law, see Article XII, section 1, Constitution of Nebraska.

Property and franchises, subject to be taken for public use, see Article X, section 6, Constitution of Nebraska.
Railroads, aid to, prohibited, see Article III, section 21, Constitution of Nebraska.
Subscription to stock by governmental subdivision prohibited, see Article XI, section 1, Constitution of Nebraska.
Actions against, venue, see section 25-403.02.
Aliens as board members, see section 76-406 et seq.
Banks, see Chapter 8.
Building and loan associations, see Chapter 8, article 3.
Drainage district corporations, filing articles, see section 31-305.
Electric Cooperative Corporation Act, see section 70-701.
Indictment and information against corporations, see section 29-1608.
Insurance, see Chapter 44.
Irrigation companies, see Chapter 46.
Public power and irrigation districts, see Chapter 70.
Securities Act of Nebraska, see section 8-1123.
Taxation, see Chapter 77.
Telegraph companies, file articles and statements, see section 86-602.
Trust companies, see Chapter 8, article 2.

ARTICLE 1

NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT

(a) GENERAL PROVISIONS

Section

(b) FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

(c) RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

(d) RELATION OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

(a) GENERAL PROVISIONS

21-101 Act, how cited.

(ULLCA 101) Sections 21-101 to 21-197 shall be known and may be cited as the Nebraska Uniform Limited Liability Company Act.

Source: Laws 2010, LB888, § 1.

21-102 Terms, defined.

(ULLCA 102) In the Nebraska Uniform Limited Liability Company Act:

(1) Certificate of organization means the certificate required by section 21-117. The term includes the certificate as amended or restated.

(2) Certificate of registration means either a document prepared and issued by a regulatory body or the electronic accessing of the regulatory body's licensing records by the Secretary of State.

(3) Contribution means any benefit provided by a person to a limited liability company:

(A) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(B) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(C) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(4) Debtor in bankruptcy means a person that is the subject of:

(A) an order for relief under Title 11 of the United States Code or a successor statute of general application; or

(B) a comparable order under federal, state, or foreign law governing insolvency.

(5) Designated office means:

(A) the office that a limited liability company is required to designate and maintain under section 21-113; or

(B) the principal office of a foreign limited liability company.

(6) Distribution, except as otherwise provided in subsection (g) of section 21-134, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(7) Effective, with respect to a record required or permitted to be delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act, means effective under subsection (c) of section 21-121.

(8) Foreign limited liability company means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(9) Limited liability company, except in the phrase foreign limited liability company, means an entity formed under the Nebraska Uniform Limited Liability Company Act.

(10) Manager means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in subsection (c) of section 21-136.

(11) Manager-managed limited liability company means a limited liability company that qualifies under subsection (a) of section 21-136.

(12) Member means a person that has become a member of a limited liability company under section 21-130 and has not dissociated under section 21-145.

(13) Member-managed limited liability company means a limited liability company that is not a manager-managed limited liability company.

(14) Operating agreement means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member. The term includes the agreement as amended or restated.

(15) Organizer means a person that acts under section 21-117 to form a limited liability company.

(16) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(17) Principal office means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(18) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant,

dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession.

(19) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) Regulatory body means a board, commission, court, or governmental authority which is charged with licensing or regulating the rendering of a professional service in this state.

(21) Sign means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(22) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(23) Transfer includes an assignment, conveyance, deed, bill of sale, lease, mortgage, trust deed, security interest, encumbrance, gift, and transfer by operation of law.

(24) Transferable interest means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

(25) Transferee means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

Source: Laws 2010, LB888, § 2.

21-103 Knowledge; notice.

(ULLCA 103) (a) A person knows a fact when the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under subdivision (d)(1) of this section or law other than the Nebraska Uniform Limited Liability Company Act.

(b) A person has notice of a fact when the person:

(1) has reason to know the fact from all of the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under subdivision (d)(2) of this section.

(c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person that is not a member is deemed:

(1) to know of a limitation on authority to transfer real property as provided in subsection (g) of section 21-127; and

(2) to have notice of a limited liability company's:

(A) dissolution, ninety days after a statement of dissolution under subdivision (b)(1)(B) of section 21-148 becomes effective;

(B) termination, ninety days after a statement of termination under subdivision (b)(2)(E) of section 21-148 becomes effective; and

(C) merger, conversion, or domestication, ninety days after articles of merger, conversion, or domestication under sections 21-170 to 21-184 become effective.

Source: Laws 2010, LB888, § 3.

21-104 Nature, purpose and duration of limited liability company; classification for tax purposes.

(ULLCA 104) (a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose.

(c) A limited liability company has perpetual duration.

(d) A limited liability company shall be classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.

Source: Laws 2010, LB888, § 4.

21-105 Powers.

(ULLCA 105) A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities, including the power to render a professional service within or without this state.

Source: Laws 2010, LB888, § 5.

21-106 Governing law.

(ULLCA 106) The law of this state governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

Source: Laws 2010, LB888, § 6.

21-107 Supplemental principles of law.

(ULLCA 107) Unless displaced by particular provisions of the Nebraska Uniform Limited Liability Company Act, the principles of law and equity supplement the act.

Source: Laws 2010, LB888, § 7.

21-108 Name.

(ULLCA 108) (a) The name of a limited liability company must contain the words limited liability company or limited company or the abbreviation L.L.C., LLC, L.C., or LC. Limited may be abbreviated as Ltd., and company may be abbreviated as Co.

(b) Unless authorized by subsection (c) of this section, the name of a limited liability company must not be the same as or deceptively similar to, in the records of the Secretary of State:

(1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state; and

(2) each name reserved under section 21-109 or other state laws allowing the reservation or registration of business names, including fictitious or assumed name statutes.

(c) A limited liability company may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of the Secretary of State, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if, as to each noncomplying name:

(1) the present user, registrant, or owner of the noncomplying name consents in a signed record to the use; or

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court establishing the applicant's right to use in this state the name applied for.

(d) Subject to section 21-159, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

Source: Laws 2010, LB888, § 8.

21-109 Reservation of name.

(ULLCA 109) (a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the Secretary of State for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a one-hundred-twenty-day period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Secretary of State for filing a signed notice of the transfer which states the name and address of the transferee.

Source: Laws 2010, LB888, § 9.

21-110 Operating agreement; scope, function, and limitations.

(ULLCA 110) (a) To the extent the operating agreement does not otherwise provide for a matter, the Nebraska Uniform Limited Liability Company Act governs the matter.

(b) An operating agreement may not:

(1) vary a limited liability company's capacity under section 21-105 to sue and be sued in its own name;

(2) vary the law applicable under section 21-106;

(3) vary the power of the court under section 21-120;

(4) subject to subsections (c) through (f) of this section, eliminate the duty of loyalty or the duty of care;

(5) subject to subsections (c) through (f) of this section, eliminate the contractual obligation of good faith and fair dealing under subsection (d) of section 21-138;

(6) unreasonably restrict the duties and rights stated in section 21-139;

(7) vary the power of a court to decree dissolution in the circumstances specified in subdivisions (a)(4) and (5) of section 21-147;

(8) vary the requirement to wind up a limited liability company's business as specified in subsection (a) and subdivision (b)(1)(A) of section 21-148;

(9) unreasonably restrict the right of a member to maintain an action under sections 21-164 to 21-169;

(10) except as otherwise provided in section 21-183, restrict the right to approve a merger, conversion, or domestication of a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

(11) except as otherwise provided in subsection (b) of section 21-112, restrict the rights under the act of a person other than a member or manager.

(c) If not manifestly unreasonable, the operating agreement may:

(1) restrict or eliminate the duty:

(A) as required in subdivision (b)(1) and subsection (g) of section 21-138, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(B) as required in subdivision (b)(2) and subsection (g) of section 21-138, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(C) as required by subdivision (b)(3) and subsection (g) of section 21-138, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(2) identify specific types or categories of activities that do not violate the duty of loyalty;

(3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and

(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under subsection (d) of section 21-138.

(d) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(e) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under the Nebraska Uniform Limited Liability Company Act and imposes the responsibility on one or more other members,

the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(f) The operating agreement may alter or eliminate the indemnification for a member or manager provided by subsection (a) of section 21-137 and may eliminate or limit a member's or manager's liability to the limited liability company and members for money damages, except for:

(1) breach of the duty of loyalty;

(2) a financial benefit received by the member or manager to which the member or manager is not entitled;

(3) a breach of a duty under section 21-135;

(4) intentional infliction of harm on the company or a member; or

(5) an intentional violation of criminal law.

(g) The court shall decide any claim under subsection (c) of this section that a term of an operating agreement is manifestly unreasonable. The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

(A) the objective of the term is unreasonable; or

(B) the term is an unreasonable means to achieve the provision's objective.

Source: Laws 2010, LB888, § 10.

21-111 Operating agreement; effect on limited liability company and persons becoming members; preformation agreement.

(ULLCA 111) (a) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(b) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(c) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

Source: Laws 2010, LB888, § 11.

21-112 Operating agreement; effect on third parties and relationship to records effective on behalf of limited liability company.

(ULLCA 112) (a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by

the operating agreement. Subject only to any court order issued under subdivision (b)(2) of section 21-142 to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(c) If a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under the Nebraska Uniform Limited Liability Company Act contains a provision that would be ineffective under subsection (b) of section 21-110 if contained in the operating agreement, the provision is likewise ineffective in the record.

(d) Subject to subsection (c) of this section, if a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under the act conflicts with a provision of the operating agreement:

(1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and

(2) the record prevails as to other persons to the extent they reasonably rely on the record.

Source: Laws 2010, LB888, § 12.

21-113 Office and agent for service of process.

(ULLCA 113) (a) A limited liability company shall designate and continuously maintain in this state:

(1) an office, which need not be a place of its activity in this state; and

(2) an agent for service of process.

(b) A foreign limited liability company that has a certificate of authority under section 21-156 shall designate and continuously maintain in this state an agent for service of process.

(c) An agent for service of process of a limited liability company or foreign limited liability company must be an individual who is a resident of this state or other person with authority to transact business in this state.

Source: Laws 2010, LB888, § 13.

21-114 Change of designated office or agent for service of process.

(ULLCA 114) (a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Secretary of State for filing a statement of change containing:

(1) the name of the company;

(2) the street and mailing addresses of its current designated office;

(3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;

(4) the name and street and mailing addresses and post office box number, if any, of its current agent for service of process; and

(5) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to subsection (c) of section 21-121, a statement of change is effective when filed by the Secretary of State.

Source: Laws 2010, LB888, § 14.

21-115 Resignation of agent for service of process.

(ULLCA 115) (a) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent must deliver to the Secretary of State for filing a statement of resignation containing the company name and stating that the agent is resigning.

(b) The Secretary of State shall file a statement of resignation delivered under subsection (a) of this section and mail or otherwise provide or deliver a copy to the designated office of the limited liability company or foreign limited liability company and another copy to the principal office of the company if the mailing addresses of the principal office appears in the records of the Secretary of State and is different from the mailing address of the designated office.

(c) An agency for service of process terminates on the earlier of:

(1) the thirty-first day after the Secretary of State files the statement of resignation; or

(2) when a record designating a new agent for service of process is delivered to the Secretary of State for filing on behalf of the limited liability company and becomes effective.

Source: Laws 2010, LB888, § 15.

21-116 Service of process.

(ULLCA 116) (a) An agent for service of process appointed by a limited liability company or foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served on the company.

(b) If a limited liability company or foreign limited liability company does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's street address, service of any process, notice, or demand on the limited liability company or foreign limited liability company may be made by registered or certified mail, return receipt requested, to the company at its designated office.

(c) Service is effected under subsection (b) of this section at the earliest of:

(1) the date the limited liability company or foreign limited liability company receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the company; or

(3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.

(d) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

Source: Laws 2010, LB888, § 16.

(b) FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

21-117 Formation; certificate of organization and other filings.

(ULLCA 201) (a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the Secretary of State for filing a certificate of organization and, if applicable, a current certificate of registration as provided in sections 21-185 to 21-189.

(b) A certificate of organization must state:

(1) the name of the limited liability company, which must comply with section 21-108;

(2) the street and mailing addresses of the initial designated office and the name and street and mailing addresses and post office box number, if any, of the initial agent for service of process of the company; and

(3) if the company is organized to render a professional service, the professional service its members, managers, professional employees, and agents are licensed or otherwise legally authorized to render in this state.

(c) Subject to subsection (c) of section 21-112, a certificate of organization may also contain statements as to matters other than those required by subsection (b) of this section. However, a statement in a certificate of organization is not effective as a statement of authority.

(d) The following rules apply to the filing of a certificate of organization:

(1) A limited liability company is formed when the Secretary of State has filed the certificate of organization and a certificate of registration, if applicable, and the company has at least one member, unless the certificate states a delayed effective date pursuant to subsection (c) of section 21-121.

(2) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the Secretary of State for filing and the Secretary of State files the certificate.

(3) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the Secretary of State is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

Source: Laws 2010, LB888, § 17.

21-118 Amendment or restatement of certificate of organization.

(ULLCA 202) (a) A certificate of organization may be amended or restated at any time.

(b) To amend its certificate of organization, a limited liability company must deliver to the Secretary of State for filing an amendment stating:

(1) the name of the company;

(2) the date of filing of its certificate of organization; and

(3) the changes the amendment makes to the certificate as most recently amended or restated.

(c) To restate its certificate of organization, a limited liability company must deliver to the Secretary of State for filing a restatement, designated as such in its heading, stating:

(1) in the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization;

(2) if the company's name has been changed at any time since the company's formation, each of the company's former names; and

(3) the changes the restatement makes to the certificate as most recently amended or restated.

(d) Subject to subsection (c) of section 21-112 and subsection (c) of section 21-121, an amendment to or restatement of a certificate of organization is effective when filed by the Secretary of State.

(e) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the Secretary of State for filing a statement of change under section 21-114 or a statement of correction under section 21-122.

Source: Laws 2010, LB888, § 18.

21-119 Signing of records to be delivered for filing to Secretary of State.

(ULLCA 203) (a) A record delivered to the Secretary of State for filing pursuant to the Nebraska Uniform Limited Liability Company Act must be signed as follows:

(1) Except as otherwise provided in subdivisions (2) and (3) of this subsection, a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

(2) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(3) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under subsection (c) of section 21-148 or a person appointed under subsection (d) of such section to wind up those activities.

(4) A statement of cancellation under subdivision (d)(2) of section 21-117 must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

(5) A statement of denial by a person under section 21-128 must be signed by that person.

(6) Any other record must be signed by the person on whose behalf the record is delivered to the Secretary of State.

(b) Any record filed under the act may be signed by an agent.

Source: Laws 2010, LB888, § 19.

21-120 Signing and filing pursuant to judicial order.

(ULLCA 204) (a) If a person required by the Nebraska Uniform Limited Liability Company Act to sign a record or deliver a record to the Secretary of

State for filing under the act does not do so, any other person that is aggrieved may petition the district court to order:

(1) the person to sign the record;

(2) the person to deliver the record to the Secretary of State for filing; or

(3) the Secretary of State to file the record unsigned.

(b) If a petitioner under subsection (a) of this section is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

Source: Laws 2010, LB888, § 20.

21-121 Delivery to and filing of records by Secretary of State; effective time and date.

(ULLCA 205) (a) A record authorized or required to be delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act must be captioned to describe the record's purpose, be in a medium permitted by the Secretary of State, and be delivered to the Secretary of State. If the filing fees have been paid, unless the Secretary of State determines that a record does not comply with the filing requirements of the act, the Secretary of State shall file the record and:

(1) for a statement of denial under section 21-128, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(2) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(b) Upon request and payment of the requisite fee, the Secretary of State shall send to the requester a certified copy of a requested record.

(c) Except as otherwise provided in sections 21-115 and 21-122, a record delivered to the Secretary of State for filing under the act may specify an effective time and a delayed effective date. Subject to section 21-115, subdivision (d)(1) of section 21-117, and section 21-122, a record filed by the Secretary of State is effective:

(1) if the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the Secretary of State's endorsement of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) the specified date; or

(B) the ninetieth day after the record is filed; or

(4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(A) the specified date; or

(B) the ninetieth day after the record is filed.

Source: Laws 2010, LB888, § 21.

21-122 Correcting filed record.

(ULLCA 206) (a) A limited liability company or foreign limited liability company may deliver to the Secretary of State for filing a statement of correction to correct a record previously delivered by the company to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained inaccurate information or was defectively signed.

(b) A statement of correction under subsection (a) of this section may not state a delayed effective date and must:

(1) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(2) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(3) correct the defective signature or inaccurate information.

(c) When filed by the Secretary of State, a statement of correction under subsection (a) of this section is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(1) for the purposes of subsection (d) of section 21-103; and

(2) as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

Source: Laws 2010, LB888, § 22.

21-123 Liability for inaccurate information in filed record.

(ULLCA 207) (a) If a record delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act and filed by the Secretary of State contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) subject to subsection (b) of this section, a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(A) the record was delivered for filing on behalf of the company; and

(B) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(i) effected an amendment under section 21-118;

(ii) filed a petition under section 21-120; or

(iii) delivered to the Secretary of State for filing a statement of change under section 21-114 or a statement of correction under section 21-122.

(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the Secretary of State for filing under the act and imposes that responsibility on one or more other members, the liability stated in subdivision (a)(2) of this section applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(c) An individual who signs a record authorized or required to be filed under the act affirms under penalty of perjury that the information stated in the record is accurate.

Source: Laws 2010, LB888, § 23.

21-124 Certificate of existence or authorization.

(ULLCA 208) (a) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the Secretary of State show that the company has been formed under section 21-117 and the Secretary of State has not filed a statement of termination pertaining to the company. A certificate of existence must state:

(1) the company's name;

(2) that the company was duly formed under the laws of this state and the date of formation;

(3) whether all fees, taxes, and penalties due under the Nebraska Uniform Limited Liability Company Act or other law to the Secretary of State have been paid;

(4) whether the company's most recent biennial report required by section 21-125 has been filed by the Secretary of State;

(5) whether the Secretary of State has administratively dissolved the company;

(6) whether the company has delivered to the Secretary of State for filing a statement of dissolution;

(7) that a statement of termination has not been filed by the Secretary of State; and

(8) other facts of record in the office of the Secretary of State which are specified by the person requesting the certificate.

(b) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

(1) the company's name and any alternate name adopted under subsection (a) of section 21-159 for use in this state;

(2) that the company is authorized to transact business in this state;

(3) whether all fees, taxes, and penalties due under the act or other law to the Secretary of State have been paid;

(4) whether the company's most recent biennial report required by section 21-125 has been filed by the Secretary of State;

(5) that the Secretary of State has not revoked the company's certificate of authority and has not filed a notice of cancellation; and

(6) other facts of record in the office of the Secretary of State which are specified by the person requesting the certificate.

(c) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the Secretary of State is

conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

Source: Laws 2010, LB888, § 24.

21-125 Biennial report.

(ULLCA 209) (a) Each odd-numbered year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

(1) the name of the company;

(2) the street and mailing addresses of the company's designated office and the name and street and mailing addresses and post office box number, if any, of its agent for service of process in this state;

(3) the street and mailing addresses of its principal office; and

(4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under subsection (a) of section 21-159.

(b) Information in a biennial report under this section must be current as of the date the report is delivered to the Secretary of State for filing.

(c) The first biennial report under this section must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A report must be delivered to the Secretary of State between January 1 and April 1 of each subsequent odd-numbered calendar year.

(d) If a biennial report under this section does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

Source: Laws 2010, LB888, § 25.

(c) RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

21-126 No agency power of member as member.

(ULLCA 301) (a) A member is not an agent of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than the Nebraska Uniform Limited Liability Company Act from imposing liability on a limited liability company because of the person's conduct.

Source: Laws 2010, LB888, § 26.

21-127 Statement of authority.

(ULLCA 302) (a) A limited liability company may deliver to the Secretary of State for filing a statement of authority. The statement:

(1) must include the name of the company and the street and mailing addresses of its designated office;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) To amend or cancel a statement of authority filed by the Secretary of State under subsection (a) of section 21-121, a limited liability company must deliver to the Secretary of State for filing an amendment or cancellation stating:

(1) the name of the company;

(2) the street and mailing addresses of the company's designated office;

(3) the caption of the statement being amended or canceled and the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement being affected is canceled.

(c) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(d) Subject to subsection (c) of this section and subsection (d) of section 21-103 and except as otherwise provided in subsections (f), (g), and (h) of this section, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(e) Subject to subsection (c) of this section, a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under subsection (b) of this section; or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c) of this section, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the statement has been canceled or restrictively amended under subsection (b) of this section and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

(g) Subject to subsection (c) of this section, if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(h) Subject to subsection (i) of this section, an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (f) of this section and is a limitation on authority for the purposes of subsection (g) of this section.

(i) After a statement of dissolution becomes effective, a limited liability company may deliver to the Secretary of State for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g) of this section.

(j) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g) of this section.

(k) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subdivision (f)(1) of this section.

Source: Laws 2010, LB888, § 27.

21-128 Statement of denial.

(ULLCA 303) A person named in a filed statement of authority granting that person authority may deliver to the Secretary of State for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

Source: Laws 2010, LB888, § 28.

21-129 Liability of members and managers.

(ULLCA 304) (a) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, or other liabilities of the company; and

(2) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(b) The mere failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities

is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

(c) Any member, manager, or employee of a limited liability company with the duty to collect, account for, or pay over any taxes imposed upon a limited liability company or with the authority to decide whether the limited liability company will pay taxes imposed upon a limited liability company shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a limited liability company perform such act. Such taxes shall be collected in the same manner as provided under section 77-1783.01.

Source: Laws 2010, LB888, § 29.

(d) RELATION OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

21-130 Becoming member.

(ULLCA 401) (a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) After formation of a limited liability company, a person becomes a member:

(1) as provided in the operating agreement;

(2) as the result of a transaction effective under sections 21-170 to 21-184;

(3) with the consent of all the members; or

(4) if, within ninety consecutive days after the company ceases to have any members:

(A) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and

(B) the designated person consents to become a member.

(d) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

Source: Laws 2010, LB888, § 30.

21-131 Form of contribution.

(ULLCA 402) A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

Source: Laws 2010, LB888, § 31.

21-132 Liability for contributions.

(ULLCA 403) (a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

(b) A creditor of a limited liability company which extends credit or otherwise acts in actual reliance on an obligation described in subsection (a) of this section may enforce the obligation.

Source: Laws 2010, LB888, § 32.

21-133 Sharing of and right to distributions before dissolution.

(ULLCA 404) (a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 21-141 and any charging order in effect under section 21-142.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in subsection (c) of section 21-154, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

Source: Laws 2010, LB888, § 33.

21-134 Limitations on distribution.

(ULLCA 405) (a) A limited liability company may not make a distribution if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (f) of this section, the effect of a distribution under subsection (a) of this section is measured:

(1) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

(2) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

(B) the payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

(d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.

(e) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (a) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In subsection (a) of this section, distribution does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

Source: Laws 2010, LB888, § 34.

21-135 Liability for improper distributions.

(ULLCA 406) (a) Except as otherwise provided in subsection (b) of this section, if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of section 21-134 and in consenting to the distribution fails to comply with section 21-138, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 21-134.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) of this section applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of section 21-134 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 21-134.

(d) A person against which an action is commenced because the person is liable under subsection (a) of this section may:

(1) implead any other person that is subject to liability under subsection (a) of this section and seek to compel contribution from the person; and

(2) implead any person that received a distribution in violation of subsection (c) of this section and seek to compel contribution from the person in the amount the person received in violation of subsection (c) of this section.

(e) An action under this section is barred if not commenced within two years after the distribution.

Source: Laws 2010, LB888, § 35.

21-136 Management of limited liability company.

(ULLCA 407) (a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(A) the company is or will be manager-managed;

(B) the company is or will be managed by managers; or

(C) management of the company is or will be vested in managers; or

(2) includes words of similar import.

(b) In a member-managed limited liability company, the following rules apply:

(1) The management and conduct of the company are vested in the members.

(2) Each member has equal rights in the management and conduct of the company's activities.

(3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.

(4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

(5) The operating agreement may be amended only with the consent of all members.

(c) In a manager-managed limited liability company, the following rules apply:

(1) Except as otherwise expressly provided in the Nebraska Uniform Limited Liability Company Act, any matter relating to the activities of the company is decided exclusively by the managers.

(2) Each manager has equal rights in the management and conduct of the activities of the company.

(3) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.

(4) The consent of all members is required to:

(A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the goodwill, outside the ordinary course of the company's activities;

(B) approve a merger, conversion, or domestication under sections 21-170 to 21-184;

(C) undertake any other act outside the ordinary course of the company's activities; and

(D) amend the operating agreement.

(5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(7) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the consent of members under the Nebraska Uniform Limited Liability Company Act may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) The Nebraska Uniform Limited Liability Company Act does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

Source: Laws 2010, LB888, § 36.

21-137 Indemnification and insurance.

(ULLCA 408) (a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in sections 21-134 and 21-138.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under subsection (f) of section 21-110, the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

Source: Laws 2010, LB888, § 37.

21-138 Standards of conduct for members and managers.

(ULLCA 409) (a) A member of a member-managed limited liability company owes to the company and, subject to subsection (b) of section 21-164, the other members the fiduciary duties of loyalty and care stated in subsections (b) and (c) of this section.

(b) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:

(A) in the conduct or winding up of the company's activities;

(B) from a use by the member of the company's property; or

(C) from the appropriation of a limited liability company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

(c) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

(d) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under the Nebraska Uniform Limited Liability Company Act or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) It is a defense to a claim under subdivision (b)(2) of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(f) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) In a manager-managed limited liability company, the following rules apply:

(1) Subsections (a), (b), (c), and (e) of this section apply to the manager or managers and not the members.

(2) The duty stated under subdivision (b)(3) of this section continues until winding up is completed.

(3) Subsection (d) of this section applies to the members and managers.

(4) Subsection (f) of this section applies only to the members.

(5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

Source: Laws 2010, LB888, § 38.

21-139 Right of members, managers, and dissociated members to information.

(ULLCA 410) (a) In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or the Nebraska Uniform Limited Liability Company Act.

(2) The company shall furnish to each member:

(A) without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or the act, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(B) on demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(3) The duty to furnish information under subdivision (a)(2) of this section also applies to each member to the extent the member knows any of the information described in such subdivision.

(b) In a manager-managed limited liability company, the following rules apply:

(1) The informational rights stated in subsection (a) of this section and the duty stated in subdivision (a)(3) of this section apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:

(A) the member seeks the information for a purpose material to the member's interest as a member;

(B) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) the information sought is directly connected to the member's purpose.

(3) Within ten days after receiving a demand pursuant to subdivision (b)(2)(B) of this section, the company shall in a record inform the member that made the demand:

(A) of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(B) if the company declines to provide any demanded information, the company's reasons for declining.

(c) On ten days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by

subdivision (b)(2) of this section. The company shall respond to a demand made pursuant to this subsection in the manner provided in subdivision (b)(3) of this section.

(d) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (g) of this section applies both to the agent or legal representative and the member or dissociated member.

(f) The rights under this section do not extend to a person as transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

Source: Laws 2010, LB888, § 39.

(e) TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

21-140 Nature of transferable interest.

(ULLCA 501) A transferable interest is personal property.

Source: Laws 2010, LB888, § 40.

21-141 Transfer of transferable interest.

(ULLCA 502) (a) A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(3) subject to section 21-143, does not entitle the transferee to:

(A) participate in the management or conduct of the company's activities; or

(B) except as otherwise provided in subsection (c) of this section, have access to records or other information concerning the company's activities.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in subdivision (4)(B) of section 21-145, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under section 21-132 and subsection (c) of section 21-135 known to the transferee when the transferee becomes a member.

Source: Laws 2010, LB888, § 41.

21-142 Charging order.

(ULLCA 503) (a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a) of this section, the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to section 21-141.

(d) At any time before completion of the foreclosure sale under subsection (c) of this section, the member or transferee whose transferable interest is subject to a charging order under subsection (a) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before completion of the foreclosure sale under subsection (c) of this section, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) The Nebraska Uniform Limited Liability Company Act does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(g) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Source: Laws 2010, LB888, § 42.

21-143 Power of personal representative of deceased member.

(ULLCA 504) If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in subsection (c) of section 21-141 and, for the purposes of settling the estate, the rights of a current member under section 21-139.

Source: Laws 2010, LB888, § 43.

(f) MEMBER'S DISSOCIATION

21-144 Member's power to dissociate; wrongful dissociation.

(ULLCA 601) (a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under subdivision (1) of section 21-145.

(b) A person's dissociation from a limited liability company is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement; or

(2) occurs before the termination of the company and:

(A) the person withdraws as a member by express will;

(B) the person is expelled as a member by judicial order under subdivision (5) of section 21-145;

(C) the person is dissociated under subdivision (7)(A) of section 21-145 by becoming a debtor in bankruptcy; or

(D) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 21-164, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

Source: Laws 2010, LB888, § 44.

21-145 Events causing dissociation.

(ULLCA 602) A person is dissociated as a member from a limited liability company when:

(1) the company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person is expelled as a member pursuant to the operating agreement;

(4) the person is expelled as a member by the unanimous consent of the other members if:

(A) it is unlawful to carry on the company's activities with the person as a member;

(B) there has been a transfer of all of the person's transferable interest in the company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under section 21-142 which has not been foreclosed;

(C) the person is a corporation and, within ninety days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the company, the person is expelled as a member by judicial order because the person:

(A) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;

(B) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 21-138; or

(C) has engaged in, or is engaging in, conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;

(6) in the case of a person who is an individual:

(A) the person dies; or

(B) in a member-managed limited liability company:

(i) a guardian or general conservator for the person is appointed; or

(ii) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under the Nebraska Uniform Limited Liability Company Act or the operating agreement;

(7) in a member-managed limited liability company, the person:

(A) becomes a debtor in bankruptcy;

(B) executes an assignment for the benefit of creditors; or

(C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

(9) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;

(10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

(11) the company participates in a merger under sections 21-170 to 21-184, if:

(A) the company is not the surviving entity; or

(B) otherwise as a result of the merger, the person ceases to be a member;

(12) the company participates in a conversion under sections 21-170 to 21-184;

(13) the company participates in a domestication under sections 21-170 to 21-184, if, as a result of the domestication, the person ceases to be a member; or

(14) the company terminates.

Source: Laws 2010, LB888, § 45.

21-146 Effect of person's dissociation as member.

(ULLCA 603) (a) When a person is dissociated as a member of a limited liability company:

(1) the person's right to participate as a member in the management and conduct of the company's activities terminates;

(2) if the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to section 21-143 and sections 21-170 to 21-184, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

(b) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member.

Source: Laws 2010, LB888, § 46.

(g) DISSOLUTION AND WINDING UP

21-147 Events causing dissolution.

(ULLCA 701) (a) A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) the passage of ninety consecutive days during which the company has no members;

(4) on application by a member, the entry by the district court of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all of the company's activities is unlawful; or

(B) it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or

(5) on application by a member, the entry by the district court of an order dissolving the company on the grounds that the managers or those members in control of the company:

(A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(b) In a proceeding brought under subdivision (a)(5) of this section, the court may order a remedy other than dissolution.

Source: Laws 2010, LB888, § 47.

21-148 Winding up.

(ULLCA 702) (a) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

(b) In winding up its activities, a limited liability company:

(1) shall:

(A) discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and

(B) deliver to the Secretary of State for filing a statement of dissolution stating the name of the company and that the company is dissolved; and

(2) may:

(A) preserve the company activities and property as a going concern for a reasonable time;

(B) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(C) transfer the company's property;

(D) settle disputes by mediation or arbitration;

(E) deliver to the Secretary of State for filing a statement of termination stating the name of the company and that the company is terminated; and

(F) perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under subsection (c) of section 21-136 and is deemed to be a manager for the purposes of subdivision (a)(2) of section 21-129.

(d) If the legal representative under subsection (c) of this section declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under subsection (c) of section 21-136 and is deemed to be a manager for the purposes of subdivision (a)(2) of section 21-129; and

(2) shall promptly deliver to the Secretary of State for filing an amendment to the company's certificate of organization to:

(A) state that the company has no members;

(B) state that the person has been appointed pursuant to this subsection to wind up the company; and

(C) provide the street and mailing addresses of the person.

(e) The district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:

(1) on application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(A) the company does not have any members;

(B) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(C) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (d) of this section; or

(3) in connection with a proceeding under subdivision (a)(4) or (5) of section 21-147.

Source: Laws 2010, LB888, § 48.

21-149 Known claims against dissolved limited liability company.

(ULLCA 703) (a) Except as otherwise provided in subsection (d) of this section, a dissolved limited liability company may give notice of a known claim under subsection (b) of this section, which has the effect as provided in subsection (c) of this section.

(b) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) of this section are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the company:

(A) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within ninety days after the claimant receives the notice; and

(B) the claimant does not commence the required action within the ninety days.

(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Source: Laws 2010, LB888, § 49.

21-150 Other claims against dissolved limited liability company.

(ULLCA 704) (a) A dissolved limited liability company shall publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice required by subsection (a) of this section must:

(1) be published three successive weeks in some legal newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the county in which the company's designated office is or was last located;

(2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced within five years after the publication date of the third required notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b) of this section, unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the third required notice, the claim of each of the following claimants is barred:

(1) a claimant that did not receive notice in a record under section 21-149;

(2) a claimant whose claim was timely sent to the company but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subdivision does not exceed the total amount of assets distributed to the person after dissolution.

Source: Laws 2010, LB888, § 50.

21-151 Administrative dissolution.

(ULLCA 705) (a) The Secretary of State may dissolve a limited liability company administratively if the company does not:

(1) pay, within sixty days after the due date, any fee, tax, or penalty due to the Secretary of State under the Nebraska Uniform Limited Liability Company Act or law other than the act; or

(2) deliver, within sixty days after the due date, its biennial report to the Secretary of State.

(b) If the Secretary of State determines that a ground exists for administratively dissolving a limited liability company, the Secretary of State shall file a record of the determination and serve the company with a copy of the filed record.

(c) If within sixty days after service of the copy pursuant to subsection (b) of this section a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist, the Secretary of State shall dissolve the company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The Secretary of State shall serve the company with a copy of the filed declaration.

(d) A limited liability company that has been administratively dissolved continues in existence but, subject to section 21-152, may carry on only activities necessary to wind up its activities and liquidate its assets under sections 21-148 and 21-154 and to notify claimants under sections 21-149 and 21-150.

(e) The administrative dissolution of a limited liability company does not terminate the authority of its agent for service of process.

Source: Laws 2010, LB888, § 51.

21-152 Reinstatement following administrative dissolution.

(ULLCA 706) (a) A limited liability company that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its dissolution. The application must be delivered to the Secretary of State for filing and state:

(1) the name of the company and the effective date of its dissolution;

(2) that the grounds for dissolution did not exist or have been eliminated; and

(3) that the company's name satisfies the requirements of section 21-108.

(b) If the Secretary of State determines that an application under subsection (a) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Source: Laws 2010, LB888, § 52; Laws 2012, LB854, § 1.
Operative date January 1, 2013.

21-153 Appeal from rejection of reinstatement.

(ULLCA 707) (a) If the Secretary of State rejects a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall prepare, sign, and file a notice that explains the reason for rejection and serve the company with a copy of the notice.

(b) Within thirty days after service of a notice of rejection of reinstatement under subsection (a) of this section, a limited liability company may appeal from the rejection by petitioning the district court of Lancaster County to set aside the dissolution. The petition must be served on the Secretary of State and contain a copy of the Secretary of State's declaration of dissolution, the company's application for reinstatement, and the Secretary of State's notice of rejection.

(c) The court may order the Secretary of State to reinstate a dissolved limited liability company or take other action the court considers appropriate.

Source: Laws 2010, LB888, § 53.

21-154 Distribution of assets in winding up limited liability company's activities.

(ULLCA 708) (a) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a) of this section, any surplus must be distributed in the manner set forth in the operating agreement or, if not so set forth, in the following order, subject, in any case, to any charging order in effect under section 21-142:

(1) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 21-141.

(c) If a limited liability company does not have sufficient surplus to comply with subdivision (b)(1) of this section, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(d) All distributions made under subsections (b) and (c) of this section must be paid in money.

Source: Laws 2010, LB888, § 54.

(h) FOREIGN LIMITED LIABILITY COMPANIES

21-155 Governing law.

(ULLCA 801) (a) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

(1) the internal affairs of the company; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the company.

(b) A foreign limited liability company may not transact business in this state until it qualifies with the Secretary of State as provided in sections 21-156 and 21-158. A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

Source: Laws 2010, LB888, § 55.

21-156 Application for certificate of authority.

(ULLCA 802) (a) A foreign limited liability company must apply for a certificate of authority to transact business in this state by delivering an application and, if applicable, a current certificate of registration as provided in

sections 21-185 to 21-189 and fees to the Secretary of State for filing. The application must state:

(1) the name of the company and, if the name does not comply with section 21-108, an alternate name adopted pursuant to subsection (a) of section 21-159;

(2) the name of the state or other jurisdiction under whose law the company is formed;

(3) the street and mailing addresses of the company's principal office and, if the law of the jurisdiction under which the company is formed requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(4) the name and street and mailing addresses and post office box number, if any, of the company's initial agent for service of process in this state.

(b) A foreign limited liability company shall deliver with a completed application under subsection (a) of this section a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the company's publicly filed records in the state or other jurisdiction under whose law the company is formed.

Source: Laws 2010, LB888, § 56.

21-157 Activities not constituting transacting business.

(ULLCA 803) (a) Activities of a foreign limited liability company which do not constitute transacting business in this state within the meaning of sections 21-155 to 21-163 include:

(1) maintaining, defending, or settling an action or proceeding;

(2) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the company's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(9) conducting an isolated transaction that is completed within thirty days and is not in the course of similar transactions; and

(10) transacting business in interstate commerce.

(b) For purposes of sections 21-155 to 21-163, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than the Nebraska Uniform Limited Liability Company Act.

Source: Laws 2010, LB888, § 57.

21-158 Filing of certificate of authority.

(ULLCA 804) Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of the Nebraska Uniform Limited Liability Company Act, the Secretary of State, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

Source: Laws 2010, LB888, § 58.

21-159 Noncomplying name of foreign limited liability company.

(ULLCA 805) (a) A foreign limited liability company whose name does not comply with section 21-108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 21-108. A foreign limited liability company that adopts an alternate name under this subsection and obtains a certificate of authority with the alternate name need not comply with any fictitious or assumed name statute. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the company is authorized under any fictitious or assumed name statute to transact business in this state under another name.

(b) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with section 21-108, it may not thereafter transact business in this state until it complies with subsection (a) of this section and obtains an amended certificate of authority.

Source: Laws 2010, LB888, § 59.

21-160 Revocation of certificate of authority.

(ULLCA 806) (a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the Secretary of State in the manner provided in subsections (b) and (c) of this section if the company does not:

(1) pay, within sixty days after the due date, any fee, tax, or penalty due to the Secretary of State under the Nebraska Uniform Limited Liability Company Act or law other than the act;

(2) deliver, within sixty days after the due date, its biennial report required under section 21-125;

(3) appoint and maintain an agent for service of process as required by subsection (b) of section 21-113; or

(4) deliver for filing a statement of a change under section 21-114 within thirty days after a change has occurred in the name or address of the agent.

(b) To revoke a certificate of authority of a foreign limited liability company, the Secretary of State must prepare, sign, and file a notice of revocation and send a copy to the company's agent for service of process in this state, or if the company does not appoint and maintain a proper agent in this state, to the company's designated office. The notice must state:

(1) the revocation's effective date, which must be at least sixty days after the date the Secretary of State sends the copy; and

(2) the grounds for revocation under subsection (a) of this section.

(c) The authority of a foreign limited liability company to transact business in this state ceases on the effective date of the notice of revocation unless before that date the company cures each ground for revocation stated in the notice filed under subsection (b) of this section. If the company cures each ground, the Secretary of State shall file a record so stating.

Source: Laws 2010, LB888, § 60.

21-161 Cancellation of certificate of authority.

(ULLCA 807) To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the Secretary of State for filing a notice of cancellation stating the name of the company and that the company desires to cancel its certificate of authority. The certificate is canceled when the notice becomes effective.

Source: Laws 2010, LB888, § 61.

21-162 Effect of failure to have certificate of authority.

(ULLCA 808) (a) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(b) The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in this state.

(c) A member or manager of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in this state without a certificate of authority.

Source: Laws 2010, LB888, § 62.

21-163 Action by Attorney General.

(ULLCA 809) The Attorney General may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of sections 21-155 to 21-163.

Source: Laws 2010, LB888, § 63.

(i) ACTIONS BY MEMBERS

21-164 Direct action by member.

(ULLCA 901) (a) Subject to subsection (b) of this section, a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the

member's interests, including rights and interests under the operating agreement or the Nebraska Uniform Limited Liability Company Act or arising independently of the membership relationship.

(b) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Source: Laws 2010, LB888, § 64.

21-165 Derivative action.

(ULLCA 902) A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or

(2) a demand under subdivision (1) of this section would be futile.

Source: Laws 2010, LB888, § 65.

21-166 Proper plaintiff.

(ULLCA 903) (a) Except as otherwise provided in subsection (b) of this section, a derivative action under section 21-165 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

(b) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

Source: Laws 2010, LB888, § 66.

21-167 Complaint.

(ULLCA 904) In a derivative action under section 21-165, the complaint must state with particularity:

(1) the date and content of the plaintiff's demand and the response to the demand by the managers or other members; or

(2) if a demand has not been made, the reasons a demand under subdivision (1) of section 21-165 would be futile.

Source: Laws 2010, LB888, § 67.

21-168 Special litigation committee.

(ULLCA 905) (a) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person's right to information under section 21-139 or, for good cause shown,

granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(A) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(B) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(2) in a manager-managed limited liability company:

(A) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(B) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

(3) be settled on terms approved by the committee; or

(4) be dismissed.

(e) After making a determination under subsection (d) of this section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to proceed under the direction of the plaintiff.

Source: Laws 2010, LB888, § 68.

21-169 Proceeds and expenses.

(ULLCA 906) (a) Except as otherwise provided in subsection (b) of this section:

(1) any proceeds or other benefits of a derivative action under section 21-165, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(b) If a derivative action under section 21-165 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reason-

able attorney's fees and costs, from the recovery of the limited liability company.

Source: Laws 2010, LB888, § 69.

(j) MERGER, CONVERSION, AND DOMESTICATION

21-170 Terms, defined.

(ULLCA 1001) In sections 21-170 to 21-184:

(1) Constituent limited liability company means a constituent organization that is a limited liability company.

(2) Constituent organization means an organization that is party to a merger.

(3) Converted organization means the organization into which a converting organization converts pursuant to sections 21-175 to 21-178.

(4) Converting limited liability company means a converting organization that is a limited liability company.

(5) Converting organization means an organization that converts into another organization pursuant to section 21-175.

(6) Domesticated company means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 21-179 to 21-182.

(7) Domesticating company means the company that effects a domestication pursuant to sections 21-179 to 21-182.

(8) Governing statute means the statute that governs an organization's internal affairs.

(9) Organization means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization.

(10) Organizational documents means:

(A) for a domestic or foreign general partnership, its partnership agreement;

(B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) for a business trust, its agreement of trust and declaration of trust;

(E) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(F) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(11) Personal liability means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(A) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(B) by the organization's organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(12) Surviving organization means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

Source: Laws 2010, LB888, § 70.

21-171 Merger.

(ULLCA 1002) (a) A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 21-172 to 21-174, and a plan of merger, if:

(1) the governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

(1) the name and form of each constituent organization;

(2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

Source: Laws 2010, LB888, § 71.

21-172 Action on plan of merger by constituent limited liability company.

(ULLCA 1003) (a) Subject to section 21-183, a plan of merger must be consented to by all the members of a constituent limited liability company.

(b) Subject to section 21-183 and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the Secretary of State for filing under section 21-173, a constituent limited liability company may amend the plan or abandon the merger:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

Source: Laws 2010, LB888, § 72.

21-173 Filings required for merger; effective date.

(ULLCA 1004) (a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) each constituent limited liability company, as provided in subsection (a) of section 21-119; and

(2) each other constituent organization, as provided in its governing statute.

(b) Articles of merger under this section must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) if it will be a limited liability company, the company's certificate of organization; or

(B) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute; and

(7) any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited liability company shall deliver the articles of merger for filing in the office of the Secretary of State.

(d) A merger becomes effective under sections 21-170 to 21-184:

(1) if the surviving organization is a limited liability company, upon the later of:

(A) compliance with subsection (c) of this section; or

(B) subject to subsection (c) of section 21-121, as specified in the articles of merger; or

(2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

Source: Laws 2010, LB888, § 73.

21-174 Effect of merger.

(ULLCA 1005) (a) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of sections 21-147 to 21-154;

(9) if the surviving organization is created by the merger:

(A) if it is a limited liability company, the certificate of organization becomes effective; or

(B) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability.

Source: Laws 2010, LB888, § 74.

21-175 Conversion.

(ULLCA 1006) (a) An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a foreign limited liability company pursuant to this section, sections 21-176 to 21-178, and a plan of conversion, if:

(1) the other organization's governing statute authorizes the conversion;

(2) the conversion is not prohibited by the law of the jurisdiction that enacted the other organization's governing statute; and

(3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

(1) the name and form of the organization before conversion;

(2) the name and form of the organization after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization that are, or are proposed to be, in a record.

Source: Laws 2010, LB888, § 75.

21-176 Action on plan of conversion by converting limited liability company.

(ULLCA 1007) (a) Subject to section 21-183, a plan of conversion must be consented to by all the members of a converting limited liability company.

(b) Subject to section 21-183 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the Secretary of State for filing under section 21-177, a converting limited liability company may amend the plan or abandon the conversion:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Source: Laws 2010, LB888, § 76.

21-177 Filings required for conversion; effective date.

(ULLCA 1008) (a) After a plan of conversion is approved:

(1) a converting limited liability company shall deliver to the Secretary of State for filing articles of conversion, which must be signed as provided in subsection (a) of section 21-119 and must include:

(A) a statement that the limited liability company has been converted into another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted organization;

(D) a statement that the conversion was approved as required by the Nebraska Uniform Limited Liability Company Act; and

(E) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(2) if the converting organization is not a converting limited liability company, the converting organization shall deliver to the Secretary of State for filing a certificate of organization, which must include, in addition to the information required by subsection (b) of section 21-117:

(A) a statement that the converted organization was converted from another organization;

(B) the name and form of that converting organization and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited liability company, when the certificate of organization takes effect; and

(2) if the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

Source: Laws 2010, LB888, § 77.

21-178 Effect of conversion.

(ULLCA 1009) (a) An organization that has been converted pursuant to sections 21-170 to 21-184 is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization;

(2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;

(3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) except as prohibited by law other than the Nebraska Uniform Limited Liability Company Act, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of sections 21-147 to 21-154.

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation, or other liability.

Source: Laws 2010, LB888, § 78.

21-179 Domestication.

(ULLCA 1010) (a) A foreign limited liability company may become a limited liability company pursuant to this section, sections 21-180 to 21-182, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(b) A limited liability company may become a foreign limited liability company pursuant to this section, sections 21-180 to 21-182, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(c) A plan of domestication must be in a record and must include:

(1) the name of the domesticating company before domestication and the jurisdiction of its governing statute;

(2) the name of the domesticated company after domestication and the jurisdiction of its governing statute;

(3) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and

(4) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

Source: Laws 2010, LB888, § 79.

21-180 Action on plan of domestication by domesticating limited liability company.

(ULLCA 1011) (a) A plan of domestication must be consented to:

(1) by all the members, subject to section 21-183, if the domesticating company is a limited liability company; and

(2) as provided in the domesticating company's governing statute, if the company is a foreign limited liability company.

(b) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the Secretary of State for filing under section 21-181, a domesticating limited liability company may amend the plan or abandon the domestication:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Source: Laws 2010, LB888, § 80.

21-181 Filings required for domestication; effective date.

(ULLCA 1012) (a) After a plan of domestication is approved, a domesticating company shall deliver to the Secretary of State for filing articles of domestication, which must include:

(1) a statement, as the case may be, that the company has been domesticated from or into another jurisdiction;

(2) the name of the domesticating company and the jurisdiction of its governing statute;

(3) the name of the domesticated company and the jurisdiction of its governing statute;

(4) the date the domestication is effective under the governing statute of the domesticated company;

(5) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by the Nebraska Uniform Limited Liability Company Act; and

(6) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction.

(b) A domestication becomes effective:

(1) when the certificate of organization takes effect, if the domesticated company is a limited liability company; and

(2) according to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

Source: Laws 2010, LB888, § 81.

21-182 Effect of domestication.

(ULLCA 1013) (a) When a domestication takes effect:

(1) the domesticated company is for all purposes the company that existed before the domestication;

(2) all property owned by the domesticating company remains vested in the domesticated company;

(3) all debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;

(4) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

(5) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;

(6) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(7) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of sections 21-147 to 21-154.

(b) A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation, or other liability.

(c) If a limited liability company has adopted and approved a plan of domestication under section 21-179 providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company's certificate of organization must be delivered to the Secretary of State for filing setting forth:

(1) the name of the company;

(2) a statement that the certificate of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction;

(3) a statement that the domestication was approved as required by the Nebraska Uniform Limited Liability Company Act; and

(4) the jurisdiction of formation of the domesticated foreign limited liability company.

Source: Laws 2010, LB888, § 82.

21-183 Restrictions on approval of mergers, conversions, and domestications.

(ULLCA 1014) (a) If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication are ineffective without the consent of the member, unless:

(1) the company's operating agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the members; and

(2) the member has consented to the provision of the operating agreement.

(b) A member does not give the consent required by subsection (a) of this section merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

Source: Laws 2010, LB888, § 83.

21-184 Sections not exclusive.

(ULLCA 1015) Sections 21-170 to 21-184 do not preclude an entity from being merged, converted, or domesticated under law other than the Nebraska Uniform Limited Liability Company Act.

Source: Laws 2010, LB888, § 84.

(k) PROFESSIONAL SERVICES AND CERTIFICATE OF REGISTRATION

21-185 Professional service; filing required; certificate of registration; contents.

(1) Each member, manager, professional employee, or agent of a limited liability company who renders a professional service shall hold a valid license or otherwise be duly authorized to render that professional service under the law of this state if such member, manager, professional employee, or agent renders a professional service within this state or under the law of the state or other jurisdiction in which such person renders the professional service.

(2) Before rendering a professional service, a limited liability company shall (a)(i) deliver to the Secretary of State for filing a certificate of registration issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and residence address of every member, manager, professional employee, and agent of the limited liability company who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business as of the last day of the month preceding the date of delivery of the certificate, and (ii) certify that all members, managers, professional employees, and agents of the limited liability company who are required by law to do so are duly licensed or otherwise authorized to render the professional service for

which the limited liability company is organized to do business or (b) comply with and qualify under the procedures set forth in subsection (2) of section 21-186.

(3) The registration certificate requirements of this section and sections 21-186 to 21-188 shall apply to both limited liability companies and foreign limited liability companies.

Source: Laws 2010, LB888, § 85.

21-186 Certificate of registration; application; contents; display; fee; electronic records; use; license verification fee; Secretary of State; duties.

(1)(a) An application for issuance of a certificate of registration shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all members, managers, professional employees, and agents of the limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, the street address at which the applicant proposes to render a professional service, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, professional employee, and agent of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession for which the applicant is organized to do business and that each member, manager, professional employee, or agent required by law to be licensed or otherwise authorized to practice the profession for which the applicant is organized to do business is not otherwise disqualified from rendering the professional service of the applicant, such regulatory body shall issue a certificate in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body certifying that the proposed or existing limited liability company complies with the provisions of the Nebraska Uniform Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

(b) One copy of a certificate of registration issued pursuant to this subsection shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and, except as provided in subsection (2) of this section, one copy shall be delivered for filing to the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate shall be delivered to the Secretary of State for filing with the certificate of organization. A certificate of registration bearing an issuance date more than twelve months old shall not be eligible for filing by the Secretary of State.

(2) When licensing records of regulatory bodies are electronically accessible to the Secretary of State, the Secretary of State shall access the records. The access of the records shall be made in lieu of a certificate of registration being prepared and issued by the regulatory body for delivery to the Secretary of State for filing. The limited liability company shall deliver to the Secretary of State for filing an application setting forth the names of all members, managers, professional employees, and agents of such limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business as of the last day of the month preceding the date of application and

shall deliver to the Secretary of State for filing an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee of fifty dollars.

The Secretary of State shall verify that all members, managers, professional employees, and agents who are required by law to do so are duly licensed or otherwise legally authorized to render the professional service for which the applicant is organized to do business or ancillary service as those which the limited liability company renders through electronic accessing of the regulatory body's records. If any member, manager, professional employee, or agent who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business is not licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business, the limited liability company shall be suspended. The suspension shall remain in effect and a biennial report shall not be delivered to the Secretary of State for filing or filed by the Secretary of State until the limited liability company attests in writing that all members, managers, professional employees, or agents who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business are duly licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, professional employees, or agents are no longer members, managers, professional employees, or agents of the limited liability company.

Source: Laws 2010, LB888, § 86.

21-187 Certificate of registration; expiration; annual application.

Each certificate of registration issued to a limited liability company pursuant to section 21-186 shall expire by its own terms one year from the date of issuance and may not be renewed. Each limited liability company shall annually apply (1) to its regulatory body for a certificate in the manner provided in subsection (1) of section 21-186 or (2) to the Secretary of State pursuant to subsection (2) of section 21-186 if the records of the regulatory body are electronically accessible to the Secretary of State. A certificate or application shall be delivered annually to the Secretary of State for filing within thirty days before the expiration date of the last certificate or application on file in the office of the Secretary of State or the limited liability company shall be suspended. Certificates shall not be transferable or assignable.

Source: Laws 2010, LB888, § 87.

21-188 Certificate of registration; suspension or revocation; procedure; notice.

A regulatory body may, upon a form prescribed by it, suspend or revoke any certificate of registration issued to any limited liability company pursuant to subsection (1) of section 21-186 upon the suspension or revocation of the license or other authorization to render a professional service by any member, manager, professional employee, or agent of the limited liability company who

is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business. Notice of such suspension or revocation shall be provided to the limited liability company affected by sending by certified or registered mail a certified copy of such suspension or revocation to the limited liability company at its principal place of business set forth in the certificate so suspended or revoked. At the same time, the regulatory body shall forward by regular mail a certified copy of such suspension or revocation to the Secretary of State who shall remove the suspended or revoked registration certificate from his or her files and deliver it to the regulatory body.

Source: Laws 2010, LB888, § 88.

21-189 Authority and duty of regulatory body licensing professionals.

Nothing in the Nebraska Uniform Limited Liability Company Act is intended to restrict or limit in any manner the authority and duty of any regulatory body licensing professionals within the state to license such persons rendering a professional service or to regulate the practice of any profession that is within the jurisdiction of the regulatory body licensing such professionals within the state notwithstanding that the person is a member, manager, professional employee, or agent of a limited liability company and rendering a professional service or engaging in the practice of the profession through a limited liability company.

Source: Laws 2010, LB888, § 89.

21-190 Professional service; limitation.

(1) A limited liability company which renders a professional service shall render only one type of professional service and such services as may be ancillary thereto and shall not render any other type of professional service or engage in any other profession. No limited liability company may render a professional service except through its members, managers, professional employees, and agents who are duly licensed or otherwise legally authorized to render such professional service within this state.

(2) This section shall not be interpreted to include in the term professional employee, as used in the Nebraska Uniform Limited Liability Company Act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering a professional service to the public for which a license or other legal authorization is required.

Source: Laws 2010, LB888, § 90.

21-191 Applicability to attorneys at law.

The provisions of the Nebraska Uniform Limited Liability Company Act shall be applicable to attorneys at law only to the extent and under such terms and conditions as the Supreme Court determines to be necessary and appropriate. Certificates of organization of limited liability companies organized to practice law shall contain such provisions as may be appropriate to comply with applicable rules of the court.

Source: Laws 2010, LB888, § 91.

(l) FEES

21-192 Fees.

(1) The filing fee for all filings under the Nebraska Uniform Limited Liability Company Act, including amendments and name reservation, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization under section 21-117 and for filing an application for a certificate of authority to transact business in this state as a foreign limited liability company under section 21-156 shall be one hundred dollars plus such recording fees and ten dollars for a certificate. There shall be no recording fee collected for the filing of a biennial report required by section 21-125 or any corrections or amendments thereto.

(2) A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file under the act.

(3) The fees for filings under the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

Source: Laws 2010, LB888, § 92.

(m) NOTICE

21-193 Notice; publication required; filing.

(1) Notice of organization, amendment of the certificate of organization, merger, conversion, or domestication must be published three successive weeks in some legal newspaper of general circulation near the designated office of the limited liability company. A notice of organization must show the information required by subsection (b) of section 21-117 to be stated in the certificate of organization. A brief resume of any amendment of the certificate of organization or of any merger, conversion, or domestication of the limited liability company shall be published in the same manner and for the same period of time as notice of organization is required to be published.

(2) Whenever any limited liability company is voluntarily dissolved, notice of the dissolution shall be published as required by section 21-150.

(3) Proof of publication of any of the notices shall be filed in the office of the Secretary of State. In the event any notice described in subsection (1) of this section and required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of the limited liability company prior to, as well as after, such publication shall be valid.

Source: Laws 2010, LB888, § 93; Laws 2012, LB942, § 1.
Effective date July 19, 2012.

(n) MISCELLANEOUS PROVISIONS

21-194 Uniformity of application and construction.

(ULLCA 1101) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2010, LB888, § 94.

21-195 Relation to Electronic Signatures in Global and National Commerce Act.

(ULLCA 1102) The Nebraska Uniform Limited Liability Company Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2010, LB888, § 95.

21-196 Effect on certain actions, proceedings, and rights.

(ULLCA 1103) The Nebraska Uniform Limited Liability Company Act does not affect an action commenced, proceeding brought, or right accrued before January 1, 2011.

Source: Laws 2010, LB888, § 96.

21-197 Application to existing relationships.

(ULLCA 1104) (a) Before January 1, 2013, the Nebraska Uniform Limited Liability Company Act governs only:

(1) a limited liability company formed on or after January 1, 2011; and

(2) except as otherwise provided in subsection (c) of this section, a limited liability company formed before January 1, 2011, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to the act and which delivers to the Secretary of State for filing a statement of election to be subject to the act pursuant to this subdivision.

(b) Except as otherwise provided in subsection (c) of this section, on and after January 1, 2013, the act governs all limited liability companies.

(c) For the purposes of applying the act to a limited liability company formed before January 1, 2011:

(1) the company's articles of organization are deemed to be the company's certificate of organization; and

(2) for the purposes of applying subdivision (11) of section 21-102 and subject to subsection (d) of section 21-112, language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

Source: Laws 2010, LB888, § 97.

ARTICLE 2

THE UNIFORM STOCK TRANSFER ACT

Section
21-201. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-202. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-203. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-204. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-205. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-206. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-207. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-208. Repealed. Laws 1963, c. 544, art. 10, § 1.

Section
21-209. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-210. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-211. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-212. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-213. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-214. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-215. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-216. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-217. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-218. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-219. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-220. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-221. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-222. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-223. Repealed. Laws 1963, c. 544, art. 10, § 1.
21-224. Repealed. Laws 1963, c. 544, art. 10, § 1.

21-201 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-202 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-203 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-204 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-205 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-206 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-207 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-208 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-209 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-210 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-211 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-212 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-213 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-214 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-215 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-216 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-217 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-218 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-219 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-220 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-221 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-222 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-223 Repealed. Laws 1963, c. 544, art. 10, § 1.

21-224 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 3
OCCUPATION TAX

Section

21-301 Domestic corporations; biennial report and fee; procedure.

(1) Each corporation organized under the laws of this state, for profit, shall make a report in writing to the Secretary of State, as of January 1, of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and biennial fee shall be submitted to the Secretary of State. The report and fee shall be due on March 1

of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or fee does not conform, the Secretary of State shall not file the report or accept the fee but shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15.

Source: Laws 1913, c. 240, § 1, p. 745; R.S.1913, § 761; C.S.1922, § 679; C.S.1929, § 24-1701; R.S.1943, § 21-301; Laws 1967, c. 101, § 1, p. 309; Laws 1969, c. 124, § 1, p. 567; Laws 1982, LB 928, § 6; Laws 2002, LB 989, § 1; Laws 2003, LB 524, § 1; Laws 2006, LB 647, § 1; Laws 2008, LB379, § 1.

Intention of Legislature was to place domestic and foreign corporation upon an equality as regards tax. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

21-302 Domestic corporations; biennial report; contents.

The biennial report required under section 21-301 from a domestic corporation subject to the Business Corporation Act shall show:

(1) The exact corporate name of the corporation;

(2) The street address of the corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of the corporation's principal office;

(4) The names and street addresses of the corporation's directors and principal officers, which shall include the president, secretary, and treasurer;

(5) A brief description of the nature of the corporation's business;

(6) The amount of paid-up capital stock; and

(7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 2, p. 745; R.S.1913, § 762; C.S.1922, § 680; C.S.1929, § 24-1702; R.S.1943, § 21-302; Laws 1967, c. 101, § 2, p. 309; Laws 1995, LB 109, § 195; Laws 2003, LB 524, § 2; Laws 2008, LB379, § 2.

Cross References

Business Corporation Act, see section 21-2001.

21-303 Domestic corporations; occupation tax; fees; amount; stock without par value, determination of amount.

(1) At the time of filing the report under section 21-301 each even-numbered year, it shall be the duty of every corporation for profit, and registered in the office of the Secretary of State on January 1, whether incorporated under the

laws of this state or incorporated under the laws of any other state when such corporations have domesticated in this state, to pay to the Secretary of State a biennial fee for each even-numbered calendar year beginning January 1, which fee shall be due and assessable on such date and delinquent if not paid on or before April 15 of each even-numbered year.

(2) The biennial fee shall be as follows: When the paid-up capital stock of a corporation does not exceed ten thousand dollars, a fee of twenty-six dollars; when such paid-up capital stock exceeds ten thousand dollars but does not exceed twenty thousand dollars, a fee of forty dollars; when such paid-up capital stock exceeds twenty thousand dollars but does not exceed thirty thousand dollars, a fee of sixty dollars; when such paid-up capital stock exceeds thirty thousand dollars but does not exceed forty thousand dollars, a fee of eighty dollars; when such paid-up capital stock exceeds forty thousand dollars but does not exceed fifty thousand dollars, a fee of one hundred dollars; when such paid-up capital stock exceeds fifty thousand dollars but does not exceed sixty thousand dollars, a fee of one hundred twenty dollars; when such paid-up capital stock exceeds sixty thousand dollars but does not exceed seventy thousand dollars, a fee of one hundred forty dollars; when such paid-up capital stock exceeds seventy thousand dollars but does not exceed eighty thousand dollars, a fee of one hundred sixty dollars; when such paid-up capital stock exceeds eighty thousand dollars but does not exceed ninety thousand dollars, a fee of one hundred eighty dollars; when such paid-up capital stock exceeds ninety thousand dollars but does not exceed one hundred thousand dollars, a fee of two hundred dollars; when such paid-up capital stock exceeds one hundred thousand dollars but does not exceed one hundred twenty-five thousand dollars, a fee of two hundred forty dollars; when such paid-up capital stock exceeds one hundred twenty-five thousand dollars but does not exceed one hundred fifty thousand dollars, a fee of two hundred eighty dollars; when such paid-up capital stock exceeds one hundred fifty thousand dollars but does not exceed one hundred seventy-five thousand dollars, a fee of three hundred twenty dollars; when such paid-up capital stock exceeds one hundred seventy-five thousand dollars but does not exceed two hundred thousand dollars, a fee of three hundred sixty dollars; when such paid-up capital stock exceeds two hundred thousand dollars but does not exceed two hundred twenty-five thousand dollars, a fee of four hundred dollars; when such paid-up capital stock exceeds two hundred twenty-five thousand dollars but does not exceed two hundred fifty thousand dollars, a fee of four hundred forty dollars; when such paid-up capital stock exceeds two hundred fifty thousand dollars but does not exceed two hundred seventy-five thousand dollars, a fee of four hundred eighty dollars; when such paid-up capital stock exceeds two hundred seventy-five thousand dollars but does not exceed three hundred thousand dollars, a fee of five hundred twenty dollars; when such paid-up capital stock exceeds three hundred thousand dollars but does not exceed three hundred twenty-five thousand dollars, a fee of five hundred sixty dollars; when such paid-up capital stock exceeds three hundred twenty-five thousand dollars but does not exceed three hundred fifty thousand dollars, a fee of six hundred dollars; when such paid-up capital stock exceeds three hundred fifty thousand dollars but does not exceed four hundred thousand dollars, a fee of six hundred sixty-six dollars; when such paid-up capital stock exceeds four hundred thousand dollars but does not exceed four hundred fifty thousand dollars, a fee of seven hundred thirty dollars; when such paid-up capital stock exceeds four hundred fifty

thousand dollars but does not exceed five hundred thousand dollars, a fee of eight hundred dollars; when such paid-up capital stock exceeds five hundred thousand dollars but does not exceed six hundred thousand dollars, a fee of nine hundred ten dollars; when such paid-up capital stock exceeds six hundred thousand dollars but does not exceed seven hundred thousand dollars, a fee of one thousand ten dollars; when such paid-up capital stock exceeds seven hundred thousand dollars but does not exceed eight hundred thousand dollars, a fee of one thousand one hundred twenty dollars; when such paid-up capital stock exceeds eight hundred thousand dollars but does not exceed nine hundred thousand dollars, a fee of one thousand two hundred thirty dollars; when such paid-up capital stock exceeds nine hundred thousand dollars but does not exceed one million dollars, a fee of one thousand three hundred thirty dollars; when such paid-up capital stock exceeds one million dollars but does not exceed ten million dollars, a fee of one thousand three hundred thirty dollars, and eight hundred dollars additional for each million or fraction thereof over and above one million dollars; when such paid-up capital stock exceeds ten million dollars but does not exceed fifteen million dollars, a fee of twelve thousand dollars; when such paid-up capital stock exceeds fifteen million dollars but does not exceed twenty million dollars, a fee of fourteen thousand six hundred sixty dollars; when such paid-up capital stock exceeds twenty million dollars but does not exceed twenty-five million dollars, a fee of seventeen thousand three hundred thirty dollars; when such paid-up capital stock exceeds twenty-five million dollars but does not exceed fifty million dollars, a fee of twenty thousand six hundred sixty dollars; when such paid-up capital stock exceeds fifty million dollars but does not exceed one hundred million dollars, a fee of twenty-one thousand three hundred thirty dollars; and when such paid-up capital stock exceeds one hundred million dollars, a fee of twenty-three thousand nine hundred ninety dollars. The minimum biennial fee for filing such report shall be twenty-six dollars. For purposes of determining the fee, the stock of corporations incorporated under the laws of any other state, which corporations have domesticated in this state and which stock is without par value, shall be deemed to have a par value of an amount equal to the amount paid in as capital for such shares at the time of the issuance thereof.

Source: Laws 1913, c. 240, § 3, p. 745; R.S.1913, § 763; C.S.1922, § 681; C.S.1929, § 24-1703; R.S.1943, § 21-303; Laws 1947, c. 55, § 1, p. 185; Laws 1955, c. 63, § 2, p. 200; Laws 1965, c. 87, § 1, p. 350; Laws 1967, c. 101, § 3, p. 310; Laws 1969, c. 124, § 2, p. 568; Laws 1982, LB 928, § 7; Laws 1992, LB 719A, § 90; Laws 2003, LB 524, § 3.

Distinction between domestic and domesticated foreign corporation is recognized. Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582 (1953).

Under former law, all occupation taxes assessed against domestic corporation for profit were a lien upon all property of corporation. Licking v. Hays Lumber Co., 146 Neb. 240, 19 N.W.2d 148 (1945).

Tax hereunder is in nature of franchise tax, rather than tax upon property, capital stock, or business, and it is not a tax on interstate commerce. State of Nebraska ex rel. Beatrice Creamery Co. v. Marsh, 119 Neb. 197, 227 N.W. 926 (1929), appeal dismissed 282 U.S. 799 (1930).

Paid-up capital of Nebraska corporation means amount of authorized capital stock employed in business. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

21-304 Foreign corporations; biennial report and fee; procedure.

(1) Each foreign corporation for profit, doing business in this state, owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements

required by law, make a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and biennial fee shall be submitted to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report and fee do not conform, the Secretary of State shall not file the report or accept the fee but shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15 of each even-numbered year.

Source: Laws 1913, c. 240, § 4, p. 748; R.S.1913, § 764; C.S.1922, § 682; C.S.1929, § 24-1704; R.S.1943, § 21-304; Laws 1955, c. 63, § 3, p. 203; Laws 1967, c. 101, § 4, p. 313; Laws 1969, c. 124, § 3, p. 571; Laws 1982, LB 928, § 8; Laws 2002, LB 989, § 2; Laws 2003, LB 524, § 4; Laws 2006, LB 647, § 2; Laws 2008, LB379, § 3.

This section requires statement of how much capital is employed within and how much without the state. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

State only can complain of failure to conform to statutory requirements. Northwest Ready Roofing Co. v. Antes, 117 Neb. 121, 219 N.W. 848 (1928).

21-305 Foreign corporations; biennial report; contents.

The biennial report required under section 21-304 from a foreign corporation subject to the Business Corporation Act shall show:

(1) The exact corporate name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) The street address of the foreign corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of the foreign corporation's principal office;

(4) The names and street addresses of the foreign corporation's directors and principal officers which shall include the president, secretary, and treasurer;

(5) A brief description of the nature of the foreign corporation's business;

(6) The value of the property owned and used by the foreign corporation in Nebraska and where such property is situated; and

(7) The change or changes, if any, in the above particulars made since the last annual report.

Source: Laws 1913, c. 240, § 5, p. 749; R.S.1913, § 765; C.S.1922, § 683; C.S.1929, § 24-1705; R.S.1943, § 21-305; Laws 1967, c. 101, § 5, p. 313; Laws 1995, LB 109, § 196; Laws 2003, LB 524, § 5; Laws 2008, LB379, § 4.

Cross References

Business Corporation Act, see section 21-2001.

Domestic and foreign corporations are treated differently for purpose of tax. State of Nebraska ex rel. Beatrice Creamery Co. v. Marsh, 119 Neb. 197, 227 N.W. 926 (1929), appeal dismissed 282 U.S. 799 (1930).

21-306 Foreign corporations; occupation tax; investigation by Secretary of State for collection purposes.

Upon the filing of the biennial report required under section 21-304 with the Secretary of State, it shall be the duty of every foreign corporation for profit, doing business in this state, to pay to the Secretary of State a biennial fee which shall be for each even-numbered calendar year beginning January 1 and become due and assessable on March 1 of that year and become delinquent if not paid by April 15 of each even-numbered year. The fee shall be measured by the property employed by the foreign corporation in the conduct of its business in the State of Nebraska. For such purpose the property shall consist of the sum total of the actual value of all real estate and personal property employed in Nebraska by such foreign corporation in the transaction of its business. The biennial fee to be paid by such foreign corporation shall be based upon the sum so determined, and shall be considered the capital stock of such foreign corporation in this state for the purpose of the biennial fee. The schedule of payment shall be double the fees set forth in section 21-303, or any amendments thereto, except that the fee shall not exceed thirty thousand dollars, and the Secretary of State, or any person deputized by the Secretary of State, shall have authority to investigate and obtain information from such corporation or any state, county, or city official. Such officers are authorized by this section to furnish such information to the Secretary of State, or anyone deputized by the Secretary of State, in order to determine all facts and give effect to the collection of the biennial fee.

Source: Laws 1913, c. 240, § 6, p. 749; R.S.1913, § 766; C.S.1922, § 684; C.S.1929, § 24-1706; Laws 1933, c. 32, § 1, p. 212; Laws 1935, c. 47, § 1, p. 172; C.S.Supp.,1941, § 24-1706; R.S.1943, § 21-306; Laws 1955, c. 63, § 4, p. 203; Laws 1965, c. 87, § 2, p. 353; Laws 1967, c. 101, § 6, p. 313; Laws 1969, c. 124, § 4, p. 571; Laws 1982, LB 928, § 9; Laws 2002, LB 989, § 3; Laws 2003, LB 524, § 6.

Occupation tax of foreign corporation is computed upon basis of paid-up capital stock employed in this state. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

21-307 Repealed. Laws 1969, c. 124, § 11.

21-308 Repealed. Laws 1969, c. 124, § 11.

21-309 Repealed. Laws 1969, c. 124, § 11.

21-310 Repealed. Laws 1967, c. 101, § 14.

21-311 Fees; disposition; monthly report of Secretary of State.

The Secretary of State shall make a report monthly to the Tax Commissioner of the biennial fees collected under sections 21-301 to 21-325 and shall pay the same into the state treasury to the credit of the General Fund. The report shall include the amount of any refunds paid out under section 21-328.

Source: Laws 1913, c. 240, § 11, p. 750; R.S.1913, § 771; C.S.1922, § 689; C.S.1929, § 24-1711; R.S.1943, § 21-311; Laws 1984, LB 799, § 2; Laws 2003, LB 524, § 7.

21-312 Fees; lien; notice; lien subject to prior liens.

The fees required to be paid by sections 21-301 to 21-325 shall be the first and best lien on all property of the corporation whether such real or personal property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof. The Secretary of State may file notice of such lien in the office of the county clerk of the county wherein the personal property sought to be charged with such lien is situated and with the county clerk or register of deeds of the county wherein the real estate sought to be charged with such lien is situated. The lien provided for in this section shall be invalid as to any mortgagee or pledgee whose lien is filed, as against any judgment lien which attached, or as against any purchaser whose rights accrued, prior to the filing of such notice.

Source: Laws 1913, c. 240, § 12, p. 750; R.S.1913, § 772; C.S.1922, § 690; C.S.1929, § 24-1712; Laws 1943, c. 54, § 1, p. 218; R.S.1943, § 21-312; Laws 1969, c. 124, § 5, p. 572; Laws 1988, LB 800, § 1.

Under prior statute, occupation taxes were a lien although not filed in office of register of deeds or county clerk. Licking v. Hays Lumber Co., 146 Neb. 240, 19 N.W.2d 148 (1945).

21-313 Failure to file report or pay fee; automatically dissolved, when.

If a corporation required to file the report and pay the fee prescribed in sections 21-301 to 21-325 fails or neglects to make such report or pay such fee by April 15 of each even-numbered year, such corporation shall be automatically dissolved on April 16 of such year.

Source: Laws 1913, c. 240, § 13, p. 750; R.S.1913, § 773; C.S.1922, § 691; C.S.1929, § 24-1713; R.S.1943, § 21-313; Laws 1945, c. 39, § 1, p. 195; Laws 1955, c. 63, § 7, p. 204; Laws 1967, c. 101, § 9, p. 315; Laws 1969, c. 124, § 6, p. 572; Laws 1982, LB 928, § 10; Laws 2002, LB 989, § 4; Laws 2003, LB 524, § 8.

Foreign corporation tax is computed upon the amount of its paid-up capital stock employed in Nebraska. State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

After action has been brought in name of dissolved corporation, amendment may be allowed substituting as plaintiffs the managing directors as trustees. Weekes Grain & Live Stock Co. v. Ware & Leland, 99 Neb. 126, 155 N.W. 233 (1915).

After charter has been forfeited for nonpayment of occupation tax, corporation cannot sue in corporate name. Weekes Grain & Live Stock Co. v. Ware & Leland, 99 Neb. 126, 155 N.W. 233 (1915); Havens & Co. v. Colonial Apartment House Co., 97 Neb. 639, 150 N.W. 1011 (1915).

21-314 Fees; how collected; credited to General Fund.

Such biennial fee or fees to be paid as provided in sections 21-301 to 21-325 may be recovered by an action in the name of the state and on collection shall be paid into the treasury to the credit of the General Fund.

Source: Laws 1913, c. 240, § 14, p. 750; R.S.1913, § 774; C.S.1922, § 692; C.S.1929, § 24-1714; R.S.1943, § 21-314; Laws 1969, c. 124, § 7, p. 573; Laws 1988, LB 800, § 2; Laws 2003, LB 524, § 9.

21-315 Fees; collection; venue of action.

The Attorney General, on request of the Secretary of State, shall institute such action in the district court of Lancaster County, or any other county in the state in which such corporation has an office or place of business.

Source: Laws 1913, c. 240, § 15, p. 750; R.S.1913, § 775; C.S.1922, § 693; C.S.1929, § 24-1715; R.S.1943, § 21-315.

21-316 Repealed. Laws 1971, LB 485, § 2.

21-317 Reports and fees; violations; annulment of charter.

If a corporation, organized under the laws of Nebraska, for profit or not for profit, required to file the report and pay the fee prescribed in sections 21-301 to 21-325, fails or neglects to make such report or pay such fee for thirty days after the expiration of the time limited by said sections, and such default is willful and intentional, the Attorney General, on the request of the Secretary of State, shall bring an action in the district court of Lancaster County, or any county in this state in which such corporation is located, to forfeit and annul the charter of such corporation. If the court is satisfied that such default is willful and intentional, it may revoke and annul such charter.

Source: Laws 1913, c. 240, § 17, p. 751; R.S.1913, § 777; C.S.1922, § 695; C.S.1929, § 24-1717; R.S.1943, § 21-317; Laws 1967, c. 101, § 10, p. 315.

Where corporation paid fee and penalty as demanded, judgment of ouster will not be sustained, though Secretary of State, through oversight, demanded less than required by law. State ex rel. Hartigan v. Sperry & Hutchinson Co., 94 Neb. 785, 144 N.W. 795 (1913).

21-318 List of corporations; duty of Secretary of State.

It shall be the duty of the Secretary of State to prepare and keep a correct list of all corporations subject to sections 21-301 to 21-325 and engaged in business within the State of Nebraska. For the purpose of obtaining the necessary information, the Secretary of State, or other person deputized by him or her, shall have access to the records of the offices of the county clerks of the state.

Source: Laws 1913, c. 240, § 18, p. 751; R.S.1913, § 778; C.S.1922, § 696; C.S.1929, § 24-1718; R.S.1943, § 21-318; Laws 1988, LB 800, § 3.

21-319 Investigation by Secretary of State for collection purposes; duty of county clerk.

Any county clerk shall, upon request of the Secretary of State, furnish him or her with such information as is shown by the records of his or her office concerning corporations located within his or her county and subject to sections 21-301 to 21-325. The Secretary of State, or any person deputized by him or her for the purpose of determining the amount of fees due from such corporation, shall have authority to investigate and determine the facts showing the proportion of the paid-up capital stock of the company represented by its property and business in Nebraska.

Source: Laws 1913, c. 240, § 19, p. 751; R.S.1913, § 779; C.S.1922, § 697; C.S.1929, § 24-1719; R.S.1943, § 21-319; Laws 1988, LB 800, § 4.

21-320 Repealed. Laws 1969, c. 124, § 11.

21-321 Reports and fees; exemptions.

All banking, insurance, and building and loan association corporations paying fees and making reports to the Auditor of Public Accounts or the Director of Banking and Finance and all other corporations paying an occupation tax to the state under any other statutory provisions than those of sections 21-301 to 21-325 shall be exempt from the provisions of such sections.

Source: Laws 1913, c. 240, § 21, p. 752; R.S.1913, § 781; C.S.1922, § 699; C.S.1929, § 24-1721; R.S.1943, § 21-321; Laws 1969, c. 124, § 8, p. 573; Laws 1988, LB 800, § 5; Laws 2003, LB 524, § 10.

21-322 Dissolution, revocation of charter; certificate required; filing; fees.

In case of dissolution or revocation of charter by action of a competent court, or the winding up of a corporation, either foreign or domestic, by proceedings in assignment or bankruptcy, a certificate shall be signed by the clerk of the court in which such proceedings were had and filed in the office of the Secretary of State. The fees for making and filing such certificate shall be taxed as costs in the proceedings and paid out of the funds of the corporation, and shall have the same priority as other costs.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-322; Laws 1967, c. 101, § 11, p. 315.

21-323 Domestic corporations; reports and taxes; notice; failure to pay; automatic dissolution; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-named and appointed registered agent at the last-named street address of the registered office of each domestic corporation subject to sections 21-301 to 21-325 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed report is due to be filed. If occupation taxes are not paid and the report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the delinquent corporation shall be automatically dissolved on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subsequent only to state, county, and municipal taxes.

(2) Upon the failure of any domestic corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall on April 16 of such year automatically dissolve the corporation for nonpayment of taxes and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall automatically dissolve a corporation subject to the Business Corporation Act by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-2034.

(b) A corporation automatically dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 21-20,155 and notify claimants under sections 21-20,156 and 21-20,157.

(c) The automatic dissolution of a corporation shall not terminate the authority of its registered agent.

(4) All delinquent occupation taxes of the corporation shall be a lien upon the assets of the corporation, subsequent only to state, county, and municipal taxes.

(5) No domestic corporation shall be voluntarily dissolved until all occupation taxes and fees due to or assessable by the state have been paid and the report filed by such corporation.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-323; Laws 1957, c. 242, § 10, p. 823; Laws 1967, c. 101, § 12, p. 316; Laws 1969, c. 124, § 9, p. 573; Laws 1971, LB 485, § 1; Laws 1982, LB 928, § 11; Laws 1995, LB 109, § 197; Laws 2002, LB 989, § 5; Laws 2003, LB 524, § 11.

Cross References

Business Corporation Act, see section 21-2001.

Under former law, lien of occupation taxes was not cut off by foreclosure of tax sale certificate where state was not made party defendant to suit and perfected lien. Licking v. Hays Lumber Co., 146 Neb. 240, 19 N.W.2d 148 (1945).

21-323.01 Domestic corporation automatically dissolved; reinstatement; application; procedure; payment required.

(1) A corporation automatically dissolved under section 21-323 may apply to the Secretary of State for reinstatement within five years after the effective date of its automatic dissolution. The application shall:

(a) Recite the name of the corporation and the effective date of its automatic dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the corporation's name satisfies the requirements of section 21-2028; and

(d) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred.

(4) A corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was automatically dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was automatically dissolved; and (ii) forward to the

Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was automatically dissolved.

Source: Laws 1995, LB 109, § 198; Laws 1996, LB 1036, § 1; Laws 2003, LB 524, § 12; Laws 2012, LB854, § 2.
Operative date January 1, 2013.

21-323.02 Domestic corporation automatically dissolved; denial of reinstatement; appeal.

(1) If the Secretary of State denies a corporation's application for reinstatement following automatic dissolution under section 21-323, he or she shall serve the corporation under section 21-2034 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 199.

21-324 Repealed. Laws 1967, c. 101, § 14.

21-325 Foreign corporations; reports and taxes; notice; failure to pay; automatic dissolution; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-known address of each foreign corporation subject to sections 21-301 to 21-325 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed report is due to be filed. If such occupation taxes are not paid and such report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the delinquent corporation shall be automatically dissolved on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subject only to state, county, and municipal taxes.

(2) Upon the failure of any foreign corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall on April 16 of such year automatically dissolve the corporation for nonpayment of taxes and shall bar the corporation from doing business in the State of Nebraska under the corporation laws of the state and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall automatically dissolve a foreign corporation subject to the Business Corporation Act by signing a certificate of revocation of authority to transact business in this state that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-20,177.

(b) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(c) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

(4) All delinquent corporation taxes of the corporation shall be a lien upon the assets of the corporation within the state, subsequent only to state, county, and municipal taxes. Nothing in sections 21-322 to 21-325 shall be construed to allow a foreign corporation to do business in Nebraska without complying with the laws of the State of Nebraska.

(5) No foreign corporation shall be voluntarily withdrawn until all occupation taxes due to or assessable by the state have been paid and the report filed by such corporation.

Source: Laws 1913, c. 240, § 23, p. 752; R.S.1913, § 783; Laws 1921, c. 173, § 2, p. 668; C.S.1922, § 701; C.S.1929, § 24-1723; R.S.1943, § 21-325; Laws 1957, c. 242, § 11, p. 824; Laws 1967, c. 101, § 13, p. 316; Laws 1969, c. 124, § 10, p. 574; Laws 1982, LB 928, § 12; Laws 1995, LB 109, § 200; Laws 2002, LB 989, § 6; Laws 2003, LB 524, § 13.

Cross References

Business Corporation Act, see section 21-2001.

21-325.01 Foreign corporation automatically dissolved; reinstatement; procedure.

(1) A foreign corporation, the certificate of authority of which has been revoked under section 21-325, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated;

(c) State that the foreign corporation's name satisfies the requirements of section 21-20,173; and

(d) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the foreign corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the

effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

(4) A foreign corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked; and (ii) forward to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

Source: Laws 1995, LB 109, § 201; Laws 1996, LB 1036, § 2; Laws 2003, LB 524, § 14; Laws 2012, LB854, § 3.
Operative date January 1, 2013.

21-325.02 Foreign corporation automatically dissolved; reinstatement denied; appeal.

(1) If the Secretary of State denies a foreign corporation's application for reinstatement following revocation of its certificate of authority under section 21-325, he or she shall serve the foreign corporation under section 21-20,177 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-20,177. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 1036, § 3.

21-326 Repealed. Laws 1967, c. 101, § 14.

21-327 Repealed. Laws 1967, c. 101, § 14.

21-328 Fees; refund; procedure; appeal.

Any corporation paying the fees imposed by section 21-303 or 21-306 may claim a refund if the payment of such fee was invalid for any reason. The corporation shall file a written claim and any evidence supporting the claim within two years after payment of such fee. The Secretary of State shall either approve or deny the claim within thirty days after such filing. Any approved

claims shall be paid out of the General Fund. Appeal of a decision by the Secretary of State shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 799, § 1; Laws 1988, LB 352, § 21.

Cross References

Administrative Procedure Act, see section 84-920.

21-329 Paid-up capital stock, defined.

For purposes of Chapter 21, article 3, the term paid-up capital stock shall mean, at any particular time, the sum of the par value of all shares of capital stock of the corporation issued and outstanding.

Source: Laws 1984, LB 800, § 1; Laws 1995, LB 109, § 202; Laws 1999, LB 35, § 1.

21-330 Corporations; excess payment; refund.

Any corporation which has paid tax in excess of the proper amount of the occupation tax imposed in sections 21-301 to 21-325 shall be entitled to a refund of such excess payment. Claims for refund shall be filed with the Secretary of State or may be submitted by the Secretary of State based on his or her own investigation. If approved or submitted by the Secretary of State, the claim shall be forwarded to the State Treasurer for payment from the General Fund. The Secretary of State shall not refund any excess tax payment if five years have passed from the date of the excess payment.

Source: Laws 1991, LB 829, § 25; Laws 1992, Fourth Spec. Sess., LB 1, § 1; Laws 1993, LB 345, § 1; Laws 1995, LB 182, § 21; Laws 2003, LB 524, § 15; Laws 2006, LB 647, § 3.

ARTICLE 4

BRIDGE COMPANIES

Section
21-401. Repealed. Laws 1961, c. 69, § 1.
21-402. Repealed. Laws 1961, c. 69, § 1.
21-403. Repealed. Laws 1961, c. 69, § 1.
21-404. Repealed. Laws 1961, c. 69, § 1.
21-405. Repealed. Laws 1961, c. 69, § 1.
21-406. Repealed. Laws 1961, c. 69, § 1.
21-407. Repealed. Laws 1961, c. 69, § 1.
21-408. Repealed. Laws 1961, c. 69, § 1.

21-401 Repealed. Laws 1961, c. 69, § 1.

21-402 Repealed. Laws 1961, c. 69, § 1.

21-403 Repealed. Laws 1961, c. 69, § 1.

21-404 Repealed. Laws 1961, c. 69, § 1.

21-405 Repealed. Laws 1961, c. 69, § 1.

21-406 Repealed. Laws 1961, c. 69, § 1.

21-407 Repealed. Laws 1961, c. 69, § 1.

21-408 Repealed. Laws 1961, c. 69, § 1.

ARTICLE 5
REAL ESTATE CORPORATIONS

Section
21-501. Repealed. Laws 1961, c. 70, § 1.
21-502. Repealed. Laws 1961, c. 70, § 1.
21-503. Repealed. Laws 1961, c. 70, § 1.
21-504. Repealed. Laws 1961, c. 70, § 1.

21-501 Repealed. Laws 1961, c. 70, § 1.

21-502 Repealed. Laws 1961, c. 70, § 1.

21-503 Repealed. Laws 1961, c. 70, § 1.

21-504 Repealed. Laws 1961, c. 70, § 1.

ARTICLE 6
CHARITABLE AND FRATERNAL SOCIETIES

Cross References

Exemption from inheritance tax, see section 77-2007.04.
Exemption from taxation, property used for charity, see section 77-202.
Fraternal benefit societies, see sections 44-1072 to 44-10,109.
Nonprofit corporation, formation, see section 21-1927.

Section
21-601. Repealed. Laws 1961, c. 71, § 1.
21-602. Repealed. Laws 1961, c. 71, § 1.
21-603. Repealed. Laws 1961, c. 71, § 1.
21-604. Repealed. Laws 1961, c. 71, § 1.
21-605. Repealed. Laws 1961, c. 71, § 1.
21-606. Repealed. Laws 1961, c. 71, § 1.
21-607. Repealed. Laws 1961, c. 71, § 1.
21-608. Societies declared to be corporations; status of subordinate organizations.
21-609. Societies declared to be corporations; power to acquire and hold property; charter, constitution; filing of copy required.
21-610. Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.
21-611. Corporate acts; how attested.
21-612. Subordinate organizations; operation of orphanages and other homes; incorporation; acquisition of property; use and investment of funds; power to borrow.
21-613. Grand organizations; operation of orphanages and other homes; acquisition of property; use and investment of funds.
21-614. Orphanages and other homes; books, inspection by Auditor of Public Accounts; diversion of property and funds; powers of Attorney General.
21-615. Orphanages and other homes; establishment; certified copy of charter to be filed.
21-616. Orphanages and other homes; establishment under other laws.
21-617. Society names and emblems; registration.
21-618. Society names and emblems; registration; procedure; effect.
21-619. Society names and emblems; registration; record.
21-620. Society names and emblems; similarity; registration not granted, when.
21-621. Society names and emblems; registration; certificate to issue.
21-622. Society emblems; unlawful use; penalty.
21-623. Society names and emblems; registration; fees.
21-624. Society names and emblems; registration; organizations not affected.

21-601 Repealed. Laws 1961, c. 71, § 1.

21-602 Repealed. Laws 1961, c. 71, § 1.

21-603 Repealed. Laws 1961, c. 71, § 1.

21-604 Repealed. Laws 1961, c. 71, § 1.

21-605 Repealed. Laws 1961, c. 71, § 1.

21-606 Repealed. Laws 1961, c. 71, § 1.

21-607 Repealed. Laws 1961, c. 71, § 1.

21-608 Societies declared to be corporations; status of subordinate organizations.

All state, grand, supreme, national, secret, fraternal, benevolent, or charitable orders, lodges, organizations, societies, or other bodies issuing charters to and having subordinate or auxiliary orders, lodges, organizations, societies, or other bodies within this state which have been or may be regularly established and chartered, including the following: The Grand Lodge, Ancient Free and Accepted Masons; The Supreme Guardian Council of the International Order of Job's Daughters; The Grand Chapter of the Order of the Eastern Star, of the State of Nebraska; the Grand Lodge Independent Order of Odd Fellows, the Grand Encampment I.O.O.F.; the Rebekah State Assembly, I.O.O.F.; the Department Council Patriarch Militant, I.O.O.F.; The Farmers' Alliance; Knights of Labor; The Grand Lodge Knights of Pythias of Nebraska; Pythian Sisterhood; Nebraska State Grange; Good Templars; Grand Army of the Republic; Women's Relief Corps, Department of Nebraska; United Spanish War Veterans, Department of Nebraska; The Benevolent and Protective Order of Elks of the United States of America; Benevolent, Patriotic Order of Does of the United States of America; the Western Bohemian Fraternal Association, Z.C.B.J.; The Bohemian Ladies' Society, J.C.D.; The Bohemian Benevolent Society, C.S.P.S.; The Bohemian Roman Catholic Benevolent Society, C.R.K.J.P. of Nebraska; The Women's Christian Temperance Union; The Young Women's Christian Association of the United States of America; Nebraska District Young Women's Christian Association; The Brotherhood of St. Andrews; The Improved Order of Red Men's League, an adoptive degree of the Improved Order of Red Men; Degree of Pocahontas; The Great Council of Nebraska Order of Red Men; The Grand Lodge Fraternal Order of Eagles; The Knights of Columbus; Order of the Alhambra; The Modern Woodmen of America; The Woodmen of the World; The Ancient Order of United Workmen; Grand Lodge, Sons of Herman of Nebraska; The American Legion; Disabled American Veterans; The Marine Corps League; Eastern Orthodox Church; Katolicky Delnik, K.D., Catholic Workmen; The Western Bohemian Catholic Union, Z.C.K.J.; Catholic Youth Organization; The American Legion Auxiliary; the following college societies: Acacia, Alpha Gamma Rho, Alpha Sigma Phi, Alpha Tau Omega, Alpha Theta Chi, Chi Phi, Beta Theta Pi, Delta Chi, Delta Sigma Phi, Delta Tau Delta, Delta Upsilon, Kappa Delta Phi, Kappa Sigma, Lambda Chi Alpha, Phi Delta Theta, Phi Kappa Psi, Pi Kappa Phi, Pi Phi Chi, Sigma Alpha Epsilon, Sigma Chi, Sigma Nu, Sigma Phi Epsilon, Phi Gamma Delta, Phi Alpha Delta, Phi Delta Phi, Phi Delta Chi, Delta Sigma Delta, Xi Psi Phi, Nu Sigma Nu, Phi Chi, Phi Rho Sigma, Achoth, Alpha Chi Omega, Alpha Delta Pi, Alpha Omicron Pi, Alpha Phi, Alpha Xi Delta, Chi

Omega, Delta Delta Delta, Delta Gamma, Delta Zeta, Gamma Phi Beta, Kappa Alpha Theta, Kappa Delta, Kappa Kappa Gamma, Pi Beta Phi, Kappa Alpha Psi, Gamma Eta Gamma, Bushnell Guild, Farm House, Silver Lynx, Theta Chi, Phi Mu, and Delta Sigma Pi; the Newman Club; the Nebraska Press Association; Boy Scouts of America; Boy Scouts of America Local Councils; Camp Fire Girls of America; Camp Fire Girls of America Local Councils; Pathfinder Club International; Firemen's Relief Association of Nebraska; Rotary International; Sertoma International; Kiwanis International; Cosmopolitan International; Optimist International; Stuart Lodge of the Catholic Knights of America; Pulaski Club of America; Katolicky Sokol of America; Telocvicna Jednota Sokol organizations in Nebraska; International Association of Lions Clubs; the Veterans of Foreign Wars of the United States; Chambers of Commerce; Junior Chambers of Commerce; OEA Senior Citizen's, Inc.; the Nebraska Council of Home Extension Clubs; Nebraska State Chapter of the P.E.O. Sisterhood; American Province of the Order of Servants of Mary; and Great Plains, Inc., together with each and every subordinate or auxiliary lodge, encampment, tribe, company, council, post, corps, department, society, or other designated organization or body within this state, under its properly designated or chartered name as has been or may be established and chartered within or for Nebraska by its respective state, grand, supreme, national, or other governing body, and working under a charter or charters from its respective state, grand, supreme, or national lodge, organization, or other governing body, be and the same are hereby made and declared corporations within the state under the name and title designated in the respective charters or constitutions by which name they shall be capable of suing, being sued, pleading, and being impleaded in the several courts of this state, the same as natural persons.

Source: Laws 1869, § 1, p. 64; Laws 1885, c. 30, § 1, p. 203; Laws 1889, c. 39, § 1, p. 403; Laws 1891, c. 17, § 1, p. 218; Laws 1905, c. 41, § 1, p. 282; Laws 1907, c. 31, § 1, p. 160; Laws 1909, c. 26, § 1, p. 202; R.S.1913, § 610; Laws 1917, c. 11, § 1, p. 69; Laws 1919, c. 156, § 1, p. 351; Laws 1921, c. 147, § 1, p. 622; Laws 1921, c. 174, § 1, p. 670; C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 144; Laws 1925, c. 148, § 1, p. 383; Laws 1929, c. 57, § 1, p. 222; C.S.1929, § 24-607; Laws 1935, c. 46, § 1, p. 168; Laws 1937, c. 52, § 1, p. 216; C.S.Supp.,1941, § 24-607; R.S.1943, § 21-608; Laws 1949, c. 30, § 1, p. 114; Laws 1953, c. 44, § 1, p. 161; Laws 1959, c. 73, § 1, p. 309; Laws 1961, c. 72, § 1, p. 277; Laws 1971, LB 8, § 1; Laws 1975, LB 149, § 1; Laws 1979, LB 102, § 1; Laws 1980, LB 748, § 1; Laws 1983, LB 262, § 1; Laws 1986, LB 762, § 1; Laws 1990, LB 1102, § 1.

A labor union is not a corporation under this section. Hurley v. Brotherhood of Railroad Trainmen, 147 Neb. 781, 25 N.W.2d 29 (1946).

Legislature, by this section, provided for the incorporation of Grand Lodge, Free and Accepted Masons, and its subordinate bodies, without any precise definition of the terms benevolent and charitable. Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Commissioners of Lancaster County, 122 Neb. 586, 241 N.W. 93 (1932), 81 A.L.R. 1166 (1932).

Where Nebraska Supreme Court held certain type of certificate issued by Nebraska fraternal beneficiary association to be ultra vires, refusal of Missouri courts to so hold violated full faith and credit clause of federal Constitution. Sovereign Camp W.O.W. v. Bolin, 305 U.S. 66 (1938), 119 A.L.R. 478 (1938).

This section constitutes as bodies corporate the organizations described therein, and filing of charter is merely a condition precedent to right to hold title to real estate in own name. Collins v. Russell, 114 F.2d 334 (8th Cir. 1940).

21-609 Societies declared to be corporations; power to acquire and hold property; charter, constitution; filing of copy required.

Each of said organizations, lodges or societies shall have power to receive bequests of real and personal property, to hold and convey both real and

personal property, to lease property and to do all other things usually done by corporations for the purpose for which organized. In order to own, hold and convey real estate, each organization mentioned in section 21-608, shall file with the Secretary of State, for itself, a certified copy of the charter of the state organization, if there be one, or if there be no state organization then of the supreme or national organization, duly certified as a true copy thereof by the secretary or other like officer of such state organization, or supreme or national organization, as the case may be, under the official seal thereof; *Provided,* that if such state organization shall not exist under or by virtue of a charter from any grand, supreme or national governing body, but is working under and by virtue of its own constitution, then such organization shall file with the Secretary of State a correct copy of such constitution certified to by its secretary or other like officer, as a true copy of such constitution under the official seal of such state organization. Each of the subordinate organizations mentioned in section 21-608, and working under a charter from a state, supreme, or national organization shall, for itself, file with the clerk of the county in which such subordinate organization is located, a copy of the charter or constitution under which it is working, duly certified as a true copy thereof, by the secretary or other like officer thereof, under the official seal thereof, and such societies shall be thereafter entitled to all the privileges and rights incident to bodies corporate so long as they retain their respective organization and charters aforesaid.

Source: Laws 1869, § 2, p. 64; Laws 1885, c. 30, § 2, p. 204; Laws 1889, c. 39, § 1, p. 404; Laws 1891, c. 17, § 1, p. 220; Laws 1905, c. 42, § 1, p. 282; Laws 1907, c. 31, § 1, p. 161; Laws 1909, c. 26, § 1, p. 203; R.S.1913, § 610; Laws 1917, c. 11, § 1, p. 70; Laws 1919, c. 156, § 1, p. 352; Laws 1921, c. 147, § 1, p. 623; Laws 1921, c. 174, § 1, p. 671; C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 145; Laws 1925, c. 148, § 1, p. 385; Laws 1929, c. 57, § 1, p. 224; C.S.1929, § 24-607; Laws 1935, c. 46, § 1, p. 170; Laws 1937, c. 52, § 1, p. 218; C.S.Supp.,1941, § 24-607; R.S.1943, § 21-609.

Filing of copy of charter of subordinate fraternal society is merely a condition precedent to right to hold real estate in its own name. Bejot v. Ainsworth Lodge No. 130, I.O.O.F., 128 Neb. 631, 259 N.W. 745 (1935).

21-610 Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.

When any such organization shall have established in this state an institution for the care of children or persons who are incapacitated in any manner and such institution shall have been incorporated under the laws of Nebraska, such corporation shall have power to act either by itself or jointly with any natural person or persons (1) as administrator of the estate of any deceased person whose domicile was within the county in which the corporation is located or whose domicile was outside the State of Nebraska, (2) as executor under a last will and testament or as guardian of the property of any infant, person with mental retardation, person with a mental disorder, or person under other disability, or (3) as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person.

Source: Laws 1917, c. 11, § 1, p. 70; Laws 1919, c. 156, § 1, p. 353; Laws 1921, c. 147, § 1, p. 624; Laws 1921, c. 174, § 1, p. 672; C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 146; Laws 1925, c. 148, § 1, p. 386; Laws 1929, c. 57, § 1, p. 225; C.S.1929, § 24-607;

Laws 1935, c. 46, § 1, p. 171; Laws 1937, c. 52, § 1, p. 218; C.S.Supp.,1941, § 24-607; R.S.1943, § 21-610; Laws 1986, LB 1177, § 3.

21-611 Corporate acts; how attested.

The act or acts of such corporations for all legal purposes shall be attested by the principal officer and the secretary under the seal of such corporation.

Source: Laws 1897, c. 20, § 4, p. 186; R.S.1913, § 611; C.S.1922, § 505; C.S.1929, § 24-608; R.S.1943, § 21-611.

21-612 Subordinate organizations; operation of orphanages and other homes; incorporation; acquisition of property; use and investment of funds; power to borrow.

Fraternal, benevolent and charitable organizations in this state which have or may hereafter be duly incorporated by the laws of the state, are hereby authorized by and through their respective grand bodies issuing charters to their subordinates, to organize and create within their respective organizations, bodies corporate for the purpose of establishing and maintaining homes in this state for the care and maintenance of orphans, widows, aged and indigent persons, or for the care of such persons, under such rules, regulations and bylaws as such organization may provide; and to acquire and receive by donation, bequest, assessment and purchase and other legitimate means, property and funds for such purpose and to hold and invest all such property and funds thus acquired; to borrow money on its real estate and other property; to acquire, invest or reinvest its funds for the endowment of such homes, or its charges or inmates; to invest, reinvest or exchange its endowment funds upon such securities as its trustees may deem safe; to take and hold mortgages upon real estate and other securities therefor, to exchange the same, and to do all things necessary for the purposes and objects of charitable, benevolent and fraternal care of orphans, widows, aged and indigent persons who need such care. But no funds or other property thus acquired by any such fraternal, benevolent or charitable association shall ever be diverted from the objects and purposes herein stated.

Source: Laws 1907, c. 30, § 1, p. 157; R.S.1913, § 612; C.S.1922, § 506; C.S.1929, § 24-609; R.S.1943, § 21-612.

21-613 Grand organizations; operation of orphanages and other homes; acquisition of property; use and investment of funds.

Any and all fraternal, benevolent and charitable grand bodies issuing charters to subordinates in this state, which grand bodies have been or may hereafter be incorporated by the laws of this state, may instead of forming an auxiliary corporation within their respective organizations for the purpose of carrying out the objects of section 21-612, proceed to acquire in the name of such grand body all necessary funds and property by donation, gift, bequests, purchase and other legitimate means, funds and property for the establishment and maintenance of homes for widows, orphans, aged and indigent persons within this state. Such grand bodies may hold, invest, reinvest and use all such funds and property in their respective names, and provide by bylaws the number of trustees or directors who shall have the supervision of such funds, property and home together with the tenure of office of such trustees or directors, and such

grand body may make such rules and regulations for the government and maintenance and control of such homes or funds as may be necessary to promote the fraternal, benevolent, and charitable objects of the same for the care and maintenance of widows, orphans, aged and indigent persons.

Source: Laws 1907, c. 30, § 2, p. 158; R.S.1913, § 613; C.S.1922, § 507; C.S.1929, § 24-610; R.S.1943, § 21-613.

21-614 Orphanages and other homes; books, inspection by Auditor of Public Accounts; diversion of property and funds; powers of Attorney General.

The books, records, and files pertaining to any such home shall be subject to the inspection of the Auditor of Public Accounts of this state, or any deputy or clerk authorized by him to inspect the same. Any organization maintaining such a home or funds is hereby required, at the request of the Auditor of Public Accounts, to report to his office in detail all matters required by him to be reported concerning the business of such funds, home or homes. In case of any diversion of the funds or other property acquired by any such organization from the object and purposes of such home or homes, or funds therefor, the Attorney General is hereby authorized to bring suit in any court having general jurisdiction in equity matters in the state, to restrain and prevent any diversion of such funds or property, and to adjust any and all wrongs concerning the same.

Source: Laws 1907, c. 30, § 3, p. 158; R.S.1913, § 614; C.S.1922, § 508; C.S.1929, § 24-611; R.S.1943, § 21-614.

21-615 Orphanages and other homes; establishment; certified copy of charter to be filed.

Fraternal, benevolent and charitable organizations in this state which may adopt the provisions of sections 21-612 to 21-614, and which shall establish homes, or funds therefor, in accordance therewith, shall, in the case where a grand lodge or grand body desires to hold the property of such home or its funds in its own name, file with the Secretary of State a certified copy of its charter together with a statement of the number of trustees or directors authorized by it to transact the business pertaining to such home or homes or funds. In case a grand body mentioned in section 21-613 shall organize an auxiliary corporation for such purpose as provided in section 21-612, then and in such case such auxiliary corporation shall file with the Secretary of State a copy of its articles of association, duly certified by the secretary of such association.

Source: Laws 1907, c. 30, § 4, p. 159; R.S.1913, § 615; C.S.1922, § 509; C.S.1929, § 24-612; R.S.1943, § 21-615.

21-616 Orphanages and other homes; establishment under other laws.

Sections 21-612 to 21-615 shall not be considered to prohibit the formation of corporations under other corporation laws of this state.

Source: Laws 1907, c. 30, § 5, p. 159; R.S.1913, § 616; C.S.1922, § 510; C.S.1929, § 24-613; R.S.1943, § 21-616.

21-617 Society names and emblems; registration.

Any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles and activities of which are not repugnant to the Constitution and laws of the United States or this state, may register, in the office of the Secretary of State, a facsimile, duplicate or description of its name, badge, motto, button, decoration, charm, emblem, rosette or other insignia, and may, by reregistration alter or cancel the same.

Source: Laws 1929, c. 140, § 1, p. 496; C.S.1929, § 24-614; R.S.1943, § 21-617.

21-618 Society names and emblems; registration; procedure; effect.

Application for such registration, alteration or cancellation shall be made by the chief officer or officers of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, upon blanks to be provided by the Secretary of State; and such registration shall be for the use, benefit, and on behalf of all associations, degrees, branches, subordinate lodges, and auxiliaries of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, and the individual members and those hereafter to become members thereof, throughout this state.

Source: Laws 1929, c. 140, § 2, p. 496; C.S.1929, § 24-615; R.S.1943, § 21-618.

21-619 Society names and emblems; registration; record.

The Secretary of State shall keep a properly indexed record of the registration provided for by sections 21-617 and 21-618, which record shall also show any altered or canceled registration.

Source: Laws 1929, c. 140, § 3, p. 497; C.S.1929, § 24-616; R.S.1943, § 21-619.

21-620 Society names and emblems; similarity; registration not granted, when.

No registration shall be granted or alteration permitted to any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, having a name, badge, motto, button, decoration, charm, emblem, rosette, or other insignia, similar to, imitating, or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette, or other insignia

whatsoever, already registered pursuant to the provisions of sections 21-617 to 21-619.

Source: Laws 1929, c. 140, § 4, p. 497; C.S.1929, § 24-617; R.S.1943, § 21-620.

21-621 Society names and emblems; registration; certificate to issue.

Upon granting registration as aforesaid, the Secretary of State shall issue his certificate to the petitioners, setting forth the fact of such registration.

Source: Laws 1929, c. 140, § 5, p. 497; C.S.1929, § 24-618; R.S.1943, § 21-621.

21-622 Society emblems; unlawful use; penalty.

Any person who shall willfully wear, exhibit, display, print or use, for any purpose, the badge, motto, button, decoration, charm, emblem, rosette, or other insignia of any such association or organization mentioned in section 21-617, duly registered hereunder, unless he or she shall be entitled to use and wear the same under the constitution and bylaws, rules and regulations of such association or organization, shall be guilty of a Class III misdemeanor.

Source: Laws 1929, c. 140, § 6, p. 497; C.S.1929, § 24-619; R.S.1943, § 21-622; Laws 1977, LB 40, § 77.

21-623 Society names and emblems; registration; fees.

The fees of the Secretary of State for registration, alteration, cancellation, searches made by him, and certificates issued by him, pursuant to sections 21-617 to 21-622, shall be as follows: One dollar and fifty cents for each registration, alteration, cancellation, search or reregistration; for the certificate contemplated in section 21-621, one dollar plus ten cents for each hundred words, or fraction thereof, set forth in said certificate issued. The fees collected under sections 21-617 to 21-624 shall be paid by the Secretary of State into the state treasury.

Source: Laws 1929, c. 140, § 7, p. 498; C.S.1929, § 24-620; R.S.1943, § 21-623.

21-624 Society names and emblems; registration; organizations not affected.

The provisions of sections 21-617 to 21-623 shall not apply to or in any way affect any fraternal society, club, organization, or association connected with and recognized by any university, college, parochial school, high school, or other educational institution in the State of Nebraska.

Source: Laws 1929, c. 140, § 8, p. 498; C.S.1929, § 24-621; R.S.1943, § 21-624; Laws 1987, LB 31, § 1.

ARTICLE 7

EDUCATIONAL INSTITUTIONS

Section
21-701. Repealed. Laws 1961, c. 73, § 1.
21-702. Repealed. Laws 1961, c. 73, § 1.
21-703. Repealed. Laws 1961, c. 73, § 1.
21-704. Repealed. Laws 1961, c. 73, § 1.
21-705. Repealed. Laws 1961, c. 73, § 1.

Section

21-701 Repealed. Laws 1961, c. 73, § 1.

21-702 Repealed. Laws 1961, c. 73, § 1.

21-703 Repealed. Laws 1961, c. 73, § 1.

21-704 Repealed. Laws 1961, c. 73, § 1.

21-705 Repealed. Laws 1961, c. 73, § 1.

21-706 Repealed. Laws 1961, c. 73, § 1.

21-707 Repealed. Laws 1961, c. 73, § 1.

21-708 Repealed. Laws 1961, c. 73, § 1.

21-709 Repealed. Laws 1961, c. 73, § 1.

21-710 Repealed. Laws 1961, c. 73, § 1.

21-711 Repealed. Laws 1961, c. 73, § 1.

21-712 Repealed. Laws 1961, c. 73, § 1.

21-713 Repealed. Laws 1961, c. 73, § 1.

21-714 Repealed. Laws 1961, c. 73, § 1.

21-715 Repealed. Laws 1961, c. 73, § 1.

21-716 Repealed. Laws 1961, c. 73, § 1.

21-717 Repealed. Laws 1961, c. 73, § 1.

21-718 Repealed. Laws 1961, c. 73, § 1.

21-719 Repealed. Laws 1961, c. 73, § 1.

21-720 Repealed. Laws 1961, c. 73, § 1.

21-721 Repealed. Laws 1961, c. 73, § 1.

21-722 Repealed. Laws 1961, c. 73, § 1.

21-723 Repealed. Laws 1961, c. 73, § 1.

21-724 Repealed. Laws 1961, c. 73, § 1.

21-725 Repealed. Laws 1961, c. 73, § 1.

21-726 Repealed. Laws 1961, c. 73, § 1.

21-727 Repealed. Laws 1961, c. 73, § 1.

21-728 Repealed. Laws 1961, c. 73, § 1.

21-729 Repealed. Laws 1961, c. 73, § 1.

21-730 Repealed. Laws 1961, c. 73, § 1.

21-731 Repealed. Laws 1961, c. 73, § 1.

ARTICLE 8
RELIGIOUS SOCIETIES

Section
21-801. Repealed. Laws 1967, c. 102, § 1.
21-802. Repealed. Laws 1967, c. 102, § 1.
21-803. Repealed. Laws 1967, c. 102, § 1.
21-804. Repealed. Laws 1967, c. 102, § 1.
21-805. Repealed. Laws 1967, c. 102, § 1.
21-806. Repealed. Laws 1967, c. 102, § 1.
21-807. Repealed. Laws 1967, c. 102, § 1.
21-808. Repealed. Laws 1967, c. 102, § 1.
21-809. Repealed. Laws 1967, c. 102, § 1.
21-810. Repealed. Laws 1967, c. 102, § 1.
21-811. Repealed. Laws 1967, c. 102, § 1.
21-812. Repealed. Laws 1967, c. 102, § 1.
21-813. Repealed. Laws 1967, c. 102, § 1.
21-814. Repealed. Laws 1967, c. 102, § 1.
21-815. Repealed. Laws 1967, c. 102, § 1.
21-816. Repealed. Laws 1967, c. 102, § 1.
21-817. Repealed. Laws 1967, c. 102, § 1.
21-818. Repealed. Laws 1967, c. 102, § 1.
21-819. Repealed. Laws 1967, c. 102, § 1.
21-820. Repealed. Laws 1967, c. 102, § 1.
21-821. Repealed. Laws 1967, c. 102, § 1.
21-822. Repealed. Laws 1967, c. 102, § 1.
21-823. Repealed. Laws 1967, c. 102, § 1.
21-824. Repealed. Laws 1967, c. 102, § 1.
21-825. Repealed. Laws 1967, c. 102, § 1.
21-826. Repealed. Laws 1967, c. 102, § 1.
21-827. Repealed. Laws 1967, c. 102, § 1.
21-828. Repealed. Laws 1967, c. 102, § 1.
21-829. Repealed. Laws 1967, c. 102, § 1.

Section
21-830. Repealed. Laws 1967, c. 102, § 1.
21-831. Repealed. Laws 1967, c. 102, § 1.
21-832. Repealed. Laws 1967, c. 102, § 1.
21-833. Repealed. Laws 1967, c. 102, § 1.
21-834. Repealed. Laws 1967, c. 102, § 1.
21-834.01. Repealed. Laws 1967, c. 102, § 1.
21-835. Repealed. Laws 1967, c. 102, § 1.
21-836. Repealed. Laws 1967, c. 102, § 1.
21-837. Repealed. Laws 1967, c. 102, § 1.
21-838. Repealed. Laws 1967, c. 102, § 1.
21-839. Repealed. Laws 1967, c. 102, § 1.
21-840. Repealed. Laws 1967, c. 102, § 1.
21-841. Repealed. Laws 1967, c. 102, § 1.
21-842. Repealed. Laws 1967, c. 102, § 1.
21-842.01. Repealed. Laws 1967, c. 102, § 1.
21-842.02. Repealed. Laws 1967, c. 102, § 1.
21-843. Repealed. Laws 1967, c. 102, § 1.
21-844. Repealed. Laws 1967, c. 102, § 1.
21-845. Repealed. Laws 1967, c. 102, § 1.
21-846. Repealed. Laws 1967, c. 102, § 1.
21-847. Repealed. Laws 1967, c. 102, § 1.
21-848. Repealed. Laws 1967, c. 102, § 1.
21-849. Repealed. Laws 1967, c. 102, § 1.
21-850. Repealed. Laws 1967, c. 102, § 1.
21-851. Repealed. Laws 1967, c. 102, § 1.
21-852. Repealed. Laws 1967, c. 102, § 1.
21-853. Repealed. Laws 1967, c. 102, § 1.
21-854. Repealed. Laws 1967, c. 102, § 1.

21-801 Repealed. Laws 1967, c. 102, § 1.

21-802 Repealed. Laws 1967, c. 102, § 1.

21-803 Repealed. Laws 1967, c. 102, § 1.

21-804 Repealed. Laws 1967, c. 102, § 1.

21-805 Repealed. Laws 1967, c. 102, § 1.

21-806 Repealed. Laws 1967, c. 102, § 1.

21-807 Repealed. Laws 1967, c. 102, § 1.

21-808 Repealed. Laws 1967, c. 102, § 1.

21-809 Repealed. Laws 1967, c. 102, § 1.

21-810 Repealed. Laws 1967, c. 102, § 1.

21-811 Repealed. Laws 1967, c. 102, § 1.

21-812 Repealed. Laws 1967, c. 102, § 1.

21-813 Repealed. Laws 1967, c. 102, § 1.

21-814 Repealed. Laws 1967, c. 102, § 1.

21-815 Repealed. Laws 1967, c. 102, § 1.

21-816 Repealed. Laws 1967, c. 102, § 1.

21-817 Repealed. Laws 1967, c. 102, § 1.

21-818 Repealed. Laws 1967, c. 102, § 1.

21-819 Repealed. Laws 1967, c. 102, § 1.

21-820 Repealed. Laws 1967, c. 102, § 1.

21-821 Repealed. Laws 1967, c. 102, § 1.

21-822 Repealed. Laws 1967, c. 102, § 1.

21-823 Repealed. Laws 1967, c. 102, § 1.

21-824 Repealed. Laws 1967, c. 102, § 1.

21-825 Repealed. Laws 1967, c. 102, § 1.

21-826 Repealed. Laws 1967, c. 102, § 1.

21-827 Repealed. Laws 1967, c. 102, § 1.

21-828 Repealed. Laws 1967, c. 102, § 1.

21-829 Repealed. Laws 1967, c. 102, § 1.

21-830 Repealed. Laws 1967, c. 102, § 1.

21-831 Repealed. Laws 1967, c. 102, § 1.

21-832 Repealed. Laws 1967, c. 102, § 1.

21-833 Repealed. Laws 1967, c. 102, § 1.

21-834 Repealed. Laws 1967, c. 102, § 1.

21-834.01 Repealed. Laws 1967, c. 102, § 1.

21-835 Repealed. Laws 1967, c. 102, § 1.

21-836 Repealed. Laws 1967, c. 102, § 1.

21-837 Repealed. Laws 1967, c. 102, § 1.

21-838 Repealed. Laws 1967, c. 102, § 1.

21-839 Repealed. Laws 1967, c. 102, § 1.

21-840 Repealed. Laws 1967, c. 102, § 1.

21-841 Repealed. Laws 1967, c. 102, § 1.

21-842 Repealed. Laws 1967, c. 102, § 1.

21-842.01 Repealed. Laws 1967, c. 102, § 1.

21-842.02 Repealed. Laws 1967, c. 102, § 1.

21-843 Repealed. Laws 1967, c. 102, § 1.

21-844 Repealed. Laws 1967, c. 102, § 1.

21-845 Repealed. Laws 1967, c. 102, § 1.

21-846 Repealed. Laws 1967, c. 102, § 1.

21-847 Repealed. Laws 1967, c. 102, § 1.

21-848 Repealed. Laws 1967, c. 102, § 1.

21-849 Repealed. Laws 1967, c. 102, § 1.

21-850 Repealed. Laws 1967, c. 102, § 1.

21-851 Repealed. Laws 1967, c. 102, § 1.

21-852 Repealed. Laws 1967, c. 102, § 1.

21-853 Repealed. Laws 1967, c. 102, § 1.

21-854 Repealed. Laws 1967, c. 102, § 1.

ARTICLE 9
PROFESSIONAL AND SIMILAR ASSOCIATIONS

Section

21-901 Repealed. Laws 1961, c. 76, § 1.

21-902 Repealed. Laws 1961, c. 76, § 1.

21-903 Repealed. Laws 1961, c. 76, § 1.

21-904 Repealed. Laws 1961, c. 76, § 1.

21-905 Repealed. Laws 1961, c. 76, § 1.

21-906 Repealed. Laws 1961, c. 76, § 1.

21-907 Repealed. Laws 1961, c. 76, § 1.

21-908 Repealed. Laws 1961, c. 76, § 1.

21-909 Repealed. Laws 1961, c. 76, § 1.

21-910 Repealed. Laws 1961, c. 76, § 1.

21-911 Repealed. Laws 1961, c. 76, § 1.

21-912 Repealed. Laws 1961, c. 76, § 1.

21-913 Repealed. Laws 1961, c. 76, § 1.

21-914 Repealed. Laws 1961, c. 76, § 1.

ARTICLE 10
BURIAL ASSOCIATIONS

Section

21-1001 Repealed. Laws 1967, c. 102, § 1.

21-1002 Repealed. Laws 1967, c. 102, § 1.

21-1003 Repealed. Laws 1967, c. 102, § 1.

21-1004 Repealed. Laws 1967, c. 102, § 1.

21-1005 Repealed. Laws 1967, c. 102, § 1.

21-1006 Repealed. Laws 1967, c. 102, § 1.

21-1007 Repealed. Laws 1967, c. 102, § 1.

21-1008 Repealed. Laws 1967, c. 102, § 1.

21-1009 Repealed. Laws 1967, c. 102, § 1.

21-1010 Repealed. Laws 1967, c. 102, § 1.

21-1011 Repealed. Laws 1967, c. 102, § 1.

21-1012 Repealed. Laws 1967, c. 102, § 1.

21-1013 Repealed. Laws 1967, c. 102, § 1.

21-1014 Repealed. Laws 1967, c. 102, § 1.

21-1015 Repealed. Laws 1967, c. 102, § 1.

21-1016 Repealed. Laws 1967, c. 102, § 1.

21-1017 Repealed. Laws 1967, c. 102, § 1.

ARTICLE 11
FONTENELLE FOREST ASSOCIATION

Section
21-1101. Legislative grant of charter; reservation of power to change.
21-1102. Repealed. Laws 1969, c. 125, § 2.
21-1103. Repealed. Laws 1969, c. 125, § 2.
21-1104. Repealed. Laws 1969, c. 125, § 2.
21-1105. Repealed. Laws 1969, c. 125, § 2.
21-1106. Repealed. Laws 1969, c. 125, § 2.
21-1107. Repealed. Laws 1969, c. 125, § 2.
21-1108. Repealed. Laws 1969, c. 125, § 2.
21-1109. Repealed. Laws 1969, c. 125, § 2.
21-1110. Repealed. Laws 1969, c. 125, § 2.
21-1111. Repealed. Laws 1969, c. 125, § 2.

21-1101 Legislative grant of charter; reservation of power to change.

Fontenelle Forest Association is hereby authorized to organize as a corporation not for profit under the provisions of the Nebraska Nonprofit Corporation Act. Upon so organizing, it shall have all of the powers and immunities provided for by such act and shall in all respects be subject to the provisions of such act, and for all purposes shall be deemed the successor to Fontenelle Forest Association as now organized and constituted.

Source: Laws 1913, c. 176, § 1, p. 531; R.S.1913, § 714; C.S.1922, § 623; C.S.1929, § 24-1101; R.S.1943, § 21-1101; Laws 1969, c. 125, § 1, p. 576; Laws 1996, LB 681, § 179.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-1102 Repealed. Laws 1969, c. 125, § 2.

21-1103 Repealed. Laws 1969, c. 125, § 2.

21-1104 Repealed. Laws 1969, c. 125, § 2.

21-1105 Repealed. Laws 1969, c. 125, § 2.

21-1106 Repealed. Laws 1969, c. 125, § 2.

21-1107 Repealed. Laws 1969, c. 125, § 2.

21-1108 Repealed. Laws 1969, c. 125, § 2.

21-1109 Repealed. Laws 1969, c. 125, § 2.

21-1110 Repealed. Laws 1969, c. 125, § 2.

21-1111 Repealed. Laws 1969, c. 125, § 2.

ARTICLE 12
FOREIGN CORPORATIONS

Section
21-1201. Repealed. Laws 1963, c. 98, § 135.
21-1202. Repealed. Laws 1963, c. 98, § 135.

Section
21-1203. Repealed. Laws 1963, c. 98, § 135.
21-1204. Repealed. Laws 1963, c. 98, § 135.
21-1205. Repealed. Laws 1963, c. 98, § 135.
21-1206. Repealed. Laws 1963, c. 98, § 135.
21-1207. Repealed. Laws 1963, c. 98, § 135.
21-1208. Repealed. Laws 1963, c. 98, § 135.
21-1209. Repealed. Laws 1963, c. 98, § 135.
21-1209.01. Repealed. Laws 1963, c. 98, § 135.
21-1210. Repealed. Laws 1963, c. 98, § 135.
21-1211. Repealed. Laws 1963, c. 98, § 135.
21-1212. Repealed. Laws 1963, c. 98, § 135.
21-1213. Repealed. Laws 1963, c. 98, § 135.
21-1214. Repealed. Laws 1963, c. 98, § 135.
21-1215. Repealed. Laws 1963, c. 98, § 135.
21-1216. Repealed. Laws 1963, c. 98, § 135.
21-1217. Repealed. Laws 1963, c. 98, § 135.

21-1201 Repealed. Laws 1963, c. 98, § 135.

21-1202 Repealed. Laws 1963, c. 98, § 135.

21-1203 Repealed. Laws 1963, c. 98, § 135.

21-1204 Repealed. Laws 1963, c. 98, § 135.

21-1205 Repealed. Laws 1963, c. 98, § 135.

21-1206 Repealed. Laws 1963, c. 98, § 135.

21-1207 Repealed. Laws 1963, c. 98, § 135.

21-1208 Repealed. Laws 1963, c. 98, § 135.

21-1209 Repealed. Laws 1963, c. 98, § 135.

21-1209.01 Repealed. Laws 1963, c. 98, § 135.

21-1210 Repealed. Laws 1963, c. 98, § 135.

21-1211 Repealed. Laws 1963, c. 98, § 135.

21-1212 Repealed. Laws 1963, c. 98, § 135.

21-1213 Repealed. Laws 1963, c. 98, § 135.

21-1214 Repealed. Laws 1963, c. 98, § 135.

21-1215 Repealed. Laws 1963, c. 98, § 135.

21-1216 Repealed. Laws 1963, c. 98, § 135.

21-1217 Repealed. Laws 1963, c. 98, § 135.

ARTICLE 13
COOPERATIVE COMPANIES

Cross References

False statement or book entry, penalty, see section 28-612.
Merger or consolidation of credit union, see section 21-17,109.
Transactions exempt from Securities Act of Nebraska, see section 8-1111.

(a) GENERAL PROVISIONS

(b) COOPERATIVE CREDIT ASSOCIATIONS

(c) COOPERATIVE FARM LAND COMPANIES

(a) GENERAL PROVISIONS

21-1301 Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.

Any number of persons, not less than ten, or one or more cooperative companies, may form and organize a cooperative corporation for the transaction of any lawful business by the adoption of articles of incorporation in the same manner and with like powers and duties as is required of other corporations except as provided in sections 21-1301 to 21-1306. Nothing in sections 21-1301 and 21-1303 shall be deemed to apply to electrical cooperatives or electric member associations. If the Business Corporation Act requires an affirmative vote of a specified percentage of stockholders before action can be taken by a corporation, such percentage for a cooperative corporation shall be of the votes cast on the matter at the stockholders' meeting at which the same shall be voted upon.

Source: Laws 1911, c. 32, § 2, p. 196; R.S.1913, § 734; Laws 1919, c. 197, § 3, p. 879; Laws 1921, c. 28, § 1, p. 161; C.S.1922, § 642; Laws 1925, c. 79, § 1, p. 243; C.S.1929, § 24-1301; R.S.1943, § 21-1301; Laws 1963, c. 102, § 1, p. 422; Laws 1975, LB 156, § 1; Laws 1995, LB 109, § 203.

Cross References

Business Corporation Act, see section 21-2001.
Transactions exempt from Securities Act of Nebraska, see section 8-1111.

Organization of cooperative association as a corporation is authorized. Schmeckpeper v. Panhandle Coop. Assn., 180 Neb. 352, 143 N.W.2d 113 (1966).

Farmers' cooperative company organized under this article is not necessarily exempt from federal income tax. Farmers Union Co-op. Co. of Guide Rock v. Commissioner of Internal Revenue, 90 F.2d 488 (8th Cir. 1937).

21-1302 Cooperative corporation; articles of incorporation; contents.

Every such cooperative company shall provide in its articles of incorporation:

(1) That the word cooperative shall be included in its corporate name and that it proposes to organize as a cooperative corporation;

(2) That dividends on the capital stock shall be fixed but shall not exceed eight percent per annum of the amount actually paid thereon;

(3) That the net earnings or savings of the company remaining after making the distribution provided in subdivision (2) of this section, if any, shall be distributed on the basis of or in proportion to the amount or value of property bought from or sold to members, or members and other patrons, or of labor performed or other services rendered to the corporation. This subdivision shall not be so interpreted as to prevent a cooperative company from declaring patronage dividends at different rates upon different classes or kinds or varieties of goods handled. This subdivision and subdivision (2) of this section shall not be so interpreted as to prevent a company from appropriating funds for the promotion of cooperation and improvement in agriculture;

(4) That the articles of incorporation or the bylaws of the company shall give a detailed statement of the method followed in distributing earnings or savings;

(5) The registered office and street address of such registered office;

(6) The current registered agent and the name and street address of such registered agent. A post office box number may be provided in addition to the street address; and

(7) The name and street address of each incorporator.

Source: Laws 1921, c. 28, § 2, p. 161; C.S.1922, § 643; Laws 1925, c. 79, § 2, p. 243; C.S.1929, § 24-1302; R.S.1943, § 21-1302; Laws 1963, c. 102, § 2, p. 423; Laws 1967, c. 103, § 1, p. 318; Laws 2008, LB379, § 5.

The requirement of the accumulation of a surplus equal to twenty percent does not restrict the corporation from providing a greater amount. Schmeckpeper v. Panhandle Coop. Assn., 180 Neb. 352, 143 N.W.2d 113 (1966).

21-1303 Cooperative corporation; additional powers; stockholder vote; conditions; adoption of articles and bylaws.

Every cooperative company which shall organize under sections 21-1301 and 21-1302 shall have power (1) to regulate and limit the right of stockholders to transfer their stock, (2) to restrict stock ownership to producers of agricultural products and, if such restriction is adopted, to provide an equitable procedure for redeeming the stock of any holder who is determined not to be a producer of agricultural products, (3) to provide that each individual holder of common stock may be limited to one vote per person, regardless of the number of shares of stock which he or she may own, at any stockholders' meeting and that such vote may be cast only in person, or by a signed, written vote if the stockholder has been previously notified in writing of the exact motion or resolution on which the vote is taken, (4) to limit the amount of capital stock that any one person or corporation may own either directly or indirectly, (5) to prohibit or to limit the amount or percentage of the total business which may be transacted with nonmembers, (6) to set aside each year to a surplus fund a portion of the savings of the company over and above all expenses and dividends or interest upon capital stock which surplus may be used for conducting the business of the corporation, and (7) to adopt articles and bylaws for the management and regulation of the affairs of the company which shall set the number of directors, the terms of such directors, including any provisions for the staggering of such terms, the number or percentage of stockholders or shares of stock required to be present, in person or by proxy, in order to constitute a quorum at each stockholders' meeting, which number or percentage shall not be less than ten percent of the stockholders but never more than fifty nor less than five stockholders. Members represented by signed, written vote may be counted in computing a quorum only on those questions as to which the signed, written vote is taken.

Source: Laws 1911, c. 32, § 3, p. 196; R.S.1913, § 735; Laws 1919, c. 57, § 1, p. 161; Laws 1921, c. 28, § 3, p. 162; C.S.1922, § 644; Laws 1925, c. 79, § 3, p. 244; C.S.1929, § 24-1303; R.S.1943, § 21-1303; Laws 1961, c. 79, § 1, p. 288; Laws 1963, c. 102, § 3, p. 423; Laws 1965, c. 89, § 1, p. 356; Laws 1975, LB 156, § 2; Laws 1981, LB 283, § 1.

Cooperative associations are given power to engage in enterprises requiring capital. Schmeckpeper v. Panhandle Coop. Assn., 180 Neb. 352, 143 N.W.2d 113 (1966).

21-1304 Cooperative corporation; contracts with members; provisions; damages for breach.

The contracts mentioned in section 21-1303 may require the members to sell, for any period of time not over five years, all or a stipulated part of their specifically enumerated products through the association or to buy specifically enumerated supplies exclusively through the association, but in such case a reasonable period during each year after the first two years of the contract shall be specified during which any member, by giving notice in prescribed form, may be released from such obligation thereafter. In order to protect itself in the necessary outlay, which it may make for the maintenance of its services, and

likewise to reimburse the association for any loss or damage which it or its members may sustain through a member's failure to deliver his products to, or to procure his supplies from the association, the association may stipulate that some regular charge shall be paid by the members for each unit of goods covered by such contract, whether actually handled by the association or not. In case it is difficult or impracticable to determine the actual amount of damage suffered by the association or its members through such failure to comply with the terms of such contract, the association and the members may agree upon a sum to be paid as liquidated damages for the breach of the contract, the amount to be stated in the contract.

Source: Laws 1925, c. 79, § 3, p. 245; C.S.1929, § 24-1303; R.S.1943, § 21-1304.

21-1305 Cooperative corporation; fees, filings, and reports.

The fees for the incorporation of cooperative companies shall be the same as those required by law of other corporations. Such cooperative corporations shall be required to make the same reports and filings as is required of other corporations.

Source: Laws 1911, c. 32, § 5, p. 197; R.S.1913, § 737; Laws 1921, c. 28, § 4, p. 162; C.S.1922, § 645; C.S.1929, § 24-1304; R.S.1943, § 21-1305.

21-1306 Cooperative; use of word restricted; penalty for violation.

No corporation, company, firm or association which shall not be incorporated as a cooperative corporation shall adopt or use the words cooperative or any abbreviation thereof as a part of its name. Any person or company violating the provisions of this section shall be guilty of a Class V misdemeanor for each day's continuance of the offense.

Source: Laws 1921, c. 28, § 5, p. 162; C.S.1922, § 646; C.S.1929, § 24-1305; R.S.1943, § 21-1306; Laws 1977, LB 40, § 78.

21-1307 Repealed. Laws 1963, c. 102, § 4.

(b) COOPERATIVE CREDIT ASSOCIATIONS

21-1308 Repealed. Laws 2002, LB 1094, § 19.

21-1309 Repealed. Laws 2002, LB 1094, § 19.

21-1310 Repealed. Laws 2002, LB 1094, § 19.

21-1311 Repealed. Laws 2002, LB 1094, § 19.

21-1312 Repealed. Laws 2002, LB 1094, § 19.

21-1313 Repealed. Laws 2002, LB 1094, § 19.

21-1314 Repealed. Laws 2002, LB 1094, § 19.

21-1315 Repealed. Laws 2002, LB 1094, § 19.

21-1316 Repealed. Laws 2002, LB 1094, § 19.

21-1316.01 Repealed. Laws 2002, LB 1094, § 19.

21-1317 Repealed. Laws 2002, LB 1094, § 19.

21-1318 Repealed. Laws 2002, LB 1094, § 19.

21-1319 Repealed. Laws 2002, LB 1094, § 19.

21-1320 Repealed. Laws 2002, LB 1094, § 19.

21-1320.01 Repealed. Laws 2002, LB 1094, § 19.

21-1321 Repealed. Laws 2002, LB 1094, § 19.

21-1322 Repealed. Laws 2002, LB 1094, § 19.

21-1323 Repealed. Laws 2002, LB 1094, § 19.

21-1324 Repealed. Laws 2002, LB 1094, § 19.

21-1325 Repealed. Laws 2002, LB 1094, § 19.

21-1326 Repealed. Laws 2002, LB 1094, § 19.

21-1326.01 Repealed. Laws 2002, LB 1094, § 19.

21-1327 Repealed. Laws 2002, LB 1094, § 19.

21-1327.01 Repealed. Laws 2002, LB 1094, § 19.

21-1328 Repealed. Laws 2002, LB 1094, § 19.

21-1329 Repealed. Laws 2002, LB 1094, § 19.

21-1330 Repealed. Laws 2002, LB 1094, § 19.

21-1331 Repealed. Laws 2002, LB 1094, § 19.

21-1331.01 Repealed. Laws 2002, LB 1094, § 19.

21-1332 Repealed. Laws 2002, LB 1094, § 19.

(c) COOPERATIVE FARM LAND COMPANIES

21-1333 Cooperative farm land company; incorporation; purposes; general powers.

Any number of persons, not less than five, may form and organize a cooperative farm land company, with or without capital stock, for the purpose of facilitating the acquisition of agricultural and grazing lands by farmers and stock raisers, by the adoption of articles of incorporation in the same manner and with like powers and duties as other corporations, except as herein provided.

Source: Laws 1941, c. 38, § 1, p. 153; C.S.Supp.,1941, § 24-2101; R.S. 1943, § 21-1333.

21-1334 Cooperative farm land company; articles of incorporation; contents; new members.

Every such cooperative farm land company shall provide in its articles of incorporation (1) that the word cooperative shall be included in its corporate name and that it proposes to organize as a cooperative farm land company; (2) if organized with capital stock, that no one person shall own either directly or indirectly more than five percent of the capital stock of the company; (3) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules; and (4) that dividends on the capital stock shall be fixed by the company, but shall in no event exceed six percent per annum of the amount actually paid thereon.

Source: Laws 1941, c. 38, § 2, p. 153; C.S.Supp.,1941, § 24-2102; R.S. 1943, § 21-1334.

21-1335 Cooperative farm land company; corporate powers.

Every cooperative corporation that shall organize under sections 21-1333 to 21-1339 shall have power (1) to have succession by its corporate name, (2) to sue and be sued, (3) to make and use a common seal and alter the same at its pleasure, (4) to regulate and limit the right of stockholders to transfer their stock, (5) to appoint such subordinate officers and agents as the business of the corporation shall require and to allow them suitable compensation, (6) to adopt bylaws for the management and regulation of the affairs of the company, (7) to purchase, hold, sell, assign, or transfer the shares of the capital stock of other cooperative companies which it may own, and while owner of such stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, (8) to provide that each individual stockholder may be limited to one vote per person regardless of the number of shares of stock which he or she may own, (9) to prohibit proxy voting and to permit voting by mail under such regulations as shall be provided for in the bylaws, (10) to engage in any activity in connection with the purchase, lease or acquisition of agricultural and grazing lands and to improve or develop such land and to mortgage, or otherwise encumber the same, (11) to contract with its members and with other cooperative organizations organized hereunder for the sale, purchase or lease of such lands with such provisions for periodical payments, reserves, reamortization, supervision of the use of the lands, crop programming, and other factors as shall be agreed upon by such contracting parties, (12) to make contracts with the United States or the State of Nebraska, or any agency thereof, for the purpose of effectuating any plan for rural rehabilitation or with any nonprofit corporation organized for such purpose, (13) to provide that continued membership in such cooperative farm land company shall be dependent upon the performance by members of contracts entered into between themselves and said cooperative farm land company, (14) to purchase, own, sell, lease, mortgage, or otherwise acquire and convey real or personal property or any interest therein, (15) to borrow money necessary or convenient to the accomplishment of the purposes of this corporation and to secure the payment thereof by mortgage, pledge or conveyance in trust, of the whole or any part of the property of the corporation, and (16) to do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the

attainment of any one or more of the objects herein enumerated and to contract accordingly, and in addition to exercise and possess all powers, rights, and privileges granted by the laws of this state to ordinary corporations and to corporations organized under sections 21-1301 to 21-1306 and 21-1401 to 21-1414, and any amendments thereto.

Source: Laws 1941, c. 38, § 3, p. 153; C.S.Supp.,1941, § 24-2103; R.S. 1943, § 21-1335; Laws 2002, LB 1094, § 10.

21-1336 Cooperative farm land company; annual report; contents; fee.

(1) Each cooperative farm land company organized hereunder shall make a report in writing to the Secretary of State annually during the month of November in such form as the secretary may prescribe for the reports of nonprofit corporations. The report shall be signed and sworn to, before an officer authorized to administer oaths, by the president, vice president, secretary or other chief officer of the corporation, and forwarded to the Secretary of State.

(2) Such report shall show (a) the name of the corporation, (b) the location of its principal office, (c) the names of the president, secretary-treasurer, and members of the board of trustees or directors, with post office address of each, (d) the date of the annual election of such corporation, and (e) the object or purpose which such corporation is engaged in carrying out.

(3) Upon the filing of such report as provided in subdivisions (1) and (2) of this section, the Secretary of State shall charge and collect a fee of one dollar on or before the first of January next following, which fee shall be in lieu of occupation tax fees.

Source: Laws 1941, c. 38, § 4, p. 154; C.S.Supp.,1941, § 24-2104; R.S. 1943, § 21-1336.

21-1337 Cooperative farm land company; certificate of compliance; occupation tax laws inapplicable.

Upon the filing of the report and the payment of the fee provided for in section 21-1336, the Secretary of State shall make out and deliver to such corporation a certificate witnessing the compliance by such corporation with section 21-1336 and the payment of the annual fee therein provided for. No further compliance with sections 21-301 to 21-325 shall be required of such cooperative farm land companies.

Source: Laws 1941, c. 38, § 5, p. 155; C.S.Supp.,1941, § 24-2105; R.S. 1943, § 21-1337; Laws 1988, LB 800, § 6.

21-1338 Cooperative farm land company; fees; disposition.

Annual fees collected under section 21-1336 shall be reported by the Secretary of State to the Tax Commissioner, and shall be paid by the secretary into the state treasury and credited to the General Fund.

Source: Laws 1941, c. 38, § 6, p. 155; C.S.Supp.,1941, § 24-2106; R.S. 1943, § 21-1338.

21-1339 Cooperative farm land company; investment in purchase-money mortgages by insurance companies, authorized.

Obligations of a cooperative farm land company secured by a first mortgage on agricultural lands purchased by a cooperative farm land company shall be a lawful investment for funds of any insurance company which has conveyed real estate to the company to the full extent of the purchase price.

Source: Laws 1941, c. 38, § 7, p. 155; C.S.Supp.,1941, § 24-2107; R.S. 1943, § 21-1339; Laws 1991, LB 237, § 55.

ARTICLE 14

NONSTOCK COOPERATIVE MARKETING COMPANIES

Section

21-1401 Terms, defined; act, how cited.

(1) For purposes of the Nonstock Cooperative Marketing Act, unless the context otherwise requires: (a) The term association means any corporation formed hereunder; (b) the term member means a person who owns a certificate of membership in an association formed without capital stock; (c) the term person means an individual, a partnership, a limited liability company, a corporation, an association, or two or more persons having a joint or common interest; (d) the term agricultural products or products means field crops, horticultural, viticultural, forestry, nut, dairy, livestock, poultry, bee and farm products, and the byproducts derived from any of them; and (e) the words used to import the singular may be applied to the plural as the context may demand.

(2) Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves as such or for their members as such but only for their members as producers.

(3) Sections 21-1401 to 21-1414 shall be known and may be cited as the Nonstock Cooperative Marketing Act.

Source: Laws 1925, c. 80, § 1, p. 247; C.S.1929, § 24-1401; R.S.1943, § 21-1401; Laws 1993, LB 121, § 150.

Cross References

Transactions exempt from Securities Act of Nebraska, see section 8-1111.

A nonstock cooperative corporation formed pursuant to this section is not a ''non-profit corporation'' as that term is used in Neb. Const. art. XII, section 8(1)(B), because it exists and operates for the economic benefit of its members. Pig Pro Nonstock Co-op v. Moore, 253 Neb. 72, 568 N.W.2d 217 (1997).

Statutory definition of ''agricultural products'' used herein was adopted by court as applicable to hauling by contract carrier. Rodgers v. Nebraska State Railway Commission, 134 Neb. 832, 279 N.W. 800 (1938).

Common membership in nonstock cooperative association did not authorize injunction against prosecution of suits against individual members on note given for membership. Epp v. Federal Trust Company, 123 Neb. 375, 242 N.W. 922 (1932).

21-1402 Formation; purposes.

Any number of persons, not less than five, engaged in the production of agricultural products or two or more nonprofit cooperative companies, stock or nonstock, may form a cooperative association without capital stock for the transaction of any lawful business by the adoption of articles of incorporation, as set forth in Chapter 21, article 14.

Source: Laws 1925, c. 80, § 2, p. 248; C.S.1929, § 24-1402; R.S.1943, § 21-1402; Laws 1951, c. 40, § 1, p. 146; Laws 1981, LB 283, § 2.

21-1403 Articles of incorporation; contents.

Every nonstock cooperative association organized under the provisions of Chapter 21, article 14, shall provide in its articles of incorporation: (1) That the words nonstock cooperative shall be included in its corporate name and that it proposes to organize as a cooperative association; (2) the objects or purposes for which it is formed; (3) that the net earnings or savings of the association, if any, shall be distributed on the basis of, or in proportion to, the amount or value of property bought from or sold to members, or members and other patrons, or of labor performed or other services rendered to the corporation, except that this subdivision shall not be so interpreted as to prevent a cooperative company from declaring patronage dividends at different rates upon different classes or kinds or varieties of goods handled; (4) that the articles of incorporation or the bylaws of the company shall give a detailed statement of the method followed in distributing earnings or savings; (5) the registered office and street address of such registered office; (6) the current registered agent and the name and street address of such registered agent. A post office box number may be provided in addition to the street address; and (7) the name and street address of each incorporator.

Source: Laws 1925, c. 80, § 3, p. 248; C.S.1929, § 24-1403; R.S.1943, § 21-1403; Laws 1967, c. 104, § 1, p. 320; Laws 1981, LB 283, § 3; Laws 2008, LB379, § 6.

21-1404 Articles of incorporation; filing; certified copy as evidence; fees.

The articles of incorporation and amendments thereof shall be filed in accordance with the general corporation laws of this state and when so filed the said articles of incorporation and amendments thereof or certified copies thereof shall be received in all the courts of this state as prima facie evidence of the facts contained therein and of the due incorporation of such association. The fees for the incorporation of nonstock cooperative associations shall be the same as those required by law of other nonprofit corporations.

Source: Laws 1925, c. 80, § 4, p. 249; C.S.1929, § 24-1404; R.S.1943, § 21-1404; Laws 1981, LB 283, § 4.

21-1405 Powers.

Each association incorporated hereunder shall have the following powers: (1) To enter into contracts with its members for periods not over five years, requiring them to sell or market all or a specified part of their livestock or other products to or through the association, or to buy all, or a specified part, of their

farm supplies from or through the association; (2) to act as agent or representative of any member or members or of nonmembers in carrying out the objects of the association; (3) to set aside each year to a surplus fund a portion of the savings of the company which surplus may be used for conducting the business of the corporation; and (4) to adopt articles and bylaws for the management of the association which shall also set the number or percentage of members required to be present in order to constitute a quorum at each members' meeting, which number or percentage shall not be less than ten percent of the members, but not more than fifty members, nor less than five members, except when the total membership is ten or less.

Source: Laws 1925, c. 80, § 5, p. 249; C.S.1929, § 24-1405; R.S.1943, § 21-1405; Laws 1977, LB 155, § 1; Laws 1981, LB 283, § 5.

21-1406 Members; eligibility; suspension or withdrawal; voting; liability for corporate debts; certificate of membership.

Only persons engaged in the production of the agricultural products, including lessees and landlords receiving such products as rent except as otherwise provided herein, or cooperative associations of such producers, shall be eligible to membership therein, subject to the terms and conditions prescribed in its articles of incorporation or bylaws consistent herewith. Only members of an association shall have the right to vote, and no member shall be entitled to more than one vote upon any question or matter affecting the association or relating to its affairs. Articles of incorporation hereunder may provide that no voting by proxy shall be permitted and such articles or bylaws adopted thereunder may further provide that a written vote received by mail from any absent member, and signed by him or her, may be read and counted at any regular or special meeting of the association, provided that the secretary shall notify all members in writing of the exact motion or resolution upon which such vote is to be taken, and a copy of same shall be forwarded with and attached to the vote so mailed by the member, and elections may be carried out in a similar manner. No member of an association shall be liable for its debts or obligations beyond the unpaid amount, if any, due by him or her on his or her membership dues. Every association formed hereunder shall issue a certificate of membership to each member which, unless otherwise provided in its articles of incorporation or bylaws, shall be nontransferable. Following the ascertainment through procedure set forth in its bylaws that a member has ceased to be eligible to membership in an association, his or her rights therein may be suspended. In the event of the death, withdrawal or expulsion of a member, the board of directors shall within a reasonable time thereafter equitably and conclusively ascertain the value of such member's membership, if any, which shall be paid him or her or his or her legal representatives by the association within a reasonable time after such ascertainment.

Source: Laws 1925, c. 80, § 6, p. 250; C.S.1929, § 24-1406; R.S.1943, § 21-1406; Laws 1977, LB 155, § 2; Laws 1981, LB 283, § 6.

21-1407 Bylaws.

Each association incorporated hereunder shall make such provision as it may desire for the adoption of its board of directors of a code of bylaws for the government and management of its business consistent herewith.

Source: Laws 1925, c. 80, § 7, p. 251; C.S.1929, § 24-1407; R.S.1943, § 21-1407.

21-1408 Directors; duties and powers; annual and special meetings; notice.

In its bylaws, each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time; and ten percent of the members may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting; *Provided, however,* that the bylaws may require instead that such notice may be given by publication in a newspaper or newspapers of general circulation, in the territory in which the association has its membership.

Source: Laws 1925, c. 80, § 8, p. 251; C.S.1929, § 24-1408; R.S.1943, § 21-1408.

21-1409 Repealed. Laws 1981, LB 283, § 7.

21-1410 Marketing contracts; breach; rights of association.

The marketing contract of any association formed hereunder may fix as liquidated damages, specific, reasonable sums to be paid by a member to the association upon the breach by him of any of the provisions of the marketing contract regarding the sale or delivery or withholding of products, and may further provide that the member will pay all costs, premium for bonds, expenses and fees in case any action is brought upon the contract by the association, and any such provision shall be valid and enforceable in the courts of this state and shall not be construed as a penalty. In the event of a breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree for the specific performance hereof. Pending the adjudication of such an action and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

Source: Laws 1925, c. 80, § 10, p. 252; C.S.1929, § 24-1410; R.S.1943, § 21-1410.

21-1411 Federation of associations; acquisition of stock or membership; agreements.

To effectuate the formation of federations of nonprofit associations of producers, any such association of producers whether formed hereunder or not is hereby authorized to acquire membership or stock in any other such association of producers, and any such association is hereby authorized to grant such membership or sell such stock to such associations, and any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements, and make all necessary and proper stipulations, agreements and contracts with any other cooperative corporation, association, or associations, formed in this or in any other state, for the cooperative and more economical carrying out of its business, or any part thereof. Any two or more associations may, by agreement between them, unite in employing and

using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective business.

Source: Laws 1925, c. 80, § 11, p. 252; C.S.1929, § 24-1411; R.S.1943, § 21-1411.

21-1412 Cooperative; use of term restricted.

No association, corporation, or organization shall use the term cooperative as a part of its name unless it is in fact operating on a cooperative basis.

Source: Laws 1925, c. 80, § 12, p. 253; C.S.1929, § 24-1412; R.S.1943, § 21-1412.

21-1413 Repealed. Laws 1981, LB 283, § 7.

21-1414 Application of general corporation laws.

The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of sections 21-1401 to 21-1414; *Provided,* that wherever such general corporation laws require an affirmative vote of a specified percentage of stockholders to authorize action by the corporation, such percentage for a nonstock cooperative association shall be that percentage of the votes cast on the matter at the members' meeting at which the same shall be voted upon. Any provision of law which is in conflict therewith shall not be construed as applying to any association herein provided for.

Source: Laws 1925, c. 80, § 14, p. 253; C.S.1929, § 24-1414; R.S.1943, § 21-1414; Laws 1977, LB 155, § 3.

ARTICLE 15

HOSPITAL SERVICE CORPORATIONS

Section
21-1501. Repealed. Laws 1959, c. 80, § 93.
21-1502. Repealed. Laws 1959, c. 80, § 93.
21-1503. Repealed. Laws 1959, c. 80, § 93.
21-1504. Repealed. Laws 1959, c. 80, § 93.
21-1505. Repealed. Laws 1959, c. 80, § 93.
21-1506. Repealed. Laws 1959, c. 80, § 93.
21-1507. Repealed. Laws 1959, c. 80, § 93.
21-1508. Repealed. Laws 1959, c. 80, § 93.
21-1509. Repealed. Laws 1989, LB 92, § 278.
21-1509.01. Repealed. Laws 1989, LB 92, § 278.
21-1510. Repealed. Laws 1989, LB 92, § 278.
21-1511. Repealed. Laws 1972, LB 1156, § 1.
21-1512. Repealed. Laws 1989, LB 92, § 278.
21-1513. Repealed. Laws 1989, LB 92, § 278.
21-1514. Repealed. Laws 1989, LB 92, § 278.
21-1515. Repealed. Laws 1989, LB 92, § 278.
21-1516. Repealed. Laws 1989, LB 92, § 278.
21-1517. Repealed. Laws 1957, c. 57, § 2.
21-1518. Repealed. Laws 1989, LB 92, § 278.
21-1519. Repealed. Laws 1989, LB 92, § 278.
21-1520. Repealed. Laws 1989, LB 92, § 278.
21-1521. Repealed. Laws 1989, LB 92, § 278.
21-1522. Repealed. Laws 1951, c. 41, § 3.
21-1523. Repealed. Laws 1959, c. 80, § 93.

Section
21-1524. Repealed. Laws 1959, c. 80, § 93.
21-1525. Repealed. Laws 1959, c. 80, § 93.
21-1526. Repealed. Laws 1959, c. 80, § 93.
21-1527. Repealed. Laws 1959, c. 80, § 93.
21-1528. Repealed. Laws 1959, c. 80, § 93.
21-1529. Repealed. Laws 1959, c. 264, § 1.

21-1501 Repealed. Laws 1959, c. 80, § 93.

21-1502 Repealed. Laws 1959, c. 80, § 93

21-1503 Repealed. Laws 1959, c. 80, § 93.

21-1504 Repealed. Laws 1959, c. 80, § 93.

21-1505 Repealed. Laws 1959, c. 80, § 93.

21-1506 Repealed. Laws 1959, c. 80, § 93.

21-1507 Repealed. Laws 1959, c. 80, § 93.

21-1508 Repealed. Laws 1959, c. 80, § 93.

21-1509 Repealed. Laws 1989, LB 92, § 278.

21-1509.01 Repealed. Laws 1989, LB 92, § 278.

21-1510 Repealed. Laws 1989, LB 92, § 278.

21-1511 Repealed. Laws 1972, LB 1156, § 1.

21-1512 Repealed. Laws 1989, LB 92, § 278.

21-1513 Repealed. Laws 1989, LB 92, § 278.

21-1514 Repealed. Laws 1989, LB 92, § 278.

21-1515 Repealed. Laws 1989, LB 92, § 278.

21-1516 Repealed. Laws 1989, LB 92, § 278.

21-1517 Repealed. Laws 1957, c. 57, § 2.

21-1518 Repealed. Laws 1989, LB 92, § 278.

21-1519 Repealed. Laws 1989, LB 92, § 278.

21-1520 Repealed. Laws 1989, LB 92, § 278.

21-1521 Repealed. Laws 1989, LB 92, § 278.

21-1522 Repealed. Laws 1951, c. 41, § 3.

21-1523 Repealed. Laws 1959, c. 80, § 93.

21-1524 Repealed. Laws 1959, c. 80, § 93.

21-1525 Repealed. Laws 1959, c. 80, § 93.

21-1526 Repealed. Laws 1959, c. 80, § 93.

21-1527 Repealed. Laws 1959, c. 80, § 93.

21-1528 Repealed. Laws 1959, c. 80, § 93.

21-1529 Repealed. Laws 1959, c. 264, § 1.

ARTICLE 16
UNION DEPOT COMPANIES

Section
21-1601. Repealed. Laws 1961, c. 80, § 1.
21-1602. Repealed. Laws 1961, c. 80, § 1.
21-1603. Repealed. Laws 1961, c. 80, § 1.
21-1604. Repealed. Laws 1961, c. 80, § 1.
21-1605. Repealed. Laws 1961, c. 80, § 1.

21-1601 Repealed. Laws 1961, c. 80, § 1.

21-1602 Repealed. Laws 1961, c. 80, § 1.

21-1603 Repealed. Laws 1961, c. 80, § 1.

21-1604 Repealed. Laws 1961, c. 80, § 1.

21-1605 Repealed. Laws 1961, c. 80, § 1.

ARTICLE 17
CREDIT UNIONS

Cross References

Confidential information, disclosure provisions, see section 8-1401.
Penalty, false statement or book entry, destruction of records, see section 28-612.

(a) CREDIT UNION ACT

Section
21-1701. Act, how cited.
21-1702. Definitions, where found.
21-1703. Capital, defined.
21-1704. Corporate central credit union, defined.
21-1705. Credit union, defined.
21-1706. Department, defined.
21-1707. Director, defined.
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21-1719. Person, defined.
21-1720. Reserves, defined.
21-1721. Risk assets, defined.
21-1722. Share account, defined.
21-1723. Ownership of a share account; rights.
21-1724. Organization; procedure; hearing.
21-1725. Existing credit unions; organization; procedure.

Section
21-17,135. Repealed. Laws 2003, LB 131, § 40.
21-17,136. Repealed. Laws 2003, LB 131, § 40.
21-17,137. Repealed. Laws 2003, LB 131, § 40.
21-17,138. Repealed. Laws 2003, LB 131, § 40.
21-17,139. Repealed. Laws 2003, LB 131, § 40.
21-17,140. Repealed. Laws 2003, LB 131, § 40.
21-17,141. Repealed. Laws 2003, LB 131, § 40.
21-17,142. Repealed. Laws 2003, LB 131, § 40.
21-17,143. Repealed. Laws 2003, LB 131, § 40.
21-17,144. Repealed. Laws 2003, LB 131, § 40.
21-17,145. Repealed. Laws 2003, LB 131, § 40.

(a) CREDIT UNION ACT

21-1701 Act, how cited.

Sections 21-1701 to 21-17,116 shall be known and may be cited as the Credit Union Act.

Source: Laws 1996, LB 948, § 1; Laws 2000, LB 932, § 23; Laws 2002, LB 957, § 15.

21-1702 Definitions, where found.

For purposes of the Credit Union Act, the definitions found in sections 21-1703 to 21-1722 shall be used.

Source: Laws 1996, LB 948, § 2.

21-1703 Capital, defined.

Capital shall mean share accounts, membership shares, reserve accounts, and undivided earnings.

Source: Laws 1996, LB 948, § 3.

21-1704 Corporate central credit union, defined.

Corporate central credit union shall mean a credit union the members of which consist primarily of other credit unions.

Source: Laws 1996, LB 948, § 4.

21-1705 Credit union, defined.

Credit union shall mean a cooperative, nonprofit corporation organized under the Credit Union Act for purposes of educating and encouraging its members in the concept of thrift, creating a source of credit for provident and productive purposes, and carrying on such collateral activities as are set forth in the act.

Source: Laws 1996, LB 948, § 5.

21-1706 Department, defined.

Department shall mean the Department of Banking and Finance.

Source: Laws 1996, LB 948, § 6.

21-1707 Director, defined.

Director shall mean the Director of Banking and Finance.

Source: Laws 1996, LB 948, § 7.

21-1708 Employee, defined.

Employee shall mean a person who works full-time or part-time for and is compensated by a credit union.

Source: Laws 1996, LB 948, § 8.

21-1709 Fixed asset, defined.

Fixed asset shall mean a structure, land, furniture, fixture, or equipment, including computer hardware and software and heating and cooling equipment, affixed to premises.

Source: Laws 1996, LB 948, § 9.

21-1710 Immediate family, defined.

Immediate family shall include any person related to a member by blood or marriage, including foster and adopted children.

Source: Laws 1996, LB 948, § 10.

21-1711 Individual, defined.

Individual shall mean a natural person.

Source: Laws 1996, LB 948, § 11.

21-1712 Insolvent, defined.

Insolvent shall mean a condition in which (1) the actual cash market value of the assets of a credit union is insufficient to pay its liabilities to its members, (2) a credit union is unable to meet the demands of its creditors in the usual and customary manner, (3) a credit union, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (4) a credit union, after written demand by the director, fails to make good an impairment of its capital or surplus.

Source: Laws 1996, LB 948, § 12.

21-1713 Line of credit, defined.

Line of credit shall mean a loan in which amounts are advanced to the borrower upon his or her request from time to time, pursuant to a preexisting contract and conditional or unconditional credit approval, and in which principal amounts repaid automatically replenish the funds available under the contract.

Source: Laws 1996, LB 948, § 13.

21-1714 Loan, defined.

Loan shall mean any extension of credit pursuant to a contract.

Source: Laws 1996, LB 948, § 14.

21-1715 Membership officer, defined.

Membership officer shall mean any member appointed by the board of directors of a credit union whose primary function is to act on applications for membership under the conditions the board and bylaws have prescribed.

Source: Laws 1996, LB 948, § 15.

21-1716 Membership shares, defined.

Membership shares shall mean a balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. Ownership of a membership share shall represent an interest in the capital of the credit union upon dissolution or conversion to another type of institution.

Source: Laws 1996, LB 948, § 16.

21-1717 Official, defined.

Official shall mean a member of the board of directors of a credit union, an officer of a credit union, a member of the credit committee of a credit union, if any, or a member of the supervisory committee of a credit union.

Source: Laws 1996, LB 948, § 17.

21-1718 Organization, defined.

Organization shall mean any corporation, association, limited liability company, partnership, society, firm, syndicate, trust, or other legal entity.

Source: Laws 1996, LB 948, § 18.

21-1719 Person, defined.

Person shall mean an individual, partnership, limited liability company, corporation, association, cooperative organization, or any other legal entity treated as a person under the laws of this state.

Source: Laws 1996, LB 948, § 19.

21-1720 Reserves, defined.

Reserves shall mean an allocation of retained income and shall include regular and special reserves, except for any allowance for loan or investment losses.

Source: Laws 1996, LB 948, § 20.

21-1721 Risk assets, defined.

Risk assets shall mean all assets except the following:

(1) Cash on hand;

(2) Deposits or shares in federally insured or state-insured banks, savings and loan associations, and credit unions that have a remaining maturity of five years or less;

(3) Assets that have a remaining maturity of five years or less and which are insured by, fully guaranteed as to principal and interest by, or due from the United States Government, its agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association. Collateralized mortgage obligations that are

comprised of government-guaranteed mortgage loans shall be included in this asset category;

(4) Loans to other credit unions that have a remaining maturity of five years or less;

(5) Student loans insured under Title IV, Part B, of the federal Higher Education Act of 1965, 20 U.S.C. 1071 et seq. or similar state insurance programs that have a remaining maturity of five years or less;

(6) Loans that have a remaining maturity of five years or less and are fully insured or guaranteed by the federal government, a state government, or any agency thereof;

(7) Share accounts or deposit accounts in a corporate central credit union that have a remaining maturity of five years or less or, if the maturity is greater than five years, an asset that is being carried on the credit union's records at the lower of cost or market value or is being marked to market value monthly;

(8) Common trust investments, including mutual funds, which deal exclusively in investments authorized by the Credit Union Act or the Federal Credit Union Act that are either carried on the credit union's records at the lower of cost or market value or are being marked to market value monthly;

(9) Prepaid expenses;

(10) Accrued interest on non risk investments;

(11) Loans fully secured by a pledge of share accounts in the lending credit union which are equal to and maintained to at least the amount of each loan outstanding;

(12) Loans which are purchased from liquidating credit unions and guaranteed by the National Credit Union Administration;

(13) National Credit Union Share Insurance Fund Guaranty Accounts established by the National Credit Union Administration pursuant to 12 U.S.C. 1783 of the Federal Credit Union Act;

(14) Investments in shares of the National Credit Union Administration Central Liquidity Facility, 12 U.S.C. 1795;

(15) Assets included in subdivisions (2) through (7) of this section with maturities greater than five years if each asset is being carried on the credit union's records at the lower of cost or market value or is being marked to market value monthly;

(16) Assets included in subdivisions (2) through (7) of this section with remaining maturities greater than five years if each asset meets the following criteria, irrespective of whether or not each asset is being carried on the credit union's records at the lower of cost or market value or is being marked to market value monthly:

(a) The interest rate of the asset is reset at least annually;

(b) The interest rate of the asset is less than the maximum allowable interest rate for the asset on the date of the required reserve transfer; and

(c) The interest rate of the asset varies directly, not inversely, with the index upon which it is based and is not reset as a multiple of the change in the related index;

(17) Fixed assets; and

(18) A deposit in the National Credit Union Share Insurance Fund, 12 U.S.C. 1783, representing a federally insured credit union's capitalization account balance of one percent of insured shares.

Source: Laws 1996, LB 948, § 21.

21-1722 Share account, defined.

Share account shall mean a balance held by a credit union and established by a member in accordance with standards specified by the credit union, including balances designated as shares, share certificates, share draft accounts, or other names. Share account shall not include membership shares.

Source: Laws 1996, LB 948, § 22.

21-1723 Ownership of a share account; rights.

Ownership of a share account shall confer membership and voting rights and shall represent an interest in the capital of the credit union upon dissolution or conversion to another type of institution.

Source: Laws 1996, LB 948, § 23.

21-1724 Organization; procedure; hearing.

(1) Any nine or more individuals residing in the State of Nebraska who are nineteen years of age or older and who have a common bond pursuant to section 21-1743 may apply to the department on forms prescribed by the department for permission to organize a credit union and to become charter members and subscribers of the credit union.

(2) The subscribers shall execute in duplicate articles of association and shall agree to the terms of the articles of association. The terms shall state:

(a) The name, which shall include the words ''credit union'' and shall not be the same as the name of any other credit union in this state, whether or not organized under the Credit Union Act, and the location where the proposed credit union will have its principal place of business;

(b) The names and addresses of the subscribers to the articles of association and the number of shares subscribed by each;

(c) The par value of the shares of the credit union which shall be established by its board of directors. A credit union may have more than one class of shares;

(d) The common bond of members of the credit union; and

(e) That the existence of the credit union shall be perpetual.

(3) The subscribers shall prepare and adopt bylaws for the governance of the credit union. The bylaws shall be consistent with the Credit Union Act and shall be executed in duplicate.

(4) The subscribers shall select at least five qualified individuals to serve on the board of directors of the credit union, at least three qualified individuals to serve on the supervisory committee of the credit union, and at least three qualified individuals to serve on the credit committee of the credit union, if any. Such individuals shall execute a signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later.

(5) The articles of association and the bylaws, both executed in duplicate, shall be forwarded by the subscribers along with the required fee, if any, to the director, as an application for a certificate of approval.

(6) The director shall act upon the application within one hundred twenty calendar days after receipt of the articles of association and the bylaws to determine whether the articles of association conform with this section and whether or not the character of the applicants and the conditions existing are favorable for the success of the credit union.

(7) The director shall notify an applicant of his or her decision on the application. If the decision is favorable, the director shall issue a certificate of approval to the credit union. The certificate of approval shall be attached to the duplicate articles of association and returned, with the duplicate bylaws, to such subscribers.

(8) The subscribers shall file the certificate of approval with the articles of association attached in the office of the county clerk of the county in which the credit union is to locate its principal place of business. The county clerk shall accept and record the documents if they are accompanied by the proper fee and, after indexing, forward to the department proper documentation that the certificate of approval with the articles of association attached have been properly filed and recorded. When the documents are so recorded, the credit union shall be organized in accordance with the Credit Union Act and may begin transacting business.

(9) If the director's decision on the application is unfavorable, he or she shall notify the subscribers of the reasons for the decision. The subscribers may then request a public hearing if no such hearing was held at the time the application was submitted for consideration.

(10) The request for a public hearing shall be made in writing to the director not more than thirty calendar days after his or her decision. The director, within ten calendar days after receipt of a request for a hearing, shall set a date for the hearing at a time and place convenient to the director and the subscribers, but no longer than sixty calendar days after receipt of such request. The director may request a stenographic record of the hearing.

Source: Laws 1996, LB 948, § 24.

21-1725 Existing credit unions; organization; procedure.

Any credit union now existing which was organized under Chapter 21, article 17, shall become organized under the Credit Union Act by filing with the department, within sixty days after October 1, 1996, a writing accepting all of the provisions of the act and declaring its intention to operate under those provisions.

Source: Laws 1996, LB 948, § 25.

21-1725.01 New credit union; branch credit union; application; procedure; hearing.

(1) Upon receiving an application to establish a new credit union, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the credit union. The date for hearing the application shall

be not less than thirty days after the last publication of notice of hearing and not more than ninety days after filing the application unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate.

(2) When application is made to establish a branch of a credit union, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant credit union warrants a hearing. If the director determines that the condition of the credit union does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch would be located and (b) give notice of such application to all financial institutions located within the county where the proposed credit union branch would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed credit union branch within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the filing of the application unless the applicant agrees to a later date.

(3) The director may, in his or her discretion, hold a public hearing on amendments to a credit union's articles of association or bylaws which are brought before the department.

(4) The director shall send any notice to financial institutions required by this section by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent.

(5) The expense of any publication and mailing required by this section shall be paid by the applicant.

Source: Laws 2002, LB 957, § 17; Laws 2003, LB 217, § 30; Laws 2005, LB 533, § 30; Laws 2010, LB890, § 13.

21-1726 Forms of articles and bylaws.

In order to simplify the organization of credit unions, the director shall cause to be prepared an approved form of articles of association and a suggested form of bylaws, consistent with the Credit Union Act, which may be used by credit union subscribers as a guide. Upon written application of any nine individuals residing in the state, the director shall supply such individuals, without charge, one approved form of the articles of association and one suggested form of bylaws.

Source: Laws 1996, LB 948, § 26.

21-1727 Articles and bylaws; amendments.

(1) The articles of association may be amended at any regular or special meeting at which a quorum of the members as provided in the bylaws is present if the notice of the meeting contained a copy of the proposed amendment. An amendment shall not become effective until it has been filed with and approved in writing by the department and the fee prescribed by section 8-602 has been paid. One copy of an amendment or amendments to the articles of association shall be filed in the office of the county clerk of the county where the credit union has its principal place of business, for which a fee of fifty cents shall be charged.

(2) Except as provided in subsection (3) of this section, the bylaws may be amended at any regular or special meeting of the board of directors by a majority of the total directors if the notice of the meeting contained a copy of the proposed amendment. An amendment shall not become effective until it has been filed with and approved in writing by the department and the fee prescribed by section 8-602 has been paid.

(3)(a) The board of directors may adopt by resolution standard bylaw amendments adopted and promulgated by the department from time to time. The standard amendments may include two or more alternatives that the board of directors may elect. The standard bylaw amendments may also include companion amendments which shall be adopted as a unit.

(b) The board of directors may adopt any standard bylaw amendment without prior approval of the department as long as the standard bylaw amendment is adopted without any change in wording and a Certificate of Resolution adopting such amendment is submitted to the department containing the adopted language within ten days after the adoption of such amendment. Certificate of Resolution forms shall be furnished by the department upon request. The fee prescribed by section 8-602 shall not be charged when standard bylaw amendments are adopted.

Source: Laws 1996, LB 948, § 27.

21-1728 Use of name exclusive; violation; penalty; injunction.

(1) No person, corporation, limited liability company, partnership, or association other than a credit union organized under the Credit Union Act or the Federal Credit Union Act or the voluntary association of credit unions, shall use a name or title containing the phrase ''credit union'' or any derivation thereof, represent itself as a credit union, or conduct business as a credit union.

(2) Any violation of this section shall be a Class V misdemeanor.

(3) The director may petition a court of competent jurisdiction to enjoin any violation of this section.

Source: Laws 1996, LB 948, § 28.

21-1729 Place of business.

(1) A credit union may change its principal place of business within this state upon written notice to, and approval by, the director.

(2) A credit union may maintain automatic teller machines and point-of-sale terminals at locations other than its principal office pursuant to section 8-157.01.

Source: Laws 1996, LB 948, § 29; Laws 1999, LB 396, § 20.

21-1730 Fiscal year.

The fiscal year of each credit union organized under the Credit Union Act shall end on December 31.

Source: Laws 1996, LB 948, § 30.

21-1731 Department; general powers.

The department shall have general supervision and control of credit unions as provided by the Credit Union Act, section 8-102, and any other applicable laws of this state.

Source: Laws 1996, LB 948, § 32.

21-1732 Director; powers and duties.

(1) The director may adopt and promulgate rules and regulations to carry out the Credit Union Act.

(2) The director may issue a cease and desist order when (a) the director has determined from competent and substantial evidence that a credit union is engaged in or has engaged in an unsafe or unsound practice or is violating or has violated a material provision of any law, rule, regulation, or any condition imposed in writing by the director or any written agreement made with the director or (b) the director has reasonable cause to believe a credit union is about to engage in an unsafe or unsound practice or is violating or has violated a material provision of any law, rule, regulation, or any condition imposed in writing by the director or any written agreement made with the director or the director has reasonable cause to believe a credit union is about to violate a material provision of any law, rule, regulation, or any condition imposed in writing by the director or any written agreement made with the director.

(3) The director may restrict the making of loans by a credit union and the withdrawal from and the deposit to share accounts of a credit union when he or she finds circumstances that make such restriction necessary for the protection of the shareholders.

(4) The director may suspend from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any official who has committed any violation of a law, rule, regulation, or cease and desist order, who has engaged in or participated in any unsafe or unsound practice in connection with a credit union, or who has committed or engaged in any act, omission, or practice which constitutes a breach of that person's fiduciary duty as an official, when the director has determined that such action or actions have resulted or will result in substantial financial loss or other damage that will seriously prejudice the interest of the credit union members.

(5) The director shall consider applications brought before the department pursuant to section 21-1725.01.

(6) The director may subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject relating to a duty upon or a power vested in the director.

Source: Laws 1996, LB 948, § 33; Laws 2002, LB 957, § 16.

21-1733 Order; appeal; procedure.

Any order or decision of the director may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1996, LB 948, § 31.

Cross References

Administrative Procedure Act, see section 84-920.

21-1734 Corrective measures; receivership proceedings.

(1) If it appears that any credit union is bankrupt or insolvent, that it has willfully violated the Credit Union Act, or that it is operating in an unsafe or unsound manner, the director may require such corrective measures in accordance with sections 8-1,134 to 8-1,139 as he or she may deem necessary or take possession of the property and business of such credit union and retain possession thereof until such time as he or she determines either to permit the credit union to resume business or to order its dissolution. In the event the director orders its dissolution, the credit union shall be liquidated in receivership proceedings in the same manner, as nearly as may be possible, as provided by the laws governing the liquidation of state banks.

(2) Pursuant to section 21-1735, the director may appoint the National Credit Union Administration Board as receiver or liquidator of the assets and liabilities of any credit union in the possession of the director. The appointment shall be subject to the approval of the district court of the judicial district in which the credit union has its principal place of business.

Source: Laws 1996, LB 948, § 34.

Cross References

Liquidation of state banks, see sections 8-194 to 8-1,118.

21-1735 National Credit Union Administration Board; appointment as receiver or liquidator.

(1) The National Credit Union Administration Board, as created by 12 U.S.C. 1752(a), shall be authorized to accept the appointment by the director as receiver or liquidator, without bond, of any credit union in the possession of the department and whose shares are to any extent insured by the National Credit Union Administration under section 201 et seq. of the Federal Credit Union Act, 12 U.S.C. 1781 et seq. Any credit union which fails to maintain such insurance may be voluntarily dissolved or liquidated by the board of directors of such credit union or may be taken in possession by the director and involuntarily liquidated as in the case of insolvency.

(2) Whenever the director takes possession of a credit union subject to the jurisdiction of the department, the director may tender to the National Credit Union Administration Board the appointment as receiver or liquidator of such credit union. If the board accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator of a credit union and its shareholders and other creditors and shall be subject to all the duties of such receiver or liquidator, except insofar as such powers, privileges, or duties are in conflict with the Federal Credit Union Act, 12 U.S.C. 1781 et seq.

(3) Whenever the National Credit Union Administration Board has been appointed as receiver or liquidator of a credit union pursuant to this section, it shall be subrogated to all the rights and interests against such credit union of

all the shareholders or other creditors of the credit union to the full extent of such rights and interests in the credit union. The rights of shareholders or other creditors of the credit union shall be determined in accordance with the laws of this state.

(4) Upon acceptance by the National Credit Union Administration Board of the appointment as receiver or liquidator of a credit union from the director and subject to the approval of the district court of the judicial district in which the credit union has its principal place of business, the possession of and title to all the assets, business, and property of every kind and nature of the credit union shall pass to and vest in the board without the execution of any instrument of conveyance, assignment, transfer, or endorsement.

(5) In addition to its powers and duties as receiver or liquidator, the National Credit Union Administration Board shall have the right and authority upon the order of any court of record of competent jurisdiction to enforce the individual liability of the members of the board of directors of any credit union.

Source: Laws 1996, LB 948, § 35.

21-1736 Examinations.

(1) The director shall examine or cause to be examined each credit union as often as deemed necessary. Each credit union and all of its officials and agents shall give the director or any of the examiners appointed by him or her free and full access to all books, papers, securities, and other sources of information relative to such credit union. For purposes of the examination, the director may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) The department shall forward a report of the examination to the chairperson of the board of directors within ninety calendar days after completion. The report shall contain comments relative to the management of the affairs of the credit union and the general condition of its assets. Within ninety calendar days after the receipt of such report, the members of the board of directors and the members of the supervisory and credit committees shall meet to consider the matters contained in the report.

(3) The director may require special examinations of and special financial reports from a credit union or a credit union service organization in which a credit union loans, invests, or delegates substantially all managerial duties and responsibilities when he or she determines that such examinations and reports are necessary to enable the director to determine the safety of a credit union's operations or its solvency. The cost to the department of such special examinations shall be borne by the credit union being examined.

(4) The director may accept, in lieu of any examination of a credit union authorized by the laws of this state, a report of an examination made of a credit union by the National Credit Union Administration or may examine any such credit union jointly with such federal agency. The director may make available to the National Credit Union Administration copies of reports of any examination or any information furnished to or obtained by the director in any examination.

Source: Laws 1996, LB 948, § 36; Laws 2002, LB 957, § 18.

21-1737 Records.

(1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with the rules and regulations as the director from time to time may prescribe.

(2) Credit unions shall preserve or keep their records or files, or photographic or microphotographic copies thereof, for a period of not less than six years after the first day of January of the year following the time of the making or filing of such records or files except as provided in subsection (3) of this section.

(3)(a) Ledger sheets showing unpaid balances in favor of members of credit unions shall not be destroyed unless the credit union has remitted such unpaid balances to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. Credit unions shall retain a record of every such remittance for ten years following the date of such remittance.

(b) Corporate records that relate to the corporation or the corporate existence of the credit union shall not be destroyed.

(4) A credit union shall not be liable for destroying records after the expiration of the record retention period provided in this section except for records involved in an official investigation or examination about which the credit union has received notice.

(5) A reproduction of any credit union records shall be admissible as evidence of transactions with the credit union as provided in section 25-12,112.

Source: Laws 1996, LB 948, § 37; Laws 1999, LB 396, § 21.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

21-1738 Reports.

A credit union shall report to the department annually on or before the first day of February on forms supplied by the department for that purpose. The chairperson of the board of directors and the president of the credit union shall sign the report or reports certifying that such report or reports are correct according to their best knowledge and belief. The director may require additional reports as he or she deems appropriate and necessary. An additional fee of fifty dollars shall be levied for each day a credit union fails to provide a required report unless the delay is excused for cause.

Source: Laws 1996, LB 948, § 38; Laws 1997, LB 137, § 11.

21-1739 Repealed. Laws 2007, LB 124, § 78.

21-1740 Credit union; powers.

(1) A credit union shall have all the powers specified in this section and all the powers specified by any other provision of the Credit Union Act.

(2) A credit union may make contracts.

(3) A credit union may sue and be sued.

(4) A credit union may adopt a seal and alter the same.

(5) A credit union may purchase, lease, or otherwise acquire and hold tangible personal property necessary or incidental to its operations. A credit union shall depreciate or appreciate such personal property in the manner and at the rates the director may prescribe by rule or order from time to time.

(6) A credit union may, in whole or part, sell, lease, assign, pledge, hypothecate, or otherwise dispose of its tangible personal property, including such property obtained as a result of defaults under obligations owing to it.

(7) A credit union may incur and pay necessary and incidental operating expenses.

(8) A credit union may receive, from a member, from another credit union, from an officer, or from an employee, payments representing equity on (a) share accounts which may be issued at varying dividend rates, (b) share account certificates which may be issued at varying dividend rates and maturities, and (c) share draft accounts, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the department. A credit union shall provide for the transfer and withdrawal of funds from accounts by the means and through the payment system that the board of directors determines best serves the convenience and needs of members.

(9) A credit union may lend its funds to its members as provided in the Credit Union Act.

(10) A credit union may borrow from any source in an amount not exceeding fifty percent of its capital and deposits.

(11) A credit union may provide debt counseling and other financial counseling services to its members.

(12) A credit union may, in whole or in part, discount, sell, assign, pledge, hypothecate, or otherwise dispose of its intangible personal property. The approval of the director shall be required before a credit union may discount, sell, assign, pledge, hypothecate, or otherwise dispose of twenty percent or more of its intangible personal property within one month unless the credit union is in liquidation.

(13) A credit union may purchase any of the assets of another credit union or assume any of the liabilities of another credit union with the approval of the director. A credit union may also purchase any of the assets of a credit union which is in liquidation or receivership.

(14) A credit union may make deposits in or loans to banks, savings banks, savings and loan associations, and trust companies, purchase shares in mutual savings and loan associations, and make deposits in or loans to or purchase shares of other credit unions, including corporate central credit unions, if such institutions are either insured by an agency of the federal government or are eligible under the laws of the United States to apply for such insurance and invest funds as otherwise provided in sections 21-17,100 to 21-17,102.

(15) A credit union may make deposits in, make loans to, or purchase shares of any federal reserve bank or central liquidity facility established under state or federal law.

(16) A credit union may hold membership in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law.

(17) A credit union may engage in activities and programs of the federal government, any state, or any agency or political subdivision thereof when approved by the board of directors and not inconsistent with the Credit Union Act.

(18) A credit union may receive funds either as shares or deposits from other credit unions.

(19) A credit union may lease tangible personal property to its members if the credit union acquires no interest in the property prior to its selection by the member.

(20) A credit union may, in whole or in part, purchase, sell, pledge, discount, or otherwise acquire and dispose of obligations of its members in accordance with the rules and regulations promulgated by the director. This subsection shall not apply to participation loans originated pursuant to section 21-1794.

(21) A credit union may, at its own expense, purchase insurance for its members in connection with its members' shares, loans, and other accounts.

(22) A credit union may establish, operate, participate in, and hold membership in systems that allow the transfer of credit union funds and funds of its members by electronic or other means, including, but not limited to, clearinghouse associations, data processing and other electronic networks, the federal reserve system, or any other government payment or liquidity program.

(23) A credit union may issue credit cards and debit cards to allow members to obtain access to their shares and extensions of credit if such issuance is not inconsistent with the rules of the department. The department may by rule or regulation allow the use of devices similar to credit cards and debit cards to allow members to access their shares and extensions of credit.

(24) A credit union may service the loans it sells, in whole or in part, to a third party.

(25) In addition to loan and investment powers otherwise authorized by the Credit Union Act, a credit union may organize, invest in, and make loans to corporations or other organizations (a) which engage in activities incidental to the conduct of a credit union or in activities which further or facilitate the purposes of a credit union or (b) which furnish services to credit unions. The director shall determine by rule, regulation, or order the activities and services which fall within the meaning of this subsection. A credit union shall notify the director of any such investment or loan if it would cause the aggregate of such investments and loans to exceed two percent of the credit union's capital and deposits. Such investments and loans may not, in the aggregate, exceed five percent of the capital and deposits of the credit union.

(26) A credit union may purchase, lease, construct, or otherwise acquire and hold land and buildings for the purpose of providing adequate facilities for the transaction of present and potential future business. A credit union may use such land and buildings for the principal office functions, service facilities, and any other activity in which it engages. A credit union may rent excess space as a source of income. A credit union shall depreciate or appreciate such buildings owned by it in the manner and at the rates the director may prescribe by rule, regulation, or order from time to time. A credit union's investment and contractual obligations, direct, indirect, or contingent, in land and buildings under this subsection shall not exceed seven percent of its capital and deposits without prior approval of the director. This subsection shall not affect the legality of investments in land and buildings made prior to October 1, 1996.

(27) A credit union may, in whole or in part, sell, lease, assign, mortgage, pledge, hypothecate, or otherwise dispose of its land and buildings, including land and buildings obtained as a result of defaults under obligations owing to it.

Source: Laws 1996, LB 948, § 40; Laws 1997, LB 137, § 13.

21-1741 Safety deposit box service.

(1) A credit union, by action of its board of directors, may, to the same extent as a bank organized under the laws of this state, operate a safety deposit box service for its members pursuant to sections 8-501 and 8-502.

(2) Before granting approval for a credit union to operate a safety deposit box service, the director shall consider the reserve position of the credit union, the performance qualifications of its management, the rules of the credit union for the operation of its safety deposit box service, security measures, bonding and insurance, and the general safe and sound condition of the credit union.

(3) A credit union shall not spend more than twenty-five thousand dollars or an amount equal to one percent of its capital, whichever is greater, on the capital expenditures of its safety deposit box service.

Source: Laws 1996, LB 948, § 41; Laws 1997, LB 137, § 14.

21-1742 Incidental powers.

A credit union may exercise all incidental powers that are suitable and necessary to enable it to carry out its purpose.

Source: Laws 1996, LB 948, § 42.

21-1743 Membership; requirements.

(1) The membership of a credit union shall consist of the subscribers to the articles of association and such persons, societies, associations, partnerships, and corporations as have been duly elected, members who have subscribed for one or more shares, have paid for such share or shares in whole or in part, have paid the entrance fee provided in the bylaws, and have complied with such other requirements as the articles of association and bylaws may specify. For purposes of obtaining a loan and to vote at membership meetings, a member, to be in good standing, must own at least one fully paid share. Credit union organization shall be limited to groups of both large and small membership having a common bond of occupation or association, including religious, social, or educational groups, employees of a common employer, or members of a fraternal, religious, labor, farm, or educational organization and the members of the immediate families of such persons.

(2) A person having been duly admitted to membership, having complied with the Credit Union Act, the articles of association, and the bylaws, having paid the entrance fee, and having paid for at least one share, shall retain full rights and privileges of membership for life unless that membership is terminated by withdrawal or expulsion in the manner provided by the act.

Source: Laws 1996, LB 948, § 43.

21-1744 Fees.

A credit union may charge an entrance fee as determined by its board of directors. A credit union may also charge periodic membership fees as determined by its board of directors.

Source: Laws 1996, LB 948, § 44.

21-1745 Retention of membership; when.

Members who cease to be eligible or who leave the field of membership may be permitted to retain their membership in the credit union under reasonable standards established by the board of directors unless terminated by withdrawal or expulsion.

Source: Laws 1996, LB 948, § 45.

21-1746 Liability of members.

The members of the credit union shall not be personally or individually liable for the payment of its debts solely by virtue of holding membership in the credit union.

Source: Laws 1996, LB 948, § 46.

21-1747 Expulsion of members.

(1) Any member may be expelled by a two-thirds vote of the members present at any regular meeting or a special meeting called to consider the matter, but only after an opportunity has been given to the member to be heard.

(2) The board of directors may expel a member pursuant to a written policy adopted by it. All members shall be given written notice of the terms of any such policy. Any person expelled by the board shall have the right, within thirty calendar days, to request a hearing before it to reconsider the expulsion. The board of directors shall schedule the requested hearing within sixty calendar days after the request.

Source: Laws 1996, LB 948, § 47.

21-1748 Termination of members.

(1) A member may voluntarily terminate his or her membership at any time in the way and manner provided in the bylaws.

(2) Termination of membership shall not serve to relieve a person from any liability to the credit union nor shall it be the basis for accelerating any obligation not in default. A terminated member shall be paid all sums in any of his or her share accounts without maturity dates within thirty calendar days. Sums in any share account with a maturity date shall not be paid prior to maturity unless the member specifically requests the funds. The credit union shall not be required to pay any funds from a share account to the extent that they secure loans and other obligations owing to the credit union.

Source: Laws 1996, LB 948, § 48.

21-1749 Meetings.

The annual meeting and any special meeting of the members of the credit union shall be held in accordance with the bylaws. A special meeting of the members of the credit union may be called by the members or by the board of directors as provided in the bylaws. A credit union shall give notice of the time

and place of any meeting of its members. In the case of a special meeting, the notice of such special meeting shall state the purpose of the meeting and the notice shall be given at least ten calendar days prior to the date of such special meeting.

Source: Laws 1996, LB 948, § 49.

21-1750 Voting rights.

(1) In any election or other membership vote, a member shall have only one vote, irrespective of the member's shareholdings. No member may vote by proxy, but a member other than an individual may vote through an agent designated for that purpose. Members may also vote by absentee ballot, mail, or other method if the bylaws of the credit union so provide.

(2) The board of directors may establish a minimum age of not greater than eighteen years as a qualification of eligibility to vote at meetings of members of the credit union, to hold office, or both.

(3) An organization having membership in the credit union may be represented and have its vote cast by one of its members or shareholders if such person has been so authorized by the organization's governing body.

(4) In elections when more than one office of the same type is being filled, the member shall have as many votes as there are offices being filled, but the member shall not cast more than one of these votes for any one candidate.

Source: Laws 1996, LB 948, § 50.

21-1751 Special meeting.

The supervisory committee, by a majority vote, may call a special meeting of the members of the credit union as provided in section 21-1749 to consider any violation of the Credit Union Act, any violation of the credit union's articles of association or bylaws, or any practice of the credit union deemed by the board of directors or supervisory committee to be unsafe or unauthorized.

Source: Laws 1996, LB 948, § 51.

21-1752 Central credit union; membership.

Credit unions organized and existing under the Credit Union Act may organize and have membership in a central credit union to which federal credit unions organized and operating in this state may belong and in which officials of both such credit unions may have membership. Organizations which are organized for the purpose of furthering credit union activities and their employees may have membership in such credit union. Small employee groups of fifty or more employees having a common bond of occupation whose probability of a successful operation would be limited because of the lack of adequate membership may join as a group in the central credit union and become members of that credit union with all the rights existing under the act.

Source: Laws 1996, LB 948, § 52.

21-1753 Central credit union; board of directors; credit committee.

At the first annual meeting of a central credit union, the members shall elect a board of directors of not less than nine members and a credit committee of not less than three members. No member of the board shall be a member of the

credit committee and no credit union small employee group or affiliated organization shall be represented by more than one member on the board of directors, one member on the credit committee, and one member on the supervisory committee.

Source: Laws 1996, LB 948, § 53.

21-1754 Central credit union; board of directors; officers; supervisory committee.

At the first meeting of each fiscal year, the board of directors of a central credit union shall elect from its number a president, vice president, secretary, and treasurer. The offices of secretary and treasurer may be held by one person if the bylaws so provide. Officers shall hold office for one year or until their successors are chosen and duly qualified. At the first meeting of each fiscal year, the board of directors shall elect a supervisory committee of not less than five members, none of whom shall be a member of the board of directors or the credit committee.

Source: Laws 1996, LB 948, § 54.

21-1755 Central credit union; purchase of credit union.

With the approval of the department, a central credit union established under section 21-1752 may purchase the assets, assume the liabilities, and accept the membership of a credit union. Such purchase shall be approved by at least a two-thirds majority of the board of directors or the duly appointed trustees of the credit union to be sold.

Source: Laws 1996, LB 948, § 55; Laws 2002, LB 1094, § 11.

21-1756 Central credit union; loans and investments; limitations.

All member credit unions may borrow and invest up to an amount specified by the board of directors of the central credit union in accordance with the limitation of section 21-1791. The central credit union may purchase all or any part of a loan originated by a member credit union to one of its individual members, who does not need to be a member of the central credit union.

Source: Laws 1996, LB 948, § 56.

21-1757 Direction of credit union affairs.

The credit union shall be under the direction of a board of directors, a supervisory committee, and when provided by the bylaws, a credit committee.

Source: Laws 1996, LB 948, § 57.

21-1758 Election or appointment of board and committees.

(1) The board of directors of any credit union shall consist of an odd number of directors, at least five in number, to be elected by and from the members. Elections shall be held at the annual meeting or in such other manner as provided by the bylaws. All members of the board of directors shall hold office for such terms as provided by the bylaws, except that the terms of the board members shall be staggered so that an approximately equal number of terms expire each year.

(2) The supervisory committee shall have at least three members. The members shall be appointed by the board of directors or elected by the credit union members in such numbers and for terms as provided in the bylaws. No member of the supervisory committee shall be a director, officer, loan officer, credit committee member, or employee of the credit union while serving on the supervisory committee.

(3) If the bylaws provide for a credit committee, the committee shall have at least three members. The members shall be appointed by the board of directors or elected by the credit union members in such number and for such terms as provided in the bylaws. The credit committee shall have and perform the duties as provided in the bylaws. If the bylaws do not provide for a credit committee, the board of directors shall have and perform the duties of the credit committee or delegate the duties as it so chooses.

Source: Laws 1996, LB 948, § 58.

21-1759 Record of board and committee membership.

The credit union shall file within thirty calendar days after the credit union's annual meeting, a record of the names and addresses of (1) the members of its board of directors, (2) the members of its supervisory and credit committees, and (3) its officers, as required by the department. Such filing shall be made on forms approved and provided by the department.

Source: Laws 1996, LB 948, § 59.

21-1760 Vacancies.

The board of directors shall fill any vacancies occurring on the board. An individual appointed to fill a vacancy on the board shall serve the remainder of the unexpired term, except that he or she shall cease to serve immediately if he or she replaced a director who was suspended or removed by the board or the supervisory committee and the credit union membership reversed such suspension or removal. Vacancies in the credit or supervisory committees shall be filled as provided in the bylaws.

Source: Laws 1996, LB 948, § 60.

21-1761 Compensation; expenses.

No officer, director, or committee member, jointly or severally, shall receive any compensation, directly or indirectly, for services performed for the credit union as such officer, director, or committee member, except that the treasurer may be compensated for his or her services in the amount, way, and manner provided for by the board of directors. However, providing life, health, accident, and similar insurance protection in reasonable amounts for a director or committee member shall not be considered compensation. Officials, while on credit union business, may be reimbursed for their necessary expenses incidental to the performance of credit union business.

Source: Laws 1996, LB 948, § 61; Laws 1999, LB 107, § 3.

21-1762 Conflicts of interest.

No official, agent, or employee of a credit union shall in any manner, directly or indirectly, participate in the deliberation upon the determination of any question affecting that person's pecuniary interest or the pecuniary interest of

any corporation, partnership, or association, other than the credit union, in which that person is directly or indirectly interested.

Source: Laws 1996, LB 948, § 62.

21-1763 Indemnification.

A credit union may indemnify any or all of its officials and employees or former officials or employees against expenses actually and necessarily incurred by them in connection with the defense or settlement of any action, suit, or proceeding in which they, or any of them, are made a party or parties thereto by reason of being or having been an official or employee of the credit union. A credit union may not indemnify any or all of its officials and employees or former officials or employees against expenses actually and necessarily incurred by them in relation to matters as to which any such official or employee shall be adjudged in such action, suit, or proceeding to be liable for willful misconduct in the performance of duty and to such matters as are settled by agreement predicated on the existence of such liability.

Source: Laws 1996, LB 948, § 63.

21-1764 Officers; duties.

(1) The members of the board of directors shall elect from their own number a chairperson, one or more vice-chairpersons, a treasurer, and a secretary, at the organizational meeting held as provided in the bylaws. The board shall fill vacancies in the positions described in this subsection as they occur. The treasurer and the secretary may be the same individual. The board shall also elect any other officers that are specified in the bylaws.

(2) The terms of the chairperson, vice-chairperson, treasurer, and secretary shall be for one year or until their successors are chosen and have been duly qualified. If the chairperson, a vice-chairperson, the treasurer, or the secretary is suspended, is removed, or has resigned as a board member, his or her position shall be deemed vacant.

(3) The duties of the officers shall be prescribed in the bylaws.

(4) The board of directors shall appoint a president to act as the chief executive officer of the credit union and to be in active charge of the credit union's operations.

(5) Notwithstanding any other provision of the Credit Union Act, a credit union may use any titles it so chooses for the officials holding the positions described in this section, as long as such titles are not misleading.

Source: Laws 1996, LB 948, § 64.

21-1765 Board of directors; authority.

The board of directors shall direct the business affairs, funds, and records of the credit union.

Source: Laws 1996, LB 948, § 65.

21-1766 Executive committee.

The board of directors may appoint from its own number an executive committee, consisting of not less than three directors, which may be authorized

to act for the board in all respects, subject to any conditions or limitations prescribed by the board.

Source: Laws 1996, LB 948, § 66.

21-1767 Meetings of directors.

(1) The board of directors shall have regular meetings as often as necessary but not less frequently than once a month unless otherwise approved by the Director of Banking and Finance. Special meetings of the board may be called as provided in the bylaws.

(2) Unless the articles of association or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.

(3) If the Director of Banking and Finance deems it expedient, he or she may call a meeting of the board of directors of any credit union, for any purpose, by giving notice to the directors of the time, place, and purpose thereof at least three business days prior to the meeting, either by personal service or by registered or certified mail sent to their last-known addresses as shown on the credit union books.

(4) A full and complete record of the proceedings and business of all meetings of the board of directors shall be recorded in the minutes of the meeting.

Source: Laws 1996, LB 948, § 67; Laws 2000, LB 932, § 24.

21-1767.01 Bond.

The department shall require each credit union to obtain a fidelity bond, naming the credit union as obligee, in an amount to be determined by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the credit union from loss which it may sustain of money or other personal property, including that for which the credit union is responsible through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or any other dishonest or criminal act of or by any of its officers, directors, supervisory committee members, credit committee members, or employees. Such bond may contain a deductible clause in an amount to be approved by the director. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. If the premium of the bond is not paid, the bond shall not be canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department by the insurer. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department by the insurer. The bond shall always be open to public inspection during the office hours of the department. In the event a bond is canceled, the department may take whatever action it deems appropriate in connection with the continued operation of the credit union involved.

Source: Laws 2000, LB 932, § 25.

21-1768 Duties of directors.

In addition to the duties found elsewhere in the Credit Union Act, the board of directors shall:

(1) Act upon applications for membership or appoint one or more membership officers to act on applications for membership under such conditions as prescribed by the board. A person denied membership by a membership officer may appeal the denial in writing to the board;

(2) Purchase adequate bond coverage as required by section 21-1767.01;

(3) Report to the department all bond claims within thirty calendar days after filing and all frauds and embezzlements involving officials or employees within thirty calendar days after discovery;

(4) Determine from time to time the interest rate or rates, consistent with the Credit Union Act, to be charged on loans, or under such conditions as prescribed by the board, delegate the authority to make such determinations and to authorize any interest refunds on such classes of loans and under such conditions as the board prescribes;

(5) Establish the policies of the credit union with respect to (a) shares, share drafts, and share certificates and (b) the granting of loans and the extending of lines of credit, including, subject to the limitations contained in section 21-1791, the maximum amount which may be loaned to any one member;

(6) Declare dividends on shares or delegate the authority to declare dividends under such conditions as prescribed by the board;

(7) Have charge of investment of funds, except that the board may appoint an investment committee of not less than three directors or an investment officer who is either a member of the board of directors or an employee of the credit union to make investments under conditions and policies established by the board and to make monthly reports to the board;

(8) Establish written policies for investments, including deposits and loans other than those to individuals, which address, at a minimum, investment objectives, investment responsibility, portfolio composition, diversification, and the financial condition of the investment obligor;

(9) Authorize the employment of such persons necessary to carry on the business of the credit union and fix the compensation, if any, of the chief executive officer;

(10) Approve an annual operating budget for the credit union which includes provisions for the compensation of employees;

(11) Designate a depository or depositories for the funds of the credit union;

(12) Suspend or remove any or all members of the credit committee, if any, for failure to perform their duties;

(13) Appoint any special committee deemed necessary;

(14) Adopt and enforce the overall policies for the operation of the credit union; and

(15) Perform such other duties as directed by the members of the credit union from time to time and perform or authorize any action not inconsistent with the Credit Union Act and not specifically reserved by the bylaws for the members of the credit union.

Source: Laws 1996, LB 948, § 68; Laws 2000, LB 932, § 26.

21-1769 Credit committee; credit manager; loan officers; powers and duties.

(1) The credit committee shall have the general supervision of all loans to members and may approve or disapprove those loans subject to written policies established by the board of directors.

(2) A credit manager having the same authority as a credit committee may be appointed in lieu of a credit committee as prescribed in the bylaws. The president may serve as the credit manager.

(3) The board of directors may appoint one or more loan officers and necessary assistants.

(4) The loan officers shall act under the direction of the president or the president's designee.

(5) The loan officer or credit manager may approve or disapprove loans, lines of credit, or advances from lines of credit and approve withdrawals of obligated members only as prescribed in writing by the board of directors.

(6) All loans approved by the loan officer shall be reviewed by the credit committee during one of its regular meetings.

(7) If the board of directors appoints a credit manager in lieu of a credit committee, all such loans approved by loan officers shall be reviewed by the credit manager.

(8) Other duties and responsibilities of the credit committee or credit manager may be prescribed in the bylaws.

Source: Laws 1996, LB 948, § 69.

21-1770 Loan officer license.

The chief executive officer or the credit committee may apply to the department on forms supplied by the department for the licensing of one or more loan officers in order to delegate to such loan officers the power to approve loans and disburse loan funds up to the limits and according to policies established by the credit committee, if any, and in the absence of a credit committee, the board of directors. Such application shall include information deemed necessary by the department and shall be signed by the entire credit committee, if any, and in the absence of a credit committee, the entire board of directors, as well as the new loan officer seeking a license. No person shall act in the capacity of loan officer for more than thirty days until approved by the department.

Source: Laws 1996, LB 948, § 70; Laws 1999, LB 107, § 4.

21-1771 Supervisory committee; duties; audit.

(1) Unless the credit union has been audited by a certified public accountant, the supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union. It shall submit a report of each annual audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union.

(2) The supervisory committee shall make or cause to be made such supplementary audits, examinations, and verifications of members' accounts as it deems necessary or as are required by the director or the board of directors and shall submit reports of these supplementary audits to the board of directors.

(3) Nothing in this section shall prohibit the department for cause from requiring a credit union to obtain a qualified opinion audit conducted by a certified public accountant and paid for by the credit union.

Source: Laws 1996, LB 948, § 71.

21-1772 Suspension and removal of officials.

(1) The supervisory committee may, by a unanimous vote of the entire committee, suspend any member of the credit committee and shall report such action to the board of directors for appropriate action. The board shall meet not less than seven nor more than twenty-one calendar days after such suspension. The suspended person shall have the right to appear and be heard at such meeting of the board.

(2) The supervisory committee may, by a unanimous vote of the entire committee, suspend any officer or member of the board of directors. Upon the request of the suspended director made fifteen calendar days after the suspension and supported by ten percent of the membership, the credit union shall call a special members' meeting which shall be held not less than seven nor more than twenty-one calendar days after such request. At such meeting the members shall decide whether to sustain or reverse the action of the supervisory committee.

(3) The board of directors may suspend or remove any member of the supervisory committee for cause by a two-thirds vote of the total board membership for failure to perform his or her duties in accordance with the Credit Union Act, the articles of association, or the bylaws.

(4) The board of directors may, by majority vote, suspend or remove any officer from his or her duties.

(5) The members of the credit union may remove any official of the credit union from office but only at a special meeting of the members called for that purpose.

Source: Laws 1996, LB 948, § 72.

21-1773 Share insurance.

No credit union organized under the Credit Union Act shall establish share accounts for any person other than a subscriber before the credit union has received a certificate of federal share insurance issued by the National Credit Union Administration under section 201 et seq. of the Federal Credit Union Act, 12 U.S.C. 1781 et seq.

Source: Laws 1996, LB 948, § 73.

21-1774 Shares.

(1) Share accounts and membership shares, if any, may be subscribed to, paid for, and transferred in such manner as the bylaws may prescribe. A credit union may have more than one class of share accounts subject to such terms, rates, and conditions as the board of directors establishes or as provided for in the underlying contract. All classes of share accounts shall be treated equally in the event of liquidation of the credit union.

(2) A credit union may require its members to subscribe to and make payments on membership shares.

(3) The par value of share accounts and membership shares shall be as prescribed in the bylaws.

(4) Membership shares may not be pledged as security on any loan.

Source: Laws 1996, LB 948, § 74.

21-1775 Special purpose share accounts.

Christmas clubs, vacation clubs, and other special purpose share accounts may be established and offered to members under the conditions and restrictions established by the board of directors if provided for in and consistent with the bylaws.

Source: Laws 1996, LB 948, § 75.

21-1776 Dividends.

(1) The board of directors may periodically authorize and declare dividends to be paid on share accounts and membership shares, if any, from the credit union's undivided earnings after provisions have been made for the required reserves. Share accounts within the same class and of different classes may be paid dividends at differing rates depending on the amounts in the account or the contractual terms applicable to the account.

(2) Dividends shall not be declared or paid at a time when the credit union is insolvent or when payment thereof would render the credit union insolvent.

Source: Laws 1996, LB 948, § 76.

21-1777 Accounting for interest and dividend expenses.

A credit union shall accrue, as an expense on a monthly basis, all dividends on any type of share account whether or not the rates involved have been specified or contracted for in advance. This section shall not be interpreted to permit a credit union to pay a dividend, except as provided in section 21-1776. Reasonable estimates may be used for the expense accrual required by this section except at the end of a dividend period.

Source: Laws 1996, LB 948, § 77.

21-1778 Maximum share account.

A credit union may, by action of the board of directors, establish a maximum amount that a member may have in any given type of share account. Any such action shall not affect any contract entered into by the credit union prior to the time of such action.

Source: Laws 1996, LB 948, § 78.

21-1779 Withdrawals.

(1) Shares may be withdrawn for payment to the account holder or to third parties in the manner and in accordance with procedures established by the board of directors subject to any rules and regulations prescribed by the department.

(2) Share accounts shall be subject to any withdrawal notice requirement specified in the contract creating the account. In addition, a credit union may impose a thirty-day withdrawal notice on all accounts when it has not specifi-

cally waived this right if it notifies the department of such imposition and the reasons therefor.

(3) A membership share may not be redeemed or withdrawn except upon termination of membership in the credit union.

Source: Laws 1996, LB 948, § 79.

21-1780 Fees related to member accounts.

(1) A credit union may collect reasonable fees and charges with respect to member accounts. The fees may be for:

(a) Additional copies of periodic statements;

(b) Various types of transactions on a per-transaction basis;

(c) A check or draft returned to the credit union by another financial institution because it was drawn against a closed account or an account with insufficient funds or for any other reason;

(d) Stop-payment orders;

(e) Any form of members' initiated withdrawal requests which the credit union rejects for any justifiable reason; and

(f) Any other service or activity relating to member share accounts.

(2) No credit union shall impose or increase any fee after October 1, 1996, until thirty calendar days after notification has been provided or made available to credit union members.

Source: Laws 1996, LB 948, § 80.

21-1781 Minor accounts.

A share account may be issued to and deposits received from a member less than nineteen years of age who may withdraw funds from such account, including the dividends thereon. Payments on a share account by such individual and withdrawals on a share account by such individual shall be valid in all respects.

Source: Laws 1996, LB 948, § 81.

21-1782 Joint accounts.

(1) A credit union member may designate any person or persons to own a share account with the member in joint tenancy with right of survivorship, as a tenant in common, or under any other form of joint ownership permitted by law, but no co-owner, unless a member in his or her own right, shall be permitted to vote, obtain loans, or hold office. In the event of the death of the person who owns the share account, the share account funds and any dividends thereon shall be paid to the co-owner and shall not be maintained in a share account unless the co-owner is a member in his or her own right.

(2) Payment of part or all of such accounts to any of the co-owners shall, to the extent of such payment, discharge the credit union's liability to all such co-owners unless the account agreement contains a prohibition or limitation on such payment.

Source: Laws 1996, LB 948, § 82.

21-1783 Trust accounts.

(1) Share accounts may be owned by a member in trust for a beneficiary.

(2) A beneficiary may be a minor, but no beneficiary, unless a member in his or her own right, shall be permitted to vote, obtain loans, or hold office or be required to pay a membership fee.

(3) Payment of part or all of such trust account to the party in whose name the account is held shall, to the extent of such payment, discharge the liability of the credit union to that party and to the beneficiary, and the credit union shall be under no obligation to see to the application of such payment.

(4) In the event of the death of the party who owns the trust account, the account funds and any dividends thereon shall be paid to the beneficiary if the credit union has not been given any other written notice of the existence or terms of any other trust and has not received a court order as to the disposition of the account.

Source: Laws 1996, LB 948, § 83.

21-1784 Liens.

A credit union shall have a lien on the share accounts from which a member may withdraw funds for his or her own use for (1) any loan or other obligation on which the member is an obligor or guarantor and (2) any other liability at the time owing to the credit union, unless the lien has been contractually waived, would cause the loss of a tax benefit for the member, or is prohibited by law. Such a lien shall not apply to an account in which the member may act solely on behalf of another person, nor shall it apply to an account in which the consent of a person not obligated on the loan or other obligation is required for a withdrawal. A credit union may exercise the lien up to the full amount of the account by offsetting funds in the account against any sums past due under such an obligation or, in the case of an obligation which has been accelerated, against the entire amount of the obligation.

Source: Laws 1996, LB 948, § 84.

21-1785 Dormant accounts.

If there has been no activity in a share account for one year, except for the posting of dividends, a credit union may impose a reasonable maintenance fee as provided in the bylaws.

Source: Laws 1996, LB 948, § 85.

21-1786 Reduction in shares.

Whenever the losses of a credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserves so that the estimated value of its assets is less than the total amount of share accounts and membership shares and the board of directors determines that the credit union may be subject to involuntary liquidation, the board may propose a reduction in shares. The credit union may, by a majority vote of those voting on the proposition, with the approval of the department, order a reduction in the membership shares and share accounts of each of its shareholders to divide the loss in proportion to the shareholdings held by shareholders in their respective share accounts with such terms as the department may prescribe.

Source: Laws 1996, LB 948, § 86.

21-1787 Purpose and conditions of loans.

Subject to the restrictions contained in the Credit Union Act, a credit union may make loans to its members for provident or productive purposes upon such terms and conditions and upon such security, real or personal, or on an unsecured basis as prescribed in its bylaws or written lending policy.

Source: Laws 1996, LB 948, § 87.

21-1788 Interest rate.

The interest rates on loans shall be determined by the board of directors, except that the rate shall not exceed eighteen percent per annum on the unpaid balance of the loan. The board may also authorize any refund of interest on such classes of loans under such conditions as it prescribes.

Source: Laws 1996, LB 948, § 88.

21-1789 Other charges related to loans.

(1) In addition to interest charged on loans, a credit union may charge members all reasonable expenses in connection with the making, closing, disbursing, extending, collecting, or renewing of loans.

(2) A credit union may assess charges to members, in accordance with its bylaws, for failure to meet their obligations to the credit union in a timely manner.

Source: Laws 1996, LB 948, § 89.

21-1790 Loan documentation.

Except as provided in section 21-1793, every application for a loan shall be made in writing upon a form prescribed by the credit union. All loan obligations shall be evidenced by a written document.

Source: Laws 1996, LB 948, § 90.

21-1791 Loan limit.

The aggregate of loans to any one member shall be limited to ten percent of a credit union's share accounts, undivided earnings, and reserves. This limit shall not apply to loans which are fully secured by assignment of share accounts in the credit union.

Source: Laws 1996, LB 948, § 91.

21-1792 Installments.

A member may receive a loan in installments or in one sum and may prepay the whole or any part of the loan without penalty on any day on which the credit union is open for business. On a first or second mortgage a credit union may require that any partial prepayment (1) be made on the date monthly installments are due and (2) be in the amount of that part of one or more monthly installments that would be applicable to principal.

Source: Laws 1996, LB 948, § 92.

21-1793 Line of credit.

(1) Upon application by a member, the credit union may approve a self-replenishing line of credit, either on an unsecured basis or secured by real or personal property, and loan advances may be granted to the member within the limit of such line of credit. When a line of credit has been approved, no additional credit application shall be required as long as the aggregate indebtedness of the line of credit with the credit union does not exceed the approved limit. The credit union may, at its option, require reapplication for a line of credit either periodically or as circumstances warrant.

(2) A line of credit shall be subject to a periodic review by the credit union in accordance with the written policies of the board of directors.

Source: Laws 1996, LB 948, § 93.

21-1794 Participation loans.

A credit union may participate in loans to credit union members jointly with other credit unions, credit union organizations, or other organizations pursuant to written policies established by the board of directors. A credit union which originates such a loan shall retain an interest of at least ten percent of the face amount of the loan.

Source: Laws 1996, LB 948, § 94.

21-1795 Other loan programs.

(1) A credit union may participate in any guaranteed loan program of the federal or state government under the terms and conditions specified in the law under which such a program is provided.

(2) A credit union may purchase the conditional sales contracts, notes, and similar instruments of its members.

Source: Laws 1996, LB 948, § 95.

21-1796 Loans to officials.

(1) A credit union may, if permitted by its bylaws, make loans to its officials, employees, and loan officers if the loan complies with all lawful requirements under the Credit Union Act with respect to other members and is not on terms more favorable than those extended to other members.

(2) If permitted in its bylaws, a credit union may permit its officials, employees, and loan officers to act as comakers, guarantors, or endorsers of loans to members of their immediate families, but not otherwise.

(3) No loan applicant may pass on his or her own loan. In the case of a loan to the chief executive officer, the loan must be approved by the board of directors, an executive committee, or the credit committee, if the credit union has a credit committee, as specified in the bylaws.

(4) The board of directors shall establish a policy on loans to officials and employees of a credit union if such loans are permitted in the bylaws.

Source: Laws 1996, LB 948, § 96.

21-1797 Liability insurance.

A credit union may purchase and maintain insurance on behalf of any person who is or was an official, employee, or agent of the credit union or who is or was serving at the request of the credit union as an official, employee, or agent

of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

Source: Laws 1996, LB 948, § 97.

21-1798 Money-type instruments.

A credit union may collect, receive, and disburse money in connection with the providing of negotiable checks, money orders, traveler's checks, and other money-type instruments, for the providing of services through automatic teller machines, and for such other purposes as may provide benefit or convenience to its members. A credit union may charge fees for such services.

Source: Laws 1996, LB 948, § 98.

21-1799 Federally authorized plans; powers; treatment.

(1) All credit unions chartered under the laws of Nebraska shall be qualified to act as a trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962 or under the terms and provisions of section 408(a) of the Internal Revenue Code if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the credit union or other credit unions.

(2) All credit unions chartered under the laws of Nebraska are qualified to act as trustee or custodian of a medical savings account created within the provisions of section 220 of the Internal Revenue Code and a health savings account created within the provisions of section 223 of the Internal Revenue Code. Except for judgments against the medical savings account holder or health savings account holder or his or her dependents for qualified medical expenses as defined under section 223(d)(2) of the Internal Revenue Code, funds credited to a medical savings account or health savings account below twenty-five thousand dollars are not susceptible to levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement and are not an asset or property of the account holder for purposes of bankruptcy law.

(3) All credit unions chartered under the laws of Nebraska are qualified to act as trustee or custodian of an education individual retirement account created within the provisions of section 530 of the Internal Revenue Code.

(4) All credit unions chartered under the laws of Nebraska are qualified to act as trustee or custodian of a Roth IRA created within the provisions of section 408A of the Internal Revenue Code.

(5) If any such plan, in the judgment of the credit union, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 220, 223, 408(a), 408A, or 530 of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the credit union is subsequently determined not to be such a qualified plan, or subsequently ceases to be such a qualified plan, in whole or in part, the credit union may continue to act as trustee of any deposits which have been made under such plan and to

dispose of such deposits in accordance with the directions of the member and beneficiaries thereof.

(6) No credit union, with respect to savings made under this section, shall be required to segregate such savings from other assets of the credit union, but the credit union shall keep appropriate records showing in detail all transactions engaged in pursuant to this section.

Source: Laws 1996, LB 948, § 99; Laws 1999, LB 107, § 5; Laws 2005, LB 465, § 2.

21-17,100 Investment of funds.

The board of directors shall have charge of the investment of funds, except that the board may designate an investment committee or investment officer to make investments on its behalf under written investment policies established by the board.

Source: Laws 1996, LB 948, § 100.

21-17,101 Deposit of funds.

The board of directors shall designate a depository or depositories for the funds of the credit union.

Source: Laws 1996, LB 948, § 101.

21-17,102 Authorized investments.

(1) Funds not used in loans to members may be invested:

(a) In securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof or in any trust or trusts established for investing directly or collectively in the same;

(b) In securities, obligations, or other instruments of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress or any political subdivision thereof;

(c) In deposits, obligations, or other accounts of financial institutions organized under state or federal law;

(d) In loans to or in share accounts of other credit unions or corporate central credit unions;

(e) In obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in 31 U.S.C. 9101 as a wholly owned government corporation; in obligations, participation certificates, or other instruments of or insured by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association; in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1454 et seq.; in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participation, securities, or other instruments of or issued by or fully guaranteed as to principal and interest by any other agency of the United

States. A state credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act, 12 U.S.C. 1721(g);

(f) In participation certificates evidencing a beneficial interest in obligations or in a right to receive interest and principal collections therefrom, which obligations have been subjected by one or more government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States or administrator thereof has been named to act as trustee;

(g) In share accounts or deposit accounts of any corporate central credit union in which such investments are specifically authorized by the board of directors of the credit union making the investment;

(h) In the shares, stock, or other obligations of any other organization, not to exceed ten percent of the credit union's capital and not to exceed five percent of the credit union's capital in any one corporation's stock, bonds, or other obligations, unless otherwise approved by the director. Such authority shall not include the power to acquire control, directly or indirectly, of another financial institution, nor invest in shares, stocks, or obligations of any insurance company or trade association except as otherwise expressly provided for or approved by the director;

(i) In the capital stock of the National Credit Union Administration Central Liquidity Facility;

(j) In obligations of or issued by any state or political subdivision thereof, including any agency, corporation, or instrumentality of a state or political subdivision, except that no credit union may invest more than ten percent of its capital in the obligations of any one issuer, exclusive of general obligations of the issuer;

(k) In securities issued pursuant to the Nebraska Business Development Corporation Act; and

(l) In participation loans with other credit unions, credit union organizations, or other organizations.

(2) In addition to investments expressly permitted by the Credit Union Act, a credit union may make any other type of investment approved by the department by rule, regulation, or order.

Source: Laws 1996, LB 948, § 102; Laws 1997, LB 137, § 15; Laws 2003, LB 217, § 31; Laws 2005, LB 533, § 31.

Cross References

Nebraska Business Development Corporation Act, see section 21-2101.

21-17,103 Transfer to regular reserve account.

(1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount there shall be set aside as a regular reserve account for contingencies an amount as set forth in 12 C.F.R. 702.

(2) The director may at any time require the credit union to increase the amount set aside in a regular reserve account pursuant to subsection (1) of this section or to establish a special reserve account if, in the judgment of the director, the financial condition of the credit union warrants such action.

Source: Laws 1996, LB 948, § 103; Laws 2001, LB 53, § 25.

21-17,104 Allowance-for-loan-losses account.

(1) A credit union shall establish an allowance-for-loan-losses account based upon reasonably foreseeable loan losses.

(2) For purposes of calculating required transfers of income to the regular reserve account pursuant to sections 21-17,103 to 21-17,107, any balance in the allowance-for-loan-losses account may be included with the balance in the regular reserve account.

Source: Laws 1996, LB 948, § 104.

21-17,105 Use of regular reserve account.

The regular reserve account shall belong to the credit union and shall be used to meet losses on risk assets and to meet such other classes of losses as are approved by the director. The regular reserve account shall not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director.

Source: Laws 1996, LB 948, § 105.

21-17,106 Special reserve account.

In addition to the regular reserve account, a special reserve account to protect the interest of the members shall be established when required by rule or regulation or when found by the board of directors of the credit union or by the director, in any special case, to be necessary for that purpose.

Source: Laws 1996, LB 948, § 106; Laws 1997, LB 137, § 16.

21-17,107 Waiver of reserve requirements.

The director may waive, in whole or in part, and on a general or case-by-case basis, the reserving requirements of sections 21-17,103 to 21-17,107 when, in his or her opinion, such a waiver is necessary or desirable to protect the public interest and fulfill the purpose of the Credit Union Act.

Source: Laws 1996, LB 948, § 107.

21-17,108 Liquidation.

(1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(2) If the board of directors decides to begin dissolution procedures, the board shall adopt a resolution recommending that the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the credit union members.

(3) Within ten days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the department and the National Credit Union Administration in writing of such decision and setting forth the reasons for the proposed liquidation. Within ten days after the members act on the question of liquidation, the president shall notify the department and the National Credit Union Administration in writing as to the action of the members on the proposal.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payments on, withdrawal of, and making any transfer of share accounts to loans and interest, making investments of any

kind, and granting of loans may be restricted or suspended pending action by the members on the proposal to dissolve. Upon approval by the members of the question of liquidation, all business transactions shall be permanently discontinued. Necessary expenses of operation shall continue to be paid upon the authorization of the board or the liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members shall be required. When authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least ten days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting on loans and distributing its assets, and doing all acts required in order to conclude its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully concluded.

(7) The board of directors or the liquidating agent shall distribute the assets of the credit union or the proceeds of any disposition of the assets pursuant to section 21-1734.

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed pursuant to section 21-1734, the board or the liquidating agent shall execute a certificate of dissolution on a form prescribed by the department and shall file the same, together with all pertinent books and records of the liquidating credit union, with the department and the credit union shall be dissolved.

Source: Laws 1996, LB 948, § 108.

21-17,109 Merger or consolidation.

(1) Any credit union organized under the Credit Union Act may, with the approval of the department, merge or consolidate with one or more other credit unions organized under the act or under the laws of the United States, if the credit unions merging or consolidating possess coinciding common bonds of association.

(2) When two or more credit unions merge or consolidate, one shall be designated as the continuing credit union or a totally new credit union shall be organized. If the latter procedure is followed, the new credit union shall be organized under the Credit Union Act or under the laws of the United States. All participating credit unions other than the continuing or new credit union shall be designated as merging credit unions.

(3) Any merger or consolidation of credit unions shall be done according to a plan of merger or consolidation. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the department for preliminary approval. If the plan includes the organization of a new credit union, all documents required pursuant to section 21-1724 shall be submitted as a part of the plan. In addition, each participating credit union shall submit the following information:

(a) The time and place of the meeting of the boards of directors at which the plan of merger or consolidation was agreed upon;

(b) The vote of the directors in favor of the adoption of the plan; and

(c) A copy of a resolution or other action by which the plan was agreed upon.

The department shall grant preliminary approval if the plan has been approved properly by the boards of directors and if the documentation required to organize a new credit union, if any, complies with section 21-1724. The director, in his or her discretion, may order a hearing be held if he or she determines that the condition of the acquiring credit union warrants a hearing or that the plan of merger would be unfair to the merging credit union.

(4) After the department grants preliminary approval, each merging credit union shall, unless waived by the department, conduct a membership vote on its participation in the plan. The vote shall be conducted either at a special meeting called for that purpose or by mail ballot. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the department indicating the vote by which the members approved the plan and either the time and place of the membership meeting or the mailing date and closing date of the mail ballot.

(5) The department may waive any voting requirements described in the Credit Union Act for any credit union upon the determination that it is in the best interests of the membership or that the credit union is insolvent or in imminent danger of becoming insolvent.

(6) The director shall grant final approval of the plan of merger or consolidation after determining that the requirements of subsections (1) through (4) of this section have been met in the case of each merging credit union. If the plan of merger or consolidation includes the organization of a new credit union, the department must approve the organization of the new credit union under section 21-1724 as part of the approval of the plan of merger or consolidation. The department shall notify all participating credit unions of the plan.

(7) Upon final approval of the plan by the department, all property, property rights, and members' interests in each merging credit union shall vest in the continuing or new credit union as applicable without deed, obligations, and other instruments of transfer, and all debts, obligations, and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each participating credit union shall remain intact. If a person is a member of more than one of the participating credit unions, the person shall be entitled to only a single set of membership rights in the continuing or new credit union.

(8) Notwithstanding any other provision of law, the department may authorize a merger or consolidation of a credit union which is insolvent or which is in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union which is insolvent or which is in danger of insolvency, if the department is satisfied that:

(a) An emergency requiring expeditious action exists with respect to such credit union;

(b) Other alternatives for such credit union are not reasonably available; and

(c) The public interest would best be served by the approval of such merger, consolidation, purchase, or assumption.

(9) Notwithstanding any other provision of law, the director may authorize an institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or any derivative thereof, to purchase any assets of or assume any liabilities of a credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the director shall attempt to effect a merger or consolidation with, or purchase or assumption by, another credit union as provided in subsection (8) of this section.

(10) For purposes of the authority contained in subsection (9) of this section, insured share accounts of each credit union may, upon consummation of the purchase or assumption, be converted to insured deposits or other comparable accounts in the acquiring institution, and the department and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

Source: Laws 1996, LB 948, § 109; Laws 1997, LB 137, § 17; Laws 2002, LB 957, § 19.

21-17,110 Conversion.

(1) A credit union incorporated under the laws of this state may be converted into a federal credit union organized under the laws of the United States as prescribed in section 21-17,111.

(2) A federal credit union organized under the laws of the United States may be converted into a credit union organized under the laws of this state as prescribed in section 21-17,112.

Source: Laws 1996, LB 948, § 110.

21-17,111 Conversion from state to federal credit union.

(1) Any credit union organized under the Credit Union Act may, with the approval of the department and with the approval of a majority of the credit union members attending an annual or special meeting of the credit union, be converted into a federal credit union. The conversion shall not release the state-organized credit union from its obligations to pay or discharge all liabilities created by law or incurred by it before the conversion, from any tax imposed by the laws of this state up to the day of the conversion in proportion to the time which has elapsed since the last preceding payment on such obligations or liabilities, or from any assessment, penalty, or forfeiture imposed or incurred under the laws of this state up to the date of the conversion. Conversion shall be made pursuant to a conversion plan approved by the department and shall not be made (a) to defeat or defraud any of the creditors of the credit union or (b) to avoid the requirements of any law of this state designed to protect consumers. The conversion plan shall address required notices and disclosures of information concerning advantages and disadvantages to the credit union and its members of the proposed conversion. Certified copies of all proceedings had by the board of directors and by the members of the credit union shall be filed by the board of directors with the department, and in addition, the credit union shall furnish to the department a certified copy of consent or approval of the National Credit Union Administration if such consent is required by the laws of the United States. Two copies of the proceedings shall be filed with the department. The department shall certify and forward by registered mail one copy of the proceedings to the county clerk of the county in which the credit union is located.

(2) When conversion becomes effective, all property of the credit union, including all rights, title, and interest in and to all kinds of property, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and remain the property of the converted credit union, which shall have, hold, and enjoy the property in its own right as fully and to the same extent as the property was possessed, held, and enjoyed prior to the conversion. The converted credit union shall be deemed to be a continuation of the same entity. All the rights, obligations, and relations of the credit union to or in respect to any person, estate, creditor, member, trust, trustee, or beneficiary of any trust or fiduciary function shall remain unimpaired. The credit union shall continue to hold all the rights, obligations, relations, and trusts, and the duties and liabilities connected therewith, and shall execute and perform every trust and relation in the same manner as if the credit union had not converted.

Source: Laws 1996, LB 948, § 111.

21-17,112 Conversion from federal to state credit union.

(1) A federal credit union organized under the Federal Credit Union Act, 12 U.S.C. 1753 et seq., and meeting all the requirements to become a state credit union organized under the Credit Union Act may, with the approval of the department and in compliance with the applicable law under which it was organized, be converted into a state credit union organized under the Credit Union Act. The required articles of association may be executed by a majority of the board of directors of the converting credit union and presented to the department for appropriate examination and approval. A majority of the directors, after executing the articles of association in duplicate, may execute all other papers, including the adoption of bylaws for the general government of the credit union consistent with the Credit Union Act, and do whatever may be required to complete its conversion.

(2) The board of directors of the converting credit union may continue to be directors of the credit union. If the director approves the articles of association as presented by the board of directors, the director shall notify the board of directors of his or her decision and shall immediately issue a certificate of approval attached to the duplicate articles of association and return it to the credit union. The certificate shall indicate that the laws of this state have been complied with and that the credit union and all its members, officials, and employees shall have the same rights, powers, and privileges and shall be subject to the same duties, liabilities, and obligations in all respects, as shall be applicable to credit unions originally organized under the Credit Union Act.

(3) The approval of the department shall be based on an examination of the credit union and the proceedings had by its board of directors and members with respect to conversion. A conversion shall not be made to defeat or defraud any of the creditors of the credit union. The expenses of an examination, which shall be computed in accordance with sections 8-605 and 8-606, shall be paid by the credit union.

(4) When the conversion becomes effective, all property of the converted credit union, including all its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and things in action, and

every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and remain the property of the converted credit union, which shall have, hold, and enjoy the property in its own right as fully and to the same extent as the property was previously possessed, held, and enjoyed by it. The converted credit union shall be deemed to be a continuation of the same entity. All the rights, obligations, and relations of the credit union to or in respect to any person, estate, creditor, member, trustee, or beneficiary of any trust or fiduciary function shall remain unimpaired. The credit union shall continue to hold all the rights, obligations, relations, and trusts, and the duties and liabilities connected therewith, and shall execute and perform every trust and relation in the same manner as if it had after the conversion assumed the trust or relation and obligation and liabilities connected with the trust or relation.

Source: Laws 1996, LB 948, § 112; Laws 1997, LB 137, § 18; Laws 2007, LB124, § 20.

21-17,113 Property taxation and collection.

The property of a credit union shall be subject to taxation in the same manner as provided by law in the case of corporations or individuals. Nothing in this section shall prevent holdings in any credit union organized under the Credit Union Act from being included in the valuation of the personal property of the owners or holders of such holdings in assessing taxes imposed by the authority of the state or any political subdivision thereof in which the credit union is located. The duty of collecting or enforcing the payment of such tax shall not be imposed upon any credit union.

Source: Laws 1996, LB 948, § 113.

21-17,114 Credit Union Act Fund; created; use; investment.

There is hereby created the Credit Union Act Fund. All funds available from the National Credit Union Share Insurance Fund shall be collected by the department and remitted to the State Treasurer for credit to the Credit Union Act Fund. The fund shall be administered by the department and used only for offsetting costs associated with the examination and supervision of federally insured, state-organized credit unions. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1996, LB 948, § 114.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2012, by a federal credit union doing business in Nebraska on

the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17; Laws 2009, LB327, § 15; Laws 2010, LB890, § 14; Laws 2011, LB74, § 5; Laws 2012, LB963, § 22. Effective date April 7, 2012.

21-17,116 Credit unions existing prior to October 1, 1996; how treated.

Credit unions formed, merged, or consolidated pursuant to and in compliance with the laws of the State of Nebraska as they existed prior to October 1, 1996, shall not be required to meet formation, merger, or consolidation requirements but shall meet all other requirements set forth in the Credit Union Act.

Source: Laws 1996, LB 948, § 116.

21-17,117 Repealed. Laws 1996, LB 948, § 130.

21-17,117.01 Repealed. Laws 1996, LB 948, § 130.

21-17,117.02 Repealed. Laws 1996, LB 948, § 130.

21-17,117.03 Repealed. Laws 1996, LB 948, § 130.

21-17,117.04 Repealed. Laws 1996, LB 948, § 130.

21-17,117.05 Repealed. Laws 1996, LB 948, § 130.

21-17,118 Repealed. Laws 1996, LB 948, § 130.

21-17,119 Repealed. Laws 1988, LB 795, § 8.

21-17,120 Repealed. Laws 1996, LB 948, § 130.

21-17,120.01 Transferred to section 21-17,115.

21-17,120.02 Repealed. Laws 1996, LB 948, § 130.

21-17,121 Repealed. Laws 1996, LB 948, § 130.

21-17,122 Repealed. Laws 1996, LB 948, § 130.

21-17,123 Repealed. Laws 1996, LB 948, § 130.

21-17,124 Repealed. Laws 1996, LB 948, § 130.

21-17,125 Repealed. Laws 1996, LB 948, § 130.

21-17,126 Repealed. Laws 1996, LB 948, § 130.

(b) NEBRASKA DEPOSITORY INSTITUTION GUARANTY CORPORATION ACT

21-17,127 Repealed. Laws 2003, LB 131, § 40.

21-17,128 Repealed. Laws 2003, LB 131, § 40.

21-17,129 Repealed. Laws 2003, LB 131, § 40.

21-17,130 Repealed. Laws 2003, LB 131, § 40.

21-17,131 Repealed. Laws 2003, LB 131, § 40.

21-17,132 Repealed. Laws 2003, LB 131, § 40.

21-17,133 Repealed. Laws 2003, LB 131, § 40.

21-17,134 Repealed. Laws 2003, LB 131, § 40.

21-17,135 Repealed. Laws 2003, LB 131, § 40.

21-17,136 Repealed. Laws 2003, LB 131, § 40.

21-17,137 Repealed. Laws 2003, LB 131, § 40.

21-17,138 Repealed. Laws 2003, LB 131, § 40.

21-17,139 Repealed. Laws 2003, LB 131, § 40.

21-17,140 Repealed. Laws 2003, LB 131, § 40.

21-17,141 Repealed. Laws 2003, LB 131, § 40.

21-17,142 Repealed. Laws 2003, LB 131, § 40.

21-17,143 Repealed. Laws 2003, LB 131, § 40.

21-17,144 Repealed. Laws 2003, LB 131, § 40.

21-17,145 Repealed. Laws 2003, LB 131, § 40.

ARTICLE 18

MEMBERSHIP CORPORATIONS AND ASSOCIATIONS

Section
21-1801. Repealed. Laws 1973, LB 157, § 6.
21-1802. Repealed. Laws 1973, LB 157, § 6.
21-1803. Repealed. Laws 1973, LB 157, § 6.
21-1804. Repealed. Laws 1973, LB 157, § 6.

21-1801 Repealed. Laws 1973, LB 157, § 6.

21-1802 Repealed. Laws 1973, LB 157, § 6.

21-1803 Repealed. Laws 1973, LB 157, § 6.

21-1804 Repealed. Laws 1973, LB 157, § 6.

ARTICLE 19

NEBRASKA NONPROFIT CORPORATION ACT

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.

(a) GENERAL PROVISIONS

(b) ORGANIZATION

(c) PURPOSES AND POWERS

(d) NAMES

(e) OFFICE AND AGENT

(f) MEMBERS AND MEMBERSHIPS

Section

(a) GENERAL PROVISIONS

21-1901 Act, how cited.

Sections 21-1901 to 21-19,177 shall be known and may be cited as the Nebraska Nonprofit Corporation Act.

Source: Laws 1996, LB 681, § 1.

21-1902 Legislative power.

The Legislature shall have the power to amend or repeal all or part of the Nebraska Nonprofit Corporation Act at any time and all domestic and foreign corporations subject to the act are governed by the amendment or repeal.

Source: Laws 1996, LB 681, § 2.

21-1903 Filing requirements.

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) The Nebraska Nonprofit Corporation Act must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by the act. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the presiding officer of its board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary; or

(3) An acknowledgment, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for a document under section 21-1904, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy (except as provided in sections 21-1936 and 21-19,154), the correct filing fee, and any tax, license fee, or penalty required by the Nebraska Nonprofit Corporation Act or other law.

Source: Laws 1996, LB 681, § 3.

21-1904 Forms.

(a) The Secretary of State may prescribe and furnish, on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a foreign corporation's application for a certificate of withdrawal; and (4) the biennial report. If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may prescribe and furnish, on request, forms for other documents required or permitted to be filed by the Nebraska Nonprofit Corporation Act but their use is not mandatory.

Source: Laws 1996, LB 681, § 4.

21-1905 Fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

(1)(i) Articles of incorporation or (ii) documents relating to domestication...$10.00

(2) Application for reserved name...$25.00

(3) Notice of transfer of reserved name...$25.00

(4) Application for registered name...$25.00

(5) Application for renewal of registered name...$25.00

(6) Corporation's statement of change of registered agent or registered office or both...$5.00

(7) Agent's statement of change of registered office for each affected corporation...$25.00 (not to exceed a total of $1,000)

(8) Agent's statement of resignation...no fee

(9) Amendment of articles of incorporation...$5.00

(10) Restatement of articles of incorporation with amendments...$5.00

(11) Articles of merger...$5.00

(12) Articles of dissolution...$5.00

(13) Articles of revocation of dissolution...$5.00

(14) Certificate of administrative dissolution...no fee

(15) Application for reinstatement following administrative dissolution...$5.00

(16) Certificate of reinstatement...no fee

(17) Certificate of judicial dissolution...no fee

(18) Certificate of authority...$10.00

(19) Application for amended certificate of authority...$5.00

(20) Application for certificate of withdrawal...$5.00

(21) Certificate of revocation of authority to transact business...no fee

(22) Biennial report...$20.00

(23) Articles of correction...$5.00

(24) Application for certificate of good standing...$10.00

(25) Any other document required or permitted to be filed by the Nebraska Nonprofit Corporation Act...$5.00

(i) Amendments...$5.00

(ii) Mergers...$5.00

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) $1.00 per page; and

(2) $10.00 for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1996, LB 681, § 5; Laws 2008, LB907, § 1.

21-1906 Effective date of document.

(a) Except as provided in subsection (b) of this section, a document is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date filed.

Source: Laws 1996, LB 681, § 6.

21-1907 Correcting filed document.

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document: (1) Contains an incorrect statement or (2) was defectively executed, attested to, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) By delivering the articles of correction to the Secretary of State.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and who are adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Source: Laws 1996, LB 681, § 7.

21-1908 Secretary of State; duties.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of section 21-1903, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing ''Filed,'' together with the Secretary of State's name and official title and the date and the time of receipt, on both the original and the document copy. After filing a document, except as provided in sections 21-1936 and 21-19,154, the Secretary of State shall deliver the document copy, with the acknowledgment of receipt of the filing fee, if a fee is required, to the domestic or foreign corporation or its representative.

(c) Upon refusing to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Source: Laws 1996, LB 681, § 8.

21-1909 Refusal to file document; appeal.

(a) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the district court of Lancaster County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation for the refusal to file.

(b) The district court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 681, § 9.

21-1910 Filed document; evidentiary effect.

A certificate attached to a copy of a document bearing the Secretary of State's signature (which may be in facsimile) and the seal of this state is conclusive evidence that the original document is on file with the Secretary of State.

Source: Laws 1996, LB 681, § 10.

21-1911 Certificate of existence.

(a) Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic or foreign corporation.

(b) The certificate of existence shall set forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual or (ii) the foreign corporation is authorized to transact business in this state;

(3) That all fees, taxes, and penalties owed to this state have been paid, if (i) payment is reflected in the records of the Secretary of State and (ii) nonpayment affects the good standing of the domestic or foreign corporation;

(4) That its most recent biennial report required by section 21-19,172 has been delivered to the Secretary of State; and

(5) That articles of dissolution have not been filed.

(c) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

Source: Laws 1996, LB 681, § 11.

21-1912 Signing false document; penalty.

(a) A person commits an offense by signing a document such person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) Any person who violates this section is guilty of a Class I misdemeanor.

Source: Laws 1996, LB 681, § 12.

21-1913 Secretary of State; powers.

The Secretary of State has the power reasonably necessary to perform the duties required of his or her office by the Nebraska Nonprofit Corporation Act.

Source: Laws 1996, LB 681, § 13.

21-1914 Terms, defined.

For purposes of the Nebraska Nonprofit Corporation Act, unless the context otherwise requires:

(1) Approved by (or approval by) the members means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by a written ballot, or written consent in conformity with the act or by the affirmative vote, written ballot, or written consent of such greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or the act for any specified member action;

(2) Articles of incorporation or articles include amended and restated articles of incorporation and articles of merger;

(3) Board or board of directors means the board of directors except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to section 21-1968;

(4) Bylaws means the code or codes of rules (other than the articles) adopted pursuant to the act for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;

(5) Class means a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For purposes of this section, rights shall be considered the same if they are determined by a formula applied uniformly;

(6) Corporation means a public benefit, a mutual benefit, or a religious corporation;

(7) Delegate means a person elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters;

(8) Deliver includes mail;

(9) Director means an individual, designated in the articles or bylaws or elected by the incorporators, and his or her successor and an individual elected or appointed by any other name or title to act as a member of the board;

(10) Distribution means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers;

(11) Domestic corporation means a corporation;

(12) Effective date of notice has the same meaning as in section 21-1915;

(13) Electronic transmission or electronically transmitted means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;

(14) Employee does not include an officer or director who is not otherwise employed by the corporation;

(15) Entity includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, limited liability company, registered limited liability partnership, trust, and two or more persons having a joint or common economic interest; state or the United States; and foreign government;

(16) File, filed, or filing means filed in the office of the Secretary of State;

(17) Foreign corporation means a corporation organized under a law other than the law of this state which would be a nonprofit corporation if formed under the laws of this state;

(18) Governmental subdivision includes authority, county, district, and municipality;

(19) Individual includes the estate of an incompetent individual;

(20) Member means (without regard to what a person is called in the articles or bylaws) any person or persons who on more than one occasion, pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors. The definition of member does not apply to a corporation created for the collection of assessments under federally mandated programs if the articles of such corporation provide that the corporation shall not have members. A person is not a member by virtue of any of the following:

(i) Any rights such person has as a delegate;

(ii) Any rights such person has to designate a director or directors; or

(iii) Any rights such person has as a director;

(21) Membership means the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and the act;

(22) Mutual benefit corporation means a domestic corporation which is formed as a mutual benefit corporation pursuant to sections 21-1920 to 21-1926 or is required to be a mutual benefit corporation pursuant to section 21-19,177;

(23) Notice has the same meaning as in section 21-1915;

(24) Person includes any individual or entity;

(25) Principal office means the office (in or out of this state) so designated in the biennial report filed pursuant to section 21-19,172 where the principal offices of a domestic or foreign corporation is located;

(26) Proceeding includes civil, criminal, administrative, and investigatory actions;

(27) Public benefit corporation means a domestic corporation which is formed as a public benefit corporation pursuant to sections 21-1920 to 21-1926 or is required to be a public benefit corporation pursuant to section 21-19,177;

(28) Record date means the date established under sections 21-1938 to 21-1950 or 21-1951 to 21-1967 on which a corporation determines the identity of its members for the purposes of the act;

(29) Religious corporation means a domestic corporation which is formed as a religious corporation pursuant to sections 21-1920 to 21-1926 or is required to be a religious corporation pursuant to section 21-19,177;

(30) Secretary means the corporate officer to whom the board of directors has delegated responsibility under subsection (b) of section 21-1990 for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation;

(31) State, when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States;

(32) United States includes district, authority, bureau, commission, department, and any other agency of the United States;

(33) Vote includes authorization by written ballot and written consent; and

(34) Voting power means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

Source: Laws 1996, LB 681, § 14; Laws 1997, LB 285, § 1; Laws 2012, LB890, § 1.
Effective date July 19, 2012.

21-1915 Notice.

(a) Notice may be oral or written.

(b) Notice may be communicated in person, by mail or other method of delivery, or by telephone or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, by radio, by television, or by other form of public broadcast communication.

(c) Oral notice is effective when communicated if communicated in a comprehensible manner.

(d) Written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with first-class postage affixed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(4) Thirty days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with other than first class, registered or certified postage affixed.

(e) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members.

(f) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report (1) if addressed or delivered to the member's address shown in the corporation's current list of members, (2) in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members at the address appearing on the current list of members, or (3) if electronically transmitted to a member in a manner authorized by the member.

(g) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in this state), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

(h) If any other provision of the Nebraska Nonprofit Corporation Act prescribes notice requirements for particular circumstances, such as subsection (b) of section 21-1955, those requirements govern. If articles or bylaws prescribe notice requirements not inconsistent with this section or other provisions of the Nebraska Nonprofit Corporation Act, those requirements govern.

Source: Laws 1996, LB 681, § 15; Laws 2012, LB890, § 2.
Effective date July 19, 2012.

21-1916 Private foundations; requirements.

Except when otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code:

(a) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(b) Shall not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(c) Shall not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(d) Shall not make any investments subjecting it to taxation under section 4944 of the Internal Revenue Code; and

(e) Shall not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

Source: Laws 1996, LB 681, § 16; Laws 1998, LB 1015, § 1.

21-1917 Meetings and votes; court order.

(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or the Nebraska Nonprofit Corporation Act, then upon petition of a director, officer, delegate, member, or the Attorney General, the district court may order that

such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized in such a manner it finds fair and equitable under the circumstances.

(b) The district court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and the act, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the district court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or the act.

(d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. An order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and the act.

Source: Laws 1996, LB 681, § 17.

21-1918 Attorney General; notice; powers.

(a) The Attorney General shall be given notice of the commencement of any proceeding that the Nebraska Nonprofit Corporation Act authorizes him or her to bring but that has been commenced by another person.

(b) Whenever any provision of the act requires that notice be given to the Attorney General before or after commencing a proceeding or permits him or her to commence a proceeding:

(1) If no proceeding has been commenced, the Attorney General may take appropriate action including, but not limited to, seeking injunctive relief; or

(2) If a proceeding has been commenced by a person other than the Attorney General, the Attorney General, as of right, may intervene in such proceeding.

Source: Laws 1996, LB 681, § 18.

21-1919 Religious corporations; constitutional protections.

If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of the Nebraska Nonprofit Corporation Act on the same subject, the religious doctrine shall control to the extent required by

the Constitution of the United States or the Constitution of the State of Nebraska or both.

Source: Laws 1996, LB 681, § 19.

(b) ORGANIZATION

21-1920 Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

Source: Laws 1996, LB 681, § 20.

21-1921 Articles of incorporation.

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 21-1931;

(2) One of the following statements:

(i) This corporation is a public benefit corporation;

(ii) This corporation is a mutual benefit corporation; or

(iii) This corporation is a religious corporation;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(4) The name and street address of each incorporator;

(5) Whether or not the corporation will have members; and

(6) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

(1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(2) The names and street addresses of the individuals who are to serve as the initial directors;

(3) Provisions not inconsistent with law regarding:

(i) Managing and regulating the affairs of the corporation;

(ii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and

(iii) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

(4) Any provision that under the Nebraska Nonprofit Corporation Act is required or permitted to be set forth in the bylaws.

(c) Each incorporator and director named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in the act.

Source: Laws 1996, LB 681, § 21; Laws 2008, LB379, § 7.

21-1922 Incorporation.

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Source: Laws 1996, LB 681, § 22.

21-1923 Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under the Nebraska Nonprofit Corporation Act, are jointly and severally liable for all liabilities created while so acting.

Source: Laws 1996, LB 681, § 23.

21-1924 Organization of corporation.

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by the Nebraska Nonprofit Corporation Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state in accordance with section 21-1981.

Source: Laws 1996, LB 681, § 24.

21-1925 Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Source: Laws 1996, LB 681, § 25.

21-1926 Emergency bylaws and powers.

(a) Unless the articles provide otherwise the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

(1) How to call a meeting of the board;

(2) Quorum requirements for the meeting; and

(3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 1996, LB 681, § 26.

(c) PURPOSES AND POWERS

21-1927 Purposes.

(a)(1) Every corporation incorporated under the Nebraska Nonprofit Corporation Act has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under the act only if incorporation under the act is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

(b) Corporations may be incorporated under the Nebraska Nonprofit Corporation Act for any one or more of, but not limited to, the following lawful purposes: Charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, or trade association. Corporations may also be incorporated under the act for the purpose of providing for, erecting, owning, leasing, furnishing, and managing any building, hall, dormitory or apartments, lands, or grounds for the use or benefit in whole or in part of any governmental, religious, social, educational, scientific, fraternal, or charitable society or societies, body or bodies, institution or institutions, incorporated or unincorporated, or for the purpose of holding property of any nature in trust for such society, body, or institution or for the purpose of assisting any governmental body in obtaining grants from the federal government, the performance of any requirements necessary to obtain a federal grant, or carrying out the purpose for which a federal grant is obtained.

Source: Laws 1996, LB 681, § 27; Laws 1999, LB 271, § 1.

21-1928 General powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, the power:

(1) To sue and be sued, complain, and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;

(3) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of, any entity;

(7) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 21-1988;

(9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) To conduct its activities, locate offices, and exercise the powers granted by the Nebraska Nonprofit Corporation Act within or without this state;

(11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(14) To impose dues, assessments, admission, and transfer fees upon its members;

(15) To establish conditions for admission of members, admit members, and issue memberships;

(16) To carry on a business; and

(17) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

Source: Laws 1996, LB 681, § 28.

21-1929 Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officer to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 1996, LB 681, § 29.

21-1930 Ultra vires.

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the Attorney General, a director, or by a member or members in a derivative proceeding.

(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation (directly, derivatively, or through a receiver, a trustee, or other legal representative), or in the case of a public benefit corporation, by the Attorney General.

Source: Laws 1996, LB 681, § 30.

(d) NAMES

21-1931 Corporate name.

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-1927 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as or deceptively similar to, upon the records of the

Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;

(3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the Secretary of State's records, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to do business in this state and the proposed user corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) The Nebraska Nonprofit Corporation Act does not control the use of fictitious names.

Source: Laws 1996, LB 681, § 31; Laws 1997, LB 44, § 2; Laws 1997, LB 453, § 1; Laws 2003, LB 464, § 1; Laws 2011, LB462, § 1.

21-1932 Reserved name.

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. Upon finding that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

Source: Laws 1996, LB 681, § 32.

21-1933 Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any change required by section 21-19,151, if the name is not the same as or deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved under section 21-1932 or 21-2029 or registered under this section; and

(3) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by section 21-19,151, by delivering to the Secretary of State an application:

(1) Setting forth its corporate name, or its corporate name with any change required by section 21-19,151, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(c) The corporate name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation or other business entity thereafter incorporated under the Nebraska Nonprofit Corporation Act or authorized to transact business in this state or by another foreign corporation or business entity thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation or business entity qualifies or consents to the qualification of another foreign corporation or business entity under the registered name.

Source: Laws 1996, LB 681, § 33; Laws 1997, LB 44, § 3; Laws 2003, LB 464, § 2.

(e) OFFICE AND AGENT

21-1934 Registered office; registered agent.

Each corporation must continuously maintain in this state:

(1) A registered office with the same street address as that of the registered agent. A post office box number may be provided in addition to the street address of the registered agent; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

Source: Laws 1996, LB 681, § 34; Laws 2008, LB379, § 8.

21-1935 Change of registered office or registered agent.

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.

(b) If the street address or post office box number of a registered agent's office is changed, the registered agent may change the street address, or, if one exists, the post office box number, of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 1996, LB 681, § 35; Laws 2008, LB379, § 9.

21-1936 Resignation of registered agent.

(a) A registered agent may resign as the registered agent by signing and delivering to the Secretary of State the original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office as shown in the most recent biennial report filed pursuant to section 21-19,172.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 1996, LB 681, § 36.

21-1937 Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent biennial report filed pursuant to section 21-19,172. Service is perfected under this subsection on the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first-class postage affixed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Source: Laws 1996, LB 681, § 37.

(f) MEMBERS AND MEMBERSHIPS

21-1938 Admission of members.

(a) The articles or bylaws may establish criteria or procedures for admission of members.

(b) No person shall be admitted as a member without his or her consent.

Source: Laws 1996, LB 681, § 38.

21-1939 Consideration.

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

Source: Laws 1996, LB 681, § 39.

21-1940 No requirement of members.

A corporation is not required to have members.

Source: Laws 1996, LB 681, § 40.

21-1941 Differences in rights and obligations.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

Source: Laws 1996, LB 681, § 41.

21-1942 Transfers.

(a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.

(b) No member of a public benefit or religious corporation may transfer a membership or any right arising therefrom.

(c) When transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

Source: Laws 1996, LB 681, § 42.

21-1943 Member's liability to third parties.

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

Source: Laws 1996, LB 681, § 43.

21-1944 Member's liability for dues, assessments, and fees.

A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

Source: Laws 1996, LB 681, § 44.

21-1945 Creditor's action against member.

(a) No proceeding may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) of this section to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

Source: Laws 1996, LB 681, § 45.

21-1946 Resignation.

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

Source: Laws 1996, LB 681, § 46.

21-1947 Termination, expulsion, and suspension.

(a) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(1) The articles or bylaws set forth a procedure that provides:

(i) Not less than fifteen days' prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(ii) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, suspension, or termination not take place; or

(2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail must be given by first-class or certified mail sent to the last-known address of the member shown on the corporation's records.

(d) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

(e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

Source: Laws 1996, LB 681, § 47.

21-1948 Purchase of memberships.

(a) A public benefit or religious corporation may not purchase any of its memberships or any right arising therefrom.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws, but no payment shall be made in violation of sections 21-19,127 and 21-19,128.

Source: Laws 1996, LB 681, § 48.

21-1949 Derivative suits.

(a) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by: (i) Any member or members having five percent or more of the voting power or by fifty members, whichever is less; or (ii) any director.

(b) In any such proceeding, each complainant shall be a member or director at the time of bringing the proceeding.

(c) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the district court may stay the proceeding until the investigation is completed.

(d) On termination of the proceeding the district court may require the complainants to pay any defendant's reasonable expenses (including counsel

fees) incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(e) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise was successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise, or settlement of an action or claim, the district court may award the complainants reasonable expenses (including counsel fees).

(f) The complainants shall notify the Attorney General within ten days after commencing any proceeding under this section if the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation.

Source: Laws 1996, LB 681, § 49.

Notice to the Attorney General as an interested party is an essential prerequisite to proceeding in an action involving a public benefit corporation, but once the notice is given, failure to provide such notice within 10 days of the filing of the original complaint does not constitute a jurisdictional defect foreclosing further action. Gilbert & Martha Hitchcock Found. v. Kountze, 275 Neb. 978, 751 N.W.2d 129 (2008).

Effective notice to the Attorney General is an essential prerequisite to proceeding in any action involving a public benefit corporation for which such notice is required. Hitchcock Foundation v. Kountze, 272 Neb. 251, 720 N.W.2d 31 (2006).

21-1950 Delegates.

(a) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(b) The articles or bylaws may set forth provisions relating to:

(1) The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

(2) Calling, noticing, holding, and conducting meetings of delegates; and

(3) Carrying on corporate activities during and between meetings of delegates.

Source: Laws 1996, LB 681, § 50.

(g) MEMBERS' MEETINGS AND VOTING

21-1951 Annual and regular meetings.

(a) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office. Unless the articles or bylaws provide otherwise, members may participate in an annual or regular meeting of the members or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present at the meeting.

(d) At the annual meeting:

(1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(2) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of section 21-1955 and subsection (b) of section 21-1962.

(e) At regular meetings the members shall consider and act upon such matters as may be raised consistent with (i) the notice requirements of section 21-1955 and (ii) subsection (b) of section 21-1962.

(f) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Source: Laws 1996, LB 681, § 51.

21-1952 Special meeting.

(a) A corporation with members shall hold a special meeting of members:

(1) On call of its board or the person or persons authorized to do so by the articles or bylaws; or

(2) Except as provided in the articles or bylaws of a religious corporation if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent requirement of subsection (a) of this section has been met.

(c) If a notice for a special meeting demanded under subdivision (a)(2) of this section is not given pursuant to section 21-1955 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 21-1955.

(d) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office. Unless the articles or bylaws provide otherwise, members may participate in a special meeting of the members or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present at the meeting.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by section 21-1955 may be conducted at a special meeting of members.

Source: Laws 1996, LB 681, § 52.

21-1953 Court-ordered meeting.

(a) The district court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

(1) On application of any member or other person entitled to participate in an annual or regular meeting, and in the case of a public benefit corporation, the Attorney General, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) On application of any member or other person entitled to participate in a regular meeting, and in the case of a public benefit corporation, the Attorney General, if a regular meeting is not held within forty days after the date it was required to be held; or

(3) On application of a member who signed a demand for a special meeting valid under section 21-1952, a person or persons entitled to call a special meeting, and, in the case of a public benefit corporation, the Attorney General, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer; or

(ii) The special meeting was not held in accordance with the notice.

(b) The district court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) If the district court orders a meeting, it may also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

Source: Laws 1996, LB 681, § 53.

21-1954 Action by written consent.

(a) Unless limited or prohibited by the articles or bylaws, action required or permitted by the Nebraska Nonprofit Corporation Act to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under section 21-1953 or 21-1957, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the Secretary of State.

(d) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is

required, member approval pursuant to this section shall be effective ten days after such written notice is given.

Source: Laws 1996, LB 681, § 54.

21-1955 Notice of meeting.

(a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. Notice of matters referred to in subdivision (c)(2) of this section, however, must be given as provided in subsection (c) of this section.

(c) Notice is fair and reasonable if:

(1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten (or if notice is mailed by other than first-class or registered mail, thirty) nor more than sixty days before the meeting date;

(2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under section 21-1987, 21-19,102, 21-19,107, 21-19,114, 21-19,121, 21-19,126, 21-19,129, or 21-19,130; and

(3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 21-1957, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if: (1) Requested in writing to do so by a person entitled to call a special meeting; and (2) the request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

Source: Laws 1996, LB 681, § 55.

21-1956 Waiver of notice.

(a) A member may waive any notice required by the Nebraska Nonprofit Corporation Act, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Source: Laws 1996, LB 681, § 56.

21-1957 Record date; determining members entitled to notice and vote.

(a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(d) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members occurs.

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy days after the record date for determining members entitled to notice of the original meeting.

(f) If the district court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

Source: Laws 1996, LB 681, § 57.

21-1958 Action by written ballot.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written ballot shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

Source: Laws 1996, LB 681, § 58.

21-1959 Members' list for meeting.

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but who are not entitled to notice of the meeting. This list shall be prepared on the same basis as and be part of the list of members.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of subsection (c) of section 21-19,166 and section 21-19,169, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or upon adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b) of this section), the district court of the county where a corporation's principal office (or if none in this state, its registered office) is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) of this section prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(f) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

Source: Laws 1996, LB 681, § 59.

21-1960 Voting entitlement generally.

(a) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(b) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

(1) If only one votes, such act binds all; and

(2) If more than one votes, the vote shall be divided on a pro rata basis.

Source: Laws 1996, LB 681, § 60.

21-1961 Quorum requirements.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, or bylaws provide for a higher or lower quorum, ten percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(b) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(c) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(d) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

Source: Laws 1996, LB 681, § 61.

21-1962 Voting requirements.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative votes also constitute a majority of the required quorum) is the act of the members.

(b) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

Source: Laws 1996, LB 681, § 62.

21-1963 Proxies.

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney in fact.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form. No proxy shall be valid for more than three years from its date of execution.

(c) An appointment of a proxy is revocable by the member.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) Appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to section 21-1966 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

Source: Laws 1996, LB 681, § 63.

21-1964 Cumulative voting for directors.

(a) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates.

(b) Cumulative voting is not authorized at a particular meeting unless:

(1) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(2) A member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of section 21-1975 are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(d) Members may not cumulatively vote if the directors and members are identical.

Source: Laws 1996, LB 681, § 64.

Cross References

Cumulative voting for directors, see Article XII, section 1, Constitution of Nebraska.

21-1965 Other methods of electing directors.

A corporation may provide in its articles or bylaws for the election of directors by members or delegates (1) on the basis of chapter or other organizational unit, (2) by region or other geographic unit, (3) by preferential voting, or (4) by any other reasonable method.

Source: Laws 1996, LB 681, § 65.

Cross References

Cumulative voting for directors, see Article XII, section 1, Constitution of Nebraska.

21-1966 Corporation's acceptance of votes.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an attorney in fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(3) Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders; and

(4) In the case of a mutual benefit corporation:

(i) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(ii) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Source: Laws 1996, LB 681, § 66.

21-1967 Voting agreements.

(a) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Such agreements may be valid for a period of up to ten years. For public benefit corporations such agreements must have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

(b) A voting agreement created under this section is specifically enforceable.

Source: Laws 1996, LB 681, § 67.

(h) DIRECTORS AND OFFICERS

21-1968 Requirement for and duties of board of directors.

(a) Each corporation must have a board of directors.

(b) Except as provided in the Nebraska Nonprofit Corporation Act or subsection (c) of this section, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

(c) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

Source: Laws 1996, LB 681, § 68.

21-1969 Qualifications of directors.

All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

Source: Laws 1996, LB 681, § 69.

21-1970 Number of directors.

(a) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(b) The number of directors may be increased or decreased (but to no fewer than three) from time to time by amendment to or in the manner prescribed in the articles or bylaws.

Source: Laws 1996, LB 681, § 70.

21-1971 Election, designation, and appointment of directors.

(a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election or provide that some of the directors are appointed by some other person or designated.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

Source: Laws 1996, LB 681, § 71.

21-1972 Terms of directors generally.

(a) The articles or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.

(b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the articles or bylaws:

(1) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) The term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies, or until there is a decrease in the number of directors.

Source: Laws 1996, LB 681, § 72.

21-1973 Staggered terms for directors.

The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

Source: Laws 1996, LB 681, § 73.

21-1974 Resignation of directors.

(a) A director may resign at any time by delivering written notice to the board of directors, its presiding officer, or to the president or secretary.

(b) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

Source: Laws 1996, LB 681, § 74.

21-1975 Removal of directors elected by members or directors.

(a) The members may remove one or more directors elected by them without cause.

(b) If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(c) Except as provided in subsection (i) of this section, a director may be removed under subsection (a) or (b) of this section only if the number of votes

cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes (or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping) sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b) through (d) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) through (e) of this section.

(h) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. A director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(j) The articles or bylaws of a religious corporation may:

(1) Limit the application of this section; and

(2) Set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

Source: Laws 1996, LB 681, § 75.

21-1976 Removal of designated or appointed directors.

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b)(1) An appointed director may be removed without cause by the person appointing the director except as otherwise provided in the articles or bylaws;

(2) The person removing the appointed director shall do so by giving written notice of the removal to the appointed director and either the presiding officer of the board or the corporation's president or secretary; and

(3) A removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

Source: Laws 1996, LB 681, § 76.

21-1977 Removal of directors by judicial proceeding.

(a) The district court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent of the voting power of any class, or the Attorney General in the case of a public benefit corporation, if it finds that (1)(i) the director engaged in fraudulent or dishonest conduct, (ii) the director engaged in a gross abuse of authority or discretion, with respect to the corporation, or (iii) a final judgment has been entered finding that the director has violated a duty set forth in sections 21-1986 to 21-1989 and (2) removal is in the best interest of the corporation.

(b) The district court may bar the removed director from serving on the board for a period prescribed by the court.

(c) If members or the Attorney General commence a proceeding under subsection (a) of this section the corporation shall be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a) of this section, they shall give the Attorney General written notice of the proceeding.

(e) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

Source: Laws 1996, LB 681, § 77.

Effective notice to the Attorney General is an essential prerequisite to proceeding in any action involving a public benefit corporation for which such notice is required. Hitchcock Foundation v. Kountze, 272 Neb. 251, 720 N.W.2d 31 (2006).

21-1978 Vacancy on board.

(a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c) of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under subsection (b) of section 21-1974 or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

Source: Laws 1996, LB 681, § 78.

21-1979 Compensation of directors.

Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors.

Source: Laws 1996, LB 681, § 79.

21-1980 Regular and special meetings.

(a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this state.

(c) Unless the articles or bylaws provide otherwise, members of the board of directors may participate in a regular or special meeting of the board or conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Source: Laws 1996, LB 681, § 80.

21-1981 Action without meeting.

(a) Unless the articles or bylaws provide otherwise, action required or permitted by the Nebraska Nonprofit Corporation Act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Source: Laws 1996, LB 681, § 81.

21-1982 Call and notice of meeting.

(a) Unless the articles, bylaws, or subsection (c) of this section provide otherwise, regular meetings of the board may be held without notice.

(b) Unless the articles, bylaws, or subsection (c) of this section provide otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members shall not be valid unless each director is given at least seven days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to section 21-1983.

(d) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or twenty percent of the directors then in office may call and give notice of a meeting of the board.

Source: Laws 1996, LB 681, § 82.

21-1983 Waiver of notice.

(a) A director may at any time waive any notice required by the Nebraska Nonprofit Corporation Act, the articles, or bylaws. Except as provided in subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with the act, the articles, or bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected to action.

Source: Laws 1996, LB 681, § 83.

21-1984 Quorum; voting.

(a) Except as otherwise provided in the Nebraska Nonprofit Corporation Act, the articles, or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in office or two directors.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless the act, the articles, or bylaws require the vote of a greater number of directors.

Source: Laws 1996, LB 681, § 84.

21-1985 Committees of the board.

(a) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors who serve at the pleasure of the board.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the articles or bylaws to take action under section 21-1984.

(c) Sections 21-1980 to 21-1984, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, shall apply to committees of the board and their members. Unless the articles or bylaws provide otherwise, members of a committee may participate in a meeting of the committee or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present at the meeting.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 21-1968.

(e) A committee of the board may not:

(1) Authorize distributions;

(2) Approve or recommend to members the dissolution, the merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;

(3) Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(4) Adopt, amend, or repeal the articles or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 21-1986.

Source: Laws 1996, LB 681, § 85.

21-1986 General standards for directors.

(a) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) A committee of the board of which the director is not a member as to matters within its jurisdiction if the director reasonably believes the committee merits confidence; or

(4) In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the

corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

Source: Laws 1996, LB 681, § 86.

21-1987 Director; conflict of interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (b) or (c) of this section.

(b) A transaction in which a director of a public benefit or religious corporation has a conflict of interest may be approved:

(1) In advance by the vote of the board of directors or a committee of the board if:

(i) The material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) The directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(2) Before or after it is consummated by obtaining approval of the:

(i) Attorney General; or

(ii) The district court in an action in which the Attorney General is joined as a party.

(c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(2) The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(d) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction or (2) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(e) For purposes of subsections (b) and (c) of this section, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subdivision (b)(1) or (c)(1) of this section if the transaction is otherwise approved as provided in subsection (b) or (c) of this section.

(f) For purposes of subdivision (c)(2) of this section, a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subdivision (d)(1) of this section may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subdivision (c)(2) of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of the Nebraska Nonprofit Corporation Act. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

Source: Laws 1996, LB 681, § 87.

The term ''transaction'' generally connotes negotiations or a consensual bilateral arrangement between the corporation and another party or parties that concern their respective and differing economic rights or interests — not simply a unilateral action by the corporation, but, rather, a ''deal.'' Glad Tidings v. Nebraska Dist. Council, 273 Neb. 960, 734 N.W.2d 731 (2007).

21-1988 Loans to or guaranties for directors and officers.

(a) A corporation may not lend money to or guaranty the obligation of a director or officer of the corporation.

(b) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

Source: Laws 1996, LB 681, § 88.

21-1989 Liability for unlawful distributions.

(a) Unless a director complies with the applicable standards of conduct described in section 21-1986, a director who votes for or assents to a distribution made in violation of the Nebraska Nonprofit Corporation Act is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating the act.

(b) A director held liable for an unlawful distribution under subsection (a) of this section is entitled to contribution:

(1) From every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 21-1986; and

(2) From each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of the act.

Source: Laws 1996, LB 681, § 89.

21-1990 Required officers.

(a) Unless otherwise provided in the articles or bylaws, a corporation shall have a president, a secretary, a treasurer, and such other officers as are appointed by the board.

(b) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(c) The same individual may simultaneously hold more than one office in a corporation.

Source: Laws 1996, LB 681, § 90.

21-1991 Duties and authority of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

Source: Laws 1996, LB 681, § 91.

21-1992 Standards of conduct for officers.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(3) In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

Source: Laws 1996, LB 681, § 92.

21-1993 Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the

pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(b) A board may remove any officer at any time with or without cause.

Source: Laws 1996, LB 681, § 93.

21-1994 Contract rights of officers.

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Source: Laws 1996, LB 681, § 94.

21-1995 Officers' authority to execute documents.

Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in Category 1 or by one officer in Category 1 and one officer in Category 2. Category 1 and Category 2 are defined as:

Category 1 - The presiding officer of the board and the president; and

Category 2 - A vice president, the secretary, treasurer and executive director.

Source: Laws 1996, LB 681, § 95.

21-1996 Terms, defined.

For purposes of sections 21-1996 to 21-19,104:

(1) Corporation includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction;

(2) Director means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. Director includes, unless the context requires otherwise, the estate or personal representative of a director;

(3) Expenses include counsel fees;

(4) Liability means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding;

(5) Official capacity means: (i) When used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in section 21-19,102, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

Official capacity does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise;

(6) Party includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding; and

(7) Proceeding means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

Source: Laws 1996, LB 681, § 96.

21-1997 Authority to indemnify.

(a) Except as provided in subsection (d) of this section a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

(1) Conducted himself or herself in good faith; and

(2) Reasonably believed:

(i) In the case of conduct in his or her official capacity with the corporation, that his or her conduct was in its best interests; and

(ii) In all other cases, that his or her conduct was at least not opposed to its best interests; and

(3) In the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the best interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subdivision (a)(2)(ii) of this section.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his or her official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Source: Laws 1996, LB 681, § 97.

21-1998 Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she is or was

a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

Source: Laws 1996, LB 681, § 98.

21-1999 Advance for expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in section 21-1997;

(2) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under sections 21-1996 to 21-19,104.

(b) The undertaking required by subdivision (a)(2) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 21-19,101.

Source: Laws 1996, LB 681, § 99.

21-19,100 Court-ordered indemnification.

Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the district court, after giving any notice it considers necessary, may order indemnification in the amount it considers proper if it determines:

(1) The director is entitled to mandatory indemnification under section 21-1998, in which case the district court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in subsection (a) of section 21-1997 or was adjudged liable as described in subsection (d) of section 21-1997, but if the director was adjudged so liable indemnification is limited to reasonable expenses incurred.

Source: Laws 1996, LB 681, § 100.

21-19,101 Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under section 21-1997 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 21-1997.

(b) The determination shall be made:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) If a quorum cannot be obtained under subdivision (1) of this section by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;

(3) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2) of this subsection; or

(ii) If a quorum of the board cannot be obtained under subdivision (1) of this subsection and a committee cannot be designated under subdivision (2) of this subsection, selected by majority vote of the full board (in which selection directors who are parties may participate); or

(4) By the members of a mutual benefit corporation, but directors who are at the time parties to the proceeding may not vote on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subdivision (b)(3) of this section to select counsel.

(d) A director of a public benefit corporation may not be indemnified until twenty days after the effective date of written notice to the Attorney General of the proposed indemnification.

Source: Laws 1996, LB 681, § 101.

21-19,102 Indemnification of officers, employees, and agents.

Unless limited by a corporation's articles of incorporation:

(1) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 21-1998, and is entitled to apply for court-ordered indemnification under section 21-19,100 in each case, to the same extent as a director;

(2) The corporation may indemnify and advance expenses under sections 21-1996 to 21-19,104 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

Source: Laws 1996, LB 681, § 102.

21-19,103 Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other

enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under section 21-1997 or 21-1998.

Source: Laws 1996, LB 681, § 103.

21-19,104 Applicability of sections.

(a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with the provisions of sections 21-1996 to 21-19,104. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) Sections 21-1996 to 21-19,104 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

Source: Laws 1996, LB 681, § 104.

(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

21-19,105 Authority to amend.

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

Source: Laws 1996, LB 681, § 105.

21-19,106 Amendment of articles of incorporation by directors.

(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) To change the corporate name by substituting the word ''corporation,'' ''incorporated,'' ''company,'' ''limited,'' or the abbreviation ''corp.,'' ''inc.,'' ''co.,'' or ''ltd.'' for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution to the name; or

(5) To make any other change expressly permitted by the Nebraska Nonprofit Corporation Act to be made by director action.

(b) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's articles subject to any approval required

pursuant to section 21-19,116. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

Source: Laws 1996, LB 681, § 106.

21-19,107 Amendment of articles of incorporation by directors and members.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's articles to be adopted must be approved:

(1) By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(2) Except as provided in subsection (a) of section 21-19,106, by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116.

(b) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the articles or board approval is required by subsection (a) of this section to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 21-1955. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

Source: Laws 1996, LB 681, § 107.

21-19,108 Class voting by members on amendments.

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class;

(2) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(3) Increase or decrease the number of memberships authorized for that class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification, or termination of the memberships of that class; or

(6) Authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(e) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members of a public benefit or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

Source: Laws 1996, LB 681, § 108.

21-19,109 Articles of amendment.

A corporation amending its articles shall deliver to the Secretary of State articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) The date of each amendment's adoption;

(4) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;

(5) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and

(ii) Either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of

undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class; and

(6) If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to section 21-19,116, a statement that the approval was obtained.

Source: Laws 1996, LB 681, § 109.

21-19,110 Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.

(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in section 21-19,107.

(c) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

(d) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(e) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(f) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under section 21-19,107.

(g) If the restatement includes an amendment requiring approval pursuant to section 21-19,116, the board must submit the restatement for such approval.

(h) A corporation restating its articles shall deliver to the Secretary of State articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) Whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or

(2) If the restatement contains an amendment to the articles requiring approval by the members, the information required by section 21-19,109; and

(3) If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to section 21-19,116, a statement that such approval was obtained.

(i) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(j) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (h) of this section.

Source: Laws 1996, LB 681, § 110.

21-19,111 Amendment pursuant to judicial reorganization.

(a) A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to section 21-19,116 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by section 21-1921.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Source: Laws 1996, LB 681, § 111.

21-19,112 Effect of amendment and restatement.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation, or any property held by it by virtue of any trust upon which such property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Source: Laws 1996, LB 681, § 112.

21-19,113 Amendment to bylaws by directors.

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to section 21-19,116. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice shall be in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

Source: Laws 1996, LB 681, § 113.

21-19,114 Amendment to bylaws by directors and members.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting class, an amendment to a corporation's bylaws to be adopted must be approved:

(1)(i) By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of the directors, or the method or way in which directors are elected or selected;

(ii) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116; or

(2) If the articles authorize:

(i)(A) By the board if the amendment does not relate to the number of directors, the composition of the board, the term of office of the directors, or the method or way in which directors are elected or selected; or

(B) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(ii) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116.

(b) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the bylaws or board approval is required or authorized by subsection (a) of this section to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

Source: Laws 1996, LB 681, § 114; Laws 1999, LB 422, § 1.

21-19,115 Class voting by members on amendments.

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would

change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class;

(2) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(3) Increase or decrease the number of memberships authorized for that class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification, or termination of all or part of the memberships of that class; or

(6) Authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment; and

(e) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

Source: Laws 1996, LB 681, § 115.

21-19,116 Approval by third persons.

The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of such person or persons.

Source: Laws 1996, LB 681, § 116.

21-19,117 Amendment terminating members or redeeming or canceling memberships.

(a) Any amendment to the articles or bylaws of a public benefit or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of the Nebraska Nonprofit Corporation Act and this section.

(b) Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(c) After adopting a resolution proposing such an amendment, the notice to members proposing such amendment shall include one statement of up to five hundred words opposing the proposed amendment if such statement is submitted by any five members or members having three percent or more of the voting power, whichever is less, not later than twenty days after the board has voted to submit such amendment to the members for their approval. In public benefit corporations the production and mailing costs shall be paid by the requesting members. In mutual benefit corporations the production and mailing costs shall be paid by the corporation.

(d) Any such amendment shall be approved by the members by two-thirds of the votes cast by each class.

(e) The provisions of section 21-1947 shall not apply to any amendment meeting the requirements of the act and this section.

Source: Laws 1996, LB 681, § 117.

(j) MERGER

21-19,118 Approval of plan of merger.

(a) Subject to the limitations set forth in section 21-19,119, one or more nonprofit corporations may merge into a business or nonprofit corporation, if the plan of merger is approved as provided in section 21-19,120.

(b) The plan of merger must set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(2) The terms and conditions of the planned merger;

(3) The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and

(4) If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or in part.

(c) The plan of merger may set forth:

(1) Any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(2) Other provisions relating to the planned merger.

Source: Laws 1996, LB 681, § 118.

21-19,119 Mergers by public benefit or religious corporations; procedure.

(a)(1) Without the prior approval of the district court in a proceeding in which the Attorney General has been given written notice, a public benefit or religious corporation may merge only with:

(i) A public benefit or religious corporation;

(ii) A foreign corporation that would qualify under the Nebraska Nonprofit Corporation Act as a public benefit or religious corporation;

(iii) A wholly-owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger; or

(iv) A business or mutual benefit corporation, if: (A) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern, are transferred or conveyed to one or more persons who would have received its assets under subdivisions (a)(5) and (6) of section 21-19,134 had it dissolved; (B) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (C) the merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) An application for prior approval of a merger for which prior approval is required by this subsection shall be made jointly by all corporations planning to merge and shall set forth by affidavit;

(i) The plan of merger;

(ii) If approval by the members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(iii) If approval by members was required;

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and the number of votes of each class indisputably voting on the plan; and

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class; and

(iv) If approval of the plan by some person or persons other than the members or the board is required pursuant to subdivision (a)(3) of section 21-19,120, a statement that the approval was obtained.

(3) Upon the filing of the application, the district court shall fix a time for hearing thereon and shall direct that written notice thereof be given to the Attorney General. If it shall appear to the satisfaction of the district court that the provisions of this subsection have been complied with and the interests of the corporations planning to merge and the public interest will not be adversely affected by the merger, the district court shall issue an order approving the merger upon such terms and conditions as it may prescribe.

(b) At least twenty days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subdivision (a)(1)(iv) of this section, notice, including a copy of the proposed plan of merger, must be delivered to the Attorney General.

(c) Without the prior written consent of the Attorney General or of the district court in a proceeding in which the Attorney General has been given notice, no member of a public benefit or religious corporation may receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. If it shall appear to the satisfaction of the district court that the interests of the corporations planning to merge and the public interest will not be adversely affected by the transaction, the district court shall issue an order approving the transaction upon such terms and conditions as it may prescribe.

(d) Venue for a proceeding to obtain prior approval of a merger for which prior approval is required by subsection (a) of this section and for a proceeding to obtain prior written consent of a transaction for which prior written consent is required by subsection (c) of this section lies in the district court in the county where the surviving corporation's principal office, or, if none in this state, its registered office, is located or where one of the corporations planning to merge is located.

Source: Laws 1996, LB 681, § 119; Laws 1997, LB 121, § 1.

21-19,120 Action on plan by board, members, and third persons.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, a plan of merger to be adopted must be approved:

(1) By the board;

(2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the merging corporation shall include a copy or summary of the

articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provisions that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 21-19,108 or 21-19,115. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

Source: Laws 1996, LB 681, § 120.

21-19,121 Articles of merger.

After a plan of merger is approved by the board of directors, and if required by section 21-19,119 or 21-19,120, by the district court or the members and any other persons, the surviving corporation shall deliver to the Secretary of State articles of merger setting forth:

(1) The plan of merger;

(2) If approval by the members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(ii) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;

(4) If approval of the plan by some person or persons other than the members or the board is required pursuant to subdivision (a)(3) of section 21-19,120, a statement that the approval was obtained; and

(5) If prior approval of the district court is required pursuant to section 21-19,119, a certified copy of the order of the district court.

Source: Laws 1996, LB 681, § 121; Laws 1997, LB 121, § 2.

21-19,122 Effect of merger.

When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;

(3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;

(4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

Source: Laws 1996, LB 681, § 122.

21-19,123 Merger with foreign corporation.

(a) Except as provided in section 21-19,119, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(1) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) The foreign corporation complies with section 21-19,121 if it is the surviving corporation of the merger; and

(3) Each domestic nonprofit corporation complies with the provisions of sections 21-19,118 to 21-19,120 and, if it is the surviving corporation of the merger, with section 21-19,121.

(b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to agree that it may be served with process within or without this state in any proceeding in the courts of this state brought against it.

Source: Laws 1996, LB 681, § 123.

21-19,124 Bequests, devises, and gifts.

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

Source: Laws 1996, LB 681, § 124.

(k) SALE OF ASSETS

21-19,125 Sale of assets in regular course of activities and mortgage of assets.

(a) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(1) Sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of its activities; or

(2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(b) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (a) of this section is not required.

Source: Laws 1996, LB 681, § 125.

21-19,126 Sale of assets other than in regular course of activities.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property (with or without the goodwill) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (b) of this section.

(b) Unless the Nebraska Nonprofit Corporation Act, the articles, or bylaws or the board of directors or members (acting pursuant to subsection (d) of this section) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(1) By the board;

(2) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116 for an amendment to the articles or bylaws.

(c) If the corporation does not have members the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction and the members may condition their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) A public benefit or religious corporation must give written notice to the Attorney General twenty days before it sells, leases, exchanges, or otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection.

(h) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

Source: Laws 1996, LB 681, § 126.

(l) DISTRIBUTIONS

21-19,127 Prohibited distributions.

Except as authorized by section 21-19,128, a corporation shall not make any distributions.

Source: Laws 1996, LB 681, § 127.

21-19,128 Authorized distributions.

(a) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

(1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and

(2) The corporation's total assets would at least equal the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with sections 21-19,129 to 21-19,145.

Source: Laws 1996, LB 681, § 128.

(m) DISSOLUTION

21-19,129 Dissolution by incorporators or directors; notice of dissolution; plan.

(a) A majority of the incorporators or directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Secretary of State articles of dissolution.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

(c) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

Source: Laws 1996, LB 681, § 129.

21-19,130 Dissolution by directors, members, and third persons; plan.

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, or bylaws or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, dissolution is authorized if it is approved:

(1) By the board;

(2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(e) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(f) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

Source: Laws 1996, LB 681, § 130.

21-19,131 Notice to the Attorney General.

(a) A public benefit or religious corporation shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a) of this section to the Attorney General or until the Attorney General has consented in writing to the

dissolution or indicated in writing that he or she will take no action with respect to the transfer or conveyance, whichever is earlier.

(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Attorney General a list showing those (other than creditors) to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person (other than creditors) who received assets and indicate what assets each received.

Source: Laws 1996, LB 681, § 131.

21-19,132 Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized;

(3) A statement that dissolution was approved by a sufficient vote of the board;

(4) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(5) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and

(ii) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class;

(6) If approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to subdivision (a)(3) of section 21-19,130, a statement that the approval was obtained; and

(7) If the corporation is a public benefit or religious corporation, that the notice to the Attorney General required by subsection (a) of section 21-19,131 has been given.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

Source: Laws 1996, LB 681, § 132.

21-19,133 Revocation of dissolution.

(a) A corporation may revoke its dissolution within one hundred twenty days after its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles

of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;

(5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If member or third person action was required to revoke the dissolution, the information required by subdivisions (a)(5) and (6) of section 21-19,132.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

Source: Laws 1996, LB 681, § 133.

21-19,134 Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

(1) Preserving and protecting its assets and minimizing its liabilities;

(2) Discharging or making provision for discharging its liabilities and obligations;

(3) Disposing of its properties that will not be distributed in kind;

(4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(6) If the corporation is a public benefit or religious corporation and no provision has been made in its articles or bylaws for the distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets: (i) To one or more persons described in section 501(c)(3) of the Internal Revenue Code engaged in activities substantially similar to those of the dissolved corporation; or (ii) if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit or religious corporations;

(7) If the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving; and

(8) Doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title of the corporation's property;

(2) Subject its directors or officers to standards of conduct different from those prescribed in sections 21-1968 to 21-19,104;

(3) Change quorum or voting requirements for its board or members, change provisions for selection, resignation, or removal of its directors or officers or both, or change provisions for amending its bylaws;

(4) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(6) Terminate the authority of the registered agent.

Source: Laws 1996, LB 681, § 134.

21-19,135 Known claims against dissolved corporations; notice.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline;

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(d) For purposes of this section, claim does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source: Laws 1996, LB 681, § 135.

21-19,136 Unknown claims against dissolved corporation; notice.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section 21-19,135;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

Source: Laws 1996, LB 681, § 136.

21-19,137 Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under section 21-19,138 to administratively dissolve a corporation if:

(1) The corporation does not pay any fees, taxes, or penalties imposed by the Nebraska Nonprofit Corporation Act or other law when they are due;

(2) The corporation does not deliver its biennial report to the Secretary of State when it is due;

(3) The corporation is without a registered agent or registered office in this state for sixty days or more;

(4) The corporation does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued within one hundred twenty days; or

(5) The corporation's period of duration, if any, stated in its articles of incorporation expires.

Source: Laws 1996, LB 681, § 137.

21-19,138 Procedure for and effect of administrative dissolution.

(a) Upon determining that one or more grounds exist under section 21-19,137 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination under section 21-1937, and in the case of a public benefit corporation shall notify the Attorney General in writing.

(b) If the corporation does not, within sixty days after service of the notice is perfected under section 21-1937, correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist, the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-1937 and in the case of a public benefit corporation shall notify the Attorney General in writing.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under section 21-19,134 and notify its claimants under sections 21-19,135 and 21-19,136.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Source: Laws 1996, LB 681, § 138.

21-19,139 Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under section 21-19,138 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the corporation's name satisfies the requirements of section 21-1931.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

Source: Laws 1996, LB 681, § 139; Laws 2012, LB854, § 4.
Operative date January 1, 2013.

21-19,140 Appeal from denial of reinstatement.

(a) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under section 21-1937 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within ninety days after service of the notice of denial is perfected. The corporation appeals by petitioning the district court to set aside the dissolution and attaching to the petition copies of the Secretary of

State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The district court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The district court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 681, § 140.

21-19,141 Grounds for judicial dissolution.

(a) The district court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(i) The corporation obtained its articles of incorporation through fraud;

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(iii) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(iv) The corporation is a public benefit corporation and is no longer able to carry out its purposes;

(2) Except as provided in the articles or bylaws of a religious corporation, in a proceeding by fifty members or members holding five percent of the voting power, whichever is less, or by a director or any person specified in the articles, if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired;

(iv) The corporate assets are being misapplied or wasted; or

(v) The corporation is a public benefit or religious corporation and is no longer able to carry out its purposes;

(3) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) Prior to dissolving a corporation, the district court shall consider whether:

(1) There are reasonable alternatives to dissolution;

(2) Dissolution is in the public interest, if the corporation is a public benefit corporation; and

(3) Dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

Source: Laws 1996, LB 681, § 141.

21-19,142 Procedure for judicial dissolution.

(a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the district court in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located or the district court of Lancaster County. Venue for a proceeding brought by any other party named in section 21-19,141 lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(b) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) The district court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the Attorney General who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall forthwith give written notice of the proceeding to the Attorney General who may intervene.

Source: Laws 1996, LB 681, § 142.

21-19,143 Receivership or custodianship.

(a) The district court in a proceeding brought to dissolve a public benefit or mutual benefit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The district court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The district court may appoint an individual or a domestic or foreign business or nonprofit corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The district court shall describe the powers and duties of the receiver or custodian in its appointing order, which order may be amended from time to time. Among other powers:

(1) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the district court. The receiver's power to dispose of the assets of the corporation is subject to any trust and any other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The district court during a receivership may redesignate the receiver as a custodian, and during a custodianship may redesignate the custodian as a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

(e) The district court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

Source: Laws 1996, LB 681, § 143.

21-19,144 Decree of dissolution.

(a) If after a hearing the district court determines that one or more grounds for judicial dissolution described in section 21-19,141 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the district court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the district court shall direct the winding up and liquidation of the corporation's affairs in accordance with section 21-19,134 and the notification of its claimants in accordance with sections 21-19,135 and 21-19,136.

Source: Laws 1996, LB 681, § 144.

21-19,145 Assets; deposit with State Treasurer; when.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them, shall be reduced to cash, subject to known trust restrictions, and deposited with the State Treasurer for safekeeping in accordance with the Uniform Disposition of Unclaimed Property Act. In the State Treasurer's discretion the property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the State Treasurer shall deliver to the creditor, claimant, or member, or his or her representative, that amount or property in accordance with the act.

Source: Laws 1996, LB 681, § 145.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

(n) FOREIGN CORPORATIONS

21-19,146 Foreign corporation; authority to transact business required.

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

(1) Maintaining, defending, or settling any proceeding;

(2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction which is completed within thirty days and which is not one in the course of repeated transactions of a like nature; or

(11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) of this section is not exhaustive.

Source: Laws 1996, LB 681, § 146.

21-19,147 Foreign corporation; transacting business without authority; consequences; civil penalty.

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection. All civil penalties collected under this subsection shall be remitted by the Attorney General for credit to the permanent school fund.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Source: Laws 1996, LB 681, § 147.

21-19,148 Foreign corporation; application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-19,151;

(2) The name of the state or country under whose law it is incorporated;

(3) The date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address;

(6) The names and street addresses of its current directors and officers;

(7) Whether the foreign corporation has members; and

(8) Whether the corporation, if it had been incorporated in this state, would be a public benefit, mutual benefit, or religious corporation.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

Source: Laws 1996, LB 681, § 148; Laws 2008, LB379, § 10.

21-19,149 Foreign corporation; amended certificate of authority.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of section 21-19,148 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Source: Laws 1996, LB 681, § 149.

21-19,150 Foreign corporation; effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Nebraska Nonprofit Corporation Act.

(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as a domestic corporation of like character. A foreign corporation is also, except as otherwise provided by the act, subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(c) The act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Source: Laws 1996, LB 681, § 150.

21-19,151 Foreign corporation; corporate name.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-1931, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (including a fictitious name) of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;

(3) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(4) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity (incorporated or authorized to transact business in this state) that is deceptively similar to, upon the records of the Secretary of State, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents in writing to the use; or

(2) The applying corporation delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing its right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by a reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-1931, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-1931 and obtains an amended certificate of authority under section 21-19,149.

Source: Laws 1996, LB 681, § 151; Laws 1997, LB 44, § 4; Laws 1997, LB 453, § 2; Laws 2003, LB 464, § 3; Laws 2011, LB462, § 2.

21-19,152 Foreign corporation; registered office; registered agent.

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office with the same address as that of its current registered agent. A post office box number may be provided in addition to the street address of the registered agent; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

Source: Laws 1996, LB 681, § 152; Laws 2008, LB379, § 11.

21-19,153 Foreign corporation; change of registered office or registered agent.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 1996, LB 681, § 153; Laws 2008, LB379, § 12.

21-19,154 Foreign corporation; resignation of registered agent.

(a) The registered agent of a foreign corporation may resign as agent by signing and delivering to the Secretary of State for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent biennial report.

(c) The agency is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 1996, LB 681, § 154.

21-19,155 Foreign corporation; service.

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report filed under section 21-19,172 if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under section 21-19,156; or

(3) Has had its certificate of authority revoked under section 21-19,158.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Source: Laws 1996, LB 681, § 155.

21-19,156 Foreign corporation; withdrawal.

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state may thereafter be made on such corporation outside this state; and

(4) A mailing address at which process against the corporation may be served.

Source: Laws 1996, LB 681, § 156.

21-19,157 Foreign corporation; grounds for revocation of certificate of authority.

(a) The Secretary of State may commence a proceeding under section 21-19,158 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver the biennial report to the Secretary of State when it is due;

(2) The foreign corporation does not pay any fees, taxes, or penalties imposed by the Nebraska Nonprofit Corporation Act or other law when they are due;

(3) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(4) The foreign corporation does not inform the Secretary of State under section 21-19,153 or 21-19,154 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within ninety days after the change, resignation, or discontinuance;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

(b) The Attorney General may commence a proceeding under section 21-19,158 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) The corporation would have been a public benefit corporation had it been incorporated in this state and that its corporate assets in this state are being misapplied or wasted; or

(3) The corporation would have been a public benefit corporation had it been incorporated in this state and it is no longer able to carry out its purposes.

Source: Laws 1996, LB 681, § 157.

21-19,158 Foreign corporation; procedure and effect of revocation.

(a) The Secretary of State upon determining that one or more grounds exist under section 21-19,157 for revocation of a certificate of authority shall serve the foreign corporation with written notice of that determination under section 21-19,155.

(b) The Attorney General, upon determining that one or more grounds exist under subsection (b) of section 21-19,157 for revocation of a certificate of authority, shall request the Secretary of State to serve, and the Secretary of State shall serve the foreign corporation with written notice of that determination under section 21-19,155.

(c) If the foreign corporation does not, within sixty days after service of the notice is perfected under section 21-19,155, correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State or Attorney General that each ground for revocation determined by the Secretary of State or Attorney General does not exist, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate of revocation and serve a copy on the foreign corporation under section 21-19,155.

(d) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate of revocation revoking its certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Source: Laws 1996, LB 681, § 158.

21-19,159 Foreign corporation; revoked certificate; application for reinstatement.

(a) A foreign corporation the certificate of authority of which has been revoked under section 21-19,158 may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its activities as if the revocation had never occurred.

Source: Laws 1996, LB 681, § 159; Laws 2012, LB854, § 5.
Operative date January 1, 2013.

21-19,160 Foreign corporation; denial of reinstatement; appeal.

(a) The Secretary of State, upon denying a foreign corporation's application for reinstatement following revocation of its certificate of authority, shall serve the foreign corporation under section 21-19,155 with a written notice that explains the reason or reasons for denial.

(b) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after the service of the notice of denial is perfected under section 21-19,155. The foreign corporation appeals by petitioning the district court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The district court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action it considers appropriate.

(d) The district court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 681, § 160.

21-19,161 Foreign corporation; domestication procedure.

In lieu of compliance with section 21-19,146, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states, which has heretofore filed, or which may hereafter file, with the Secretary of State of this state, a copy certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date and the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Nebraska Nonprofit Corporation Act, with respect to its property and business operations within this state, shall become and be a body corporate of this state.

Source: Laws 1996, LB 681, § 161; Laws 2008, LB379, § 13.

21-19,162 Foreign corporation; renouncing domestication.

Any foreign corporation, which has domesticated pursuant to section 21-19,161, may cease to be a domesticated corporation by filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, renouncing its domestication and withdrawing its acceptance and agreement provided for in section 21-19,161.

Source: Laws 1996, LB 681, § 162.

21-19,163 Foreign corporation; domestication; procedure.

If a foreign corporation, which has domesticated pursuant to section 21-19,161, surrenders its foreign corporate charter and files, records, and publishes notice of amended articles of incorporation in the manner, time, and

places required by sections 21-1920, 21-1921, and 21-19,173, such foreign corporation shall thereupon become and be a domestic corporation organized under the Nebraska Nonprofit Corporation Act.

Source: Laws 1996, LB 681, § 163.

21-19,164 Foreign corporation organized prior to January 1, 1997; status.

Any corporation organized under the laws of any other state or territory which had become, in accordance with section 21-1966.01, as such section existed prior to January 1, 1997, a body corporate of this state, shall retain such status for all purposes notwithstanding the repeal of such section.

Source: Laws 1996, LB 681, § 164.

(o) RECORDS AND REPORTS

21-19,165 Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by subsection (d) of section 21-1985.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(4) The minutes of all meetings of members and records of all actions approved by the members for the past three years;

(5) All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 21-19,170;

(6) A list of the names and business or home addresses of its current directors and officers; and

(7) Its most recent biennial report delivered to the Secretary of State under section 21-19,172.

Source: Laws 1996, LB 681, § 165.

21-19,166 Inspection of records by members.

(a) Subject to subsection (e) of this section and subsection (c) of section 21-19,167, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in subsection (e) of section 21-19,165 if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(b) Subject to subsection (e) of this section, a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under subsection (a) of section 21-19,165, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) Subject to section 21-19,169, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) of this section only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with this purpose.

(d) This section does not affect:

(1) The right of a member to inspect records under section 21-1959 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independent of the Nebraska Nonprofit Corporation Act, to compel the production of corporate records for examination.

(e) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

Source: Laws 1996, LB 681, § 166.

21-19,167 Scope of inspection rights.

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under section 21-19,166 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a member's demand to inspect the record of members under subdivision (b)(3) of section 21-19,166 by providing

the member with a list of its members that was compiled no earlier than the date of the member's demand.

Source: Laws 1996, LB 681, § 167.

21-19,168 Court-ordered inspection.

(a) If a corporation does not allow a member who complies with subsection (a) of section 21-19,166 to inspect and copy any records required by that subsection to be available for inspection, the district court in the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections (b) and (c) of section 21-19,166 may apply to the district court in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The district court shall dispose of an application under this subsection on an expedited basis.

(c) If the district court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the district court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

Source: Laws 1996, LB 681, § 168.

21-19,169 Limitations on use of membership list.

Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) Used for any commercial purpose; or

(3) Sold to or purchased by any person.

Source: Laws 1996, LB 681, § 169.

21-19,170 Financial statements for members.

(a) Except as provided in the articles or bylaws of a religious corporation, a corporation, upon written demand from a member, shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for that year. If financial statements are prepared for

the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany the statements. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's financial accounting records:

(1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

Source: Laws 1996, LB 681, § 170.

21-19,171 Report of indemnification to members.

If a corporation indemnifies or advances expenses to a director under section 21-1997, 21-1998, 21-1999, or 21-19,100 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

Source: Laws 1996, LB 681, § 171.

21-19,172 Biennial report; contents.

(a) Commencing in 1999 and each odd-numbered year thereafter, each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The street address of its registered office and the name of its current registered agent at the office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of its principal office;

(4) The names and business or residence addresses of its directors and principal officers;

(5) A brief description of the nature of its activities;

(6) Whether or not it has members;

(7) If it is a domestic corporation, whether it is a public benefit, mutual benefit, or religious corporation; and

(8) If it is a foreign corporation, whether it would be a public benefit, mutual benefit, or religious corporation had it been incorporated in this state.

(b) The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

(c) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports

must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. For purposes of the Nebraska Nonprofit Corporation Act, the biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(d) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(e) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee as prescribed in section 21-1905. For purposes of the Nebraska Nonprofit Corporation Act, the fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(f) Biennial reports shall be filed in 1997 pursuant to sections 21-1981 and 21-1982 (Reissue 1991) as if such sections had not been repealed by Laws 1996, LB 681. Fees, including penalties, due or delinquent prior to 1999 shall be paid pursuant to section 21-1982 (Reissue 1991) as if such section had not been repealed by Laws 1996, LB 681.

Source: Laws 1996, LB 681, § 172; Laws 2008, LB379, § 14.

(p) PUBLICATION

21-19,173 Notice of incorporation, amendment, merger, or dissolution; publication.

(a) Notice of incorporation, amendment, or merger of a domestic corporation subject to the Nebraska Nonprofit Corporation Act shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office or, if none in this state, its registered office is located.

A notice of incorporation shall show (1) the corporate name of the corporation, (2) whether the corporation is a public benefit, mutual benefit, or religious corporation, (3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office, (4) the name and street address of each incorporator, and (5) whether or not the corporation will have members.

A brief resume of any amendment or merger of the corporation shall be published in the same manner for the same period of time as a notice of incorporation is required to be published.

(b) Notice of dissolution of a domestic corporation shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office or, if none in this state, its registered office is located. A notice of dissolution shall show (1) the terms and conditions of such dissolution, (2) the names of the persons who are to wind up and liquidate its affairs and their official titles, and (3) a statement of assets and liabilities of the corporation.

(c) Proof of publication of any of the notices required to be published under this section shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the subsequent publication thereof is filed in the office of the Secretary of State, the acts of such corporation prior to, as well as after, such publication shall be valid.

Source: Laws 1996, LB 681, § 173.

(q) TRANSITION PROVISIONS

21-19,174 Applicability of act.

The Nebraska Nonprofit Corporation Act applies to all domestic corporations in existence on January 1, 1997, that were incorporated under Chapter 21, article 19 and to any not-for-profit corporations in existence on January 1, 1997, that were heretofore organized under any laws repealed by Laws 1959, LB 349.

Source: Laws 1996, LB 681, § 174.

21-19,175 Foreign corporation; subject to act; effect.

A foreign corporation authorized to transact business in this state on January 1, 1997, is subject to the Nebraska Nonprofit Corporation Act, but is not required to obtain a new certificate of authority to transact business under the act.

Source: Laws 1996, LB 681, § 175.

21-19,176 Repeal of former law; effect.

(a) Except as provided in subsection (b) of this section, the repeal of a statute by Laws 1996, LB 681, shall not affect:

(1) The operation of the statute or any action taken under it before its repeal;

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(5) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by Laws 1996, LB 681, is reduced by the Nebraska Nonprofit Corporation Act, the penalty or punishment, if not already imposed, shall be imposed in accordance with the act.

Source: Laws 1996, LB 681, § 176.

21-19,177 Public benefit, mutual benefit, and religious corporation; designation.

Each domestic corporation existing on January 1, 1997, that is or becomes subject to the Nebraska Nonprofit Corporation Act shall be designated as a public benefit, mutual benefit, or religious corporation as follows:

(1) Any corporation designated by statute as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by statute;

(2) Any corporation that does not come within subdivision (1) of this section, but is organized primarily or exclusively for religious purposes, is a religious corporation;

(3) Any corporation that does not come within subdivision (1) or (2) of this section, but is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation;

(4) Any corporation that does not come within subdivision (1), (2), or (3) of this section, but is organized for a public or charitable purpose, and upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation; and

(5) Any corporation that does not come within subdivision (1), (2), (3), or (4) of this section is a mutual benefit corporation.

Source: Laws 1996, LB 681, § 177.

ARTICLE 20

BUSINESS CORPORATION ACT

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.
Subchapter S corporation, taxation, see section 77-2734.01.

(a) GENERAL PROVISIONS

(b) INCORPORATION

Section

(c) PURPOSES AND POWERS

(d) NAME

(e) OFFICE AND AGENT

(f) SHARES AND DISTRIBUTIONS

(g) SHAREHOLDERS

(a) GENERAL PROVISIONS

21-2001 Act, how cited.

Sections 21-2001 to 21-20,197 shall be known and may be cited as the Business Corporation Act.

Source: Laws 1995, LB 109, § 1; Laws 1996, LB 1036, § 4; Laws 2001, LB 138, § 2; Laws 2012, LB1018, § 1.
Effective date July 19, 2012.

21-2002 Legislative powers.

The Legislature shall have the power to amend or repeal all or part of the Business Corporation Act at any time and all domestic and foreign corporations subject to the act shall be governed by the amendment or repeal.

Source: Laws 1995, LB 109, § 2.

21-2003 Filing requirements.

(1) A document shall satisfy the requirements of this section and of any other provision of law that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(2) The Business Corporation Act shall require or permit filing the document in the office of the Secretary of State.

(3) The document shall contain the information required by the act. It may contain other information as well.

(4) The document shall be typewritten or printed.

(5) The document shall be in the English language. A corporate name shall not be required to be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations shall not be required to be in English if accompanied by a reasonably authenticated English translation.

(6) The document shall be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may, but shall not be required to, contain (a) the corporate seal, (b) an attestation by the secretary or an assistant secretary, and (c) an acknowledgment, verification, or proof.

(8) If the Secretary of State has prescribed a mandatory form for the document under section 21-2004, the document shall be in or on the prescribed form.

(9) The document shall be delivered to the Secretary of State for filing and shall be accompanied by one exact or conformed copy, except as provided in sections 21-2033 and 21-20,176, the correct filing fee, and any tax, license fee, or penalty required by law.

Source: Laws 1995, LB 109, § 3; Laws 2009, LB528, § 1; Laws 2010, LB791, § 2.

Cross References

Occupation tax, see Chapter 21, article 3.

21-2004 Forms.

(1) The Secretary of State may prescribe and furnish on request forms for (a) an application for a certificate of existence, (b) a foreign corporation's application for a certificate of authority to transact business in this state, and (c) a foreign corporation's application for a certificate of withdrawal. If the Secretary of State so requires, use of these forms shall be mandatory.

(2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by the Business Corporation Act, but the use of such forms shall not be mandatory.

Source: Laws 1995, LB 109, § 4.

21-2005 Fees.

(1) The Secretary of State shall collect the fees prescribed by this section when the documents described in this subsection are delivered to him or her for filing:

(a) Articles of incorporation or documents relating to domestication:

(i) If the capital stock is $10,000 or less, the fee shall be $60;

(ii) If the capital stock is more than $10,000 but does not exceed $25,000, the fee shall be $100;

(iii) If the capital stock is more than $25,000 but does not exceed $50,000, the fee shall be $150;

(iv) If the capital stock is more than $50,000 but does not exceed $75,000, the fee shall be $225;

(v) If the capital stock is more than $75,000 but does not exceed $100,000, the fee shall be $300; and

(vi) If the capital stock is more than $100,000, the fee shall be $300, plus $3 additional for each $1,000 in excess of $100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share.

(b) Articles of incorporation or documents relating to domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be $300.

(c) Application for reserved name . . . $25

(d) Notice of transfer of reserved name . . . $25

(e) Application for registered name . . . $25

(f) Application for renewal of registered name . . . $25

(g) Corporation's statement of change of registered agent or registered office or both . . . $25

(h) Agent's statement of change of registered office for each affected corporation . . . $25 not to exceed a total of . . . $1,000

(i) Agent's statement of resignation . . . No fee

(j) Amendment of articles of incorporation . . . $25

(k) Restatement of articles of incorporation . . . $25 with amendment of articles . . . $25

(l) Articles of merger, share exchange, or conversion . . . $25

(m) Articles of dissolution . . . $45

(n) Articles of revocation of dissolution . . . $25

(o) Certificate of administrative dissolution . . . No fee

(p) Application for reinstatement . . . $25

(q) Certificate of reinstatement . . . No fee

(r) Certificate of judicial dissolution . . . No fee

(s) Application for certificate of authority . . . $130

(t) Application for amended certificate of authority . . . $25

(u) Application for certificate of withdrawal . . . $25

(v) Certificate of revocation of authority to transact business . . . No fee

(w) Articles of correction . . . $25

(x) Application for certificate of existence or authorization . . . $25

(y) Any other document required or permitted to be filed by the Business Corporation Act . . . $25.

(2) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (1) of this section.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(a) One dollar per page for copying; and

(b) Ten dollars for the certificate.

(4) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1995, LB 109, § 5; Laws 1996, LB 1036, § 5; Laws 2007, LB117, § 1; Laws 2008, LB907, § 2; Laws 2012, LB1018, § 2. Effective date July 19, 2012.

21-2006 Effective time and date of filing.

(1) Except as provided in subsection (2) of this section and subsection (3) of section 21-2007, a document accepted for filing shall be effective:

(a) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(b) At the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, the document shall become effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

Source: Laws 1995, LB 109, § 6.

21-2007 Correcting filed document.

(1) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (a) contains an incorrect statement or (b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document shall be corrected:

(a) By preparing articles of correction that (i) describe the document, including its filing date, or attach a copy of it to the articles of correction, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(b) By delivering the articles of correction to the Secretary of State for filing.

(3) Articles of correction shall be effective on the effective date of the document they correct except as to persons relying on the uncorrected docu-

ment and adversely affected by the correction. As to those persons, the articles of correction shall be effective when filed.

Source: Laws 1995, LB 109, § 7.

21-2008 Secretary of State; filing duty.

(1) If a document delivered to the Secretary of State for filing satisfies the requirements of section 21-2003, the Secretary of State shall file it.

(2) The Secretary of State shall file such document by stamping or otherwise endorsing Filed, together with his or her name and official title and the date and time of receipt, on both the original and the document copy. After filing a document, except as provided in sections 21-2033 and 21-20,176, the Secretary of State shall deliver the document copy with the acknowledgment of receipt of the filing fee, if a fee is required, to the domestic or foreign corporation or its representative.

(3) If the Secretary of State refuses to file a document, he or she shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for his or her refusal.

(4) The Secretary of State's duty to file documents under this section shall be ministerial. His or her filing or refusal to file a document shall not:

(a) Affect the validity or invalidity of the document in whole or in part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Source: Laws 1995, LB 109, § 8.

21-2009 Secretary of State's refusal to file document; appeal.

(1) If the Secretary of State refuses to file a document delivered to his or her office for filing, the domestic or foreign corporation may appeal the refusal within thirty days after the return of the document to the district court of Lancaster County. The appeal shall be commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his or her refusal to file.

(2) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 9.

21-2010 Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the Secretary of State, bearing his or her signature, which may be in facsimile, and the seal of this state, shall be conclusive evidence that the original document is on file with the Secretary of State.

Source: Laws 1995, LB 109, § 10.

21-2011 Certificate of existence or authorization.

(1) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization shall set forth:

(a) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual or (ii) the foreign corporation is authorized to transact business in this state;

(c) That no occupation taxes due from and assessable against the corporation are unpaid and have become delinquent;

(d) That no annual report required to be forwarded by the corporation to the Secretary of State has become delinquent; and

(e) That articles of dissolution have not been filed.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Source: Laws 1995, LB 109, § 11.

21-2012 Signing false document; penalty.

(1) A person commits an offense if he or she signs a document he or she knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(2) An offense under this section shall be a Class I misdemeanor.

Source: Laws 1995, LB 109, § 12.

21-2013 Secretary of State; powers.

The Secretary of State shall have the power reasonably necessary to perform the duties required of him or her by the Business Corporation Act.

Source: Laws 1995, LB 109, § 13.

21-2014 Terms, defined.

For purposes of the Business Corporation Act, unless the context otherwise requires:

(1) Articles of incorporation shall include amended and restated articles of incorporation and articles of merger;

(2) Authorized shares shall mean the shares of all classes a domestic or foreign corporation is authorized to issue;

(3) Conspicuous shall mean so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, shall be considered conspicuous;

(4) Corporation or domestic corporation shall mean a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act;

(5) Deliver or delivery shall mean any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;

(6) Distribution shall mean a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or otherwise;

(7) Effective date of notice shall have the same meaning as in section 21-2015;

(8) Electronic transmission or electronically transmitted shall mean any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;

(9) Employee shall include an officer but not a director. A director may accept duties that make him or her also an employee;

(10) Entity shall include corporation and foreign corporation, not-for-profit corporation, limited liability company, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, two or more persons having a joint or common economic interest, state, United States, and foreign government;

(11) Foreign corporation shall mean a corporation for profit incorporated under a law other than the law of this state;

(12) Governmental subdivision shall include authority, county, district, and municipality;

(13) Individual shall include the estate of an incompetent or deceased individual;

(14) Notice shall have the same meaning as in section 21-2015;

(15) Person shall include individual and entity;

(16) Principal office shall mean the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;

(17) Proceeding shall include civil suit or action and criminal, administrative, and investigatory action;

(18) Record date shall mean the date established under sections 21-2035 to 21-2050 or 21-2051 to 21-2077 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;

(19) Secretary shall mean the corporate officer to whom the board of directors has delegated responsibility under subsection (3) of section 21-2097 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

(20) Share shall mean the unit into which the proprietary interests in a corporation are divided;

(21) Shareholder shall mean the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;

(22) State, when referring to a part of the United States, shall include a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States;

(23) Subscriber shall mean a person who subscribes for shares in a corporation, whether before or after incorporation;

(24) United States shall include district, authority, bureau, commission, department, and any other agency of the United States; and

(25) Voting group shall mean all shares of one or more classes or series that under the articles of incorporation or the act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or the act to vote generally on the matter are for that purpose a single voting group.

Source: Laws 1995, LB 109, § 14; Laws 2009, LB528, § 2.

21-2015 Notice.

(1) Notice under the Business Corporation Act shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person, by mail or other method of delivery, or by telephone or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective (a) when mailed, if mailed postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (b) when electronically transmitted to the shareholder in a manner authorized by the shareholder. Notice by a public corporation to its shareholder shall be effective if the notice is addressed to the shareholder or group of shareholders in a manner permitted by rules and regulations adopted and promulgated under the federal Securities Exchange Act of 1934 if the public corporation has first received affirmative written consent or implied consent required under such rules and regulations.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office, shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:

(a) When received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed; or

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice shall be effective when communicated if communicated in a comprehensible manner.

(7) If the act prescribes notice requirements for particular circumstances, those requirements shall govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of the act, those requirements shall govern.

Source: Laws 1995, LB 109, § 15; Laws 2009, LB528, § 3.

21-2016 Number of shareholders.

(1) For purposes of the Business Corporation Act, the following, identified as a shareholder in a corporation's current record of shareholders, shall constitute one shareholder:

(a) Three or fewer co-owners;

(b) A corporation, partnership, limited liability company, trust, estate, or other entity; and

(c) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of the act, shareholdings registered in substantially similar names shall constitute one shareholder if it is reasonable to believe that the names represent the same person.

Source: Laws 1995, LB 109, § 16.

(b) INCORPORATION

21-2017 Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

Source: Laws 1995, LB 109, § 17.

21-2018 Articles of incorporation.

(1) The articles of incorporation shall set forth:

(a) The corporate name for the corporation that satisfies the requirements of section 21-2028;

(b) The number of shares the corporation is authorized to issue and, if such shares are to consist of one class only, the par value of each of such shares or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(d) The name and street address of each incorporator; and

(e) Any provision limiting or eliminating the requirement to hold an annual meeting of the shareholders if the corporation is registered or intends to

register as an investment company under the federal Investment Company Act of 1940. The provision shall not be effective if such corporation does not become or ceases to be so registered.

(2) The articles of incorporation may set forth:

(a) The names and street addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders; and

(iv) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) Any provision that under the Business Corporation Act is required or permitted to be set forth in the bylaws;

(d) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he or she is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders;

(iii) A violation of section 21-2096; or

(iv) An intentional violation of criminal law; and

(e) A provision permitting or making obligatory indemnification of a director for liability, as defined in section 21-20,102, to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which he or she is not entitled, (ii) an intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 21-2096, or (iv) an intentional violation of criminal law.

(3) The articles of incorporation shall not be required to set forth any of the corporate powers enumerated in the act.

Source: Laws 1995, LB 109, § 18; Laws 2008, LB379, § 15.

21-2019 Corporate existence.

(1) Unless a delayed effective date is specified, the corporate existence shall begin when the articles of incorporation are filed.

(2) The Secretary of State's filing of the articles of incorporation shall be conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Source: Laws 1995, LB 109, § 19.

21-2020 Preincorporation transactions; joint and several liability.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under the Business Corporation Act, shall be jointly and severally liable for all liabilities created while so acting.

Source: Laws 1995, LB 109, § 20.

This section is not applicable when an individual contracts as an agent of a corporation that was in existence when the contract was executed. Par 3, Inc. v. Livingston, 268 Neb. 636, 686 N.W.2d 369 (2004).

21-2021 Organizational meetings.

(1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; and

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by the Business Corporation Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

Source: Laws 1995, LB 109, § 21.

21-2022 Bylaws.

(1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Source: Laws 1995, LB 109, § 22.

21-2023 Emergency bylaws.

(1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which shall be subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws shall remain effective during the emergency. The emergency bylaws shall not be effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Shall bind the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency shall exist for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 1995, LB 109, § 23.

(c) PURPOSES AND POWERS

21-2024 Corporation; purpose.

(1) Every corporation incorporated under the Business Corporation Act shall have the purpose of engaging in any lawful business unless a more limited purpose shall be set forth in the articles of incorporation.

(2) A corporation engaging in a business subject to regulation under another law of this state may incorporate under the act only if permitted by, and subject to all limitations of, such other law.

(3) Corporations shall not be organized under the act to perform any professional services as specified in section 21-2202 except for professional services rendered by a designated broker as defined in section 81-885.01.

(4) A designated broker as defined in section 81-885.01 may be organized as a corporation under the Business Corporation Act.

Source: Laws 1995, LB 109, § 24; Laws 2011, LB315, § 1; Laws 2012, LB852, § 1.
Effective date July 19, 2012.

21-2025 Corporation; general powers.

Unless its articles of incorporation provide otherwise, every corporation shall have perpetual duration and succession in its corporate name and shall have the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power to:

(1) Sue and be sued, complain, and defend in its corporate name;

(2) Have a corporate seal, which may be altered at will, and use it or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the state, for managing the business and regulating the affairs of the corporation;

(4) Purchase, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other entity;

(7) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, limited liability company, trust, or other entity;

(10) Conduct its business, locate offices, and exercise the powers granted by the Business Corporation Act within or without this state;

(11) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, share-bonus plans, share-option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) Transact any lawful business that will aid governmental policy; and

(15) Make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation.

Source: Laws 1995, LB 109, § 25.

21-2026 Corporation; emergency powers.

(1) In anticipation of or during an emergency as defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency as defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors shall be given only to those directors to whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency to further the ordinary business affairs of the corporation:

(a) Shall bind the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency shall exist for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 1995, LB 109, § 26.

21-2027 Ultra vires.

(1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) In a proceeding by the Attorney General under section 21-20,162.

(3) In a shareholder's proceeding under subdivision (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable, and if all affected persons are parties to the proceeding. The court may also award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

(4) Venue for a proceeding under subdivision (2)(a) or (2)(b) of this section shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 1995, LB 109, § 27.

(d) NAME

21-2028 Corporate name.

(1) A corporate name:

(a) Shall contain the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., or words or abbreviations of like import in another language, except that a corporation organized to conduct a banking business under the Nebraska Banking Act may use a name which includes the word bank without using any such words or abbreviations; and

(b) Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-2024 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4) of this section, a corporate name shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (2)(a) through (f) of this section:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under section 21-2029 or 21-2030;

(c) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(f) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(3) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon his or her records, one or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation or business entity consents to the use in writing; or

(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the proposed user corporation has:

(a) Merged with the other corporation or business entity;

(b) Been formed by reorganization of the other corporation or business entity; or

(c) Acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(5) The Business Corporation Act shall not be construed to control the use of fictitious names.

Source: Laws 1995, LB 109, § 28; Laws 1997, LB 44, § 5; Laws 1997, LB 453, § 3; Laws 1998, LB 1321, § 76; Laws 2003, LB 464, § 4; Laws 2011, LB462, § 3.

Cross References

Nebraska Banking Act, see section 8-101.01.

21-2029 Reserved name.

(1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he or she shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

Source: Laws 1995, LB 109, § 29.

21-2030 Registered name.

(1) A foreign corporation may register its corporate name or its corporate name with any addition required by section 21-20,173 if the name is not the

same as or deceptively similar to, upon the records of the Secretary of State, the corporate names that are not available under subdivision (2)(c) of section 21-2028.

(2) A foreign corporation shall register its corporate name or its corporate name with any addition required by section 21-20,173 by delivering to the Secretary of State for filing an application:

(a) Setting forth its corporate name or its corporate name with any addition required by section 21-20,173, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application which complies with the requirements of subsection (2) of this section between October 1 and December 31 of the preceding year. The renewal application shall renew the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under the Business Corporation Act or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Source: Laws 1995, LB 109, § 30; Laws 2003, LB 464, § 5.

(e) OFFICE AND AGENT

21-2031 Registered office and registered agent.

Each corporation shall continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose business office is identical with the registered office;

(b) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(c) A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

Source: Laws 1995, LB 109, § 31.

21-2032 Change of registered office or registered agent.

(1) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent, either on the statement or attached to it, to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address or post office box number of his or her business office, he or she may change the street address, or, if one exists, the post office box number, of the registered office of any corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Source: Laws 1995, LB 109, § 32; Laws 2008, LB379, § 16.

21-2033 Resignation of registered agent.

(1) A registered agent may resign his or her agency appointment by signing and delivering to the Secretary of State for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(3) The agency appointment shall be terminated and the registered office discontinued, if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 1995, LB 109, § 33.

21-2034 Service on corporation.

(1) A corporation's registered agent shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service shall be perfected under this subsection at the earliest of:

(a) The date the corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

(3) This section shall not be construed to prescribe the only means, or necessarily the required means, of serving a corporation.

Source: Laws 1995, LB 109, § 34.

(f) SHARES AND DISTRIBUTIONS

21-2035 Authorized shares.

(1) The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the preferences, limitations, and relative rights of that class shall be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 21-2036.

(2) The articles of incorporation shall authorize (a) one or more classes of shares that together have unlimited voting rights and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by the Business Corporation Act;

(b) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event, (ii) for cash, indebtedness, securities, or other property, or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section shall not be exhaustive.

Source: Laws 1995, LB 109, § 35.

21-2036 Class or series of shares; determined by board of directors.

(1) If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights,

within the limits set forth in section 21-2035, of (a) any class of shares before the issuance of any shares of that class or (b) one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class shall be given a distinguishing designation.

(3) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the Secretary of State for filing articles of amendment, which shall be effective without shareholder action, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date the amendment was adopted; and

(d) A statement that the amendment was duly adopted by the board of directors.

Source: Laws 1995, LB 109, § 36.

21-2037 Issued and outstanding shares.

(1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued shall be outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares shall be subject to the limitations of subsection (3) of this section and to section 21-2050.

(3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

Source: Laws 1995, LB 109, § 37.

21-2038 Fractional shares.

(1) A corporation may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders; and

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip shall be conspicuously labeled scrip and shall contain the information required by subsection (2) of section 21-2044.

(3) The holder of a fractional share shall be entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip shall not be entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Source: Laws 1995, LB 109, § 38.

21-2039 Subscription for shares before incorporation.

(1) A subscription for shares entered into before incorporation shall be irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies such terms. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation shall be considered fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation shall be a contract between the subscriber and the corporation subject to section 21-2040.

Source: Laws 1995, LB 109, § 39.

21-2040 Issuance of shares.

(1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. Such determination by the board of directors shall be conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor shall be considered fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not

paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

Source: Laws 1995, LB 109, § 40.

21-2041 Liability of shareholders.

(1) A purchaser from a corporation of its own shares shall not be liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued pursuant to section 21-2040 or specified in the subscription agreement pursuant to section 21-2039.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation shall not be personally liable for the acts or debts of the corporation, except that he or she may become personally liable by reason of his or her own acts or conduct.

Source: Laws 1995, LB 109, § 41.

A court will disregard a corporation's identity and hold shareholders personally liable where the corporation has been used to commit fraud, violate a legal duty, or perpetrate a dishonest or unjust act in contravention of the rights of another. Victory Lake Marine, Inc. v. Velduis, 9 Neb. App. 815, 621 N.W.2d 306 (2000).

21-2042 Share dividends.

(1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection shall be a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (a) the articles of incorporation so authorize, (b) a two-thirds majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (c) there are no outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date shall be the date the board of directors authorizes the share dividend.

Source: Laws 1995, LB 109, § 42.

21-2043 Share options.

A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

Source: Laws 1995, LB 109, § 43.

21-2044 Form and content of certificates.

(1) Shares may but shall not be required to be represented by certificates. Unless the Business Corporation Act or another law expressly provides otherwise, the rights and obligations of shareholders shall be identical whether or not their shares are represented by certificates.

(2) At a minimum, each share certificate shall state on its face:

(a) The name of the issuing corporation and that it is organized under the laws of this state;

(b) The name of the person to whom issued; and

(c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class, the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, shall be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate (a) shall be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and (b) may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Source: Laws 1995, LB 109, § 44.

21-2045 Shares without certificates.

(1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization shall not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by subsections (2) and (3) of section 21-2044 and, if applicable, section 21-2046.

Source: Laws 1995, LB 109, § 45.

21-2046 Restriction on transfer or registration of shares or other securities.

(1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction shall not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares shall be valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by subsection (2) of section 21-2045. Unless so noted, a restriction shall not be enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares shall be authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve exemptions under federal or state securities law or under the Internal Revenue Code; or

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, shares shall include a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 1995, LB 109, § 46.

21-2047 Payment of expenses.

A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

Source: Laws 1995, LB 109, § 47.

21-2048 Shareholders' preemptive rights.

(1) The shareholders of a corporation shall not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide. The shareholders of a corporation organized prior to January 1, 1996, shall continue to have a preemptive right to acquire the corporation's unissued shares in the manner provided in this section if the articles of incorporation of the corporation did not, on or after January 1, 1996, expressly eliminate such preemptive rights to its shareholders.

(2) A statement included in the articles of incorporation that the corporation elects to have preemptive rights, or words of similar import, shall mean that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation shall have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them;

(b) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing shall be irrevocable even though it is not supported by consideration;

(c) There shall be no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(iii) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation; or

(iv) Shares sold otherwise than for money;

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets shall have no preemptive rights with respect to shares of any class;

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets shall have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights; and

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year shall be subject to the shareholders' preemptive rights.

(3) For purposes of this section, shares shall include a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 1995, LB 109, § 48; Laws 1996, LB 681, § 181.

21-2049 Corporation's acquisition of own shares.

(1) A corporation may acquire its own shares and shares so acquired shall constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares shall be reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the Secretary of State for filing. The articles shall set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

Source: Laws 1995, LB 109, § 49.

21-2050 Distributions to shareholders.

(1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3) of this section.

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase redemption or other acquisition of the corporation's shares, the record date shall be the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) of this section either on financial statements prepared on the basis of generally accepted accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7) of this section, the effect of a distribution under subsection (3) of this section shall be measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) In all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization or (ii) the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section shall be at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, shall not be considered a liability for purposes of determination under subsection (3) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.

Source: Laws 1995, LB 109, § 50.

(g) SHAREHOLDERS

21-2051 Annual meeting.

(1) A corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws shall not affect the validity of any corporate action.

(4) Notwithstanding the provisions of this section, a corporation registered as an investment company under the federal Investment Company Act of 1940, which, pursuant to section 21-2018, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, shall not be required to hold an annual meeting of the shareholders except as provided in such articles of incorporation or as otherwise required by the federal Investment Company Act of 1940, and the rules and regulations adopted and promulgated under such act.

Source: Laws 1995, LB 109, § 51.

21-2052 Special meeting.

(1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) If the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) If not otherwise fixed under section 21-2053 or 21-2057, the record date for determining shareholders entitled to demand a special meeting shall be the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by subsection (3) of section 21-2055 may be conducted at a special shareholders' meeting.

Source: Laws 1995, LB 109, § 52.

21-2053 Court-ordered meeting.

(1) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, may summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier

of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(b) On application of a shareholder who signed a demand for a special meeting valid under section 21-2052 if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Source: Laws 1995, LB 109, § 53.

21-2054 Action without meeting.

(1) Action required or permitted by the Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under section 21-2053 or 21-2057, the record date for determining shareholders entitled to take action without a meeting shall be the date the first shareholder signs the consent under subsection (1) of this section.

(3) A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.

(4) If the act requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice shall contain or be accompanied by the same material that, under the act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

Source: Laws 1995, LB 109, § 54.

21-2055 Notice of meeting.

(1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless the Business Corporation Act or the articles of incorporation require otherwise, the corporation shall be required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless the act or the articles of incorporation require otherwise, notice of an annual meeting shall not be required to include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under section 21-2053 or 21-2057, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting shall be the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice shall not be required to be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or is required to be fixed under section 21-2057, however, notice of the adjourned meeting shall be given under this section to persons who are shareholders as of the new record date.

Source: Laws 1995, LB 109, § 55.

21-2056 Waiver of notice.

(1) A shareholder may waive any notice required by the Business Corporation Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, shall be signed by the shareholder entitled to the notice, and shall be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

Source: Laws 1995, LB 109, § 56.

21-2057 Record date.

(1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting shall be effective for any adjournment of the meeting unless the board of directors fixes a new record date, which the board shall do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, the court may provide

that the original record date shall continue in effect or it may fix a new record date.

Source: Laws 1995, LB 109, § 57.

21-2058 Shareholders' list for meeting.

(1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares, and shall show the address of and number of shares held by each shareholder.

(2) The shareholders' list shall be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his or her agent, or his or her attorney shall be entitled on written demand to inspect and, subject to the requirements of subsection (3) of section 21-20,183, to copy the shareholders' list during regular business hours and at his or her expense during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting and any shareholder, his or her agent, or his or her attorney shall be entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, his or her agent, or his or her attorney to inspect the shareholders' list before or at the meeting or to copy the list as permitted by subsection (2) of this section, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the shareholders' list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list shall not affect the validity of action taken at the meeting.

Source: Laws 1995, LB 109, § 58.

21-2059 Voting entitlement of shares.

(1) Except as provided in subsections (2) and (3) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, shall be entitled to one vote on each matter voted on at a shareholders' meeting. Only shares shall be entitled to vote.

(2) Absent special circumstances, the shares of a corporation shall not be entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section shall not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares shall not be entitled to vote after notice of redemption has been mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under

an irrevocable obligation to pay the holders the redemption price upon surrender of the shares.

Source: Laws 1995, LB 109, § 59.

21-2060 Proxies.

(1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney in fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine that the shareholder or the shareholder's agent or attorney in fact authorized the transmission.

(3) An appointment of a proxy shall be effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment shall be valid for eleven months unless a longer period is expressly provided in the appointment form or electronic transmission.

(4) An appointment of a proxy shall be revocable by the shareholder unless the appointment form or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest shall include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under section 21-2068.

(5) The death or incapacity of the shareholder appointing a proxy shall not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section shall be revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he or she did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to section 21-2062 and to any express limitation on the proxy's authority appearing on the face of the appointment form or electronic transmission, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Source: Laws 1995, LB 109, § 60; Laws 2009, LB528, § 4.

Although subsection (4) of this section lists several examples of ''[a]ppointments coupled with an interest,'' these examples are not exhaustive and other arrangements may also be held to be ''coupled with an interest.'' In that regard, subsection (4) incorporates the common-law test, based on principles of agency law, for whether an appointment is coupled with an interest. Bamford v. Bamford, Inc., 279 Neb. 259, 777 N.W.2d 573 (2010).

An appointment made irrevocable under subsection (4) of this section is revoked when the interest with which it is coupled is extinguished. Bamford v. Bamford, Inc., 279 Neb. 259, 777 N.W.2d 573 (2010).

This section provides that shareholders may vote in person or by proxy and establishes the basic rules for appointing a proxy. Bamford v. Bamford, Inc., 279 Neb. 259, 777 N.W.2d 573 (2010).

21-2061 Shares held by nominees.

(1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) The types of nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner;

(c) The manner in which the procedure is selected by the nominee;

(d) The information that shall be provided when the procedure is selected;

(e) The period for which selection of the procedure is effective; and

(f) Other aspects of the rights and duties created.

Source: Laws 1995, LB 109, § 61.

21-2062 Corporation's acceptance of notes.

(1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, shall be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a shareholder, the corporation, if acting in good faith, shall nevertheless be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation shall be entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section shall not be liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section shall be valid unless a court of competent jurisdiction determines otherwise.

Source: Laws 1995, LB 109, § 62.

21-2063 Voting groups; quorum and voting requirements.

(1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or the Business Corporation Act provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group shall constitute a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting it shall be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group shall be approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or the act requires a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (3) of this section shall be governed by section 21-2065.

(5) The election of directors shall be governed by section 21-2066.

Source: Laws 1995, LB 109, § 63.

21-2064 Action by single and multiple voting groups.

(1) If the articles of incorporation or the Business Corporation Act provides for voting by a single voting group on a matter, action on that matter shall be taken when voted upon by that voting group as provided in section 21-2063.

(2) If the articles of incorporation or the act provides for voting by two or more voting groups on a matter, action on that matter shall be taken only when voted upon by each of those voting groups counted separately as provided in section 21-2063. Action may be taken by one voting group on a matter even

though no action is taken by another voting group entitled to vote on the matter.

Source: Laws 1995, LB 109, § 64.

21-2065 Greater quorum or voting requirements.

(1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by the Business Corporation Act.

(2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Source: Laws 1995, LB 109, § 65.

21-2066 Voting for directors; cumulative voting.

(1) Unless otherwise provided in the articles of incorporation, directors shall be elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) In all elections for directors, every shareholder entitled to vote at such elections shall have the right to vote in person or by proxy for the number of shares owned by him or her, for as many persons as there are directors to be elected or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his or her shares shall equal, or to distribute them upon the same principle among as many candidates as he or she thinks fit, and such directors shall not be elected in any other manner.

Source: Laws 1995, LB 109, § 66.

Cross References

Cumulative voting for directors, see Article XII, section 1, Constitution of Nebraska.

21-2067 Voting trusts.

(1) One or more shareholders may create a voting trust conferring on a trustee the right to vote or otherwise act for them by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust shall become effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust shall be valid for not more than ten years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension shall be valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension

agreement and a list of beneficial owners to the corporation's principal office. An extension agreement shall bind only those parties signing it.

Source: Laws 1995, LB 109, § 67.

In order to be valid, a voting trust agreement must, by its terms, be limited to a period of ten years or less, or it must be clear from the terms and provisions of the agreement that the voting trust will terminate in ten years or less. Bamford v. Bamford, Inc., 279 Neb. 259, 777 N.W.2d 573 (2010).

This section does not create a ''safe harbor'' for voting trusts; rather, it clearly imposes substantive limitations on the provisions of such agreements. Bamford v. Bamford, Inc., 279 Neb. 259, 777 N.W.2d 573 (2010).

This section provides generally that one or more shareholders of a corporation may create a voting trust, which confers on the trustee the right to vote or otherwise act for them. The voting trust becomes effective when the first shares subject to the trust are registered in the trustee's name. A voting trust ''shall be valid for not more than ten years after its effective date'' unless extended by the parties to it. Bamford v. Bamford, Inc., 279 Neb. 259, 777 N.W.2d 573 (2010).

This section provides that a voting trust agreement cannot, absent an extension, extend longer than ten years. Bamford v. Bamford, Inc., 279 Neb. 259, 777 N.W.2d 573 (2010).

21-2068 Voting agreements.

(1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section shall not be subject to the provisions of section 21-2067.

(2) A voting agreement created under this section shall be specifically enforceable.

Source: Laws 1995, LB 109, § 68.

21-2069 Shareholder agreements.

(1) An agreement among the shareholders of a corporation that complies with this section shall be effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of the Business Corporation Act in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 21-2050;

(c) Establishes who shall be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation, or among any of them;

(f) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(h) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among

the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(2) An agreement authorized by this section shall be:

(a) Set forth (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement or (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and the agreement is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment unless the agreement provides otherwise; and

(c) Valid for ten years unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection (2) of section 21-2045. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws without shareholder action to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be grounds for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

Source: Laws 1995, LB 109, § 69.

21-2070 Derivative proceedings; terms, defined.

For purposes of sections 21-2070 to 21-2077:

(1) Derivative proceeding shall mean a civil suit or action in the right of a domestic corporation or, to the extent provided in section 21-2077, in the right of a foreign corporation; and

(2) Shareholder shall include a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

Source: Laws 1995, LB 109, § 70.

21-2071 Derivative proceedings; standing.

A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at such time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Source: Laws 1995, LB 109, § 71.

21-2072 Derivative proceedings; demand; venue.

(1) No shareholder may commence a derivative proceeding until:

(a) A written demand has been made upon the corporation to take suitable action; and

(b) Ninety days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

(2) Venue for a proceeding under this section shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 1995, LB 109, § 72.

21-2073 Derivative proceedings; stay.

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

Source: Laws 1995, LB 109, § 73.

21-2074 Derivative proceedings; dismissal.

(1) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (6) of this section has determined, in good faith, after conducting a reasonable inquiry upon

which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6) of this section, the determination in subsection (1) of this section shall be made by:

(a) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(b) A majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(3) None of the following shall by itself cause a director to be considered not independent for purposes of this section:

(a) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either (a) that a majority of the board of directors did not consist of independent directors at the time the determination was made or (b) that the requirements of subsection (1) of this section have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (1) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

(6) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

Source: Laws 1995, LB 109, § 74.

21-2075 Derivative proceedings; discontinuance or settlement.

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

Source: Laws 1995, LB 109, § 75.

21-2076 Derivative proceedings; payment of expenses.

On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses, including attorney's fees, incurred in the proceeding if the court finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if the court finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's reasonable expenses, including attorney's fees, incurred because of the filing of a pleading, motion, or other paper, if the court finds that the pleading, motion, or other paper was not well-grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Source: Laws 1995, LB 109, § 76.

Subdivision (1) of this section does not authorize a court to order payment of fees by individual defendants. Trieweiler v. Sears, 268 Neb. 952, 689 N.W.2d 807 (2004).

Subdivision (3) of this section is directed at the conduct of litigation, not at the underlying wrongful conduct of the defendants. Trieweiler v. Sears, 268 Neb. 952, 689 N.W.2d 807 (2004).

21-2077 Derivative proceedings; applicability to foreign corporations.

In any derivative proceeding in the right of a foreign corporation, the matters covered by sections 21-2070 to 21-2077 shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 21-2073, 21-2075, and 21-2076.

Source: Laws 1995, LB 109, § 77.

(h) DIRECTORS AND OFFICERS

21-2078 Board of directors; duties.

(1) Except as provided in section 21-2069, each corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 21-2069.

Source: Laws 1995, LB 109, § 78.

21-2079 Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director shall not be required to be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

Source: Laws 1995, LB 109, § 79.

21-2080 Number and election of directors.

(1) A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent the number of directors last approved by the shareholders.

(3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(4) Directors shall be elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 21-2083.

(5) If a corporation is registered as an investment company under the federal Investment Company Act of 1940, and, pursuant to section 21-2018, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, the initial directors shall be elected at the first meeting of the shareholders after such provision limiting or eliminating such meeting is included in the articles of incorporation, and thereafter the election of directors by shareholders shall not be required unless required by the federal Investment Company Act of 1940, or the rules and regulations under such act or otherwise required by the Business Corporation Act.

Source: Laws 1995, LB 109, § 80.

21-2081 Election of directors by classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class or classes of shares entitled to elect one or more directors is a separate voting group for purposes of election of directors.

Source: Laws 1995, LB 109, § 81.

21-2082 Terms of directors.

(1) The terms of the initial directors of a corporation shall expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors shall expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 21-2083.

(3) A decrease in the number of directors shall not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy shall expire at the next shareholders' meeting at which directors are elected.

(5) Despite the expiration of a director's term, he or she shall continue to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

Source: Laws 1995, LB 109, § 82.

21-2083 Staggered terms of directors.

The articles of incorporation may provide for staggering the terms of the directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group shall expire at the first annual shareholders' meeting after their election, the terms of the second group shall expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, shall expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Source: Laws 1995, LB 109, § 83.

21-2084 Resignation of directors.

(1) A director may resign at any time by delivering written notice to the board of directors, to its chairperson, or to the corporation.

(2) The resignation shall be effective when notice is delivered unless the notice specifies a later effective date.

Source: Laws 1995, LB 109, § 84.

21-2085 Removal of directors by shareholders.

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.

(3) A director may not be removed if the number of votes sufficient to elect him or her under cumulative voting is voted against his or her removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him or her exceeds the number of votes cast not to remove him or her.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose or one of the purposes of the meeting is removal of the director.

Source: Laws 1995, LB 109, § 85.

21-2086 Removal of directors by judicial proceeding.

(1) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares of any class if the court finds that (a) the director engaged in fraudulent or

dishonest conduct or gross abuse of authority or discretion with respect to the corporation and (b) removal is in the best interests of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant.

Source: Laws 1995, LB 109, § 86.

The language of this section leads to the conclusion that judicial removal of a director is an extraordinary remedy. Neiman v. Tri R Angus, 274 Neb. 252, 739 N.W.2d 182 (2007).

To succeed in an action brought under subsection (1) of this section, the prohibited conduct must be proved, and it must be shown that removal of a director is in the best interests of the corporation. More specifically, the district court may remove a director in an action brought by shareholders holding at least 10 percent of the outstanding shares if the court, after reviewing the evidence, finds that the director engaged in fraudulent or dishonest conduct or engaged in a gross abuse of authority or discretion with respect to the corporation and also finds that the removal of the director is in the corporation's best interests. Neiman v. Tri R Angus, 274 Neb. 252, 739 N.W.2d 182 (2007).

21-2087 Vacancy on board of directors.

(1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group shall be entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection (2) of section 21-2084 or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Source: Laws 1995, LB 109, § 87.

21-2088 Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Source: Laws 1995, LB 109, § 88.

21-2089 Board of directors; meetings.

(1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.

Source: Laws 1995, LB 109, § 89.

21-2090 Action without meeting.

(1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by the Business Corporation Act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section shall be effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.

Source: Laws 1995, LB 109, § 90.

21-2091 Notice of meeting.

(1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice shall not be required to describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Source: Laws 1995, LB 109, § 91.

21-2092 Waiver of notice.

(1) A director may waive any notice required by the Business Corporation Act, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the director at the beginning of the meeting or promptly upon his or her arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 1995, LB 109, § 92.

21-2093 Quorum and voting.

(1) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in the Business Corporation Act, a quorum of a board of directors shall consist of:

(a) A majority of the fixed number of directors if the corporation has a fixed board size; or

(b) A majority of the number of directors prescribed or, if no number is prescribed, the number in office immediately before the meeting begins if the corporation has a variable-range board size.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (1) of this section.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present shall be the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken shall be deemed to have assented to the action taken unless (a) he or she objects at the beginning of the meeting or promptly upon his or her arrival to holding it or transacting business at the meeting, (b) his or her dissent or abstention from the action taken is entered in the minutes of the meeting, or (c) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention shall not be available to a director who votes in favor of the action taken.

Source: Laws 1995, LB 109, § 93.

21-2094 Committees.

(1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it shall be approved by the greater of (a) a majority of all the directors in office when the action is taken or (b) the number of directors required by the articles of incorporation or bylaws to take action under section 21-2093.

(3) Sections 21-2089 to 21-2093 which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors shall apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section 21-2078.

(5) A committee may not, however:

(a) Authorize distributions;

(b) Approve or propose to shareholders action that the Business Corporation Act requires be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to section 21-20,117;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of merger not requiring shareholder approval;

(g) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(h) Authorize or approve the issuance or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a

committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(6) The creation of, delegation of authority to, or action by a committee shall not alone constitute compliance by a director with the standards of conduct described in section 21-2095.

Source: Laws 1995, LB 109, § 94.

21-2095 Standards of conduct for directors.

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

A director may, but need not, in considering the best interests of the corporation, consider, among other things, the effects of any action on employees, suppliers, creditors, and customers of the corporation and communities in which offices or other facilities of the corporation are located.

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) A director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director shall not be liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 1995, LB 109, § 95; Laws 2007, LB191, § 1.

An ordinarily prudent person ''in a like position'', within the meaning of this section, is an ordinarily prudent person who was the director of the particular corporation. Trieweiler v. Sears, 268 Neb. 952, 689 N.W.2d 807 (2004).

The phrase ''under similar circumstances'', as used in this section, means that a court should take account of the director's responsibilities in the corporation, the information available at the time, and the special background knowledge or expertise the director has. Trieweiler v. Sears, 268 Neb. 952, 689 N.W.2d 807 (2004).

In a derivative action brought by a minority shareholder, the directors have the burden to establish the fairness and reasonableness of their operation of the corporation. Sadler v. Jorad, Inc., 268 Neb. 60, 680 N.W.2d 165 (2004).

In a derivative action brought by a minority shareholder, the directors were required to show that the actions they took were performed in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner that they reasonably believed to be in the best interests of the corporation. Sadler v. Jorad, Inc., 268 Neb. 60, 680 N.W.2d 165 (2004).

21-2096 Director; liability for unlawful distributions.

(1) A director who votes for or assents to a distribution made in violation of section 21-2050 or the articles of incorporation shall be personally liable to the

corporation for the amount of the distribution that exceeds what could have been distributed without violating section 21-2050 or the articles of incorporation if it is established that he or she did not perform his or her duties in compliance with section 21-2095. In any proceeding commenced under this section, a director shall have all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution shall be entitled to contribution:

(a) From every other director who could be liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of section 21-2050 or the articles of incorporation.

(3) A proceeding under this section shall be barred unless it is commenced within two years after the date on which the effect of the distribution was measured under subsection (5) or (7) of section 21-2050.

Source: Laws 1995, LB 109, § 96.

21-2097 Required officers.

(1) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers the responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation.

Source: Laws 1995, LB 109, § 97.

A receiver is an officer of the court and, thus, is subject to the control and powers specifically granted by the court and authorized by statute. A receiver is required to perform numerous tasks in satisfying his duty of care: Collecting, selling, distributing, and disposing of corporate assets. Inherent in the task of monitoring a corporate estate is the bringing and defending of pertinent lawsuits. Dickie v. Flamme Bros., 251 Neb. 910, 560 N.W.2d 762 (1997).

21-2098 Duties of officers.

Each officer shall have the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Source: Laws 1995, LB 109, § 98.

21-2099 Standards of conduct for officers.

(1) An officer with discretionary authority shall discharge his or her duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, an officer shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer shall not be liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 1995, LB 109, § 99.

21-20,100 Resignation and removal of officers.

(1) An officer may resign at any time by delivering notice to the corporation. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor shall not take office until the effective date.

(2) A board of directors may remove any officer at any time with or without cause.

Source: Laws 1995, LB 109, § 100.

21-20,101 Contract rights of officers.

(1) The appointment of an officer shall not itself create any contract rights.

(2) An officer's removal shall not affect the officer's contract rights, if any, with the corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer.

Source: Laws 1995, LB 109, § 101.

21-20,102 Indemnification; terms, defined.

For purposes of sections 21-20,102 to 21-20,111:

(1) Corporation shall include any domestic or foreign predecessor entity of a corporation in a merger;

(2) Director or officer shall mean an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, member of a limited liability company, trustee, employee, or agent of another domestic or foreign corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or other entity. A director or officer shall be considered to be serving an employee benefit plan at the corporation's request if his or her duties to the corporation also impose duties on or

otherwise involve services by him or her to the plan or to participants in or beneficiaries of the plan. Director or officer shall include, unless the context requires otherwise, the estate or personal representative of a director or officer;

(3) Disinterested director shall mean a director who, at the time of a vote referred to in subsection (3) of section 21-20,105 or a vote or selection referred to in subsection (2) or (3) of section 21-20,107, is not (a) a party to the proceeding or (b) an individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made;

(4) Expenses shall include attorney's fees;

(5) Liability shall mean the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding;

(6) Official capacity shall mean (a) when used with respect to a director, the office of director in a corporation, and (b) when used with respect to an officer, as contemplated in section 21-20,108, the office in a corporation held by the officer. Official capacity shall not include service for any other domestic or foreign corporation or limited liability company or any partnership, joint venture, trust, employee benefit plan, or other entity;

(7) Party shall mean an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding; and

(8) Proceeding shall mean any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Source: Laws 1995, LB 109, § 102.

21-20,103 Indemnification authority.

(1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because he or she is a director against liability incurred in the proceeding if:

(a)(i) He or she conducted himself or herself in good faith;

(ii) He or she reasonably believed:

(A) In the case of conduct in his or her official capacity, that his or her conduct was in the best interests of the corporation; and

(B) In all other cases that his or her conduct was at least not opposed to the best interests of the corporation; and

(iii) In the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful; or

(b) He or she engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by subdivision (2)(e) of section 21-2018.

(2) A director's conduct with respect to an employee benefit plan for a purpose he or she reasonably believed to be in the interests of the participants in and beneficiaries of the plan shall be conduct that satisfies the requirement of subdivision (1)(a)(ii)(B) of this section.

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not be, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under subdivision (1)(c) of section 21-20,106, a corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (1) of this section; or

(b) In connection with any proceeding with respect to conduct for which he or she was adjudged liable on the basis that he or she received a financial benefit to which he or she was not entitled, whether or not involving action in his or her official capacity.

Source: Laws 1995, LB 109, § 103.

21-20,104 Mandatory indemnification.

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she was a director of the corporation against reasonable expenses incurred by him or her in connection with the proceeding.

Source: Laws 1995, LB 109, § 104.

The nonpayment of corporate taxes and the issuance of a certificate of dissolution by the Secretary of State effectively dissolves a corporation, which begins the running of the 2-year statute of limitations. Eiche v. Blankenau, 253 Neb. 255, 570 N.W.2d 190 (1997).

21-20,105 Indemnification; expenses.

(1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because he or she is a director if he or she delivers to the corporation:

(a) A written affirmation of his or her good faith belief that he or she has met the relevant standard of conduct described in section 21-20,103 or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by subdivision (2)(d) of section 21-2018; and

(b) His or her written undertaking to repay any funds advanced if he or she is not entitled to mandatory indemnification under section 21-20,104 and it is ultimately determined under section 21-20,106 or 21-20,107 that he or she has not met the relevant standard of conduct described in section 21-20,103.

(2) The undertaking required by subdivision (1)(b) of this section shall be an unlimited general obligation of the director but shall not be required to be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section shall be made:

(a) By the board of directors:

(i) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose consti-

tute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

(ii) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection (3) of section 21-2093, in which authorization directors who do not qualify as disinterested directors may participate; or

(b) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

Source: Laws 1995, LB 109, § 105.

21-20,106 Court-ordered indemnification.

(1) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 21-20,104;

(b) Order indemnification or an advance for expenses if the court determines that the director is entitled to indemnification or an advance for expenses pursuant to a provision authorized by subsection (1) of section 21-20,110; or

(c) Order indemnification or an advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if he or she has not met the relevant standard of conduct set forth in subsection (1) of section 21-20,103, failed to comply with section 21-20,105, or was adjudged liable in a proceeding referred to in subdivision (4)(a) or (b) of section 21-20,103, but if he or she was adjudged so liable his or her indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subdivision (1)(a) of this section or to indemnification or an advance for expenses under subdivision (1)(b) of this section, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or an advance for expenses. If the court determines that the director is entitled to indemnification or an advance for expenses under subdivision (1)(c) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or an advance for expenses.

Source: Laws 1995, LB 109, § 106.

Cross References

Occupation tax, see Chapter 21, article 3.

21-20,107 Determination and authorization of indemnification.

(1) A corporation may not indemnify a director under section 21-20,103 unless authorized for a specific proceeding after a determination has been

made that indemnification of the director is permissible because he or she has met the relevant standard of conduct set forth in section 21-20,103.

(2) The determination shall be made:

(a) If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

(b) By special legal counsel:

(i) Selected in the manner prescribed in subdivision (a) of this subsection; or

(ii) If there are fewer than two disinterested directors, selected by the board of directors in which selection directors who do not qualify as disinterested directors may participate; or

(c) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

(3) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subdivision (2)(b)(ii) of this section to select special legal counsel.

Source: Laws 1995, LB 109, § 107.

21-20,108 Indemnification of officers.

(1) A corporation may indemnify and advance expenses under sections 21-20,102 to 21-20,111 to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(a) To the same extent as a director; and

(b) If he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for (i) liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding or (ii) liability arising out of conduct that constitutes (A) receipt by him or her of a financial benefit to which he or she is not entitled, (B) an intentional infliction of harm on the corporation or the shareholders, or (C) an intentional violation of criminal law.

(2) The provisions of subdivision (1)(b) of this section shall apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(3) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 21-20,104, and may apply to a court under section 21-20,106 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or an advance for expenses under those provisions.

Source: Laws 1995, LB 109, § 108.

21-20,109 Indemnification; insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or

officer of the corporation, serves at the corporation's request as a director, officer, member of a limited liability company, partner, trustee, employee, or agent of another domestic or foreign corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director or officer whether or not the corporation would have power to indemnify or advance expenses to him or her against the same liability under sections 21-20,102 to 21-20,111.

Source: Laws 1995, LB 109, § 109.

21-20,110 Indemnification; variation by corporation.

(1) A corporation may, by a provision in its articles of incorporation or bylaws, or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 21-20,103 or advance funds to pay for or reimburse expenses in accordance with section 21-20,105. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (3) of section 21-20,105 and in subsection (3) of section 21-20,107. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 21-20,105 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(2) Any provision pursuant to subsection (1) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by subdivision (1)(c) of section 21-20,133.

(3) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or an advance for expenses created by or pursuant to sections 21-20,102 to 21-20,111.

(4) Sections 21-20,102 to 21-20,111 shall not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

(5) Sections 21-20,102 to 21-20,111 shall not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Source: Laws 1995, LB 109, § 110.

21-20,111 Indemnification; restrictions.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by sections 21-20,102 to 21-20,111.

Source: Laws 1995, LB 109, § 111.

21-20,112 Director; conflict of interest; terms, defined.

For purposes of sections 21-20,112 to 21-20,115:

(1) Conflicting interest with respect to a corporation shall mean the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or she or a related person is a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he or she were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if he or she were called upon to vote on the transaction:

(i) An entity, other than the corporation, of which the director is a director, general partner, member of a limited liability company, agent, or employee;

(ii) A person that controls one or more of the entities specified in subdivision (i) of this subdivision or an entity that is controlled by, or is under common control with, one or more of the entities specified in subdivision (i) of this subdivision; or

(iii) An individual who is a general partner, principal, or employer of the director;

(2) Director's conflicting interest transaction with respect to a corporation shall mean a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest respecting which a director of the corporation has a conflicting interest;

(3) Related person of a director shall mean (a) the spouse, or a parent or sibling thereof, of the director, or a child, grandchild, sibling, parent, or spouse of any thereof, of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified in this subdivision is a substantial beneficiary or (b) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary;

(4) Required disclosure shall mean disclosure by the director who has a conflicting interest of (a) the existence and nature of his or her conflicting interest and (b) all facts known to him or her respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction; and

(5) Time of commitment respecting a transaction shall mean the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a

controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

Source: Laws 1995, LB 109, § 112.

21-20,113 Director; conflict of interest; judicial action.

(1) A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction, may not be enjoined or set aside or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because a director of the corporation, or any person with whom or which he or she has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined or set aside or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because the director, or any person with whom or which he or she has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors' action respecting the transaction was at any time taken in compliance with section 21-20,114;

(b) Shareholders' action respecting the transaction was at any time taken in compliance with section 21-20,115; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

Source: Laws 1995, LB 109, § 113.

21-20,114 Director; conflict of interest; directors' action.

(1) Directors' action respecting a transaction shall be effective for purposes of subdivision (2)(a) of section 21-20,113 if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on a duly empowered committee of the board of directors who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section. Such action by a committee shall be effective only if:

(a) All members of the committee are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither he or she nor a related person of the director specified in subdivision (3)(a) of section 21-20,112 is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in subdivision (4)(b) of section 21-20,112, then disclosure shall be sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of his or her conflicting interest and informs them of the character

of and limitations imposed by that duty before their vote on the transaction and (b) plays no part, directly or indirectly, in the directors' deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the committee shall constitute a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section shall not be affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section, qualified director shall mean, with respect to a director's conflicting interest transaction, any director who does not have either (a) a conflicting interest respecting the transaction or (b) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, under the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

Source: Laws 1995, LB 109, § 114.

21-20,115 Director; conflict of interest; shareholders' action.

(1) Shareholders' action respecting a transaction shall be effective for purposes of subdivision (2)(b) of section 21-20,113 if a two-thirds majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after (a) notice to shareholders describing the director's conflicting interest transaction, (b) provision of the information referred to in subsection (4) of this section, and (c) required disclosure to the shareholders who voted on the transaction to the extent the information was not known by them.

(2) For purposes of this section, qualified shares shall mean any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge before the vote of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares shall constitute a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders' action that otherwise complies with this section shall not be affected by the presence of holders or the voting of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number and the identity of persons holding or controlling the vote, and of all shares that the director knows are beneficially owned or the voting of which is controlled by the director or by a related person of the director, or both.

(5) If a shareholders' vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that his or her failure did not determine and was not intended by him or her to influence the outcome of the vote, the court may, with or without further proceedings respecting subdivision (2)(c) of

section 21-20,113, take such action respecting the transaction and the director and give such effect, if any, to the shareholders' vote as it considers appropriate in the circumstances.

Source: Laws 1995, LB 109, § 115.

(i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

21-20,116 Articles of incorporation; authority to amend.

(1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation shall be determined as of the effective date of the amendment.

(2) A shareholder of the corporation shall not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Source: Laws 1995, LB 109, § 116.

21-20,117 Articles of incorporation; amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) To change the corporate name by substituting the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

(6) To make any other change expressly permitted by the Business Corporation Act to be made without shareholder action.

Source: Laws 1995, LB 109, § 117.

21-20,118 Articles of incorporation; amendment by board of directors and shareholders.

(1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and

communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice of the meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) Unless the Business Corporation Act, the articles of incorporation, or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the amendment to be adopted shall be approved by:

(a) A two-thirds majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) The votes required by sections 21-2063 and 21-2064 by every other voting group entitled to vote on the amendment.

Source: Laws 1995, LB 109, § 118.

21-20,119 Articles of incorporation; voting on amendments by voting groups.

(1) The holders of the outstanding shares of a class shall be entitled to vote as a separate voting group if shareholder voting is otherwise required by the Business Corporation Act on a proposed amendment if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class;

(b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) Effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(d) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(e) Change the shares of all or part of the class into a different number of shares of the same class;

(f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(h) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1) of this section, the shares of that series shall be entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected shall vote together as a single voting group on the proposed amendment.

(4) A class or series of shares shall be entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Source: Laws 1995, LB 109, § 119.

21-20,120 Articles of incorporation; amendment before issuance of shares.

If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

Source: Laws 1995, LB 109, § 120.

21-20,121 Articles of incorporation; articles of amendment.

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and

(6) If an amendment was approved by the shareholders:

(a) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

(b) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

Source: Laws 1995, LB 109, § 121.

21-20,122 Restated articles of incorporation.

(1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in section 21-20,118.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(4) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(b) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 21-20,121.

(5) Duly adopted restated articles of incorporation shall supersede the original articles of incorporation and all amendments thereto.

(6) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (4) of this section.

Source: Laws 1995, LB 109, § 122.

21-20,123 Articles of incorporation; amendment pursuant to reorganization.

(1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by section 21-2018.

(2) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization shall not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section shall not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Source: Laws 1995, LB 109, § 123.

21-20,124 Articles of incorporation; effect of amendment.

An amendment to articles of incorporation shall not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name shall not abate a proceeding brought by or against the corporation in its former name.

Source: Laws 1995, LB 109, § 124.

21-20,125 Bylaws; amendment by board of directors or shareholders.

(1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) The articles of incorporation or the Business Corporation Act reserves this power exclusively to the shareholders in whole or part; or

(b) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

Source: Laws 1995, LB 109, § 125.

21-20,126 Bylaw increasing quorum or voting requirement for shareholders.

(1) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by the Business Corporation Act. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) of this section may not be adopted, amended, or repealed by the board of directors.

Source: Laws 1995, LB 109, § 126.

21-20,127 Bylaw increasing quorum or voting requirement for board of directors.

(1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subdivision (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Source: Laws 1995, LB 109, § 127.

(j) MERGER AND SHARE EXCHANGE

21-20,128 Merger; plan.

(1) One or more corporations may merge with one or more corporations or business entities, subject to section 21-20,134, if the board of directors of each corporation adopts and its shareholders, if required by section 21-20,130, approve a plan of merger, and if each business entity approves the plan of merger in accordance with the laws under which the business entity was formed and in accordance with the applicable requirements of its organizational documents.

(2) The plan of merger shall set forth:

(a) The name of each corporation or business entity planning to merge and the name of the surviving corporation or business entity into which each corporation or business entity plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each merging corporation or the interests of each merging business entity into any combination of shares, obligations, securities, interests, or rights in the surviving corporation or business entity or other consideration.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation or amendments to the organizational documents of the surviving business entity; and

(b) Other provisions relating to the merger.

(4) As used in this section:

(a) Business entity means a foreign corporation; a domestic or foreign partnership; a domestic or foreign limited partnership; or a domestic or foreign limited liability company; and

(b) Organizational documents includes:

(i) For a foreign corporation, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute or comparable records as provided in its governing statute;

(ii) For a domestic or foreign partnership, its partnership agreement;

(iii) For a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement; and

(iv) For a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement or comparable records as provided in its governing statute.

Source: Laws 1995, LB 109, § 128; Laws 2012, LB1018, § 3.
Effective date July 19, 2012.

21-20,129 Share exchange; plan.

(1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 21-20,130, approve the exchange.

(2) The plan of exchange shall set forth:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange; and

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part.

(3) The plan of exchange may set forth other provisions relating to the exchange.

(4) This section shall not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

Source: Laws 1995, LB 109, § 129.

21-20,130 Merger or share exchange; action on plan.

(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger and the board of directors of the corporation whose shares will be acquired in the share exchange shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors shall recommend the plan of merger or share exchange to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote shall approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless the Business Corporation Act, the articles of incorporation, or the board of directors acting pursuant to subsection (3) of this section requires a

greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups shall be required:

(a) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section 21-20,119; and

(b) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger shall not be required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section 21-20,117, from its articles before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of participating shares outstanding immediately before the merger.

(8) For purposes of subsection (7) of this section:

(a) Participating shares shall mean shares that entitle their holders to participate without limitation in distributions; and

(b) Voting shares shall mean shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

Source: Laws 1995, LB 109, § 130; Laws 2012, LB1018, § 4.
Effective date July 19, 2012.

21-20,131 Merger of subsidiary.

(1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without the approval of the shareholders of the parent or subsidiary.

(2) The board of directors of the parent shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or in part.

(3) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(4) The parent may not deliver articles of merger to the Secretary of State for filing until at least thirty days after the date the parent mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(5) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in section 21-20,117.

Source: Laws 1995, LB 109, § 131.

21-20,132 Articles of merger or share exchange.

(1) After a plan of merger or share exchange is approved by the shareholders or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the Secretary of State for filing articles of merger or share exchange setting forth:

(a) The plan of merger or share exchange;

(b) If shareholder approval was not required, a statement to that effect; and

(c) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(2) A merger or share exchange shall take effect upon the effective date of the articles of merger or share exchange.

Source: Laws 1995, LB 109, § 132.

21-20,133 Effect of merger or share exchange.

(1) When a merger takes effect:

(a) Every other corporation party to the merger shall merge into the surviving corporation and the separate existence of every corporation except the surviving corporation shall cease;

(b) The title to all real estate and other property owned by each corporation party to the merger shall be vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation shall have all liabilities of each corporation party to the merger;

(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) The articles of incorporation of the surviving corporation shall be amended to the extent provided in the plan of merger; and

(f) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property shall be converted and the former holders of the shares shall be entitled only to the rights provided in the articles of merger or to their rights under sections 21-20,137 to 21-20,150.

(2) When a share exchange takes effect the shares of each acquired corporation shall be exchanged as provided in the plan and the former holders of the shares shall be entitled only to the exchange rights provided in the articles of share exchange or to their rights under sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 133.

21-20,134 Merger or share exchange with foreign corporation.

(1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with section 21-20,132 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of sections 21-20,128 to 21-20,131 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 21-20,132.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange shall be deemed:

(a) To agree that it may be served with process within or without this state in a proceeding in the courts of this state to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholder of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under sections 21-20,137 to 21-20,150.

(3) This section shall not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Source: Laws 1995, LB 109, § 134.

(k) SALE OF ASSETS

21-20,135 Sales of assets in regular course of business and mortgage of assets.

(1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section shall not be required.

Source: Laws 1995, LB 109, § 135.

21-20,135.01 Transfer of real estate.

A corporation may transfer any interest in real estate by instrument, with or without a corporate seal, signed by the president, a vice president, or the presiding officer of the board of directors of the corporation. Such instrument, when acknowledged by such officer to be an act of the corporation, shall be presumed to be valid and may be recorded in the proper office of the county in which the real estate is located, in the same manner as other such instruments.

Source: Laws 2001, LB 138, § 1.

21-20,136 Sales of assets other than in regular course of business.

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote shall approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the transaction to be authorized shall be approved by a two-thirds majority of all the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(7) A transaction that constitutes a distribution shall be governed by section 21-2050 and not by this section.

Source: Laws 1995, LB 109, § 136.

(l) DISSENTERS' RIGHTS

21-20,137 Dissenters' rights; terms, defined.

For purposes of sections 21-20,137 to 21-20,150:

(1) Beneficial shareholder shall mean the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder;

(2) Corporation shall mean the issuer of the shares held by a dissenter before the corporate action or the surviving or acquiring corporation by merger or share exchange of that issuer;

(3) Dissenter shall mean a shareholder who is entitled to dissent from corporate action under section 21-20,138 and who exercises that right when and in the manner required by sections 21-20,140 to 21-20,148;

(4) Fair value, with respect to a dissenter's shares, shall mean the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable;

(5) Interest shall mean interest from the effective date of the corporate action until the date of payment at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature;

(6) Record shareholder shall mean the person in whose name shares are registered in the records of a corporation or the beneficial shareholder to the extent of the rights granted by a nominee certificate on file with a corporation; and

(7) Shareholder shall mean the record shareholder or the beneficial shareholder.

Source: Laws 1995, LB 109, § 137.

21-20,138 Right to dissent.

(1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party:

(i) If shareholder approval is required for the merger by section 21-20,130 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) If the corporation is a subsidiary that is merged with its parent under section 21-20,131;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) Alters or abolishes a preferential right of the shares;

(ii) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(iii) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 21-2038; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, the bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for his or her shares under sections 21-20,137 to 21-20,150 may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(3) The right to dissent and obtain payment under sections 21-20,137 to 21-20,150 shall not apply to the shareholders of a bank, trust company, stock-owned savings and loan association, or the holding company of any such bank, trust company, or stock-owned savings and loan association.

Source: Laws 1995, LB 109, § 138; Laws 2003, LB 131, § 22.

The phrase ''all, or substantially all,'' as used in subsection (1)(c) of this section, means a sale of corporate assets that, quantitatively or qualitatively, would result in a fundamental change in the nature of the corporation. State ex rel. Columbus Metal v. Aaron Ferer & Sons, 272 Neb. 758, 725 N.W.2d 158 (2006).

Pursuant to subsection (3) of this section, minority shareholders of a bank or bank holding company have no statutory right to dissent and receive fair value for their shares. Bank shareholders possess an equitable right to receive fair value for their shares in the event that they are canceled by a cash-out merger, regardless of their exclusion from such rights under subsection

(3) of this section. Stoneman v. United Neb. Bank, 254 Neb. 477, 577 N.W.2d 271 (1998).

21-20,139 Dissent by nominees and beneficial owners.

(1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his or her name only if he or she dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he or she asserts dissenters' rights. The rights of a partial dissenter under this subsection shall be determined as if the shares as to which he or she dissents and his or her other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his or her behalf only if:

(a) He or she submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) He or she does so with respect to all shares of which he or she is the beneficial shareholder or over which he or she has power to direct the vote.

Source: Laws 1995, LB 109, § 139.

21-20,140 Notice of dissenters' rights.

(1) If proposed corporate action creating dissenters' rights under section 21-20,138 is submitted to a vote at a shareholders' meeting, the meeting notice shall state that shareholders are or may be entitled to assert dissenters' rights under sections 21-20,137 to 21-20,150 and be accompanied by a copy of such sections.

(2) If corporate action creating dissenters' rights under section 21-20,138 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send those shareholders the dissenters' notice described in section 21-20,142.

Source: Laws 1995, LB 109, § 140.

21-20,141 Dissenters' rights; notice of intent to demand payment.

(1) If proposed corporate action creating dissenters' rights under section 21-20,138 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights (a) shall deliver to the corporation before the vote is taken written notice of his or her intent to demand payment for his or her shares if the proposed action is effectuated and (b) shall not vote his or her shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) of this section shall not be entitled to payment for his or her shares under sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 141.

21-20,142 Dissenters' notice.

(1) If proposed corporate action creating dissenters' rights under section 21-20,138 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 21-20,141.

(2) The dissenters' notice shall be sent no later than ten days after the corporate action was taken and shall:

(a) State where the payment demand shall be sent and where and when certificates for certificated shares shall be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he or she acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation shall receive the payment demand which date may not be fewer than thirty nor more than sixty days after the date the notice required by subsection (1) of this section is delivered; and

(e) Be accompanied by a copy of sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 142.

21-20,143 Dissenters' rights; duty to demand payment.

(1) A shareholder who was sent a dissenters' notice described in section 21-20,142 shall demand payment, certify whether he or she acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to subdivision (2)(c) of section 21-20,142, and deposit his or her certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits his or her shares under subsection (1) of this section shall retain all other rights of a shareholder until such rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or does not deposit his or her share certificates where required, each by the date set in the dissenters' notice, shall not be entitled to payment for his or her shares under sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 143.

21-20,144 Dissenters' rights; share restrictions.

(1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions are released under section 21-20,146.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares shall retain all other rights of a shareholder until such rights are canceled or modified by the taking of the proposed corporate action.

Source: Laws 1995, LB 109, § 144.

21-20,145 Dissenters' rights; payment.

(1) Except as provided in section 21-20,147, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 21-20,143 the amount the corporation estimates to be the fair value of his or her shares, plus accrued interest.

(2) The payment shall be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) A statement of the corporation's estimate of the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's right to demand payment under section 21-20,148; and

(e) A copy of sections 21-20,137 to 21-20,150.

Source: Laws 1995, LB 109, § 145.

21-20,146 Dissenters' rights; failure to take action.

(1) If the corporation does not take the proposed action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If, after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under section 21-20,142 and repeat the payment demand procedure.

Source: Laws 1995, LB 109, § 146.

21-20,147 Dissenters' rights; after-acquired shares.

(1) A corporation may elect to withhold payment required by section 21-20,145 from a dissenter unless he or she was the beneficial shareholder before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his or her demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 21-20,148.

Source: Laws 1995, LB 109, § 147.

21-20,148 Dissenters' rights; procedure if shareholder dissatisfied with payment or offer.

(1) A dissenter may notify the corporation in writing of his or her own estimate of the fair value of his or her shares and amount of interest due, and demand payment of his or her estimate, less any payment under section 21-20,145, or reject the corporation's offer under section 21-20,147 and demand payment of the fair value of his or her shares and interest due if:

(a) The dissenter believes that the amount paid under section 21-20,145 or offered under section 21-20,147 is less than the fair value of his or her shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under section 21-20,145 within sixty days after the date set for demanding payment; or

(c) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

(2) A dissenter waives his or her right to demand payment under this section unless he or she notifies the corporation of his or her demand in writing under subsection (1) of this section within thirty days after the corporation made or offered payment for his or her shares.

Source: Laws 1995, LB 109, § 148.

21-20,149 Dissenters' rights; court action.

(1) If a demand for payment under section 21-20,148 remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the district court of the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled, parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section shall be plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. Appraisers shall have the powers described in the order appointing them or in any amendment to such order. The dissenters shall be entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding shall be entitled to judgment (a) for the amount, if any, by which the court finds the fair value of his or her shares, plus interest, exceeds the amount paid by the corporation or (b) for the fair value, plus accrued interest, of his or her after-acquired shares for which the corporation elected to withhold payment under section 21-20,147.

Source: Laws 1995, LB 109, § 149.

21-20,150 Dissenters' rights; court costs and attorney's fees.

(1) The court in an appraisal proceeding commenced under section 21-20,149 shall determine all costs of the proceeding, including the reasonable compensa-

tion and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 21-20,148.

(2) The court may also assess the attorney's fees and expenses and the fees and expenses of experts for the respective parties in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 21-20,140 to 21-20,148; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by sections 21-20,137 to 21-20,150.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the corporation, the court may award to counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

Source: Laws 1995, LB 109, § 150.

(m) DISSOLUTION

21-20,151 Voluntary dissolution; dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) Either (a) that none of the corporation's shares has been issued or (b) that the corporation has not commenced business;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders if shares were issued; and

(6) That a majority of the incorporators or initial directors authorized the dissolution.

Source: Laws 1995, LB 109, § 151.

21-20,152 Voluntary dissolution; dissolution by board of directors and shareholders.

(1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal to dissolve on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 21-2055. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) of this section requires a greater vote or a vote by voting groups, the proposal to dissolve to be adopted shall be approved by a two-thirds majority of all the votes entitled to be cast on that proposal.

Source: Laws 1995, LB 109, § 152.

21-20,153 Voluntary dissolution; articles of dissolution.

(1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(a) The name of the corporation;

(b) The date dissolution was authorized;

(c) If dissolution was approved by the shareholders:

(i) The number of votes entitled to be cast on the proposal to dissolve; and

(ii) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and

(d) If voting by voting groups was required, the information required by subdivision (c) of this subsection shall be separately provided for each voting group entitled to vote separately on the proposal to dissolve.

(2) A corporation shall be dissolved upon the effective date of its articles of dissolution.

Source: Laws 1995, LB 109, § 153.

21-20,154 Voluntary dissolution; revocation of dissolution.

(1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) The name of the corporation;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was authorized;

(d) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If shareholder action was required to revoke the dissolution, the information required by subdivision (1)(c) or (d) of section 21-20,153.

(4) Revocation of dissolution shall be effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it shall relate back to and take effect as of the effective date of the dissolution and the corporation shall resume carrying on its business as if dissolution had never occurred.

Source: Laws 1995, LB 109, § 154.

21-20,155 Voluntary dissolution; effect.

(1) A dissolved corporation shall continue its corporate existence but may not carry on any business, except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation shall not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in sections 21-2078 to 21-20,115;

(d) Change quorum or voting requirements for its board of directors or shareholders, change provisions for selection, resignation, or removal of its directors or officers or both, or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation.

Source: Laws 1995, LB 109, § 155.

Cross References

Dissolved corporation, suit authorized, see section 25-312.01.

21-20,156 Voluntary dissolution; known claims against dissolved corporation.

(1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice shall:

(a) Describe the information that shall be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation shall be barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(4) For purposes of this section, claim shall not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source: Laws 1995, LB 109, § 156.

21-20,157 Voluntary dissolution; unknown claims against dissolved corporation.

(1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice shall:

(a) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(b) Describe the information that shall be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under section 21-20,156;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his or her pro rata share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him or her.

Source: Laws 1995, LB 109, § 157.

21-20,158 Administrative dissolution; grounds.

The Secretary of State may commence a proceeding under section 21-20,159 to administratively dissolve a corporation if:

(1) The corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(3) The corporation's period of duration stated in its articles of incorporation expires.

Source: Laws 1995, LB 109, § 158.

21-20,159 Administrative dissolution; procedure and effect.

(1) If the Secretary of State determines that one or more grounds exist under section 21-20,158 for dissolving a corporation, he or she shall serve the corporation with written notice of his or her determination under section 21-2034.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-2034, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-2034.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 21-20,155 and notify claimants under sections 21-20,156 and 21-20,157.

(4) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

Source: Laws 1995, LB 109, § 159.

Cross References

Dissolved corporation, suit authorized, see section 25-312.01.

21-20,160 Administrative dissolution; reinstatement.

(1) A corporation administratively dissolved under section 21-20,159 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the corporation's name satisfies the requirements of section 21-2028.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct, and (b) that the corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed annual report for the current year, he or she shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its business as if the administrative dissolution had never occurred.

Source: Laws 1995, LB 109, § 160; Laws 2012, LB854, § 6.
Operative date January 1, 2013.

Cross References

Biennial report, see section 21-301.
Occupation tax, see Chapter 21, article 3.

21-20,161 Administrative dissolution; denial of reinstatement; appeal.

(1) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he or she shall serve the corporation under section 21-2034 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 161.

21-20,162 Judicial dissolution; grounds.

Except as provided in subdivision (2)(b) of this section, the court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2)(a) In a proceeding by a shareholder if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) The corporate assets are being misapplied or wasted.

(b) The right to bring a proceeding under this subdivision does not apply to shareholders of a bank, trust company, or stock-owned savings and loan association;

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Source: Laws 1995, LB 109, § 162; Laws 1999, LB 396, § 22; Laws 2003, LB 131, § 23.

The meaning of the term "deadlocked" within the context of this section is a corporation which, because of decision or indecision of the stockholders, cannot perform its corporate powers. Woodward v. Andersen, 261 Neb. 980, 627 N.W.2d 742 (2001).

This section clearly requires that the court's jurisdiction to dissolve the corporation is premised upon the petitioner's being a shareholder of the corporation. Baye v. Airlite Plastics Co., 260 Neb. 385, 618 N.W.2d 145 (2000).

21-20,163 Judicial dissolution; procedure.

(1) Venue for a proceeding by the Attorney General to dissolve a corporation shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located, or the district court of Lancaster County. Venue for a proceeding brought by any other party named in section 21-20,162 shall lie in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is or was last located.

(2) It shall not be necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and

duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within ten days of the commencement of a proceeding under subdivision (2) of section 21-20,162 to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities exchange, the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 21-20,166 and accompanied by a copy of such section.

Source: Laws 1995, LB 109, § 163.

21-20,164 Judicial dissolution; receivership or custodianship.

(1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing after notifying all parties to the proceeding and any interested persons designated by the court before appointing a receiver or custodian. The court appointing a receiver or custodian shall have exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order which may be amended from time to time. Among other powers:

(a) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located at a public or private sale if authorized by the court and (ii) may sue and defend in his or her own name as receiver of the corporation in all courts of this state; and

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation, its shareholders, and its creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

Source: Laws 1995, LB 109, § 164.

21-20,165 Judicial dissolution; decree.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 21-20,162 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution

and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 21-20,155 and the notification of claimants in accordance with sections 21-20,156 and 21-20,157.

Source: Laws 1995, LB 109, § 165.

21-20,166 Judicial dissolution; election to purchase.

(1) In a proceeding under subdivision (2) of section 21-20,162 to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under subdivision (2) of section 21-20,162 or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision (2) of section 21-20,162 may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(3) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3) of this section, the court, upon application of any party, shall stay such proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision (2) of section 21-20,162 was filed or as of such other date as the court deems appropriate under the circumstances.

(5)(a) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments when necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature, and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed.

(b) If the court finds that the petitioning shareholder had probable grounds for relief under subdivision (2)(a)(ii) or (iv) of section 21-20,162, it may award to the petitioning shareholder reasonable attorney's fees and expenses and fees and expenses of any experts employed by him or her.

(6) Upon entry of an order under subsection (3) or subdivision (5)(a) of this section, the court shall dismiss the petition to dissolve the corporation under section 21-20,162, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him or her by the order of the court which shall be enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subdivision (5)(a) of this section shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 21-20,152 and 21-20,153, which articles shall then be adopted and filed within fifty days thereafter. Upon the filing of such articles of dissolution the corporation shall be dissolved in accordance with the provisions of sections 21-20,155 to 21-20,157 and the order entered pursuant to subsection (5) of this section shall no longer be of any force or effect except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of subdivision (5)(b) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5) of this section, other than an award of fees and expenses pursuant to subsection (5) of this section, shall be subject to the provisions of section 21-2050.

Source: Laws 1995, LB 109, § 166; Laws 1999, LB 396, § 23.

A trial court's valuation of a closely held corporation is reasonable if it has an acceptable basis in fact and principle. Detter v. Miracle Hills Animal Hosp., 269 Neb. 164, 691 N.W.2d 107 (2005).

The existence of professional goodwill as a distributable asset in an action for the dissolution of a professional entity presents a question of fact. Detter v. Miracle Hills Animal Hosp., 269 Neb. 164, 691 N.W.2d 107 (2005).

21-20,167 Dissolution; deposit with State Treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not

competent to receive them shall be reduced to cash and deposited with the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer shall pay him or her, or his or her representative, that amount in accordance with the act.

Source: Laws 1995, LB 109, § 167.

Cross References

Dissolved corporation, suit authorized, see section 25-312.01.
Uniform Disposition of Unclaimed Property Act, see section 69-1329.

(n) FOREIGN CORPORATIONS

21-20,168 Foreign corporation; certificate of authority.

(1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining, defending, or settling any proceeding;

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce; or

(l) Acting as a foreign corporate trustee to the extent authorized under section 30-3820.

(3) The list of activities in subsection (2) of this section shall not be construed as exhaustive.

(4) The requirements of the Business Corporation Act shall not be applicable to foreign or alien insurers which are subject to the requirements of Chapter 44.

Source: Laws 1995, LB 109, § 168; Laws 2003, LB 130, § 113.

21-20,169 Foreign corporation; transacting business without certificate of authority; effect.

(1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court in this state may stay a proceeding commenced by a foreign corporation, its successor, or its assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If the court determines that a certificate of authority is required, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation shall be liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection and shall remit them to the State Treasurer for credit to the permanent school fund.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority shall not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Source: Laws 1995, LB 109, § 169.

Cross References

Permanent school fund, see Article VII, section 5, Constitution of Nebraska.

21-20,170 Foreign corporation; certificate of authority; application.

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-20,173;

(b) The name of the state or country under whose law the foreign corporation is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address; and

(f) The names and street addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

Source: Laws 1995, LB 109, § 170; Laws 2008, LB379, § 17.

21-20,171 Foreign corporation; amended certificate of authority.

(1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the Secretary of State if it changes:

(a) Its corporate name;

(b) The period of its duration; or

(c) The state or country of its incorporation.

(2) The requirements of section 21-20,170 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.

Source: Laws 1995, LB 109, § 171.

21-20,172 Foreign corporation; certificate of authority; effect.

(1) A certificate of authority shall authorize the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Business Corporation Act.

(2) A foreign corporation with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by the act, shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(3) The act shall not be construed to authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Source: Laws 1995, LB 109, § 172.

Cross References

Foreign corporation, authority in state, see Article XII, section 1, Constitution of Nebraska.

Subsection (3) of this section was intended to preserve the judicially developed doctrine that internal corporate affairs are governed by the state of incorporation even when the corporation's business and assets are located primarily in other states. Johnson v. Johnson, 272 Neb. 263, 720 N.W.2d 20 (2006).

21-20,173 Corporate name of foreign corporation.

(1) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-2028, the foreign corporation, in order to obtain or maintain a certificate of authority to transact business in this state, may:

(a) Add the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., to its corporate name for use in this state; or

(b) Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4) of this section, the corporate name, including a fictitious name, of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (2)(a) through (f) of this section:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under section 21-2029 or 21-2030;

(c) The fictitious name of another foreign corporation authorized to transact business in this state;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(f) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(3) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity, incorporated or authorized to transact business in this state, that is the same as or deceptively similar to, upon his or her records, the name applied for. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation or business entity consents to the use in writing; or

(b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation or business entity;

(b) Has been formed by reorganization of the other corporation or business entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-2028, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-2028 and obtains an amended certificate of authority under section 21-20,171.

Source: Laws 1995, LB 109, § 173; Laws 1997, LB 44, § 6; Laws 1997, LB 453, § 4; Laws 2003, LB 464, § 6; Laws 2011, LB462, § 4.

21-20,174 Foreign corporation; registered office and registered agent.

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose business office is identical with the registered office;

(b) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(c) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

Source: Laws 1995, LB 109, § 174.

21-20,175 Foreign corporation; change of registered office or registered agent.

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) After any change or changes are made, that the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address or post office box number of his or her business office, he or she may change the street address or post office box number of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Source: Laws 1995, LB 109, § 175; Laws 2008, LB379, § 18.

21-20,176 Foreign corporation; resignation of registered agent.

(1) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Secretary of State for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency appointment shall be terminated and the registered office discontinued if so provided on the thirty-first day after the date on which the statement was filed.

Source: Laws 1995, LB 109, § 176.

21-20,177 Foreign corporation; service; consent to service of search warrant or subpoena.

(1) The registered agent of a foreign corporation authorized to transact business in this state shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process shall also consent to service of process directed to the foreign corporation's agent in Nebraska for a search warrant issued pursuant to sections 28-807 to 28-829, or for any other validly issued and properly served subpoena, including those authorized under section 86-2,112, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to service of a subpoena or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the search warrant is sought.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation has:

(a) No registered agent or its registered agent cannot with reasonable diligence be served;

(b) Withdrawn from transacting business in this state under section 21-20,178; or

(c) Had its certificate of authority revoked under section 21-20,180.

(3) Service shall be perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark if mailed postage prepaid and correctly addressed.

(4) This section shall not be construed to prescribe the only means or necessarily the required means of serving a foreign corporation.

Source: Laws 1995, LB 109, § 177; Laws 2009, LB97, § 1.

21-20,178 Foreign corporation; withdrawal.

(1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such corporation outside this state; and

(d) A mailing address at which process against the corporation may be served.

Source: Laws 1995, LB 109, § 178.

21-20,179 Foreign corporation; revocation of certificate of authority; grounds.

The Secretary of State may commence a proceeding under section 21-20,180 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign corporation does not inform the Secretary of State under section 21-20,175 or 21-20,176 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(4) The foreign corporation or its agent for service of process does not comply with section 21-20,177; or

(5) The Secretary of State receives a duly authenticated certificate from the official having custody of the corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

Source: Laws 1995, LB 109, § 179; Laws 2009, LB97, § 2.

21-20,180 Foreign corporation; revocation of certificate of authority; procedure and effect.

(1) If the Secretary of State determines that one or more grounds exist under section 21-20,179 for revocation of a certificate of authority, he or she shall serve the foreign corporation with written notice of his or her determination under section 21-20,177.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-20,177, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-20,177.

(3) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(4) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

Source: Laws 1995, LB 109, § 180.

21-20,180.01 Foreign corporation; revocation of certificate of authority; reinstatement; procedure; effect.

(1) A foreign corporation, the certificate of authority of which has been revoked under section 21-20,180, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(c) State that the foreign corporation's name satisfies the requirements of section 21-20,173.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the foreign corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed annual report for the current year, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

Source: Laws 1996, LB 1036, § 6; Laws 2012, LB854, § 7.
Operative date January 1, 2013.

Cross References

Biennial report, see section 21-304.
Occupation tax, see Chapter 21, article 3.

21-20,181 Foreign corporation; revocation of certificate of authority; reinstatement denied; appeal.

(1) If the Secretary of State denies a foreign corporation's application for reinstatement following revocation of its certificate of authority under section 21-20,180, he or she shall serve the foreign corporation under section 21-20,177 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-20,177. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 181; Laws 1996, LB 1036, § 7.

21-20,181.01 Foreign corporation; domestication; procedure.

In lieu of compliance with section 21-20,168, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states which has heretofore filed, or which may hereafter file, with the Secretary of State of this state a copy, certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date, the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Business Corporation Act with respect to its property and business operations within this state shall become and be a body corporate of this state. If the stock is no par, a resolution of the corporation, signed by an officer of the corporation, shall state the book value of the no par stock, which in no event shall be less than one dollar per share.

Source: Laws 1996, LB 1036, § 8; Laws 2008, LB379, § 19.

21-20,181.02 Foreign corporation; cessation of domestication.

Any foreign corporation which has so domesticated pursuant to section 21-20,181.01 may cease to be a domesticated corporation by filing with the Secretary of State a certified copy of a resolution adopted by its board of directors renouncing its domestication and withdrawing its acceptance and agreement provided for in section 21-20,181.01.

Source: Laws 1996, LB 1036, § 9.

21-20,181.03 Foreign corporation; surrender of foreign charter; effect.

If a foreign corporation which has domesticated pursuant to section 21-20,181.01 surrenders its foreign corporate charter, and files, records, and publishes notice of amended articles of incorporation in the manner, time, and places required by sections 21-2017, 21-2018, and 21-20,189, such foreign corporation shall thereupon become and be a domestic corporation organized under the Business Corporation Act.

Source: Laws 1996, LB 1036, § 10.

(o) RECORDS AND REPORTS

21-20,182 Corporate records.

(1) A corporation shall keep as permanent records the minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all

actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each shareholder.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments thereto currently in effect;

(b) Its bylaws or restated bylaws and all amendments thereto currently in effect;

(c) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations if shares issued pursuant to those resolutions are outstanding;

(d) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past three years;

(e) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 21-20,186;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its most recent biennial report delivered to the Secretary of State under section 21-301.

Source: Laws 1995, LB 109, § 182; Laws 2003, LB 524, § 16.

21-20,183 Inspection of corporate records by shareholders.

(1) A shareholder of a corporation shall be entitled to inspect and copy during regular business hours at the corporation's principal office any of the records of the corporation described in subsection (5) of section 21-20,182 if he or she gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy.

(2) A shareholder of a corporation shall be entitled to inspect and copy during regular business hours at a reasonable location specified by the corporation any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) The shareholder's demand is made in good faith and for a proper purpose;

(b) The shareholder describes with reasonable particularity his or her purpose and the records he or she desires to inspect; and

(c) The records are directly connected with the shareholder's purpose.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section shall not affect:

(a) The right of a shareholder to inspect records under section 21-2058 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of the Business Corporation Act, to compel the production of corporate records for examination.

(6) For purposes of this section, shareholder shall include a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

Source: Laws 1995, LB 109, § 183.

21-20,184 Inspection of corporate records; rights.

(1) A shareholder's agent or attorney shall have the same inspection and copying rights as the shareholder he or she represents.

(2) The right to copy records under section 21-20,183 shall include, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under subdivision (2)(c) of section 21-20,183 by providing him or her with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Source: Laws 1995, LB 109, § 184.

21-20,185 Corporate records; court-ordered inspection.

(1) If a corporation does not allow a shareholder who complies with subsection (1) of section 21-20,183 to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (2) and (3) of section 21-20,183 may apply to the district court in the county where the corporation's principal office, or, if none in this state, its

registered office, is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney's fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

Source: Laws 1995, LB 109, § 185.

21-20,186 Financial statements for shareholders.

(1) A corporation shall furnish its shareholders annual financial statements which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for that year unless such information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(2) If the annual financial statements are reported upon by a public accountant, the accountant's report shall accompany the financial statements. If not, the financial statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating his or her reasonable belief whether the financial statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(3) A corporation shall deliver the annual financial statements to each shareholder within one hundred twenty days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not delivered the statements, the corporation shall deliver to him or her the latest financial statements.

Source: Laws 1995, LB 109, § 186; Laws 2009, LB528, § 5.

21-20,187 Other reports to shareholders.

(1) If a corporation indemnifies or advances expenses to a director under section 21-20,103, 21-20,104, 21-20,105, or 21-20,106 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(2) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued

and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

Source: Laws 1995, LB 109, § 187.

21-20,188 Biennial report to Secretary of State.

Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report as required under section 21-301 or 21-304.

Source: Laws 1995, LB 109, § 188; Laws 2003, LB 524, § 17.

(p) PUBLICATION

21-20,189 Publication and notice requirements.

(1) Notice of incorporation, amendment, merger, or share exchange of a domestic corporation subject to the Business Corporation Act shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

A notice of incorporation shall show (a) the corporate name for the corporation, (b) the number of shares the corporation is authorized to issue, (c) the street address of the corporation's initial registered office and the name of its initial registered agent at that office, and (d) the name and street address of each incorporator.

A brief resume of any amendment, merger, or share exchange of the corporation shall be published in the same manner and for the same period of time as a notice of incorporation is required to be published.

(2) Notice of the dissolution of a domestic corporation and the terms and conditions of such dissolution and the names of the persons who are to wind up and liquidate its business and affairs and their official titles, with a statement of assets and liabilities of the corporation, shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

(3) Proof of publication of any of the notices required to be published under this section shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of such corporation prior to, as well as after, such publication shall be valid.

Source: Laws 1995, LB 109, § 189.

(q) TRANSITION PROVISIONS

21-20,190 Act; applicability to existing domestic corporations.

The Business Corporation Act shall apply to all domestic corporations in existence on January 1, 1996, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Source: Laws 1995, LB 109, § 190.

21-20,191 Act; applicability to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on January 1, 1996, shall be subject to the Business Corporation Act but shall not be required to obtain a new certificate of authority to transact business under the act.

Source: Laws 1995, LB 109, § 191.

21-20,192 Repeal of statutes; reduction in penalty; effect.

(1) Except as provided in subsection (2) of this section, the repeal of a statute by Laws 1995, LB 109, shall not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation before its repeal; or

(d) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by Laws 1995, LB 109, is reduced by a similar provision of the Business Corporation Act, the penalty or punishment, if not already imposed, shall be imposed in accordance with the act.

Source: Laws 1995, LB 109, § 192.

21-20,193 Foreign corporation; domesticated under prior law; status.

Any corporation organized under the laws of any other state or territory which had become, in accordance with section 21-20,122, as such section existed prior to January 1, 1996, a body corporate of this state, shall retain such status for all purposes notwithstanding the repeal of such section.

Source: Laws 1996, LB 1036, § 11.

(r) CONVERSION

21-20,194 Conversion; plan.

(1) Pursuant to a plan of conversion, a domestic corporation may convert into a domestic limited liability company pursuant to this section, sections 21-170 to 21-184, and sections 21-20,195 to 21-20,197, or may convert to a foreign limited liability company pursuant to this section, sections 21-20,195 to 21-20,197, and the laws under which the foreign limited liability company is formed.

(2) A plan of conversion shall be in a record and shall include all of the following:

(a) The name of the domestic corporation before conversion;

(b) The name and form of the converted entity after conversion;

(c) The terms and conditions of the conversion, including the manner and basis for converting the shares of the corporation into any combination of

obligations, interests, or rights in the converted entity or other consideration; and

(d) The organizational documents of the converted entity.

(3) For purposes of this section, record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Source: Laws 2012, LB1018, § 5.
Effective date July 19, 2012.

21-20,195 Conversion; action on plan.

(1) The plan of conversion shall be adopted by the domestic corporation's board of directors.

(2) After adopting the plan of conversion, the domestic corporation's board of directors shall submit the plan to the domestic corporation's shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(3) The domestic corporation shall notify each shareholder of the domestic corporation, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion and shall contain or be accompanied by a copy or summary of the plan of conversion. The notice shall include or be accompanied by a copy of the organizational documents as they will be in effect immediately after the conversion.

(4) The domestic corporation's board of directors may condition its submission of the plan of conversion to the domestic corporation's shareholders on any basis.

(5) Unless the articles of incorporation, the bylaws, or the board of directors of the domestic corporation require a greater vote or a greater number of votes to be present, the plan of conversion shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group. Separate voting by voting groups shall be required on a plan of conversion if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section 21-20,119.

(6) If any provision of the articles of incorporation, the bylaws, or an agreement of the domestic corporation to which any of the directors or shareholders of the domestic corporation are parties, adopted or entered into before July 19, 2012, applies to a merger of the corporation and the document does not refer to a conversion of the corporation, the provision shall be deemed to apply to a conversion of the corporation until such provision is subsequently amended.

(7) If, as a result of the conversion, one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations,

or liabilities of any other person or entity, approval of the plan of conversion shall require the execution, by each such shareholder of the domestic corporation, of a separate written consent to become so subject to such owner liability.

(8) After a conversion is authorized, and at any time before a filing is made under section 21-20,196, a domestic corporation that is being converted may amend its plan of conversion or abandon the planned conversion as follows:

(a) As provided in the plan of conversion; or

(b) Except as prohibited by the plan of conversion, by the same consent as was required to approve the plan of conversion.

Source: Laws 2012, LB1018, § 6.
Effective date July 19, 2012.

21-20,196 Conversion; articles of conversion.

(1) After a plan of conversion is approved, a domestic corporation that is being converted shall deliver to the Secretary of State for filing articles of conversion, which shall include all of the following:

(a) A statement that the domestic corporation has been converted into another entity;

(b) The name and form of the other entity and the jurisdiction of its governing statute;

(c) The date the conversion is effective under the governing statute of the converted entity;

(d) A statement that the conversion was approved as required by section 21-20,195;

(e) A statement that the conversion was approved as required by the governing statute of the converted entity; and

(f) A domestic corporation converting into a foreign limited liability company shall deliver to the office of the Secretary of State for filing (i) a certificate which sets forth all of the information required to be in the certificate or other instrument of conversion filed pursuant to the laws under which the resulting foreign limited liability company is formed and (ii) an agreement that the resulting foreign limited liability company may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of the former domestic corporation.

(2) The conversion becomes effective as provided by the governing statute of the domestic or foreign limited liability company.

Source: Laws 2012, LB1018, § 7.
Effective date July 19, 2012.

21-20,197 Effect of conversion.

(1) A domestic corporation that has been converted pursuant to the Business Corporation Act is for all purposes the same domestic corporation that existed before the conversion.

(2) When a conversion takes effect, all of the following apply:

(a) All property owned by the converting entity remains vested in the converted entity. The converting entity shall file a certificate of conversion in the office of the register of deeds for each county in which the converting entity

owns real property. Such certificate of conversion shall be indexed against the real property owned;

(b) All debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity;

(c) An action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(d) The shares or interests of the converting entity are reclassified into shares, interests, or other securities, obligations, rights to acquire shares, interests, or other securities, or into cash or other property in accordance with the plan of conversion; and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity;

(e) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity; and

(f) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

(3) A converted entity that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation if, before the conversion, the converting corporation was subject to suit in this state on the obligation.

Source: Laws 2012, LB1018, § 8.
Effective date July 19, 2012.

ARTICLE 21

NEBRASKA BUSINESS DEVELOPMENT CORPORATION ACT

Section

21-2101 Act, how cited.

Sections 21-2101 to 21-2117 shall be known and may be cited as the Nebraska Business Development Corporation Act.

Source: Laws 1967, c. 100, § 1, p. 302.

21-2102 Terms, defined.

For purposes of the Nebraska Business Development Corporation Act, unless the context otherwise requires:

(1) Development corporation or corporation shall mean any corporation organized pursuant to the act for the purpose of developing business, industry, and enterprise in the State of Nebraska by the lending of money thereto and otherwise organizing for the purposes set forth in section 21-2104;

(2) Financial institution shall mean any banking institution, insurance company or related corporation, savings and loan association, partnership, limited liability company, credit union, foundation, trust, licensee under the Small Business Investment Act of 1958, 15 U.S.C. 661 et seq., as the act existed on September 1, 2001, or other entity engaged in lending or investing funds and authorized to do business in the State of Nebraska, including the United States Small Business Administration;

(3) Member shall mean any financial institution which undertakes to lend money to a development corporation upon its call and in accordance with section 21-2109;

(4) Board of directors shall mean members of the board of directors of a development corporation in office from time to time; and

(5) Loan limit shall mean, for any member, the maximum account permitted to be outstanding at any one time on loans made by any such member to a development corporation, as determined under the Nebraska Business Development Corporation Act.

Source: Laws 1967, c. 100, § 2, p. 302; Laws 1990, LB 1241, § 4; Laws 1993, LB 121, § 156; Laws 2001, LB 300, § 5.

21-2103 Business development corporations; incorporation.

One or more business development corporations may be incorporated in this state pursuant to the provisions of the Business Corporation Act not in conflict with or inconsistent with the provisions of the Nebraska Business Development Corporation Act.

Source: Laws 1967, c. 100, § 3, p. 303; Laws 1995, LB 109, § 204.

Cross References

Business Corporation Act, see section 21-2001.

21-2104 Business development corporation; purposes.

The purposes of a business development corporation shall be only: (1) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Nebraska and its citizens; (2) to encourage and assist through loans, investments, or other business transactions the location of new business and industry in the state; (3) to rehabilitate and assist existing business and industry in this state; (4) to stimulate and assist in the expansion of any kind of business activity which would tend to promote business development and maintain the economic stability in this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; (5) to cooperate and act in conjunction with other organizations, public or private, including the United States Small Business Administration, in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this state; and (6) to provide

financing for the promotion, development, and conduct of all kinds of business activity in this state.

Source: Laws 1967, c. 100, § 4, p. 303; Laws 1973, LB 56, § 1; Laws 1990, LB 1241, § 5; Laws 2001, LB 300, § 6.

21-2105 Powers.

(1) A development corporation shall have all the powers granted to corporations organized under the Business Corporation Act except that it shall not give security for any loan made to it by members unless all loans to it by members are secured ratably in proportion to unpaid balances due.

(2) The restriction in subsection (1) of this section shall in no manner be construed so as to prohibit a development corporation from making unsecured borrowings from the Small Business Administration, an agency of the United States Government.

Source: Laws 1967, c. 100, § 5, p. 304; Laws 1995, LB 109, § 205.

Cross References

Business Corporation Act, see section 21-2001.

21-2106 Name.

Every corporation created under the provisions of sections 21-2101 to 21-2117 shall have as a part of its corporate name or title the words business development.

Source: Laws 1967, c. 100, § 6, p. 304.

21-2107 Offices; location.

A development corporation may maintain an office or offices in such place or places within the State of Nebraska as may be fixed by the board of directors.

Source: Laws 1967, c. 100, § 7, p. 304.

21-2108 Shares; acquire, sell, assign, or mortgage.

Notwithstanding any other provisions of law, any person, partnership, limited liability company, or corporation may acquire, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of capital stock of a development corporation created under the Nebraska Business Development Corporation Act, except that insurance companies, reciprocal exchanges, and fraternal benefit societies shall not invest therein other than as provided in the Insurers Investment Act.

Source: Laws 1967, c. 100, § 8, p. 304; Laws 1991, LB 237, § 56; Laws 1993, LB 121, § 157.

Cross References

Insurers Investment Act, see section 44-5101.

21-2109 Membership; investment.

(1) Notwithstanding any other provision of law, any financial institution is authorized to become a member of and to invest in a development corporation by making application to the board of directors on such form and in such manner as the board of directors may require, and membership shall become effective upon acceptance of such application by such board. Membership shall

be for the duration of the corporation, except that upon written notice given to the corporation two years in advance, a member may withdraw from membership at the expiration date of such notice and shall not, after the expiration date of such notice, be obligated to make any loans to the corporation. No financial institution shall become a member of more than one development corporation.

(2) Each such member shall make loans to the corporation as and when called upon to do so, upon such terms and conditions as approved from time to time by the board of directors, subject to the following conditions:

(a) All loans shall be evidenced by negotiable instruments of the corporation and shall bear interest at the rate determined by the board of directors to be the prime rate on unsecured commercial loans as of the date of the loan;

(b) All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with this section;

(c) The total amount outstanding at any one time on loans to a development corporation made by any member, other than an insurance company, reciprocal exchange, or fraternal benefit society, shall not exceed the following limit, to be determined as of the time such member becomes a member, on the basis of figures contained in the most recent year-end statement prior to its application for membership:

(i) Banking associations, three percent of the paid-in capital and surplus;

(ii) Savings and loan associations, three percent of the general reserve account and surplus; and

(iii) Other financial institutions, such limits as may be approved from time to time by the board of directors of the development corporation;

(d) In the case of an insurance company, reciprocal exchange, and fraternal benefit society, the total amount outstanding at any time on loans to a development corporation shall be limited as follows: (i) For stock life insurance companies, one percent of capital and unassigned surplus, which amount loaned shall be included in and be a part of those investments authorized for stock life insurance companies under section 44-5153; (ii) for mutual life insurance companies or fraternal benefit societies, one percent of unassigned surplus, which amount loaned shall be included in and be a part of those investments authorized under such section; and (iii) for other insurance companies or reciprocal exchanges, one-tenth of one percent of admitted assets, which amount loaned shall be included in and be a part of those investments authorized under such section; and

(e) Each call for loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the loan limit of each member bears to the aggregate loan limits of all members.

Source: Laws 1967, c. 100, § 9, p. 305; Laws 1990, LB 1241, § 6; Laws 1991, LB 237, § 57; Laws 2001, LB 300, § 7.

21-2110 Shares; par value; authorized capital.

(1) Each share of stock of the corporation shall have a par value of not less than ten dollars per share, as fixed by its articles of incorporation, and shall be issued only for lawful money of the United States. At least two hundred thousand dollars shall be paid into the treasury for capital stock before a corporation shall be authorized to transact any business other than such business as relates to its organization.

(2) Each shareholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held, and each member shall be entitled to one vote, in person or by proxy, as such member.

(3) The rights given by the Business Corporation Act to shareholders to attend meetings and to receive notice thereof and to exercise voting rights shall apply to members as well as to shareholders of a corporation created under the Nebraska Business Development Corporation Act. The voting rights of the members shall be the same as if they were a separate class of shareholders, and shareholders and members shall in all cases vote separately by classes. A quorum at a shareholders' meeting shall require the presence in person or by proxy of a majority of the holders of the voting rights of each class.

Source: Laws 1967, c. 100, § 10, p. 306; Laws 1995, LB 109, § 206.

Cross References

Business Corporation Act, see section 21-2001.

21-2111 Board of directors; election; vacancy.

The business and affairs of the corporation shall be conducted by a board of directors. The number of directors shall at all times be a multiple of three. Two-thirds of the directors shall be elected by the members and one-third shall be elected by the shareholders. Any vacancy in the office of a director elected by members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders.

Source: Laws 1967, c. 100, § 11, p. 307.

Cross References

Cumulative voting for directors, see Article XII, section 1, Constitution of Nebraska.

21-2112 Articles of incorporation; amendment.

No amendment to the articles of incorporation shall be made which increases the obligation of a member to make loans to the corporation or which makes any change in a principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan made by a member to the corporation or which affects the right of a member to withdraw from membership or the voting rights of such member without the consent of eighty percent of the members who would be affected by such amendment; *Provided,* that this section shall not be construed to authorize amendments of the articles of incorporation so as to give greater rights or powers to the corporation or lesser rights or powers to the members than are set forth in sections 21-2101 to 21-2117.

Source: Laws 1967, c. 100, § 12, p. 307.

21-2113 Reserves; amount.

Each year the corporation shall set apart, as a reserve against losses and contingencies, not less than ten percent of its net earnings for the preceding fiscal year until such reserve shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of such reserve so evidenced shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation.

Source: Laws 1967, c. 100, § 13, p. 307.

21-2114 Funds; deposit.

No corporation organized under the provisions of sections 21-2101 to 21-2117 shall at any time be authorized to receive money on deposit. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

Source: Laws 1967, c. 100, § 14, p. 308.

21-2115 Books and records.

A corporation shall keep, in addition to the books and records required by the Business Corporation Act, a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to all books and records as are given to shareholders in the Business Corporation Act.

Source: Laws 1967, c. 100, § 15, p. 308; Laws 1995, LB 109, § 207.

Cross References

Business Corporation Act, see section 21-2001.

21-2116 Shares; exempt from registration.

The shares of capital stock of the corporation and the documents representing the indebtedness of the corporation to its members, and any offering of the above, shall be exempt from registration under the Securities Act of Nebraska. A corporation making any such offering, and the officers and employees thereof, shall also be exempt from registration and qualification as dealers and salesmen under the Securities Act of Nebraska.

Source: Laws 1967, c. 100, § 16, p. 308.

Cross References

Securities Act of Nebraska, see section 8-1123.

21-2117 Credit of state not pledged.

Under no circumstances is the credit of the State of Nebraska, or any political subdivision thereof, pledged by the provisions of sections 21-2101 to 21-2117.

Source: Laws 1967, c. 100, § 17, p. 308.

ARTICLE 22

PROFESSIONAL CORPORATIONS

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.

Section

Section

21-2201 Act, how cited.

Sections 21-2201 to 21-2223 shall be known and may be cited as the Nebraska Professional Corporation Act.

Source: Laws 1969, c. 121, § 1, p. 555; Laws 1994, LB 488, § 1; Laws 2011, LB315, § 2.

21-2202 Terms, defined.

For purposes of the Nebraska Professional Corporation Act, unless the context otherwise requires:

(1) Certificate of registration or registration certificate from or by the regulating board means either a document prepared and issued by the regulating board or the electronic accessing of the regulating board's licensing records by the Secretary of State;

(2) Professional corporation means a corporation which is organized under the act for the specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation;

(3) Professional service means any personal services rendered by an attorney at law, a certified public accountant, a public accountant, a dentist, an osteopathic physician, a physician and surgeon, a real estate broker, an associate real estate broker, a real estate salesperson, or a veterinarian. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and

(4) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the professional corporation is organized to render.

Source: Laws 1969, c. 121, § 2, p. 555; Laws 1980, LB 893, § 1; Laws 1989, LB 342, § 1; Laws 1995, LB 406, § 2; Laws 2012, LB852, § 2.
Effective date July 19, 2012.

21-2203 Powers, benefits, and privileges.

Except as the Nebraska Professional Corporation Act shall otherwise require, professional corporations shall enjoy all the powers, benefits, and privileges and be subject to all the duties, restrictions, and liabilities of a business corporation under the Business Corporation Act and sections 21-301 to 21-325.

Source: Laws 1969, c. 121, § 3, p. 556; Laws 1995, LB 109, § 208.

Cross References

Business Corporation Act, see section 21-2001.

21-2204 Articles of incorporation; certificate of registration; filing.

(1) One or more individuals residing within the State of Nebraska, each of whom is licensed or otherwise legally authorized to render the same professional service, may, by filing articles of incorporation and a certificate of registration with the Secretary of State, organize and become a shareholder in a professional corporation. The articles of incorporation shall conform to the requirements of section 21-2018 and the certificate of registration shall conform to the requirements of sections 21-2216 to 21-2218.

(2) In addition to the requirements of subsection (1) of this section, the articles of incorporation shall contain a statement of the profession to be practiced by the corporation.

Source: Laws 1969, c. 121, § 4, p. 556; Laws 1995, LB 109, § 209; Laws 2004, LB 16, § 1.

21-2205 Professional services that may be rendered.

A professional corporation shall render only one type of professional service and such services as may be ancillary thereto and shall not engage in any other profession. No corporation organized and incorporated under the Nebraska Professional Corporation Act may render professional services except through its officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services within this state. This section shall not be interpreted to include in the term employee, as used in the act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

A professional corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds, and any other type of investments.

Source: Laws 1969, c. 121, § 5, p. 556; Laws 1997, LB 622, § 57.

21-2206 Corporate name.

The corporate name of a corporation organized under sections 21-2201 to 21-2222 shall contain the word professional corporation, or P.C. The use of the word company, corporation, incorporated, or any other word, abbreviation, affix or prefix indicating that it is a corporation in the corporate name of a corporation organized under sections 21-2201 to 21-2222, other than the words professional corporation, or the abbreviation P.C. is specifically prohibited.

Source: Laws 1969, c. 121, § 6, p. 557.

21-2207 Offices; designate in articles of incorporation; change; duties.

A professional corporation shall have only those offices which are designated by street address in the articles of incorporation, and shall not change any such office or offices without amendment of the articles of incorporation.

Source: Laws 1969, c. 121, § 7, p. 557.

21-2208 Shares of capital stock; issuance; transfer; conditions; violation; effect.

A professional corporation may issue shares of its capital stock only to persons who are duly registered in Nebraska to render the same professional service as that provided in its articles of incorporation. A shareholder in a professional corporation may voluntarily transfer his shares only to a person who is duly licensed to render the same professional service as that for which the corporation was organized. No shares shall be issued by or transferred upon the books of the professional corporation unless there has been filed with the Secretary of State a certificate by the regulating board stating that the person to whom the shares are to be issued or transferred is duly licensed to render the same professional service as that for which the corporation was organized. Any share transferred or issued in violation of this section shall be null and void.

Source: Laws 1969, c. 121, § 8, p. 557.

21-2209 Provision of services in another jurisdiction; license required, when; foreign corporation; requirements.

(1) A professional corporation may provide professional services in another jurisdiction if such corporation complies with all applicable laws of such jurisdiction regulating the rendering of professional services. Notwithstanding any other provision of the Nebraska Professional Corporation Act, no shareholder, director, officer, employee, or agent of a professional corporation shall be required to be licensed to render professional services in this state or to reside in this state if such shareholder, director, officer, employee, or agent does not render professional services in this state and is licensed in one or more states, territories of the United States, or the District of Columbia to render a professional service described in the professional corporation's articles of incorporation.

(2) A foreign professional corporation shall not transact business in this state unless it renders one of the professional services specified in subdivision (3) of section 21-2202 and complies with the provisions of the act, including, without limitation, registration with the appropriate regulating board in this state as provided in sections 21-2216 to 21-2218. A foreign professional corporation

shall not transact business in this state if the laws of the jurisdiction under which such foreign professional corporation is incorporated do not allow for a professional corporation incorporated under the laws of this state to transact business in such jurisdiction.

(3)(a) A foreign professional corporation shall (i) apply for a certificate of authority in the same manner as a foreign business corporation pursuant to sections 21-20,168 to 21-20,181 and (ii) file with the Secretary of State a current certificate of registration as provided in sections 21-2216 to 21-2218.

(b) Except as otherwise provided in the Nebraska Professional Corporation Act, foreign professional corporations shall enjoy all the powers, benefits, and privileges and shall be subject to all the duties, restrictions, and liabilities of a foreign business corporation under sections 21-301 to 21-325 and the Business Corporation Act.

(c) A foreign professional corporation shall not be required as a condition to obtaining a certificate of authority to have all of its shareholders, directors, and officers licensed to render professional services in this state if all of its shareholders, directors, and officers, except the secretary and assistant secretary, are licensed in one or more states or territories of the United States or the District of Columbia to render a professional service described in its articles of incorporation and any shareholder, director, officer, employee, or agent who renders professional services within this state on behalf of the foreign professional corporation is licensed to render professional services in this state.

(d) A foreign professional corporation shall not be required to obtain a certificate of authority to transact business in this state unless it maintains or intends to maintain an office in this state for the conduct of business or professional practice.

(4) For purposes of this section, foreign professional corporation shall mean a corporation which is organized under the law of any other state or territory of the United States or the District of Columbia for the specific purpose of rendering professional services and which has as its shareholders only individuals who are duly licensed or otherwise legally authorized to render the same professional services as the corporation.

Source: Laws 1994, LB 488, § 2; Laws 1995, LB 109, § 210; Laws 1995, LB 406, § 3; Laws 2004, LB 16, § 2.

Cross References

Business Corporation Act, see section 21-2001.

21-2210 Professional relationship and liabilities.

Nothing contained in sections 21-2201 to 21-2222 shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services or to the standards of professional conduct. Any officer, shareholder, agent or employee of a corporation organized under sections 21-2201 to 21-2222 shall remain personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional service on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable up to the full value of its

property for any negligent or wrongful acts or misconduct committed by any of its officers, agents or employees while they are engaged on behalf of the corporation.

Source: Laws 1969, c. 121, § 10, p. 558.

21-2211 Regulating board; powers.

Nothing in sections 21-2201 to 21-2222 shall restrict or limit in any manner the authority and duty of a regulating board in registering individuals licensed to perform professional services or the practice of the profession which is within the jurisdiction of such board, notwithstanding the fact that such individual is an officer, director, shareholder or employee of a professional corporation and renders such professional service or engages in the practice of such profession through the professional corporation.

Source: Laws 1969, c. 121, § 11, p. 558.

21-2212 Death or disqualification of shareholder; purchase or redemption of shares; death or disqualification of last remaining shareholder; powers of successor in interest.

(1) The articles of incorporation or the bylaws of the professional corporation shall provide for the purchase or redemption of the shares of any shareholder upon his or her death or disqualification to render the professional services of the professional corporation within this state.

(2) Unless otherwise provided in the articles of incorporation or the bylaws of the professional corporation, upon the death or disqualification of the last remaining shareholder of a professional corporation, a successor in interest to such deceased or disqualified shareholder may dissolve the corporation and wind up and liquidate its business and affairs, notwithstanding the fact that such successor in interest could not have become a shareholder of the professional corporation. The successor in interest may file articles of dissolution with the Secretary of State in accordance with section 21-20,153. Thereafter, the successor in interest may wind up and liquidate the corporation's business and affairs in accordance with section 21-20,155 and notify claimants in accordance with sections 21-20,156 and 21-20,157.

Source: Laws 1969, c. 121, § 12, p. 558; Laws 2010, LB759, § 1.

21-2213 Officer, shareholder, agent, or employee; legally disqualified; effect.

If any officer, shareholder, agent, or employee of a corporation organized under sections 21-2201 to 21-2222 who has been rendering professional service to the public becomes legally disqualified to render such professional service within this state, or accepts employment that, pursuant to existing law, places restrictions or limitations upon his continued rendering of such professional services, he shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution.

Source: Laws 1969, c. 121, § 13, p. 558.

21-2214 Secretary of State; names of corporations; certify to Attorney General; legally disqualified officer, shareholder, agent, or employee; action for dissolution.

The Secretary of State shall certify to the Attorney General, from time to time, the names of all corporations organized pursuant to the provisions of sections 21-2201 to 21-2222 which have failed to comply with the provisions of section 21-2213. Whenever the Secretary of State shall certify the name of the corporation to the Attorney General as having given cause for dissolution, the Secretary of State shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the Attorney General shall file an action in the name of the state against such corporation for its dissolution.

Source: Laws 1969, c. 121, § 14, p. 559.

21-2215 Involuntary dissolution; procedure.

Every action for the involuntary dissolution of a corporation failing to comply with the provisions of section 21-2213 shall be commenced by the Attorney General either in the district court of the county in which the registered office of the corporation is situated or in the district court of Lancaster County. Summons shall issue and be served as in other civil actions. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the last-known registered office of the corporation is situated, containing a notice of pendency of such action, the title of the court, the title of the action, and the date on and after which default may be entered. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its last-known registered office or mailing address within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice.

Source: Laws 1969, c. 121, § 15, p. 559.

21-2216 Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

(1) No corporation shall open, operate, or maintain an establishment or do business for any purposes set forth in the Nebraska Professional Corporation Act without (a) filing with the Secretary of State a certificate of registration from the regulating board of the particular profession for which the professional corporation is organized to do business, which certificate shall set forth the name and residence addresses of all shareholders as of the last day of the month preceding such filing, and (b) certifying that all shareholders, directors, and officers, except the secretary and the assistant secretary, are duly licensed to render the same professional services as those for which the corporation was organized. Application for a certificate of registration shall be made by the professional corporation to the regulating board in writing and shall contain the names of all officers, directors, shareholders, and professional employees of

the professional corporation, the street address at which the applicant proposes to perform professional services, and such other information as may be required by the regulating board.

(2) If it appears to the regulating board that each shareholder, officer, director, and professional employee of the applicant, except the secretary and the assistant secretary, is licensed to practice the profession of the applicant and that each shareholder, officer, director, or professional employee is not otherwise disqualified from performing the professional services of the applicant, such regulating board shall certify, in duplicate upon a form bearing its date of issuance and prescribed by such regulating board, that such proposed or existing professional corporation complies with the provisions of the act and of the applicable rules and regulations of such regulating board. Each applicant for such registration certificate shall pay such regulating board a fee of twenty-five dollars for the issuance of such duplicate certificate.

(3) One copy of such certificate shall be prominently exposed to public view upon the premises of the principal place of business of each professional corporation organized under the act, and one copy shall be filed by the professional corporation with the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate from the regulating board shall be filed in the office of the Secretary of State together with the articles of incorporation. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(4) When licensing records of regulating boards are electronically accessible, the Secretary of State shall access the records. The access shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The professional corporation shall file with the Secretary of State an application setting forth the name and residence addresses of all officers, directors, shareholders, and professional employees as of the last day of the month preceding the date of the application and shall file with the Secretary of State an annual update thereafter. Each application shall be accompanied by a licensure verification fee of fifty dollars. The Secretary of State shall verify that all of the directors, officers, shareholders, and professional employees listed on the application, except for the secretary and assistant secretary, are duly licensed or otherwise legally authorized to render the same professional service or an ancillary service as those for which the professional corporation was organized. Verification shall be done by electronically accessing the regulating board's licensing records. If any director, officer, shareholder, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the professional corporation was organized to render, the corporation will be suspended. The biennial report and tax cannot be filed and paid in the office of the Secretary of State until the corporation attests in writing that the director, officer, shareholder, or professional employee is licensed or otherwise legally authorized to practice, which shall be verified by the Secretary of State, or is no longer a director, officer, shareholder, or professional employee of the corporation. When the biennial report and the tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323.

Source: Laws 1969, c. 121, § 16, p. 560; Laws 1971, LB 489, § 1; Laws 1973, LB 157, § 4; Laws 1976, LB 749, § 1; Laws 1982, LB 928, § 16; Laws 1992, LB 1019, § 27; Laws 1995, LB 406, § 4; Laws 2003, LB 524, § 18; Laws 2008, LB379, § 20.

21-2217 Registration certificate; term; filing; failure to file; effect; not transferable.

Each registration certificate issued to each applicant shall expire by its own terms one year from the date of issuance and may not be renewed. Each professional corporation must annually apply to its regulating board for a registration certificate in the manner provided in section 21-2216. A certificate from the regulating board as provided in section 21-2216 must annually be filed with the Secretary of State within thirty days of the expiration date of the last certificate on file in the office of the Secretary of State or such corporation shall be suspended. If the corporation is suspended, the biennial report and tax cannot be filed and paid in the office of the Secretary of State until the certificate from the regulating board is filed in the office of the Secretary of State. If the report is not filed, the tax paid, and the certificate filed by April 16 of the current year, when the report and tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323. Registration certificates shall not be transferable or assignable.

Source: Laws 1969, c. 121, § 17, p. 561; Laws 1971, LB 489, § 2; Laws 1973, LB 157, § 5; Laws 1987, LB 186, § 2; Laws 2003, LB 524, § 19.

21-2218 Regulating board; certificate of registration; revoke or suspend; procedure.

The regulating board may, upon a form prescribed by it, suspend or revoke any certificate of registration of any professional corporation, upon the revocation or suspension of the license to render professional service of any officer, director, shareholder, or professional employee of a holder of a certificate of registration. Notice of such revocation shall be provided the professional corporation affected by sending by certified or registered United States mail a certified copy of such revocation to the professional corporation at its principal place of business set forth in the registration certificate so revoked. At the same time, the regulating board shall forward by regular United States mail a certified copy of such revocation to the Secretary of State who shall thereupon remove the revoked registration certificate from his file and deliver the same to such regulating board.

Source: Laws 1969, c. 121, § 18, p. 561.

21-2219 Merger or consolidation.

A professional corporation organized under the provisions of the Nebraska Professional Corporation Act may consolidate or merge with another domestic professional corporation organized under the act to render the same professional service or a foreign professional corporation admitted or which would qualify to be admitted under the act to render the same professional service in this state.

Source: Laws 1969, c. 121, § 19, p. 561; Laws 1994, LB 488, § 3.

21-2220 Sections; attorneys at law; applicability.

The provisions of sections 21-2201 to 21-2222 shall be applicable to attorneys at law only to the extent and under such terms and conditions as the Supreme Court of the State of Nebraska shall determine to be necessary and appropriate.

Articles of incorporation of professional corporations organized to practice law shall contain such provisions as may be appropriate to comply with applicable rules of the court.

Source: Laws 1969, c. 121, § 20, p. 561.

21-2221 Sections; when not applicable.

Sections 21-2201 to 21-2222 shall not apply to any individual or group of individuals within this state who prior to December 25, 1969, were permitted to organize a corporation and perform personal services to the public by the means of a corporation, and sections 21-2201 to 21-2222 shall not apply to any corporations organized by such individual or group of individuals prior to December 25, 1969; *Provided,* any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of sections 21-2201 to 21-2222 by amending the articles of incorporation in such a manner as to be consistent with all the provisions of sections 21-2201 to 21-2222 and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of sections 21-2201 to 21-2222.

Source: Laws 1969, c. 121, § 21, p. 562.

21-2222 Rights of natural persons.

Nothing contained in the Nebraska Professional Corporation Act is intended to alter the right of natural persons licensed to provide professional service to organize as a partnership, a limited liability company, an unincorporated association, a business trust, or any other lawful form of business organization.

Source: Laws 1969, c. 121, § 22, p. 562; Laws 1993, LB 121, § 158.

21-2223 Designated broker; professional corporation.

A designated broker as defined in section 81-885.01 may be organized as a professional corporation under the Nebraska Professional Corporation Act.

Source: Laws 2011, LB315, § 3.

ARTICLE 23

NEBRASKA INDUSTRIAL DEVELOPMENT CORPORATION ACT

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.

Section

Section
21-2315. Corporation; documents; filing without payment of fees or taxes.
21-2316. Act; how construed.
21-2317. Corporation incorporated under Nebraska Nonprofit Corporation Act; validated.
21-2318. Act, how cited.

21-2301 Terms, defined.

For purposes of the Nebraska Industrial Development Corporation Act, unless the context otherwise requires:

(1) Corporation means any corporation organized pursuant to the act;

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

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

Source: Laws 1972, LB 1517, § 1; Laws 1995, LB 494, § 1.

21-2302 Legislative intent.

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

It is the further intent of the Legislature to vest the corporations with all the powers that may be necessary to enable them to accomplish their purposes, except that the corporations shall not have the power of eminent domain. It is not intended that the corporations themselves be authorized to operate any such manufacturing, industrial, commercial, or research enterprise. The Ne-

braska Industrial Development Corporation Act shall be liberally construed in conformity with such intention.

Source: Laws 1972, LB 1517, § 2; Laws 1995, LB 494, § 2.

21-2303 Incorporation; procedure; application; approval.

Whenever any number of natural persons, not less than three, each of whom shall be a duly qualified elector of and taxpayer in the local political subdivision, file with the governing body of any local political subdivision an application in writing seeking permission to apply for the incorporation of an industrial development board of the local political subdivision, the governing body shall proceed to consider the application. If the governing body, by appropriate resolution duly adopted, (1) finds and determines that it is wise, expedient, necessary, or advisable that the corporation be formed, (2) authorizes the persons making the application to proceed to form the corporation, and (3) approves the form of the articles of incorporation proposed to be used in organizing the corporation, then the persons making the application shall execute, acknowledge, and file articles of incorporation for the corporation under the Nebraska Industrial Development Corporation Act. No corporation may be formed unless the application has first been filed with the governing body of the local political subdivision and the governing body has adopted a resolution pursuant to this section.

Source: Laws 1972, LB 1517, § 3; Laws 1995, LB 494, § 3.

21-2304 Articles of incorporation; contents.

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

Source: Laws 1972, LB 1517, § 4; Laws 1995, LB 494, § 4; Laws 2008, LB379, § 21.

21-2305 Articles of incorporation; filing.

When executed and notarized under section 21-2304, the articles of incorporation shall be filed with the Secretary of State. The Secretary of State shall examine the articles of incorporation and, if he or she finds (1) that the recitals contained in the articles of incorporation are correct, (2) that the requirements of section 21-2304 have been complied with, and (3) that the name of the corporation is not identical with or similar enough to the name of another corporation already in existence in this state as to lead to confusion and uncertainty, the Secretary of State shall approve the articles of incorporation

and record them in his or her office. When the articles of incorporation have been made, filed, and approved the applicants shall constitute a corporation under the name set out in the articles of incorporation pursuant to the Nebraska Industrial Development Corporation Act.

Source: Laws 1972, LB 1517, § 5; Laws 1995, LB 494, § 5.

21-2306 Articles of incorporation; amendment; procedure.

The articles of incorporation may at any time be amended to make any changes or add any provisions which might have been included in the first instance. To amend the articles of incorporation, the members of the board of directors of the corporation shall file with the governing body of the local political subdivision an application in writing seeking permission to amend the articles of incorporation and specifying in the application the amendment proposed to be made. The governing body shall consider the application and if by appropriate resolution it (1) duly finds and determines that it is wise, expedient, necessary, or advisable that the proposed amendment be made, (2) authorizes the same to be made, and (3) approves the form of the proposed amendment, then the persons making the application shall execute an instrument embodying the amendment specified in the application. The instrument shall be subscribed and acknowledged before a notary public by each member of the board of directors and shall be filed with the Secretary of State. The Secretary of State shall examine the proposed amendment and, if he or she finds that the requirements of this section have been complied with and that the proposed amendment is within the scope of what might be included in the original articles of incorporation, the Secretary of State shall approve the amendment and record it in his or her office. When the amendment has been made, filed, and approved it shall become effective and the articles of incorporation shall be amended pursuant to the amendment. The articles of incorporation under the Nebraska Industrial Development Corporation Act shall be amended only as provided in this section.

Source: Laws 1972, LB 1517, § 6; Laws 1995, LB 494, § 6.

21-2307 Board of directors; qualifications; expenses; public meetings.

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

Source: Laws 1972, LB 1517, § 7; Laws 1981, LB 204, § 20; Laws 1995, LB 494, § 7.

21-2308 Corporate powers.

(1) The corporation shall have the following powers together with all powers incidental or necessary for the performance of its duties under the Nebraska Industrial Development Corporation Act: (a) To have succession by its corpo-

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

(2)(a) If the local political subdivision is a county, any project or projects of the corporation shall be located within the county, except that in no event shall any project or part of a project be located within the corporate limits of a city or village.

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

(c) The corporation shall not operate any project as a business other than as a lessor.

Source: Laws 1972, LB 1517, § 9; Laws 1995, LB 494, § 8; Laws 1996, LB 931, § 1.

21-2309 Corporate bonds; payment.

All bonds issued by the corporation shall be payable solely out of the revenue and receipts derived from the leasing or sale by the corporation of its projects or of any thereof as may be designated in the proceedings of the board of

directors under which the bonds shall be authorized to be issued. The bonds may be executed and delivered by the corporation at any time, may be in a form and in denominations and of a tenor and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in installments and at a time or times not exceeding forty years from the date of issuance, may be payable at a place or places whether within or without the State of Nebraska, may bear interest at a rate or rates payable at a time or times and at a place or places and evidenced in a manner, may be executed by officers of the corporation and in a manner, and may contain provisions not inconsistent with this section, as provided in the proceedings of the board of directors authorizing the bonds to be issued. If deemed advisable by the board of directors, there may be included in the proceedings under which bonds of the corporation are authorized to be issued, an option to redeem all or any part of the bonds as specified in the proceedings at a price or prices and after notice or notices and on terms and conditions as set forth in the proceedings and as summarized on the face of the bonds. This section shall not be construed to confer on the corporation any right or option to redeem any bonds except as may be provided in the proceedings under which the bonds are issued. Any bonds of the corporation may be sold at public or private sale in a manner and from time to time as determined by the board of directors to be most advantageous. The corporation may pay all expenses, premiums, and commissions which its board of directors deems necessary or advantageous in connection with the issuance of the bonds. Issuance by the corporation of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same project or any other project, but the proceedings under which any subsequent bonds are issued shall recognize and protect any prior pledge or mortgage made for a prior issue of bonds, unless in the proceedings authorizing the prior issue the right was reserved to issue subsequent bonds on a parity with the prior issue. Any bonds of the corporation at any time outstanding may at any time be refunded by the corporation by the issuance of refunding bonds in an amount the board of directors deems necessary, but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest on the bonds to be refunded and any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the bonds to be refunded shall have matured at that time or at a later date, either by sale of the refunding bonds and the application of the proceeds of the refunding bonds for the payment of the bonds to be refunded, or by the exchange of the refunding bonds for the bonds to be refunded with the consent of the holders of the bonds to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same projects or separate projects and regardless of whether or not the bonds proposed to be refunded are payable on the same date or on different dates or are due serially or otherwise. All bonds and the interest coupons applicable to the bonds are negotiable instruments.

Source: Laws 1972, LB 1517, § 10; Laws 1995, LB 494, § 9.

21-2310 Bonds; security.

The principal of and interest on bonds issued by the corporation shall be secured by a pledge of the revenue and receipts out of which the principal of and interest on the bonds is payable, and may be secured by a mortgage or deed of trust covering all or any part of the projects from which the revenue or

receipts pledged may be derived, including any enlargements of and additions to any projects made at a later date. The resolution under which the bonds are authorized to be issued and any mortgage or deed of trust may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the corporation to others, the creation and maintenance of special funds from the revenue and the rights and remedies available in the event of default, all as the board of directors deems advisable and not in conflict with the provisions of this section. Each pledge, agreement, mortgage, and deed of trust made for the benefit of security of any of the bonds of the corporation shall continue to be effective until the principal of and interest on the bonds for the benefit of which the pledge, agreement, mortgage, and deed of trust were made shall have been fully paid. In the event of default in payment or in any agreements of the corporation made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any mortgage or deed of trust executed as security for the bonds, the rights of the bondholders may be enforced by mandamus, the appointment of a receiver in equity, or by foreclosure of any such mortgage or deed of trust, or any one or more of the remedies.

Source: Laws 1972, LB 1517, § 11; Laws 1995, LB 494, § 10.

21-2311 Corporation; property; bonds; exempt from taxation.

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

Source: Laws 1972, LB 1517, § 12; Laws 1995, LB 494, § 11.

21-2312 Local political subdivision; liability; exempt.

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

Source: Laws 1972, LB 1517, § 13; Laws 1995, LB 494, § 12.

21-2313 Corporation; nonprofit.

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

Source: Laws 1972, LB 1517, § 14; Laws 1995, LB 494, § 13.

21-2314 Corporation; dissolution; effect.

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

Source: Laws 1972, LB 1517, § 15; Laws 1995, LB 494, § 14.

21-2315 Corporation; documents; filing without payment of fees or taxes.

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

Source: Laws 1972, LB 1517, § 16; Laws 1995, LB 494, § 15.

21-2316 Act; how construed.

The Nebraska Industrial Development Corporation Act shall not be construed as a restriction or limitation upon powers which the corporation might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, notice, or approval shall be required for the organization of the corporation or the issuance of any bonds or any instrument as security for the bonds or instrument, except as provided in the act, any other law to the contrary notwithstanding, but nothing in the act shall be construed to deprive the state and its governmental subdivisions of their respective police powers over any properties of the corporation or to impair any power of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

Source: Laws 1972, LB 1517, § 17; Laws 1995, LB 494, § 16.

21-2317 Corporation incorporated under Nebraska Nonprofit Corporation Act; validated.

In all cases when there has been an attempt to incorporate a local political subdivision industrial development corporation under the provisions of the Nebraska Nonprofit Corporation Act, and articles of incorporation have been duly recorded and filed containing provisions substantially similar to those for incorporation under the provisions of the Nebraska Industrial Development Corporation Act, the corporation may, with the approval of the governing body of the local political subdivision in which it is located, become validated ab initio as a corporation organized under and governed by the act with respect to any bonds issued and all other matters concerning its affairs and business by

executing and filing with the Secretary of State a certificate of its adoption of the act.

Source: Laws 1972, LB 1517, § 18; Laws 1995, LB 494, § 17; Laws 1996, LB 681, § 182.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-2318 Act, how cited.

Sections 21-2301 to 21-2318 shall be known and may be cited as the Nebraska Industrial Development Corporation Act.

Source: Laws 1972, LB 1517, § 19.

ARTICLE 24

SHAREHOLDERS PROTECTION ACT

Section
21-2401. Repealed. Laws 1983, LB 599, § 15.
21-2402. Repealed. Laws 1983, LB 599, § 15.
21-2403. Repealed. Laws 1983, LB 599, § 15.
21-2404. Repealed. Laws 1983, LB 599, § 15.
21-2405. Repealed. Laws 1983, LB 599, § 15.
21-2406. Repealed. Laws 1983, LB 599, § 15.
21-2407. Repealed. Laws 1983, LB 599, § 15.
21-2408. Repealed. Laws 1983, LB 599, § 15.
21-2409. Repealed. Laws 1983, LB 599, § 15.
21-2410. Repealed. Laws 1983, LB 599, § 15.
21-2411. Repealed. Laws 1983, LB 599, § 15.
21-2412. Repealed. Laws 1983, LB 599, § 15.
21-2413. Repealed. Laws 1983, LB 599, § 15.
21-2414. Repealed. Laws 1983, LB 599, § 15.
21-2415. Repealed. Laws 1983, LB 599, § 15.
21-2416. Repealed. Laws 1983, LB 599, § 15.
21-2417. Repealed. Laws 1983, LB 599, § 15.
21-2418. Repealed. Laws 1988, LB 1110, § 26.
21-2419. Repealed. Laws 1988, LB 1110, § 26.
21-2420. Repealed. Laws 1988, LB 1110, § 26.
21-2421. Repealed. Laws 1988, LB 1110, § 26.
21-2422. Repealed. Laws 1988, LB 1110, § 26.
21-2423. Repealed. Laws 1988, LB 1110, § 26.
21-2424. Repealed. Laws 1988, LB 1110, § 26.
21-2425. Repealed. Laws 1988, LB 1110, § 26.
21-2426. Repealed. Laws 1988, LB 1110, § 26.
21-2427. Repealed. Laws 1988, LB 1110, § 26.
21-2428. Repealed. Laws 1988, LB 1110, § 26.
21-2429. Repealed. Laws 1988, LB 1110, § 26.
21-2430. Repealed. Laws 1988, LB 1110, § 26.
21-2431. Act, how cited.
21-2432. Legislative declarations.
21-2433. Definitions, where found.
21-2434. Acquiring person, defined.
21-2435. Affiliate, defined.
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21-2437. Business combination, defined.
21-2438. Control, controlling, controlled by, or under common control with, defined.
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21-2441. Interested shares, defined.
21-2442. Issuing public corporation, defined.

Section
21-2443. Owner, defined.
21-2444. Person, defined.
21-2445. Share acquisition date, defined.
21-2446. Subsidiary of an issuing public corporation, defined.
21-2447. Voting stock, defined.
21-2448. Stock or other property; market value; how determined.
21-2449. Acquiring person; deliver information statement; contents; amendment.
21-2450. Consideration of voting rights; special meeting; conditions.
21-2451. Control-share acquisition; voting rights of shares.
21-2452. Business combination; prohibited activities.
21-2453. Act; exemptions.

21-2401 Repealed. Laws 1983, LB 599, § 15.

21-2402 Repealed. Laws 1983, LB 599, § 15.

21-2403 Repealed. Laws 1983, LB 599, § 15.

21-2404 Repealed. Laws 1983, LB 599, § 15.

21-2405 Repealed. Laws 1983, LB 599, § 15.

21-2406 Repealed. Laws 1983, LB 599, § 15.

21-2407 Repealed. Laws 1983, LB 599, § 15.

21-2408 Repealed. Laws 1983, LB 599, § 15.

21-2409 Repealed. Laws 1983, LB 599, § 15.

21-2410 Repealed. Laws 1983, LB 599, § 15.

21-2411 Repealed. Laws 1983, LB 599, § 15.

21-2412 Repealed. Laws 1983, LB 599, § 15.

21-2413 Repealed. Laws 1983, LB 599, § 15.

21-2414 Repealed. Laws 1983, LB 599, § 15.

21-2415 Repealed. Laws 1983, LB 599, § 15.

21-2416 Repealed. Laws 1983, LB 599, § 15.

21-2417 Repealed. Laws 1983, LB 599, § 15.

21-2418 Repealed. Laws 1988, LB 1110, § 26.

21-2419 Repealed. Laws 1988, LB 1110, § 26.

21-2420 Repealed. Laws 1988, LB 1110, § 26.

21-2421 Repealed. Laws 1988, LB 1110, § 26.

21-2422 Repealed. Laws 1988, LB 1110, § 26.

21-2423 Repealed. Laws 1988, LB 1110, § 26.

21-2424 Repealed. Laws 1988, LB 1110, § 26.

21-2425 Repealed. Laws 1988, LB 1110, § 26.

21-2426 Repealed. Laws 1988, LB 1110, § 26.

21-2427 Repealed. Laws 1988, LB 1110, § 26.

21-2428 Repealed. Laws 1988, LB 1110, § 26.

21-2429 Repealed. Laws 1988, LB 1110, § 26.

21-2430 Repealed. Laws 1988, LB 1110, § 26.

21-2431 Act, how cited.

Sections 21-2431 to 21-2453 shall be known and may be cited as the Shareholders Protection Act.

Source: Laws 1988, LB 1110, § 2.

21-2432 Legislative declarations.

It is declared that:

(1) This state has traditionally regulated the affairs of corporations, including the regulation of mergers and other business combinations. The United States Supreme Court has recently reaffirmed the power of states to regulate these affairs;

(2) Issuing public corporations encompass, represent, and affect, through their ongoing business operations, a variety of constituencies including shareholders, employees, customers, suppliers, and local communities and their economies whose welfare is vital to this state's interests;

(3) In order to promote the welfare of these constituencies, the regulation of the internal affairs of issuing public corporations by the laws of this state governing business corporations should allow for the stable, long-term growth of issuing public corporations;

(4) Business combinations involving public corporations frequently occur through acquisition techniques which in effect coerce shareholders to participate in the transaction;

(5) Business combinations involving public corporations are also frequently financed largely through debt to be repaid in the short term through changes in operations of the public corporation, the sale of assets of the public corporation, and other means. These measures involve a substantial risk of unfair business dealing, may prevent shareholders from realizing the full value of their holdings through forced mergers and other coercive devices, and may undermine the state's interest in promoting stable relationships involving the corporations that it charters; and

(6) The Shareholders Protection Act is not intended to alter the case law development on directors' fiduciary duties of care and loyalty in responding to challenges to control or the burden of proof with regard to compliance with those duties, nor is the act intended to prevent the use of any other lawful defensive measure.

Source: Laws 1988, LB 1110, § 1.

21-2433 Definitions, where found.

For purposes of the Shareholders Protection Act, unless the context otherwise requires, the definitions found in sections 21-2434 to 21-2447 shall be used.

Source: Laws 1988, LB 1110, § 3.

21-2434 Acquiring person, defined.

Acquiring person shall mean a person who makes or proposes to make a control-share acquisition. If two or more persons act as a partnership, limited partnership, limited liability company, syndicate, or other group pursuant to any agreement, arrangement, relationship, or understanding, whether or not in writing, for the purpose of acquiring, owning, or voting shares of an issuing public corporation, all members of the partnership, limited partnership, limited liability company, syndicate, or other group shall constitute a person for purposes of this section.

Source: Laws 1988, LB 1110, § 4; Laws 1993, LB 121, § 159.

21-2435 Affiliate, defined.

Affiliate shall mean a person who directly or indirectly controls, is controlled by, or is under common control with another person.

Source: Laws 1988, LB 1110, § 5.

21-2436 Associate, defined.

Associate, when used to indicate a relationship with any person, shall mean any of the following: (1) Any corporation, limited liability company, or organization of which the person is an officer, director, member, or partner or is, directly or indirectly, the owner of ten percent or more of any class of voting stock; (2) any trust or estate in which the person has at least a ten percent beneficial interest or as to which the person serves as trustee or personal representative or in a similar fiduciary capacity; and (3) any relative or spouse of the person, or any relative of the spouse, who has the same residence as such person.

Source: Laws 1988, LB 1110, § 6; Laws 1993, LB 121, § 160.

21-2437 Business combination, defined.

Business combination, when used in reference to any issuing public corporation and any interested shareholder of the issuing public corporation, shall mean:

(1) Any merger or consolidation of the issuing public corporation or any subsidiary of the issuing public corporation with:

(a) The interested shareholder; or

(b) Any other corporation, whether or not such other corporation is an interested shareholder of the issuing public corporation, that is or after the merger or consolidation would be an affiliate or associate of the interested shareholder;

(2) Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition in a single transaction or a series of transactions to or with the interested shareholder or any affiliate or associate of the interested shareholder of assets of the issuing public corporation or any subsidiary of the issuing public corporation:

(a) Having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the issuing public corporation; or

(b) Having an aggregate market value equal to ten percent or more of the aggregate market value of all the outstanding shares of the issuing public corporation;

(3) Any transaction or series of transactions which results in the issuance or transfer by the corporation or by any subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested shareholder if such stock has an aggregate market value equal to at least five percent of the aggregate market value of all the outstanding shares of the corporation except pursuant to the exercise of warrants or rights to purchase stock offered or distributed, or a dividend or distribution paid or made, pro rata to all shareholders of the issuing public corporation and except pursuant to the exercise or conversion of securities exercisable for or convertible into stock of such corporation or any such subsidiary, which securities were outstanding prior to the time that the interested shareholder became an interested shareholder;

(4) Any transaction involving the corporation or any subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the corporation or of any such subsidiary which is owned directly or indirectly by the interested shareholder except as a result of immaterial changes due to fractional share adjustments; or

(5) Any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the issuing public corporation, of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by or through the issuing public corporation or any subsidiary of the issuing public corporation.

Source: Laws 1988, LB 1110, § 7.

21-2438 Control, controlling, controlled by, or under common control with, defined.

Control, controlling, controlled by, or under common control with shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person who is the owner of ten percent or more of a corporation's outstanding voting stock shall be presumed to have control of the corporation in the absence of proof by a preponderance of the evidence to the contrary. A person shall not be considered to have control of a corporation if the person holds voting power, in good faith and not for the purpose of avoiding the Shareholders Protection Act, as an agent, bank, broker, nominee, custodian, or trustee for one or more owners who do not individually or as a group have control of the corporation.

Source: Laws 1988, LB 1110, § 8.

21-2439 Control-share acquisition, defined.

Control-share acquisition shall mean an acquisition, directly or indirectly, by an acquiring person of ownership of voting stock of an issuing public corpora-

tion that, except for the Shareholders Protection Act, would, when added to all other shares of the issuing public corporation owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the following ranges of voting power: (1) At least twenty percent but less than thirty-three and one-third percent; (2) at least thirty-three and one-third percent but less than or equal to fifty percent; or (3) over fifty percent.

The acquisition of any shares of an issuing public corporation shall not constitute a control-share acquisition if the acquisition is consummated in any of the following circumstances: (a) Before April 9, 1988; (b) pursuant to a contract existing before April 9, 1988; (c) pursuant to the laws of descent and distribution; (d) pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing the Shareholders Protection Act; (e) pursuant to a merger or plan of share exchange effected in compliance with sections 21-20,128 to 21-20,134 if the issuing public corporation is a party to the plan of merger or plan of share exchange; or (f) from a person who owns over fifty percent of the shares of an issuing public corporation and who acquired the shares prior to April 9, 1988.

All shares, the ownership of which is acquired within a one-hundred-twenty-day period, and all shares, the ownership of which is acquired pursuant to a plan to make a control-share acquisition, shall be deemed to have been acquired in the same acquisition.

Source: Laws 1988, LB 1110, § 9; Laws 1995, LB 109, § 211.

21-2440 Interested shareholder, defined.

Interested shareholder shall mean any person, other than the issuing public corporation or any subsidiary of the issuing public corporation, who is (1) the owner, directly or indirectly, of ten percent or more of the outstanding voting stock of such corporation or (2) an affiliate or associate of such corporation and at any time within the five-year period immediately prior to the date in question was the owner, directly or indirectly, of ten percent or more of the then outstanding voting stock of such corporation. For the purpose of determining whether a person is an interested shareholder, the number of shares of voting stock of such corporation deemed to be outstanding shall include shares deemed to be owned by such person but shall not include any other unissued shares of voting stock of such corporation which may be issuable pursuant to any agreement, arrangement, or understanding or upon exercise of conversion rights, warrants, or options or otherwise.

Source: Laws 1988, LB 1110, § 10.

21-2441 Interested shares, defined.

Interested shares shall mean the voting stock of an issuing public corporation owned by an acquiring person.

Source: Laws 1988, LB 1110, § 11.

21-2442 Issuing public corporation, defined.

Issuing public corporation shall mean:

(1) A domestic corporation (a) which has one hundred or more shareholders and (b) which has (i) its principal executive offices within Nebraska, (ii) assets

in Nebraska with a market value of at least ten million dollars, or (iii) ten percent or more of its shareholders resident in Nebraska or ten percent or more of its shares owned by Nebraska residents. For purposes of section 21-2453 only, the determination described in this subdivision shall be made as of the share acquisition date in question. The residence of a shareholder shall be presumed to be the address appearing on the records of the corporation; or

(2) A foreign corporation which has (a) one hundred or more shareholders, (b) its principal executive offices within Nebraska, (c) assets in Nebraska with a market value of at least ten million dollars, (d) ten percent or more of its shareholders resident in Nebraska or ten percent or more of its shares owned by Nebraska residents, and (e) at least five hundred employees in Nebraska. For purposes of section 21-2453 only, the determination described in this subdivision shall be made as of the share acquisition date in question. The residence of a shareholder shall be presumed to be the address appearing on the records of the corporation.

Source: Laws 1988, LB 1110, § 12.

21-2443 Owner, defined.

Owner, when used with respect to any stock of any class or series, shall mean a person who individually or with or through any affiliates or associates (1) beneficially owns such stock, directly or indirectly, (2) has (a) the right to acquire such stock, whether such right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants, or options or otherwise, except that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange or (b) the right to vote such stock pursuant to any agreement, arrangement, or understanding, except that a person shall not be deemed the owner of any stock if the agreement, arrangement, or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons, or (3) has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in subdivision (2)(b) of this section, or disposing of such stock with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

Source: Laws 1988, LB 1110, § 13.

21-2444 Person, defined.

Person shall mean any individual, corporation, partnership, limited liability company, unincorporated association, or other entity.

Source: Laws 1988, LB 1110, § 14; Laws 1993, LB 121, § 161.

21-2445 Share acquisition date, defined.

Share acquisition date, with respect to any person and any issuing public corporation, shall mean the date that the person first becomes an interested shareholder of the issuing public corporation.

Source: Laws 1988, LB 1110, § 15.

21-2446 Subsidiary of an issuing public corporation, defined.

Subsidiary of an issuing public corporation shall mean any other corporation of which voting stock having a majority of the votes entitled to be cast is owned, directly or indirectly, by such issuing public corporation.

Source: Laws 1988, LB 1110, § 16.

21-2447 Voting stock, defined.

Voting stock shall mean stock of any class or series entitled to vote generally in the election of directors.

Source: Laws 1988, LB 1110, § 17.

21-2448 Stock or other property; market value; how determined.

The market value of stock or property other than cash or stock shall be determined as follows:

(1) In the case of stock, by:

(a) The highest closing sale price during the thirty days immediately before the date in question of a share of the same class or series of stock on the composite tape for stocks listed on the New York Stock Exchange or, if the same class or series of stock is not quoted on the composite tape or if the same class or series of stock is not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the federal Securities Exchange Act of 1934 on which the same class or series of stock is listed;

(b) If the same class or series of stock is not listed on an exchange described in subdivision (1)(a) of this section, the highest closing bid quotation for a share of the same class or series of stock during the thirty days immediately before the date in question on the National Association of Securities Dealers Automated Quotation System or any similar system then in use; or

(c) If no quotations described in subdivision (1)(b) of this section are available, the fair market value on the date in question of a share of the same class or series of stock as determined in good faith by the board of directors of the issuing public corporation; and

(2) In the case of property other than cash or stock, the fair market value of the property on the date in question as determined in good faith by the board of directors of the issuing public corporation.

Source: Laws 1988, LB 1110, § 18.

21-2449 Acquiring person; deliver information statement; contents; amendment.

(1) An acquiring person may deliver to the issuing public corporation at its principal executive office an information statement which shall contain all of the following:

(a) The identity of the acquiring person and the identity of each affiliate and associate of the acquiring person;

(b) A reference that the information statement is made under the Shareholders Protection Act;

(c) The number and class or series of shares of the issuing public corporation owned, directly or indirectly, prior to the control-share acquisition by each such person;

(d) The number and class or series of shares of the issuing public corporation acquired or proposed to be acquired pursuant to the control-share acquisition by each such person and specification of the following ranges of voting power that the acquiring person in good faith believes would result from consummation of the control-share acquisition:

(i) At least twenty percent but less than thirty-three and one-third percent;

(ii) At least thirty-three and one-third percent but less than or equal to fifty percent; or

(iii) Over fifty percent; and

(e) The terms of the control-share acquisition or proposed control-share acquisition, including such objective facts as would be substantially likely to affect the decision of a shareholder with respect to voting on the control-share acquisition.

(2) If any material change occurs in the facts set forth in the information statement including any material increase or decrease in the number of shares of the issuing public corporation acquired or proposed to be acquired by such person, the acquiring person shall promptly deliver to the issuing public corporation at its principal executive office an amendment to the information statement containing information relating to such material change.

Source: Laws 1988, LB 1110, § 19.

21-2450 Consideration of voting rights; special meeting; conditions.

(1) If the acquiring person (a) makes a request in writing for a special meeting of the shareholders at the time of delivery of the information statement, (b) has made a control-share acquisition or has made a bona fide written offer to make a control-share acquisition, and (c) gives a written undertaking, within ten days after receipt by the issuing public corporation of the information statement, to pay or reimburse the issuing public corporation's expenses of a special meeting of the shareholders, a special meeting of the shareholders of the issuing public corporation shall be called for the purpose of considering the voting rights to be accorded to shares acquired or to be acquired pursuant to the control-share acquisition. The special meeting shall be held no later than fifty days after receipt of the information statement unless the acquiring person agrees to a later date. If the acquiring person so requests in writing at the time of delivery of the information statement, the special meeting shall not be held sooner than thirty days after receipt by the issuing corporation of the information statement.

(2) If no request for a special meeting is made, consideration of the voting rights to be accorded to shares acquired or to be acquired pursuant to the control-share acquisition shall be presented at the next special or annual meeting of the shareholders, notice of which has not been given prior to the receipt of the information statement, unless the matter of the voting rights becomes moot.

(3) The notice of the meeting shall be accompanied at a minimum by a copy of the information statement, a copy of any amendment to the information statement previously delivered to the issuing public corporation, and a state-

ment disclosing that the board of the issuing public corporation recommends approval of, expresses no opinion and is remaining neutral toward, recommends rejection of, or is unable to take a position with respect to according voting rights to shares acquired or to be acquired in the control-share acquisition. The notice of meeting shall be given at least thirty days before the meeting.

Source: Laws 1988, LB 1110, § 20.

21-2451 Control-share acquisition; voting rights of shares.

Shares acquired in a control-share acquisition shall have the same voting rights as other shares of the same class or series in all elections of directors but shall have voting rights on all other matters only if approved by a vote of shareholders of the issuing public corporation at a special or annual meeting of shareholders pursuant to the Shareholders Protection Act and, to the extent so approved, shall have the same voting rights as other shares of the same class or series. Any such control-share acquisition shall be approved by (1) the affirmative vote of the holders of a majority of the shares entitled to vote which are not interested shares and (2) in the case of any shares entitled to vote as a class, the affirmative vote of the holders of a majority of the shares of such class which are not interested shares.

Any shares acquired in a control-share acquisition which do not have voting rights accorded to them by approval of a resolution of shareholders shall regain such voting rights on transfer to a person, other than the acquiring person or any affiliate or associate of the acquiring person, unless the acquisition of the shares by the other person constitutes a control-share acquisition, in which case the voting rights of the shares shall be subject to the Shareholders Protection Act.

Source: Laws 1988, LB 1110, § 21.

21-2452 Business combination; prohibited activities.

Except as provided in section 21-2453, no issuing public corporation shall engage in any business combination with any interested shareholder of the issuing public corporation for a period of five years after the interested shareholder's share acquisition date unless the business combination or the acquisition of shares made by the interested shareholder on the interested shareholder's share acquisition date is approved by the board of directors of the issuing public corporation prior to the interested shareholder's share acquisition date.

Source: Laws 1988, LB 1110, § 22.

21-2453 Act; exemptions.

The Shareholders Protection Act shall not apply to any of the following:

(1) Unless the articles of incorporation provide otherwise, a business combination with an interested shareholder who was an interested shareholder immediately before April 9, 1988, unless the interested shareholder subsequently increased its ownership of the voting power of the outstanding voting stock of the issuing public corporation to a proportion in excess of the proportion of voting power that the interested shareholder owned immediately before April 9, 1988, excluding an increase approved by the board of directors of the issuing public corporation before the increase occurred;

(2) An issuing public corporation if the corporation's original articles of incorporation contain a provision expressly electing not to be governed by the act;

(3) An issuing public corporation if the corporation, by action of its board of directors, adopts an amendment to its bylaws within forty-five days of April 9, 1988, expressly electing not to be governed by the act, which amendment shall not be further amended by the board of directors;

(4) An issuing public corporation if the corporation does not have a class of voting stock that is listed on a national securities exchange or is authorized for quotation on an interdealer quotation system of a registered national securities association unless such circumstances result from action taken by an interested shareholder or a transaction in which a person becomes an interested shareholder;

(5) A business combination of an issuing public corporation with an interested shareholder which became an interested shareholder inadvertently and as soon as practicable divested sufficient shares so that the shareholder ceased to be an interested shareholder; or

(6) A business combination of an issuing public corporation with an interested shareholder which was an interested shareholder immediately before April 9, 1988, and inadvertently increased its ownership of the voting power of the outstanding voting stock of the issuing public corporation to a proportion in excess of the proportion of voting power that the interested shareholder owned immediately before April 9, 1988, if the interested shareholder divests itself of a sufficient amount of voting stock so that the interested shareholder is no longer the owner of a proportion of the voting power in excess of the proportion of voting power that the interested shareholder held immediately before April 9, 1988.

Source: Laws 1988, LB 1110, § 23.

ARTICLE 25
NAME PROTECTION

Section

21-2501 Act, how cited.

Sections 21-2501 to 21-2508 shall be known and may be cited as the Name Protection Act.

Source: Laws 1986, LB 1025, § 1.

21-2502 Registration of corporate name; procedure; term.

(1) Any corporation which has done business under a corporate name in the State of Nebraska for a period of twenty-five years or more may register such

name with the Secretary of State by filing in the office of the Secretary of State, in duplicate, on a form to be furnished by the Secretary of State, an application for registration of that name setting forth the following information:

(a) The name and street address of the corporation applying for such registration and the state of incorporation;

(b) The date the name was first used anywhere and the date such name was first used in this state by the applicant; and

(c) A statement that the applicant is the owner of the name and that no other person has the right to use such name in this state either in the identical form or in such near resemblance as might be calculated to deceive or to be mistaken therefor.

(2) The application shall be signed by an officer of the corporation applying, whose signature shall be acknowledged before a notary public. The application shall be accompanied by a filing fee of two hundred dollars payable to the Secretary of State. The Secretary of State shall return a duplicate stamped copy with the date of filing to the applicant or the representative submitting the application for filing.

(3) Registration of the corporate name under this section shall be effective for ten years from the date of registration and shall not be renewable by the registrant.

Source: Laws 1986, LB 1025, § 2.

21-2503 Corporation dissolution; change of name; effect; continued use of name; not required.

Any corporation may be dissolved or may change its name from the name registered in accordance with the Name Protection Act, and such dissolution or change of name shall not be deemed an abandonment of any name registered pursuant to such act. Continued use of a registered name shall not be a prerequisite to protection of a registered name under such act.

Source: Laws 1986, LB 1025, § 3.

21-2504 Corporate name; registration; assignment; procedure.

Any corporate name and its registration shall be assignable by instruments in writing duly executed. The instruments shall include the street address, city, and state of the assignee and shall be recorded with the Secretary of State, in duplicate, upon the payment of a fee of five dollars payable to the Secretary of State who, upon recording the assignment, shall return the duplicate copy, stamped with the date of filing, to the applicant or the representative submitting the assignment for filing.

Source: Laws 1986, LB 1025, § 4.

21-2505 Names registered; Secretary of State; duties.

The Secretary of State shall keep for public information a record of all names registered under the Name Protection Act.

Source: Laws 1986, LB 1025, § 5.

21-2506 Secretary of State; cancel registration; when.

The Secretary of State shall cancel from the register:

(1) Any registration for which the Secretary of State receives a voluntary request for cancellation from the registrant or the assignee of record;

(2) All registrations granted under the Name Protection Act upon completion of the term of ten years from the date of registration;

(3) Any registration concerning which a court of competent jurisdiction finds:

(a) That the registration was granted improperly; or

(b) That the registration was obtained fraudulently; or

(4) Any registration which a court of competent jurisdiction orders canceled on any ground.

Source: Laws 1986, LB 1025, § 6.

21-2507 False or fraudulent registration; liability.

Any person who for himself or herself or on behalf of any other person files or registers any name in the office of the Secretary of State under the Name Protection Act by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured in any court of competent jurisdiction.

Source: Laws 1986, LB 1025, § 7.

21-2508 Wrongful use of registered name; liability; action to enjoin; other remedies.

Any person shall be liable in a civil action by the owner of a registered name for a wrongful use of such name, and any owner of a name registered under the Name Protection Act may enjoin the wrongful use of the registered name. Any court of competent jurisdiction may grant an injunction to restrain such use and may require the defendant to pay to such owner all profits derived from and all damages suffered by reason of such wrongful use. Proof of monetary damage, loss of profits, competition between the parties, or intent to deceive shall not be required. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court, in its discretion, may award attorney's fees to the prevailing party if (1) the party complaining of the improper or unauthorized use of a registered name has brought an action which he or she knew to be groundless or (2) the party charged with the improper or unauthorized use of a registered name has willfully engaged in the improper or unauthorized use of the registered name. The relief provided in this section is in addition to remedies otherwise available for the same conduct under the common law or other statutes of this state.

Source: Laws 1986, LB 1025, § 8.

ARTICLE 26

LIMITED LIABILITY COMPANIES

Section

Section
21-2652. Merger or consolidation; domestic and foreign entities; conditions; effect.
21-2653. Notices; publication; filing.
21-2654. Charging order; authorized; procedure; effect; powers of court.

21-2601 Act, how cited; termination.

Sections 21-2601 to 21-2654 shall be known and may be cited as the Limited Liability Company Act. The act terminates on January 1, 2013.

Source: Laws 1993, LB 121, § 1; Laws 1994, LB 884, § 25; Laws 1997, LB 44, § 7; Laws 2006, LB 647, § 4; Laws 2009, LB35, § 2; Laws 2010, LB888, § 99.
Termination date January 1, 2013.

21-2601.01 Terms, defined.

For purposes of the Limited Liability Company Act, unless the context otherwise requires:

(1) Certificate of registration or registration certificate from or by the regulating board means either a document prepared and issued by the regulating board or the electronic accessing of the regulating board's licensing records by the Secretary of State;

(2) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant, public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and

(3) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the limited liability company is organized to render.

Source: Laws 2006, LB 647, § 5; Laws 2008, LB379, § 22.
Termination date January 1, 2013.

21-2602 Organization of company; purpose; deemed a syndicate; exceptions.

(1) A limited liability company may be organized pursuant to the Limited Liability Company Act for any lawful purpose other than for the purpose of being an insurer as described in section 44-102.

(2) A limited liability company organized pursuant to the act shall be deemed to be a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska, except that a limited liability company in which the members are members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day-to-day labor and management of the farm or

ranch, and none of whom are nonresident aliens, shall not be deemed to be a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska.

Source: Laws 1993, LB 121, § 2; Laws 1994, LB 884, § 26; Laws 1996, LB 681, § 183; Laws 2003, LB 127, § 1.
Termination date January 1, 2013.

21-2603 Powers.

A limited liability company organized pursuant to and existing under the Limited Liability Company Act may:

(1) Sue, be sued, complain, and defend in its name;

(2) Purchase, take, receive, lease, and otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or an interest in real or personal property wherever situated;

(3) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(4) Lend money to and otherwise assist its members;

(5) Purchase, take, receive, subscribe for, and otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, and otherwise dispose of, use, and deal in and with shares or other interests in or obligations of other limited liability companies, domestic or foreign corporations, associations, general or limited partnerships, or individuals or direct or indirect obligations of the United States or of any government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(6) Make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;

(7) Lend money for its proper purposes, invest and reinvest its funds, and take and hold real property and personal property for the payment of funds loaned or invested;

(8) Conduct its business, carry on its operations, and have and exercise the powers granted by the act in any state, territory, district, or possession of the United States or in any foreign country;

(9) Elect or appoint one or more managers and agents of the limited liability company and define their duties and fix their compensation;

(10) Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of this state, for the administration and regulation of the affairs of the limited liability company;

(11)(a) Indemnify a member, manager, or former member or manager of the limited liability company against expenses actually and reasonably incurred in connection with the defense of a civil or criminal action, suit, or proceeding in which such person is made a party by reason of being or having been a member or manager except in matters as to which such person is adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty and (b) make any other indemnification that is authorized by the articles of organization or by an article of the operating agreement or resolution adopted by the members after notice;

(12) Cease its activities and surrender its certificate of organization;

(13) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized;

(14) Become a member of a general partnership, limited partnership, joint venture or similar association, or other limited liability company; and

(15) Render a professional service within or without this state.

Source: Laws 1993, LB 121, § 3; Laws 1997, LB 631, § 1; Laws 2006, LB 647, § 6.
Termination date January 1, 2013.

21-2604 Name.

(1) The words limited liability company, ltd. liability company, or ltd. liability co., or the abbreviation L.L.C. or LLC, shall be the last words of the name of every limited liability company, and the limited liability company name may not:

(a) Contain a word or phrase which indicates or implies that it is organized for a purpose other than one or more of the purposes contained in its articles of organization; or

(b) Except as provided in subsection (2) of this section, be the same as or deceptively similar to the name of a limited liability company or corporation existing under the laws of this state or a foreign limited liability company or corporation authorized to transact business in this state or a name the exclusive right to which is reserved in any manner provided under the laws of this state.

(2) A limited liability company may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of the Secretary of State, one or more of the names described in subsection (1) of this section. The Secretary of State shall authorize use of the name applied for if:

(a) The other limited liability company or business entity consents to the use in writing; or

(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction that establishes the applicant's right to use the name applied for in this state.

(3) Omission of the words or an abbreviation required by subsection (1) of this section in the use of the name of the limited liability company shall render any person who participates in the omission or who knowingly acquiesces in such omission liable for indebtedness, damage, or liability caused by the omission.

(4) Identification as a limited liability company in the manner required by subsection (1) of this section shall appear at the end of the name of the limited liability company on all correspondence, stationery, checks, invoices, and documents executed by the limited liability company.

Source: Laws 1993, LB 121, § 4; Laws 1997, LB 631, § 2; Laws 2008, LB907, § 3.
Termination date January 1, 2013.

21-2604.01 Reservation of name.

(1) The exclusive right to the use of a name may be reserved by:

(a) Any person intending to organize a limited liability company under the Limited Liability Company Act and to adopt that name;

(b) Any domestic limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;

(c) Any foreign limited liability company intending to register in this state and currently using or intending to adopt that name; and

(d) Any person intending to organize a foreign limited liability company and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, he or she shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Such reservation may be renewed or canceled by filing a notice of such fact on forms prescribed by the Secretary of State. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) A fee as set forth in section 21-2634 shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation, and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

Source: Laws 1997, LB 44, § 8.
Termination date January 1, 2013.

21-2605 Formation.

One or more persons may form a limited liability company by executing and delivering articles of organization in duplicate to the Secretary of State.

Source: Laws 1993, LB 121, § 5; Laws 1994, LB 884, § 27; Laws 1997, LB 631, § 3.
Termination date January 1, 2013.

21-2606 Articles of organization.

(1) The articles of organization of a limited liability company shall set forth:

(a) The name of the limited liability company;

(b) The purpose for which the limited liability company is organized but, if the limited liability company provides a professional service, the articles of organization shall contain a statement of the profession to be practiced by the limited liability company;

(c) The address of its principal place of business in this state and the name and address of its current registered agent in this state. A post office box number may be provided in addition to the street address;

(d) The total amount of cash contributed to stated capital and a description and agreed value of property other than cash contributed;

(e) The total additional contributions agreed to be made by all members and the times at which or events upon the happening of which the contributions will be made;

(f) The right, if given, of the members to admit additional members and the terms and conditions of the admission; and

(g) If the limited liability company is to be managed by one or more managers, the names and addresses of the persons who will serve as managers until the successor is elected, or if the management of a limited liability company is reserved to the one or more classes of members, the names and addresses of such members.

(2) The articles of organization of a limited liability company may set forth:

(a) The period of its duration, which may be perpetual. If the articles of organization do not state a period of duration, the limited liability company shall have perpetual existence; and

(b) Any other provision not inconsistent with law which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions which are required or permitted to be set out in the operating agreement of the limited liability company.

(3) It shall not be necessary to set out in the articles of organization any of the powers enumerated in the Limited Liability Company Act.

Source: Laws 1993, LB 121, § 6; Laws 1994, LB 884, § 28; Laws 1997, LB 631, § 4; Laws 2006, LB 647, § 7; Laws 2008, LB379, § 23. Termination date January 1, 2013.

21-2607 Filing of articles of organization and current registration certificate.

(1) Duplicate originals of the articles of organization of a limited liability company shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the limited liability company is organized to render a professional service, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such articles of organization and fees. If the Secretary of State finds that the articles of organization conform to law and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

(a) Endorse on each of the duplicate originals the word filed and the month, day, and year of the filing thereof;

(b) File one of the duplicate originals and any registration certificate, if applicable, in his or her office; and

(c) Issue a certificate of organization to which he or she shall affix the other duplicate original.

(2) The certificate of organization, together with a duplicate original of the articles of organization affixed to it by the Secretary of State, shall be returned to the principal office of the limited liability company or to its representative.

Source: Laws 1993, LB 121, § 7; Laws 2004, LB 16, § 3; Laws 2006, LB 647, § 8.
Termination date January 1, 2013.

21-2608 Effect of issuance of certificate of organization.

(1) Upon the issuance of the certificate of organization, the limited liability company shall be considered organized unless a delayed effective date is stated in the articles of organization. The certificate of organization shall be conclu-

sive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized pursuant to the Limited Liability Company Act except as against this state in a proceeding to cancel or revoke the certificate of organization or for involuntary dissolution of the limited liability company.

(2) A limited liability company shall not transact business or incur indebtedness, except business or indebtedness that is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the Secretary of State has issued a certificate of organization or, if later, any delayed effective date of organization stated in the articles of organization.

Source: Laws 1993, LB 121, § 8; Laws 1997, LB 631, § 5.
Termination date January 1, 2013.

21-2609 Registered office and registered agent to be maintained.

A limited liability company shall have and continuously maintain in this state:

(1) A registered office which may but need not be the same as its place of business; and

(2) A registered agent having a business office identical with the registered office, which agent may be an individual resident in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state.

Source: Laws 1993, LB 121, § 9.
Termination date January 1, 2013.

21-2610 Change of registered office or registered agent.

(1) A limited liability company, whether foreign or domestic, may change its registered office or registered agent upon filing with the Secretary of State a statement setting forth:

(a) The name of the limited liability company;

(b) The street address of its current registered office;

(c) If the address of its registered office is to be changed, the new address;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If its registered agent is to be changed, the name of the successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) That the change was authorized by an affirmative vote of a majority in interest of the members of the limited liability company or in any other manner authorized by the articles of organization.

(2) The statement shall be executed by an authorized representative of the limited liability company and delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section, he or she shall file the statement in his or her office, and upon filing, the change of address of the registered office or the appointment of a new registered agent shall be effective.

(3) A registered agent may resign as registered agent of a limited liability company upon filing a written notice, executed in duplicate, with the Secretary of State who shall mail a copy thereof to the limited liability company at its place of business if known to the Secretary of State, otherwise at its registered office. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of notice by the Secretary of State.

(4) If a registered agent changes the street address or post office box number for his or her business office, he or she may change the street address, or, if one exists, the post office box number, of the registered office of any limited liability company for which he or she is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the limited liability company has been notified of the change.

Source: Laws 1993, LB 121, § 10; Laws 1994, LB 884, § 29; Laws 1997, LB 631, § 6; Laws 2006, LB 647, § 9; Laws 2008, LB379, § 24.
Termination date January 1, 2013.

21-2611 Failure to maintain registered agent or registered office or pay annual fee.

If a limited liability company has failed for ninety days to appoint and maintain a registered agent in this state, has failed for ninety days after change of its registered office or registered agent to file with the Secretary of State a statement of the change, or has failed to pay any fee required by section 21-2634, it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights, or privileges acquired under the laws of this state. The Secretary of State shall mail a notice of failure to comply to the limited liability company at its registered office by certified mail. Unless the limited liability company comes into compliance within thirty days after the delivery of notice, the limited liability company shall be deemed to be defunct and to have forfeited its certificate of organization. A defunct limited liability company may at any time after the forfeiture of its certificate be revived and reinstated by filing any necessary documents, paying any fees, and paying an additional fee of one hundred dollars. A revived and reinstated limited liability company shall have the same force and effect as if its existence had not been defunct.

Source: Laws 1993, LB 121, § 11; Laws 1994, LB 884, § 30; Laws 2008, LB907, § 4.
Termination date January 1, 2013.

21-2612 Liability of members, managers, and employees.

(1) The members and managers of a limited liability company shall not be liable under a judgment, decree, or order of a court or in any other manner for a debt, obligation, or liability of the limited liability company. Except as otherwise specifically set forth in the Limited Liability Company Act, no member, manager, employee, or agent of a limited liability company shall be personally liable under any judgment, decree, or order of any court, agency, or other tribunal in this or any other state, or on any other basis, for any debt, obligation, or liability of the limited liability company.

(2) Any member, manager, or employee of a limited liability company with the duty to collect, account for, or pay over any taxes imposed upon a limited liability company or with the authority to decide whether the limited liability company will pay taxes imposed upon a limited liability company shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a limited liability company perform such act. Such taxes shall be collected in the same manner as provided under section 77-1783.01.

Source: Laws 1993, LB 121, § 12; Laws 1994, LB 884, § 31; Laws 1997, LB 631, § 7; Laws 2005, LB 216, § 1; Laws 2008, LB914, § 1. Termination date January 1, 2013.

21-2613 Service of process.

(1) The registered agent appointed by a limited liability company shall be an agent of the limited liability company upon whom any process, notice, or demand required or permitted by law to be served may be served.

(2) If a limited liability company fails to appoint or maintain a registered agent in this state or if the registered agent cannot with reasonable diligence be found at the registered office, the limited liability company shall be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service shall be perfected under this subsection at the earliest of:

(a) The date the limited liability company receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the limited liability company; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

(3) This section shall not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

Source: Laws 1993, LB 121, § 13; Laws 2006, LB 647, § 10. Termination date January 1, 2013.

21-2614 Contributions to capital; stated capital, defined.

Contributions to capital by a member of a limited liability company may consist of any tangible or intangible property or benefit to the company. For purposes of the Limited Liability Company Act, stated capital shall mean the sum of initial capital contributed to a limited liability company which serves as a minimum basis for capitalization.

Source: Laws 1993, LB 121, § 14; Laws 1994, LB 884, § 32. Termination date January 1, 2013.

21-2615 Management.

Unless the articles of organization provide to the contrary, management of a limited liability company shall be vested in each member in proportion to such person's contribution to the capital of the limited liability company as adjusted from time to time to properly reflect any additional contribution or withdrawal by another member. If the articles of organization provide for the management of the limited liability company by one or more managers, the managers shall be elected by one or more classes of members in a manner provided in the

operating agreement. The managers shall also hold the offices and have the responsibilities accorded to them by such members and as set out in the operating agreement.

Source: Laws 1993, LB 121, § 15; Laws 1994, LB 884, § 33; Laws 1997, LB 631, § 8.
Termination date January 1, 2013.

21-2616 Contracting debts.

Debt shall not be contracted and liability shall not be incurred by or on behalf of a limited liability company except by a manager, if management of the limited liability company has been vested in a manager, or by a member of one or more classes, if management of the limited liability company is retained by a member of such class.

Source: Laws 1993, LB 121, § 16; Laws 1997, LB 631, § 9.
Termination date January 1, 2013.

21-2617 Property.

Real and personal property owned or purchased by a limited liability company shall be held and owned and conveyance shall be made in the name of the limited liability company. Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company if executed by a manager of a limited liability company having a manager or, if management has been retained by one or more classes of members, by a member of any such class.

Source: Laws 1993, LB 121, § 17; Laws 1997, LB 631, § 10.
Termination date January 1, 2013.

21-2617.01 Biennial report; contents; dissolution of company; revocation of certificate; Secretary of State; powers; procedure; revival or restoration; when.

(1) A limited liability company and a foreign limited liability company authorized to transact business in the state shall file a biennial report in the office of the Secretary of State which contains:

(a) The name of the limited liability company and the state or other jurisdiction under whose laws the limited liability company or foreign limited liability company is formed; and

(b) The street address of the limited liability company's principal place of business in this state or, if the limited liability company does not have an office in this state, the name and street address of the company's agent for service of process.

(2) Commencing on January 1, 2007, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited liability company files articles of organization or a foreign limited liability company becomes authorized to transact business in this state. A correction or amendment to a biennial report may be filed at any time.

(3) The Secretary of State may dissolve a limited liability company or revoke the certificate of authority to transact business of a foreign limited liability company that fails to file a biennial report when due or pay the required filing fee provided in section 21-2634. To do so, the Secretary of State shall provide

the company at least sixty days' written notice of intent to dissolve or revoke. The notice shall be mailed to the company at its principal office or the office of the agent for service of process as set forth in the articles of organization, biennial report, or other filing designating the agent for service of process, whichever was most recently filed. The notice shall specify the biennial report that has not been filed, the fee that has not been paid, and the effective date of the dissolution or revocation. The dissolution or revocation is not effective if the biennial report is filed and the fee is paid before the effective date of the dissolution or revocation.

(4) Revival or restoration of the authority of a company dissolved or whose certificate of authority has been revoked pursuant to this section shall be accomplished as provided in section 21-2611, and upon completion of such requirements for revival or restoration, the revival or restoration shall relate back to the date of dissolution or revocation as if such dissolution or revocation had not occurred.

Source: Laws 2006, LB 647, § 11.
Termination date January 1, 2013.

21-2618 Division of profits.

A limited liability company may divide the profits of its business and distribute the profits to the members of the limited liability company upon the basis stipulated in the operating agreement if, after distribution is made, the aggregate fair market value of the assets of the limited liability company is in excess of all liabilities of the limited liability company other than liabilities to members on account of their contributions to capital.

Source: Laws 1993, LB 121, § 18; Laws 1997, LB 631, § 11.
Termination date January 1, 2013.

21-2619 Withdrawal or reduction of members' contributions to capital.

(1) A member shall not receive out of limited liability company property any part of such member's contributions to capital until:

(a) All liabilities of the limited liability company other than liabilities to members on account of their contributions to capital have been paid or there remains property of the limited liability company with an aggregate fair market value sufficient to pay them;

(b) The members constituting at least a majority in interest or such greater interest as specified in the articles of organization have consented unless the return of the contributions to capital may be rightfully obtained pursuant to section 21-2625; and

(c) The articles of organization are canceled or amended to set out any withdrawal or reduction of stated capital.

(2) In the absence of a statement in the articles of organization to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of such member's contributions to capital, shall have no right to demand or receive specific property in satisfaction of a withdrawal or reduction of such member's capital accounts.

(3) A member of the limited liability company who has withdrawn from membership, but whose capital account has not been liquidated pursuant to the articles of organization or the operating agreement, shall have the status of a

transferee as provided in section 21-2621 unless otherwise provided in the operating agreement.

Source: Laws 1993, LB 121, § 19; Laws 1994, LB 884, § 34; Laws 1996, LB 681, § 184; Laws 1997, LB 631, § 12.
Termination date January 1, 2013.

21-2620 Liability of member to company.

(1) A member shall be liable to the limited liability company:

(a) For the difference between such member's contributions to stated capital as actually made and as stated in the articles of organization as having been made; and

(b) For any unpaid contribution to stated capital which such member agreed in the articles of organization to make in the future at the time and on the conditions stated in the articles of organization.

(2) A member holds as trustee for the limited liability company:

(a) Specific property stated in the articles of organization as contributed by such member but which was not contributed or which has been wrongfully or erroneously returned; and

(b) Money or other property wrongfully paid or conveyed to such member on account of such member's contributions to capital.

(3) The liabilities of a member as set out in this section may be waived or compromised only by the consent of all members. A waiver or compromise shall not affect the right of a creditor of the limited liability company who extended credit or whose claim arose after the filing and before a cancellation or amendment of the articles of organization to enforce the liabilities.

(4) When a contributor has rightfully received the return in whole or in part of such person's contributions to capital, the contributor shall be liable to the limited liability company for any sum, not in excess of the amount returned with interest, necessary to discharge the liability to all creditors of the limited liability company who extended credit or whose claims arose before the return for a period of three years from the date of distributions.

Source: Laws 1993, LB 121, § 20; Laws 1994, LB 884, § 35; Laws 1997, LB 631, § 13.
Termination date January 1, 2013.

21-2621 Interest in company; transferability of interest; admission of additional members.

The interest of a member in a limited liability company constitutes the personal estate of the member and may be transferred or assigned as provided in the articles of organization or operating agreement. Unless otherwise provided in the articles of organization or the operating agreement, if a majority in interest of the members of the limited liability company other than the member proposing to dispose of such member's interest do not approve of the proposed transfer or assignment of part or all of the member's interest to a nonmember by written consent, the nonmember transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company or to become a member, and the nonmember transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of capital to which the

transferring member would otherwise be entitled. Unless otherwise provided in the articles of organization or the operating agreement, additional members shall be admitted only upon an affirmative vote of a majority in interest of the current members of the limited liability company.

Source: Laws 1993, LB 121, § 21; Laws 1994, LB 884, § 36; Laws 1996, LB 681, § 185; Laws 1997, LB 631, § 14.
Termination date January 1, 2013.

21-2622 Dissolution.

(1) A limited liability company shall be dissolved only upon the occurrence of the following:

(a) The expiration of the period fixed, if any, for the duration of the limited liability company;

(b) The unanimous written agreement of all members;

(c) Any other event described in the articles of organization; or

(d) The judicial dissolution of the limited liability company.

(2) On application by or for any member, the district court may decree the dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business of such limited liability company in conformity with its articles of organization or its operating agreement.

Source: Laws 1993, LB 121, § 22; Laws 1994, LB 884, § 37; Laws 1996, LB 681, § 186; Laws 1997, LB 631, § 15.
Termination date January 1, 2013.

21-2623 Filing of statement of intent to dissolve.

(1) Following the occurrence of any of the events specified in section 21-2622 effecting the dissolution of the limited liability company, the limited liability company shall execute a statement of intent to dissolve in such form as prescribed by the Secretary of State.

(2) Duplicate originals of the statement of intent to dissolve shall be delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section and all fees and taxes have been paid, he or she shall:

(a) Endorse on each of such duplicate originals the word filed and the month, day, and year of the filing thereof;

(b) File one of the duplicate originals in his or her office; and

(c) Return the other duplicate original to the limited liability company or its representative.

Source: Laws 1993, LB 121, § 23.
Termination date January 1, 2013.

21-2624 Effect of filing of dissolving statement.

Upon the filing by the Secretary of State of a statement of intent to dissolve, the limited liability company shall cease to carry on its business except as may be necessary for the winding up of its business. The separate existence of the limited liability company shall continue until a certificate of dissolution has

been issued by the Secretary of State or until a decree dissolving the limited liability company has been entered by a court of competent jurisdiction.

Source: Laws 1993, LB 121, § 24.
Termination date January 1, 2013.

21-2625 Distribution of assets upon dissolution.

(1) In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:

(a) Liabilities to creditors other than members of the limited liability company on account of their contributions to capital, in the order of priority provided by law;

(b) Liabilities to members of the limited liability company in respect of their share of the profits and other compensation by way of income on their contributions; and

(c) Liabilities to members of the limited liability company in respect of their contributions to capital.

(2) Subject to any statement in the operating agreement, members shall share in the limited liability company assets in respect to their claims for contributions to capital and in respect to their claims for profits or for compensation by way of income on their contributions to capital, respectively, in proportion to the respective amounts of the claim.

Source: Laws 1993, LB 121, § 25.
Termination date January 1, 2013.

21-2626 Articles of dissolution.

When all debts, liabilities, and obligations have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets have been distributed to the members, articles of dissolution shall be executed in duplicate and verified by the person signing the statement. The statement shall set forth:

(1) The name of the limited liability company;

(2) That the Secretary of State has filed a statement of intent to dissolve the company and the date on which the statement was filed;

(3) That all debts, liabilities, and obligations have been paid and discharged or that adequate provision has been made therefor;

(4) That all the remaining property and assets have been distributed to the members in accordance with their respective rights and interests; and

(5) That there are no suits pending against the limited liability company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

Source: Laws 1993, LB 121, § 26.
Termination date January 1, 2013.

21-2627 Filing of articles of dissolution; issuance of certificate of dissolution.

(1) Duplicate originals of the articles of dissolution of a limited liability company shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of dissolution conform to the requirements of section 21-2626 and all fees and taxes have been paid, he or she shall:

(a) Endorse on each of such duplicate originals the word filed and the month, day, and year of the filing thereof;

(b) File one of the duplicate originals in his or her office; and

(c) Issue a certificate of dissolution to which he or she shall affix the other duplicate original.

(2) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, shall be returned to the representative of the dissolved limited liability company. Upon the issuance of the certificate of dissolution, the existence of the limited liability company shall cease except for the purpose of suits, other proceedings, and appropriate action as provided in the Limited Liability Company Act. The manager at the time of dissolution shall thereafter be trustee for the members and creditors of the dissolved limited liability company and as such shall have authority to distribute any property of the limited liability company discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of such dissolved limited liability company.

(3) The certificate of organization of a limited liability company shall be canceled by the Secretary of State upon issuance of the certificate of dissolution.

Source: Laws 1993, LB 121, § 27.
Termination date January 1, 2013.

21-2628 Amendment of articles of organization.

(1) The articles of organization of a limited liability company shall be amended when:

(a) There is a change in the name of the limited liability company;

(b) There is a change in the purpose for which the limited liability company is organized;

(c) There is a change in stated capital that reduces the stated capital below the amount in the articles of organization;

(d) There is a change in the time, if any, stated in the articles of organization for the dissolution of the limited liability company;

(e) A time is fixed for the dissolution of the limited liability company if no time is specified in the articles of organization; or

(f) The members desire to make a change in any other statement in the articles of organization so the articles will accurately represent the agreement between the members.

(2) The form for evidencing an amendment to the articles of organization of a limited liability company shall be prescribed by the Secretary of State and shall contain such terms and provisions as determined by the Secretary of State. The articles of organization may be amended upon the affirmative vote of a majority in interest of the members or in such other manner as is provided in the articles of organization. The amendment shall be executed by an authorized representative of the limited liability company. Duplicate originals of the amendment shall be forwarded to the Secretary of State for filing with the filing fee.

Source: Laws 1993, LB 121, § 28; Laws 1994, LB 884, § 38; Laws 1996, LB 681, § 187; Laws 1997, LB 631, § 16.
Termination date January 1, 2013.

21-2629 Parties to actions.

A member of a limited liability company shall not be a proper party to proceedings by or against a limited liability company except when the object is to enforce a member's right against or liability to the limited liability company.

Source: Laws 1993, LB 121, § 29.
Termination date January 1, 2013.

21-2630 Waiver of notice.

When notice is required to be given to a member or manager under the Limited Liability Company Act, the articles of organization, or the operating agreement, a waiver in writing signed by the person or persons entitled to the notice, whether before or after the time stated in the notice, shall be the equivalent to the giving of notice.

Source: Laws 1993, LB 121, § 30.
Termination date January 1, 2013.

21-2631 Professional service; license and registration certificate required; filing.

(1) Each member, manager, employee, or agent of a limited liability company organized under the Limited Liability Company Act who renders a professional service shall hold a valid license or otherwise be duly authorized to render that professional service under the law of this state if such person renders a professional service within this state or under the law of the state, territory, or other jurisdiction in which such person renders the professional service.

(2) Before rendering a professional service, the limited liability company shall (a)(i) file with the Secretary of State a registration certificate issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and residence address of every member as of the last day of the month preceding the filing, and (ii) certify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise authorized to perform the professional service for which the limited liability company is organized or (b) comply with and qualify under the procedures set forth in subsection (2) of section 21-2631.01.

(3) The registration certificate requirements of this section and sections 21-2631.01 to 21-2632 shall apply to both domestic and foreign limited liability companies.

Source: Laws 1993, LB 121, § 31; Laws 1994, LB 884, § 39; Laws 1996, LB 681, § 188; Laws 1997, LB 631, § 17; Laws 2004, LB 16, § 4; Laws 2006, LB 647, § 13.
Termination date January 1, 2013.

21-2631.01 Registration certificate; application; contents; issuance; fees; display; Secretary of State; access electronic licensing records; verification; suspension.

(1) An application for issuance of a registration certificate shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all members, managers, and professional employees of the limited liability company, the street address at which the applicant proposes to perform

a professional service, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, and professional employee of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession of the applicant and that each member, manager, or professional employee required by law to be licensed is not otherwise disqualified from performing the professional service of the applicant, such regulatory body shall certify in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body that the proposed or existing limited liability company complies with the provisions of the Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such registration certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

One copy of such certificate shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and one copy shall be filed with the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate shall be filed in the office of the Secretary of State with the articles of organization. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(2) When licensing records of regulating boards are electronically accessible to the Secretary of State, the Secretary of State shall access the records. The access of the records shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The limited liability company shall file with the Secretary of State an application setting forth the names of all members, managers, and professional employees of such limited liability company who are required by law to be licensed or otherwise authorized to practice the professional service for which the limited liability company is organized as of the last day of the month preceding the date of application and shall file with the Secretary of State an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee of fifty dollars.

The Secretary of State shall verify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise legally authorized to render the same professional service or ancillary service as those which the limited liability company renders through electronic accessing of the regulating board's records. If any member, manager, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the limited liability company was organized to render, the limited liability company shall be suspended. The suspension shall remain in effect and a biennial report shall not be filed in the office of the Secretary of State until the limited liability company attests in writing that all members, managers, or professional employees are duly licensed or otherwise legally authorized to render the appropriate service and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, or professional employees are no longer members, managers, or professional employees of the limited liability company.

Source: Laws 1994, LB 884, § 40; Laws 1996, LB 681, § 189; Laws 2006, LB 647, § 14.
Termination date January 1, 2013.

21-2631.02 Registration certificate; expiration; filing; not transferable or assignable.

Each registration certificate issued to a limited liability company pursuant to section 21-2631.01 shall expire by its own terms one year from the date of issuance and may not be renewed. Each limited liability company shall annually apply (1) to its regulatory body for a registration certificate in the manner provided in subsection (1) of section 21-2631.01 or (2) to the Secretary of State pursuant to subsection (2) of section 21-2631.01 if the records of the regulating body are electronically accessible to the Secretary of State. A certificate or application shall be filed annually with the Secretary of State within thirty days before the expiration date of the last certificate or application on file in the office of the Secretary of State or the limited liability company shall be suspended. Registration certificates shall not be transferable or assignable.

Source: Laws 1994, LB 884, § 41; Laws 1996, LB 681, § 190.
Termination date January 1, 2013.

21-2631.03 Registration certificate; suspension or revocation; procedures.

A regulatory body may, upon a form prescribed by it, suspend or revoke any registration certificate issued to any limited liability company pursuant to subsection (1) of section 21-2631.01 upon the suspension or revocation of the license or other authorization to perform professional service of any member, manager, or professional employee of a holder of a certificate. Notice of such revocation shall be provided the limited liability company affected by sending by certified or registered mail a certified copy of such revocation to the limited liability company at its principal place of business set forth in the registration certificate so revoked. At the same time, the regulatory body shall forward by regular mail a certified copy of such revocation to the Secretary of State who shall remove the suspended or revoked registration certificate from his or her files and deliver it to the regulatory body.

Source: Laws 1994, LB 884, § 42; Laws 1996, LB 681, § 191.
Termination date January 1, 2013.

21-2632 Professional service; regulation of practice.

Nothing in the Limited Liability Company Act is intended to restrict or limit in any manner the authority and duty of any regulatory body licensing professionals within the state to license such individuals rendering a professional service or to regulate the practice of any profession that is within the jurisdiction of the regulatory body licensing such professionals within the state notwithstanding that the person is a member, manager, employee, or agent of a limited liability company and rendering a professional service or engaging in the practice of the profession through a limited liability company.

Source: Laws 1993, LB 121, § 32; Laws 1994, LB 884, § 43; Laws 2006, LB 647, § 15.
Termination date January 1, 2013.

21-2632.01 Limited liability company; professional service; limitation of services.

A limited liability company which provides a professional service shall render only one type of professional service and such services as may be ancillary

thereto and shall not engage in any other profession. No limited liability company organized under the Limited Liability Company Act may render a professional service except through its members, managers, and professional employees who are duly licensed or otherwise legally authorized to render such professional service within this state. This section shall not be interpreted to include in the term professional employee, as used in the act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering a professional service to the public for which a license or other legal authorization is required.

Source: Laws 2006, LB 647, § 12; Laws 2008, LB379, § 25.
Termination date January 1, 2013.

21-2633 Taxation.

A limited liability company shall be classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.

Source: Laws 1993, LB 121, § 33; Laws 1997, LB 631, § 18.
Termination date January 1, 2013.

Cross References

Taxation of members, credit, see section 77-2734.01.

21-2634 Fees.

The filing fee for all filings pursuant to the Limited Liability Company Act, including amendments, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization and for filing an application for a certificate of authority as a foreign limited liability company shall be one hundred dollars plus such recording fees and ten dollars for a certificate. There shall be no recording fee collected for the filing of a biennial report or any corrections or amendments thereto. A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file pursuant to the act. The fees for filings pursuant to the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

Source: Laws 1993, LB 121, § 34; Laws 1994, LB 884, § 44; Laws 2006, LB 647, § 16.
Termination date January 1, 2013.

21-2635 Unauthorized assumption of powers.

All persons who assume to act as a limited liability company without authority to do so shall be jointly and severally liable for all debts and liabilities of the company.

Source: Laws 1993, LB 121, § 35.
Termination date January 1, 2013.

21-2636 Legislative intent; recognition outside the state.

It is the intent of the Legislature that the legal existence of limited liability companies organized under the Limited Liability Company Act be recognized outside the boundaries of this state and that, subject to any reasonable require-

ment of registration, a domestic limited liability company transacting business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

Source: Laws 1993, LB 121, § 36.
Termination date January 1, 2013.

21-2637 Foreign limited liability company; law governing; rights.

The law of the state or other jurisdiction under which a foreign limited liability company is formed shall govern its formation and internal affairs and the liability of its members and managers. A foreign limited liability company shall not be denied a certificate of authority by reason of any difference between those laws and the laws of this state. A foreign limited liability company holding a valid certificate of authority in this state shall have no greater rights and privileges than a domestic limited liability company. The certificate of authority shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

Source: Laws 1993, LB 121, § 37.
Termination date January 1, 2013.

21-2638 Foreign limited liability company; certificate of authority; application.

Before doing business in this state, a foreign limited liability company shall obtain a certificate of authority from the Secretary of State. In order to obtain a certificate of authority, a foreign limited liability company shall submit to the Secretary of State, together with payment of the fee required by the Limited Liability Company Act, an original executed by a member or manager, together with a duplicate original, of an application for a certificate of authority as a foreign limited liability company, setting forth:

(1) The name of the foreign limited liability company;

(2) The state or other jurisdiction or country where organized, the date of its organization, and a statement issued by an appropriate authority in that jurisdiction that the foreign limited liability company exists in good standing under the laws of the jurisdiction of its organization;

(3) The nature of the business or purposes to be conducted or promoted in this state;

(4) The address of the registered office and the name and street address of the current resident agent for service of process required to be maintained by the act. A post office box number may be provided in addition to the street address; and

(5) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such foreign limited liability company is entitled to a certificate of authority to transact business in this state and to determine and assess the fees and taxes prescribed by the laws of this state.

Source: Laws 1993, LB 121, § 38; Laws 2008, LB379, § 26.
Termination date January 1, 2013.

21-2639 Foreign limited liability company; filing of certificate of authority and current registration certificate.

The original and a duplicate original of the application of a foreign limited liability company for a certificate of authority shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the foreign limited liability company is organized to render a professional service, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such application and fees. If the Secretary of State finds that the application conforms to law and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

(1) Endorse on each of such documents the word filed and the month, day, and year of the filing thereof;

(2) File in his or her office the original of the application and any registration certificate, if applicable; and

(3) Issue a certificate of authority to transact business in this state to which he or she shall affix the duplicate original of the application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the Secretary of State, shall be returned to the principal office of the foreign limited liability company or its representative.

Source: Laws 1993, LB 121, § 39; Laws 2004, LB 16, § 5; Laws 2006, LB 647, § 17.
Termination date January 1, 2013.

21-2640 Foreign limited liability company; name.

No certificate of authority shall be issued to a foreign limited liability company unless the name of such company satisfies the requirements of subsection (1) of section 21-2604. If the name under which a foreign limited liability company is registered in the jurisdiction of its formation does not satisfy the requirements of such subsection, to obtain or maintain a certificate of authority the foreign limited liability company may use a designated name that is available and which satisfies the requirements of such subsection.

Source: Laws 1993, LB 121, § 40; Laws 1997, LB 631, § 19.
Termination date January 1, 2013.

21-2641 Foreign limited liability company; application for certificate of authority; amendments.

(1) The application for a certificate of authority of a foreign limited liability company shall be amended by filing articles of amendment with the Secretary of State signed by a person with authority to do so under the laws of this state or other jurisdiction of its organization. The articles of amendment shall set forth:

(a) The name of the foreign limited liability company;

(b) The date the original application for a certificate of authority was filed; and

(c) The amendment to the application for a certificate of authority.

(2) The application for a certificate of authority may be amended in any way, except that the application for a certificate of authority as amended may

contain only provisions that may be lawfully contained in an application for registration at the time of making the amendment.

Source: Laws 1993, LB 121, § 41.
Termination date January 1, 2013.

21-2642 Foreign limited liability company; withdrawal.

The original and a duplicate original of an application for withdrawal of a foreign limited liability company shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of the Limited Liability Company Act, he or she shall, when all fees and taxes have been paid:

(1) Endorse on the original and the duplicate original the word filed and the month, day, and year of the filing thereof;

(2) File the original in his or her office; and

(3) Issue a certificate of withdrawal to which he or she shall affix the duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the foreign limited liability company or its representative. Upon the issuance of such certificate of withdrawal, the authority of the foreign limited liability company to transact business in this state shall cease.

Source: Laws 1993, LB 121, § 42.
Termination date January 1, 2013.

21-2643 Foreign limited liability company; transaction of business without certificate of authority; effect.

No foreign limited liability company transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this state until such limited liability company has obtained a certificate of authority. No action, suit, or proceeding shall be maintained in any court of this state by any successor or assignee of such limited liability company on any right, claim, or demand arising out of the transaction of business by such limited liability company in this state until a certificate of authority has been obtained by the foreign limited liability company which has acquired all or substantially all of its assets. A foreign limited liability company shall not be barred solely for the reason that it is or has been carrying on one or more of the activities enumerated in section 21-2644.

The failure of a foreign limited liability company to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such limited liability company and shall not prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

A foreign limited liability company which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and taxes which would have been imposed by the laws of this state upon the foreign limited liability company had it duly applied for and received a certificate of authority to transact business in this state as required by the Limited Liability Company Act

plus all penalties imposed by the laws of this state for failure to pay such fees and taxes. The Attorney General shall bring proceedings to recover all amounts due this state under this section.

Source: Laws 1993, LB 121, § 43.
Termination date January 1, 2013.

21-2644 Foreign limited liability company; activities not considered transacting business in this state.

(1) Without excluding activities which do not constitute transacting business in this state, a foreign limited liability company shall not be considered to be transacting business in this state, for the purpose of being required to secure a certificate of authority pursuant to section 21-2638, by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to its securities;

(e) Effecting sales through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, when such orders require acceptance without this state before becoming binding contracts;

(g) Creating, as a borrower or lender, or acquiring indebtedness, mortgages, or other security interests in real or personal property;

(h) Securing, collecting, or servicing debts or enforcing any rights in property securing the same;

(i) Transacting any business in interstate commerce; or

(j) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(2) A foreign limited liability company shall not be considered to be transacting business solely because it:

(a) Owns a controlling interest in a corporation or a foreign corporation that transacts business;

(b) Is a limited partner of a limited partnership or foreign limited partnership that is transacting business; or

(c) Is a member or manager of a limited liability company or foreign limited liability company that is transacting business.

(3) The specification of activities which do not constitute transacting business for purposes of the Limited Liability Company Act shall establish a standard for those activities in determining whether a foreign limited liability company is exercising its franchise or doing business in this state in a business capacity

except for activities which may subject a limited liability company to service of process or to property taxes assessed against any property or interest therein.

Source: Laws 1993, LB 121, § 44.
Termination date January 1, 2013.

21-2645 Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this state in violation of the Limited Liability Company Act.

Source: Laws 1993, LB 121, § 45.
Termination date January 1, 2013.

21-2646 Act; applicability to attorneys at law.

The provisions of the Limited Liability Company Act shall be applicable to attorneys at law only to the extent and under such terms and conditions as the Nebraska Supreme Court determines to be necessary and appropriate. Articles of organization of limited liability companies organized to practice law shall contain such provisions as may be appropriate to comply with applicable rules of the court.

Source: Laws 1994, LB 884, § 45.
Termination date January 1, 2013.

21-2647 Merger or consolidation; authorized.

Any one or more limited liability companies may merge or consolidate with or into any one or more limited liability companies, general partnerships, limited partnerships, or corporations, and any one or more general partnerships, limited partnerships, or corporations may merge or consolidate with or into any one or more limited liability companies.

Source: Laws 1994, LB 884, § 46; Laws 1997, LB 631, § 20.
Termination date January 1, 2013.

21-2648 Merger or consolidation; written plan; contents.

(1) Each constituent entity shall enter into a written plan of merger or consolidation which shall be approved in accordance with section 21-2649.

(2) The plan of merger or consolidation shall set forth:

(a) The name of each limited liability company, corporation, general partnership, or limited partnership which is a constituent entity in the merger or consolidation and the name of the surviving entity into which each other constituent entity proposes to merge or the new entity into which each constituent entity proposes to consolidate;

(b) The terms and conditions of the proposed merger or consolidation;

(c) The manner and basis of converting the interests in each limited liability company, the shares of stock or other interests in each corporation, and the interests in each general partnership or limited partnership that is a constituent entity in the merger or consolidation into interests, shares, or other securities or obligations, as the case may be, of the surviving entity or the new entity, or of any other limited liability company, corporation, general partnership, limited partnership, or other entity, or, in whole or in part, into cash or other property;

(d) In the case of a merger, such amendments to the articles of organization of a limited liability company, articles or certificate of incorporation of a corporation, or certificate of limited partnership of a limited partnership, as the case may be, of the surviving entity as are desired to be effected by the merger, or that no such changes are desired;

(e) In the case of a consolidation, all of the statements required to be set forth in articles of organization of any new entity that is a limited liability company, articles or certificate of incorporation of any new entity that is a corporation, or certificate of limited partnership of any new entity that is a limited partnership, as the case may be; and

(f) Such other provisions relating to the proposed merger or consolidation as are deemed necessary or desirable.

Source: Laws 1994, LB 884, § 47; Laws 1997, LB 631, § 21.
Termination date January 1, 2013.

21-2649 Merger or consolidation; approval; abandonment.

(1)(a) A proposed plan of merger or consolidation complying with the requirements of section 21-2648 shall be approved in the manner provided by this section.

(b) A limited liability company which is a party to a proposed merger or consolidation shall have the plan of merger or consolidation authorized and approved by a majority in interest, or such greater interest as otherwise provided in the articles of organization, of the members of such limited liability company.

(c) A corporation which is a party to a proposed merger or consolidation shall have the plan of merger or consolidation authorized and approved in the manner and by the vote required by the laws of this state.

(d) A partnership which is a party to a proposed merger or consolidation shall have the plan of merger authorized and approved in the manner and by the vote required by its partnership agreement and in accordance with the partnership laws of this state.

(2) After a merger or consolidation is authorized, unless the plan of merger or consolidation provides otherwise, and at any time before articles of merger or consolidation are filed, the plan of merger or consolidation may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or consolidation or, if none is set forth, as follows:

(a) By a majority in interest, or such greater interest as otherwise provided in the articles of organization, of the members of each limited liability company that is a constituent entity;

(b) By the vote of the board of directors of any corporation that is a constituent entity; and

(c) By the partners of any partnership that is a constituent entity in accordance with its partnership agreement and applicable partnership law.

Source: Laws 1994, LB 884, § 48; Laws 1996, LB 681, § 192; Laws 1997, LB 631, § 22.
Termination date January 1, 2013.

21-2650 Merger or consolidation; filings required; when effective.

(1) After a plan of merger or consolidation is approved as provided in section 21-2649, the surviving entity or the new entity shall deliver to the Secretary of State for filing articles of merger or consolidation duly executed by each constituent entity setting forth:

(a) The name of each constituent entity;

(b) The plan of merger or consolidation;

(c) The effective date of the merger or consolidation if later than the date of filing of the articles of merger or consolidation;

(d) The name of the surviving entity or the new entity; and

(e) A statement that the plan of merger or consolidation was duly authorized and approved by each constituent entity in accordance with section 21-2649.

(2) A merger or consolidation takes effect upon the later of the effective date of the filing of the articles of merger or consolidation or the date set forth in the plan of merger or consolidation.

(3) Duplicate originals of the articles of merger or consolidation shall be delivered to the Secretary of State who, after determining that such documents appear in all respects to conform to the requirements of sections 21-2647 to 21-2652, shall file one of the duplicate originals and endorse on each duplicate original the word filed with the month, day, and year of the filing thereof and return one duplicate original to the surviving entity or the new entity or its representative.

Source: Laws 1994, LB 884, § 49.
Termination date January 1, 2013.

21-2651 Merger or consolidation; effect.

Consummation of a merger or consolidation shall have the effects provided in this section:

(1) The constituent entities which are a party to the plan of merger or consolidation shall be a single entity, which in the case of a merger shall be the entity designated in the plan of merger as the surviving entity and in the case of a consolidation shall be the new entity provided for in the plan of consolidation;

(2) The separate existence of each constituent entity party to the plan of merger or consolidation, except the surviving entity or the new entity, shall cease;

(3) The surviving entity or the new entity shall thereupon and thereafter possess all the rights, privileges, immunities, powers, and franchises, of a public as well as a private nature, of each constituent entity and shall be subject to all the restrictions, disabilities, and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the form of existence of the surviving entity or the new entity;

(4) All property, real, personal, and mixed, all debts due on whatever account, including promises to make contributions to stated capital and subscriptions, all other choses in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity or the new entity without further act or deed;

(5) The title to all real estate and any interest therein vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) The surviving entity or the new entity shall be responsible and liable for all liabilities and obligations of each of the constituent entities so merged or consolidated, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger or consolidation had not taken place or the surviving entity or the new entity may be substituted in the action;

(7) Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger or consolidation;

(8) In the case of a merger, if the surviving entity or the new entity is a limited liability company, a corporation, or a limited partnership, the articles of organization of the limited liability company, articles or certificate of incorporation of the corporation, or certificate of limited partnership of the limited partnership, as the case may be, shall be amended to the extent provided in the articles of merger;

(9) In the case of a consolidation in which the new entity is a limited liability company, corporation, or limited partnership, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of organization, articles or certificate of incorporation, or certificate of limited partnership, as the case may be, of the new entity, shall be deemed to be the original articles of organization, articles or certificate of incorporation, or certificate of limited partnership of the new entity;

(10) The membership or other interests in a limited liability company, shares or other interests in a corporation, or partnership or other interests in a limited partnership that is a constituent entity, as the case may be, that are to be converted or exchanged into interests, shares or other securities, cash, obligations, or other property under the terms of the articles of merger or consolidation shall be so converted, and the former holders thereof shall be entitled only to the rights provided in the articles of merger or consolidation or the rights otherwise provided by law; and

(11) Nothing in sections 21-2647 to 21-2652 shall abridge or impair any dissenter's or appraisal rights that may otherwise be available to the members or shareholders or other holders of an interest in any constituent entity.

Source: Laws 1994, LB 884, § 50; Laws 1997, LB 631, § 23.
Termination date January 1, 2013.

21-2652 Merger or consolidation; domestic and foreign entities; conditions; effect.

(1) Any one or more domestic limited liability companies may merge or consolidate with or into one or more foreign limited liability companies, foreign corporations, foreign general partnerships, or foreign limited partnerships or any one or more foreign limited liability companies, foreign corporations, foreign general partnerships, or foreign limited partnerships may merge or consolidate with or into any one or more limited liability companies of this state if:

(a) The merger or consolidation is permitted by the law of the state or jurisdiction under whose laws each foreign constituent entity is organized or

formed and each foreign constituent entity complies with that law in effecting the merger or consolidation;

(b) The foreign constituent entity complies with section 21-2650 if it is the surviving entity or the new entity; and

(c) Each domestic constituent entity complies with the applicable provisions of sections 21-2647 to 21-2649 and, if it is the surviving entity or the new entity, with section 21-2650.

(2) Upon a merger involving one or more domestic limited liability companies taking effect, if the surviving entity or the new entity is to be governed by the laws of any state other than this state or by the laws of the District of Columbia or of any foreign country, then the surviving entity or the new entity shall agree:

(a) That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent entity party to the merger or consolidation that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving entity or the new entity arising from the merger or consolidation; and

(b) To irrevocably appoint the Secretary of State as its agent for service of process in any such proceeding, and the surviving entity or the new entity shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.

(3) The effect of such merger or consolidation shall be as provided in section 21-2651 if the surviving entity or the new entity is to be governed by the laws of this state. If the surviving entity or the new entity is to be governed by the laws of any jurisdiction other than this state, the effect of such merger or consolidation shall be the same as provided in such section except insofar as the laws of such other jurisdiction provide otherwise.

Source: Laws 1994, LB 884, § 51; Laws 1997, LB 631, § 24.
Termination date January 1, 2013.

21-2653 Notices; publication; filing.

Notice of organization, amendment, merger, consolidation, or statement of intent to dissolve must be published three successive weeks in some legal newspaper of general circulation near the registered office of the limited liability company. A notice of organization must show (1) the name of the limited liability company, (2) the address of the registered office, (3) the general nature of the business to be transacted, (4) the time of commencement and termination, if any, of the limited liability company, and (5) by what members or managers the affairs of the limited liability company are to be conducted. A brief resume of any amendment, merger, or consolidation of the limited liability company shall be published in the same manner and for the same period of time as notice of organization is required to be published. Whenever any limited liability company is voluntarily dissolved, notice of the dissolution thereof and the terms and conditions of such dissolution and the names of the persons who are to manage the company affairs and distribute its assets and their official titles, with a statement of assets and liabilities of the limited liability company, shall be published three successive weeks in some legal newspaper of general circulation within the county in which the registered office of the limited liability company is located. Proof of publication of any of

the notices shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of the limited liability company prior to, as well as after, such publication shall be valid.

Source: Laws 1994, LB 884, § 52; Laws 1997, LB 631, § 25.
Termination date January 1, 2013.

21-2654 Charging order; authorized; procedure; effect; powers of court.

(1) On application to a court of competent jurisdiction by any judgment creditor of a member or transferee, the court may charge the transferable interest of the judgment debtor in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent of the amounts so charged, the judgment creditor has only the rights of the transferee to receive any distribution to which the judgment debtor would otherwise have been entitled with respect to the interest of the judgment debtor in the limited liability company.

(2) A charging order entered pursuant to this section constitutes a lien on the judgment debtor's transferable interest in the limited liability company.

(3) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (1) of this section, the court may (a) appoint a receiver of the distribution subject to the charging order, and the receiver shall have the power to make all inquiries the judgment debtor might have made, and (b) make all other orders necessary to give effect to the charging order.

(4) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest and does not become a member of the limited liability company.

(5) At any time before completion of the foreclosure sale under subsection (4) of this section, the member or transferee whose transferable interest is subject to a charging order under subsection (1) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(6) At any time before completion of the foreclosure sale under subsection (4) of this section, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(7) This section does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's interest in the limited liability company.

(8) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Source: Laws 2009, LB35, § 1; Laws 2010, LB888, § 100.
Termination date January 1, 2013.

ARTICLE 27
FOREIGN TRADE ZONES

Section
21-2701. Terms, defined.
21-2702. Foreign trade zones; establishment, operation, and maintenance.
21-2703. Foreign trade zones; select and describe locations.

21-2701 Terms, defined.

As used in sections 21-2701 to 21-2703, unless the context otherwise requires:

(1) Private corporation shall mean a corporation organized under Chapter 21, with a purpose of establishing, operating and maintaining a foreign trade zone;

(2) Public corporation shall mean this state; a political subdivision thereof; any municipality therein; any public agency of the state, of any political subdivision thereof, or of any municipality therein; or any other corporate instrumentality of this state, a political subdivision of this state or a municipality in this state; and

(3) Act of Congress shall mean the Act of Congress approved June 18, 1934, entitled An act to provide for the establishment, operation, and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934.

Source: Laws 1973, LB 387, § 1; R.S.1943, (1991), § 21-20,145.

21-2702 Foreign trade zones; establishment, operation, and maintenance.

Any private corporation or public corporation shall have the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating and maintaining foreign trade zones and foreign trade subzones under the provisions of the Act of Congress and, when such grant is issued, to accept such grant and to establish, operate and maintain such foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation and maintenance of such zones, all in accordance with the Act of Congress and other applicable law and rules and regulations.

Source: Laws 1973, LB 387, § 2; R.S.1943, (1991), § 21-20,146.

21-2703 Foreign trade zones; select and describe locations.

Any private corporation or public corporation may select and describe the location of the foreign trade zones or foreign trade subzones for which an application is made, and make such rules and regulations concerning the establishment, operation and maintenance of the foreign trade zones or foreign trade subzones as may be necessary to comply with the Act of Congress or as may be necessary to comply with the rules and regulations made in accordance with the Act of Congress.

Source: Laws 1973, LB 387, § 3; R.S.1943, (1991), § 21-20,147.

ARTICLE 28
RELIGIOUS ASSOCIATIONS

Section

21-2801 Religious association; ceases to exist; vesting of property.

Whenever any religious association organized as follows:

(1) Unincorporated church, parish, congregation, or association which may or may not recognize some superior church authority,

(2) The single church, parish, or congregation which is incorporated as an entity and is legally independent of any superior denominational organization or authority, or

(3) The single church, parish, or congregation which is incorporated as a part of, and subject to the authority of some denominational organization having general supervision over it, ceases to exist or to maintain its organization, all its remaining real or personal property shall vest in, and be transferred, in the manner provided in section 21-2802, to the incorporated annual conference, presbytery, diocese, diocesan council, state convention, or other incorporated governing, supervising, or cooperative body of the same religious denomination within whose jurisdiction such association was located, or with which it was affiliated, it being intended that such property shall vest in and be transferred to the next highest governing, supervising, or cooperative corporate body of the same denomination, having its original corporate existence within this state; *Provided,* that associations or corporations as defined in subdivision (1), (2), or (3) of this section, which have been affiliated with or subject to superior church authority or denominational statewide cooperative agency or have used the name of such superior church or denominational statewide cooperative agency during the ownership of its property, becomes abandoned by their own act or as defined herein and where the governing law, constitution, articles of incorporation, or bylaws of such superior church authority or denominational statewide cooperative agency provides for reversion of such property to the superior church authority or denominational statewide cooperative agency or supervision of the disposition thereof, then, in case such local church is abandoned or ceases to exist or maintain its organization, in lieu of court proceedings, the superior church authority or denominational statewide cooperative agency may record a certified copy of that portion of its governing law, constitution, articles of incorporation, or bylaws in the office of the register of deeds of the county in which the real estate or other property is located and such provisions shall then be binding upon such property; *and provided further,* that the trustees or officers of such abandoned local church may, within three months after such recording, file an action in the district court to test the validity of the provisions of such governing law of the superior church authority or denominational statewide cooperative agency. When any religious society as defined in subdivision (1), (2), or (3) of this section shall have ceased to maintain periodic meetings for the purpose of worship or religious instruction for a period of two consecutive years, or if the governing body or congregation

of the church votes to dissolve or votes to discontinue holding religious services, such society shall be deemed to have ceased to exist or to maintain its organization within the meaning of this section.

Source: Laws 1967, c. 105, § 18, p. 333; R.S.1943, (1991), § 21-1993.

21-2802 Religious association; vesting of property; application; notice; transfer of property.

Upon the application to the district court for the county where such religious association was located, as provided in section 21-2801, by any officer, director, or trustee of the body in which such property is to vest as aforesaid, the court shall appoint a time for hearing the application. Three weeks' published and posted notice thereof shall be given, and any additional notice which the court may direct. Such notice shall direct all interested persons to appear on the date of such hearing and make their objections thereto, if any they have, and it shall be published in a newspaper published in whole or in part within such county or, if there is no such newspaper, in a newspaper published within this state and of general circulation within such county, as directed by the court. The posted notice shall be in three prominent public places within the county where such property is located. If, upon hearing, it appears that a proper case exists under section 21-2801, the court shall adjudge and direct a transfer of such property to be made through a trustee appointed by it for that purpose. Affidavits of the publishing and posting of the notice may be filed in the proceedings, and they shall be evidence in all actions and proceedings in the courts of this state.

Source: Laws 1967, c. 105, § 19, p. 334; R.S.1943, (1991), § 21-1994.

21-2803 Religious association; affiliated with other association; withdrawal; use of name.

Whenever any religious association, as defined in subdivision (1) or (2) of section 21-2801, shall have been affiliated with a conference, missionary society, state convention, or other body which is incorporated as the statewide cooperative agency of affiliated religious associations as defined in subdivision (1) or (2) of section 21-2801, and while so affiliated and with the assistance and cooperation of such statewide denominational cooperative agency has acquired property and caused title to the same to be vested in the name of such local association using in whole or in part the denominational designation of the denomination of such statewide denominational cooperative agency and thereafter, after a substantial change in the membership, such local religious association shall withdraw from and terminate its affiliation with the statewide denominational cooperative agency then such religious society, so far as title to the property acquired during such cooperation is concerned, shall be deemed to have ceased to exist or maintain its organization, within the meaning of section 21-2801, and shall not be thereafter entitled to use in the name of such religious association the characteristic denominational designation or other words calculated to induce the belief that it is in any way belonging to or affiliated with the denomination maintaining such a statewide cooperative agency.

Source: Laws 1967, c. 105, § 20, p. 335; R.S.1943, (1991), § 21-1995.

ARTICLE 29

NEBRASKA LIMITED COOPERATIVE ASSOCIATION ACT

PART 1. GENERAL PROVISIONS

PART 2. FILING AND REPORTS

PART 3. FORMATION AND ARTICLES OF ORGANIZATION

PART 4. MEMBERS

PART 5. MEMBER INTEREST

Section

PART 6. MARKETING CONTRACTS

PART 7. DIRECTORS AND OFFICERS

PART 8. INDEMNIFICATION

PART 9. CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

PART 10. DISSOCIATION

PART 11. DISSOLUTION

PART 1

GENERAL PROVISIONS

21-2901 Act, how cited.

Sections 21-2901 to 21-29,134 shall be known and may be cited as the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB368, § 1; Laws 2008, LB848, § 1.

21-2902 Legislative power to amend or repeal.

The Legislature shall have the power to amend or repeal all or part of the Nebraska Limited Cooperative Association Act at any time and all domestic and foreign limited cooperative associations subject to the act shall be governed by the amendment or repeal.

Source: Laws 2007, LB368, § 2.

21-2903 Terms, defined.

For purposes of the Nebraska Limited Cooperative Association Act, unless the context otherwise requires:

(1) Articles of organization includes initial, amended, and restated articles of organization. In the case of a foreign limited cooperative association, the term includes all records that:

(a) Have a function similar to articles of organization; and

(b) Are required to be filed in the office of the Secretary of State or other official having custody of articles of organization in this state or the country under whose law it is organized;

(2) Bylaws includes initial, amended, and restated bylaws;

(3) Contribution means a benefit that a person provides to a limited cooperative association in order to become a member or in the person's capacity as a member;

(4) Debtor in bankruptcy means a person that is the subject of:

(a) An order for relief under 11 U.S.C. 101 et seq., as the sections existed on January 1, 2008; or

(b) An order comparable to an order described in subdivision (4)(a) of this section under federal, state, or foreign law governing insolvency;

(5) Designated office means the office designated under section 21-2913;

(6) Distribution means a transfer of money or other property from a limited cooperative association to a member because of the member's financial rights or to a transferee of a member's financial rights. The term does not include the amounts described in section 21-2983;

(7) Domestic entity means an entity organized under the laws of this state;

(8) Entity means an association, a business trust, a company, a corporation, a cooperative, a limited cooperative association, a general partnership, a limited liability company, a limited liability partnership, or a limited partnership, domestic or foreign;

(9) Financial rights means the right to participate in allocation and distribution under sections 21-2980 and 21-2981 but does not include rights or obligations under a marketing contract governed by sections 21-2949 to 21-2952;

(10) Foreign limited cooperative association means a foreign entity organized under a law similar to the Nebraska Limited Cooperative Association Act in another jurisdiction;

(11) Foreign entity means an entity that is not a domestic entity;

(12) Governance rights means the right to participate in governance of the limited cooperative association under section 21-2928;

(13) Investor member means a member that has made a contribution to a limited cooperative association and is not permitted or required by the articles of association or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(14) Limited cooperative association means an association organized under the Nebraska Limited Cooperative Association Act;

(15) Member means a person that is a patron member or investor member or both in a limited cooperative association. The term does not include a person that has dissociated as a member;

(16) Members' interest means the interest of a patron member or investor member;

(17) Members' meeting means an annual or a special members' meeting;

(18) Patron means a person or entity that conducts economic activity with a limited cooperative association which entitles the person to receive financial rights based upon patronage;

(19) Patronage means business transactions between a limited cooperative association and a person which entitles the person to receive financial rights based on the value or quantity of business done between the person and the limited cooperative association;

(20) Patron member means a person admitted as a patron member pursuant to the articles of organization or bylaws and who is permitted or required by the articles of organization or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(21) Person means an individual; an entity; a trust; a governmental subdivision, agency, or instrumentality; or any other legal or commercial entity;

(22) Principal office means the office, whether or not in this state, where the principal executive office of a limited cooperative association or a foreign limited cooperative association is located;

(23) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(24) Required information means the information a limited cooperative association is required to maintain under section 21-2910;

(25) Sign means, with the present intent to authenticate a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach or logically associate an electronic symbol, sound, or process to or with a record;

(26) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(27) Transfer includes assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law; and

(28) Voting member means a member that, under the articles of organization or bylaws, has a right to vote on matters subject to vote by members.

Source: Laws 2007, LB368, § 3; Laws 2008, LB848, § 2.

21-2904 Nature of limited cooperative association.

(1) A limited cooperative association is an entity distinct from its members.

(2) A limited cooperative association may be organized under the Nebraska Limited Cooperative Association Act for any lawful purpose, regardless of whether or not for profit, except for the purpose of being a financial institution which is subject to supervision by the Department of Banking and Finance under section 8-102 or which would be subject to supervision by the department if chartered by the State of Nebraska or the business of an insurer as described in section 44-102.

(3) A limited cooperative association has a perpetual duration, unless otherwise set forth in its articles of organization or bylaws.

Source: Laws 2007, LB368, § 4.

21-2905 Powers.

(1) Except as otherwise provided in the Nebraska Limited Cooperative Association Act, a limited cooperative association has the power to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a member for harm caused to the limited cooperative association by a violation of the articles of organization or bylaws of the limited cooperative association or violation of a duty to the limited cooperative association.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, a limited cooperative association shall not issue bonds, debentures, or other evidence of indebtedness to a member unless, prior to issuance, the association provides the member with a written disclosure statement that includes a conspicuous notice that the money is not insured or guaranteed by an agency or instrumentality of the United States Government and that the investment may lose value.

(b) A limited cooperative association need not provide the written disclosure statement described in subdivision (a) of this subsection to any member that is described in subdivision (8) of section 8-1111.

(c) Any extension of credit by a limited cooperative association to a member in connection with the sale of the association's goods or services shall not:

(i) Exceed nine months from the date of such sale; or

(ii) Be secured by real property, except that an extension of credit in default at the end of the original term may be extended or renewed for successive periods not exceeding nine months in length and may be secured by real property at the end of the original term or any extension or renewal thereof.

(d) No new money may be advanced by an association in connection with the extension or renewal of an extension of credit granted under subdivision (2)(c) of this section.

Source: Laws 2007, LB368, § 5.

21-2906 Name.

(1) The name of a limited cooperative association must contain the words ''limited cooperative association'' or their abbreviation.

(2) The name of a limited cooperative association shall not be the same as or deceptively similar to:

(a) The name of any entity organized or authorized to transact business in this state;

(b) A name reserved or registered under section 21-2907 or 21-2908; and

(c) A fictitious name approved for a foreign limited cooperative association authorized to transact business in this state.

Source: Laws 2007, LB368, § 6.

21-2907 Reservation of name.

(1) A person may reserve the exclusive use of the name of a limited cooperative association, including a fictitious name for a foreign limited cooperative association whose name is unavailable, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the name applied for is available, it shall be reserved for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(2) The owner of a name reserved for a limited cooperative association may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer which states the name and address of the transferee.

Source: Laws 2007, LB368, § 7.

21-2908 Foreign limited cooperative association; name.

(1) A foreign limited cooperative association may register its name pursuant to section 21-2907 if the name is not the same as or deceptively similar to names that are unavailable under section 21-2906.

(2) A foreign limited cooperative association may register its name, or its name with any addition required by section 21-29,106, by delivering to the Secretary of State for filing an application:

(a) Setting forth its name, or its name with any addition required by section 21-29,106, the state or country of organization and date of its organization, and a brief description of the nature of the affairs in which it is engaged; and

(b) Accompanied by a certificate of existence or authorization from the state or country of organization.

(3) A foreign limited cooperative association whose registration is effective may qualify as a foreign limited cooperative association under its name or consent in a record to the use of its name by a limited cooperative association later organized under the Nebraska Limited Cooperative Association Act or by a foreign limited cooperative association later authorized to transact business in this state. The registration of the name terminates when the limited cooperative association is organized or the foreign limited cooperative association qualifies or consents to the qualification of another foreign limited cooperative association under the registered name.

Source: Laws 2007, LB368, § 8.

21-2909 Use of terms or abbreviation.

The use of the terms ''cooperative or nonstock cooperative'' or an abbreviation of the terms under the Nebraska Limited Cooperative Association Act is not a violation of the provisions restricting the use of the terms under the Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339, however, use of the term ''cooperative'' by a limited cooperative association shall not be construed under any other law to qualify a limited cooperative association as a cooperative organized under the Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339.

Source: Laws 2007, LB368, § 9.

Cross References

Nonstock Cooperative Marketing Act, see section 21-1401.

21-2910 Required information.

A limited cooperative association shall maintain in a record at its principal office the following information:

(1) A current list showing the full name and last-known street address, mailing address, and term of office of each director and officer;

(2) A copy of the initial articles of organization and all amendments to and restatement of the articles, together with signed copies of any powers of attorney under which any articles, amendments, or restatement has been signed;

(3) A copy of the initial bylaws and all amendments to or restatement of the bylaws;

(4) A copy of any filed articles of merger or consolidation;

(5) A copy of any audited financial statements;

(6) A copy of the minutes of meetings of members and records of all actions taken by members without a meeting for the three most recent years;

(7) A current list showing the full name and last-known street and mailing addresses, separately identifying the patron members, in alphabetical order, and the investor members, in alphabetical order;

(8) A copy of the minutes of directors' meetings and records of all actions taken by directors without a meeting for the three most recent years;

(9) A record stating:

(a) The amount of cash contributed and agreed to be contributed by each member;

(b) A description and statement of the agreed value of other benefits contributed and agreed to be contributed by each member;

(c) The times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made; and

(d) For a person that is both a patron member and an investor member, a specification of the interest the person owns in each capacity; and

(10) A copy of all communications in a record to members as a group or to any class of members as a group for the three most recent years.

Source: Laws 2007, LB368, § 10; Laws 2008, LB848, § 3.

21-2911 Business transactions of member with limited cooperative association.

A member may lend money to and transact other business with the limited cooperative association and has the same rights and obligations with respect to the loan or other transaction as a person that is not a member subject to the articles of organization or bylaws or a specific contract relating to the transaction.

Source: Laws 2007, LB368, § 11.

21-2912 Dual capacity.

A person may be both a patron member and an investor member. A person that is both a patron member and an investor member has the rights, powers, duties, and obligations provided by the Nebraska Limited Cooperative Association Act and the articles of organization or bylaws in each of those capacities. When the person acts as a patron member, the person is subject to the obligations, duties, and restrictions under the act and the articles of organization or bylaws governing patron members. When the person acts as an investor member, the person is subject to the obligations, duties, and restrictions under the act and the articles of organization or bylaws governing investor members.

Source: Laws 2007, LB368, § 12.

21-2913 Designated office and agent for service of process.

(1) A limited cooperative association and a foreign limited cooperative association shall designate and continuously maintain in this state:

(a) An office, which need not be a place of its activity in this state; and

(b) An agent for service of process.

(2) An agent for service of process of a limited cooperative association or foreign limited cooperative association shall be an individual who is a resident of this state or other person authorized to do business in this state.

Source: Laws 2007, LB368, § 13.

21-2914 Change of designated office or agent for service of process.

(1) In order to change its registered office, its agent for service of process, or the address of its agent for service of process, a limited cooperative association or a foreign limited cooperative association shall deliver to the Secretary of State for filing a statement of change containing:

(a) The name of the limited cooperative association or foreign limited cooperative association;

(b) The street and mailing addresses of its current registered office;

(c) If the current registered office is to be changed, the street and mailing addresses of the new registered office;

(d) The name and street and mailing addresses of its current agent for service of process; and

(e) If the current agent for service of process or an address of the agent is to be changed, the new information.

(2) A statement of change is effective when filed with the Secretary of State.

Source: Laws 2007, LB368, § 14.

21-2915 Resignation of agent for service of process.

(1) To resign as an agent for service of process of a limited cooperative association or a foreign limited cooperative association, the agent shall deliver to the Secretary of State for filing a statement of resignation containing the name of the limited cooperative association or foreign limited cooperative association.

(2) After receiving a statement of resignation, the Secretary of State shall file it and mail a copy to the principal office of the limited cooperative association or foreign limited cooperative association and another copy to the principal office if the address of the principal office appears in the records of the Secretary of State and is different from the address of the registered office.

(3) An agency for service of process terminates thirty days after the Secretary of State files the statement of resignation.

Source: Laws 2007, LB368, § 15.

21-2916 Service of process.

(1) An agent for service of process appointed by a limited cooperative association or a foreign limited cooperative association is an agent of the limited cooperative association or foreign limited cooperative association for service of any process, notice, or demand required or permitted by law to be served upon the limited cooperative association or foreign limited cooperative association.

(2)(a) If a limited cooperative association or a foreign limited cooperative association has no agent for service of process or the agent cannot with reasonable diligence be served the limited cooperative association may be served by registered or certified mail, return receipt requested, addressed to the limited cooperative association at its principal office. Service shall be perfected under this subsection at the earliest of:

(i) The date the limited cooperative association receives the mail;

(ii) The date shown on the return receipt, if signed on behalf of the limited cooperative association; or

(iii) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

(b) This subsection shall not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited cooperative association in any other manner now or hereafter permitted by law.

Source: Laws 2007, LB368, § 16.

PART 2

FILING AND REPORTS

21-2917 Signing of records to be delivered for filing to the Secretary of State.

Records delivered to the Secretary of State for filing pursuant to the Nebraska Limited Cooperative Association Act shall be signed in the following manner:

(1) The initial articles of organization shall be signed by at least one organizer;

(2) A notice of cancellation under section 21-29,108 shall be signed by each organizer that signed the initial articles of organization;

(3) Except as otherwise provided in this subsection, a record signed on behalf of an existing limited cooperative association shall be signed by an officer or authorized representative; and

(4) A record filed on behalf of a dissolved limited cooperative association by a person winding up the activities under section 21-2989 or a person appointed under such section to wind up those activities.

Source: Laws 2007, LB368, § 17.

21-2918 Signing and filing of records pursuant to judicial order.

(1) If a person required by the Nebraska Limited Cooperative Association Act to sign or deliver a record to the Secretary of State for filing does not do so, any other aggrieved person may petition the district court of Lancaster County to order:

(a) The person to sign the record and the person to deliver the record to the Secretary of State for filing; or

(b) The Secretary of State to file the record unsigned.

(2) If an aggrieved person under subsection (1) of this section is not the limited cooperative association or foreign limited cooperative association to which the record pertains, the aggrieved person shall make the limited cooperative association or foreign limited cooperative association a party to the action. An aggrieved person under subsection (1) of this section may seek any or all of the remedies provided in such subsection in the same action.

(3) A record filed unsigned pursuant to this section is effective without being signed.

Source: Laws 2007, LB368, § 18.

21-2919 Delivery to and filing of records by Secretary of State; effective time and date.

(1) A record authorized to be delivered to the Secretary of State for filing under the Nebraska Limited Cooperative Association Act shall be captioned to describe the record's purpose and be delivered to the Secretary of State in a medium authorized by the Secretary of State. Unless the Secretary of State determines that a record does not comply with the filing requirements of the act and if all filing fees have been paid the Secretary of State shall file the record and send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in the act, a record delivered to the Secretary of State for filing under the act may specify an effective time and a delayed effective date. Except as otherwise provided in the act, a record filed by the Secretary of State is effective:

(a) If the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the Secretary of State's endorsement of the date and time on the record;

(b) If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) The specified date; or

(ii) The ninetieth day after the record is filed; or

(d) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) The specified date; or

(ii) Ninety days after the record is filed.

Source: Laws 2007, LB368, § 19.

21-2920 Correcting filed record.

(1) A limited cooperative association or foreign limited cooperative association may deliver to the Secretary of State for filing a statement of correction to correct a record previously delivered by the limited cooperative association or foreign limited cooperative association to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained false or erroneous information or was defectively signed.

(2) A statement of correction shall not state a delayed effective date and shall:

(a) Describe the record to be corrected, including its filing date, or contain an attached copy of the record as filed;

(b) Specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

(c) Correct the incorrect information or defective signature.

(3) When filed by the Secretary of State, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed as to persons relying on the uncorrected record and adversely affected by the correction prior to its correction.

Source: Laws 2007, LB368, § 20.

21-2921 Liability for false information in filed record.

If a record delivered to the Secretary of State for filing under the Nebraska Limited Cooperative Association Act and filed by the Secretary of State contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew the information to be false at the time the record was signed.

Source: Laws 2007, LB368, § 21.

21-2922 Certificate of good standing or authorization.

(1) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of good standing for a limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed articles of organization, the limited cooperative association is in good standing, and there has not been filed articles of dissolution.

(2) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of authorization for a foreign limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation pursuant to section 21-29,108.

(3) Subject to any qualification stated in the certificate, a certificate of good standing or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the limited cooperative association or foreign limited cooperative association is in good standing or is authorized to transact business in this state.

Source: Laws 2007, LB368, § 22; Laws 2008, LB848, § 4.

21-2923 Biennial report.

(1) A limited cooperative association or a foreign limited cooperative association authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

(a) The name of the limited cooperative association or foreign limited cooperative association;

(b) The street and mailing addresses of the limited cooperative association's or foreign limited cooperative association's designated office and the name and street and mailing addresses of its agent for service of process in this state;

(c) In the case of a limited cooperative association, the street and mailing addresses of its principal office if different from its designated office; and

(d) In the case of a foreign limited cooperative association, the state or other jurisdiction under whose law the foreign limited cooperative association is formed and any alternative name adopted under section 21-29,106.

(2) Information in the biennial report must be current as of the date the biennial report is delivered to the Secretary of State.

(3) Commencing on January 1, 2009, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited cooperative association files articles of organization or a foreign limited cooperative association becomes authorized to transact business in this state. A correction or amendment to a biennial report may be filed at any time.

(4) If a biennial report does not contain the information required in subsection (1) of this section, the Secretary of State shall promptly notify the reporting limited cooperative association or foreign limited cooperative association and return the report for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

(5) If a filed biennial report contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Secretary of State immediately before the filing, the differing information in the biennial report is considered a statement of change under section 21-2914.

(6) If a limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-2994 to administratively dissolve the limited cooperative association.

(7) If a foreign limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-29,107 to revoke the certificate of authority of the foreign limited cooperative association.

Source: Laws 2007, LB368, § 23.

21-2924 Filing fees.

The filing fees for records filed under this section with the Secretary of State are governed by section 33-101.

Source: Laws 2007, LB368, § 24.

PART 3

FORMATION AND ARTICLES OF ORGANIZATION

21-2925 Organizers.

A limited cooperative association may be organized by one or more organizers who need not be members.

Source: Laws 2007, LB368, § 25.

21-2926 Formation of limited cooperative association; articles of organization.

(1) To form a limited cooperative association, articles of organization shall be delivered to the Secretary of State for filing. The articles shall state:

(a) The name of the limited cooperative association;

(b) The purposes for which the limited cooperative association was formed;

(c) The street and mailing addresses of the initial registered office and the name, street, and mailing addresses of the registered agent for service of process;

(d) The name and the street and mailing addresses of each organizer;

(e) The term for which the limited cooperative association is to exist, if other than perpetual;

(f) The number and terms of directors or the method in which the number and terms shall be determined; and

(g) Any additional information required by the Secretary of State.

(2) Articles of organization may contain any other matters deemed relevant by the organizer or organizers.

(3) Unless the articles of organization state a delayed effective date, a limited cooperative association is formed when the Secretary of State receives for filing the articles of organization. If the articles state a delayed effective date, a limited cooperative association is not formed if, before the articles take effect, one or more organizers sign and deliver to the Secretary of State for filing a notice of cancellation.

Source: Laws 2007, LB368, § 26.

21-2927 Organization of limited cooperative association.

After the effective date of the articles of organization:

(1) If initial directors are named in the articles of organization, the initial directors shall hold an organizational meeting to appoint officers, adopt initial bylaws, and carry on any other business brought before the meeting; and

(2) If initial directors are not named in the articles of organization, the organizers shall designate the initial directors and call a meeting of them to adopt initial bylaws or carry on any other business necessary and proper to complete the organization of the limited cooperative association.

Source: Laws 2007, LB368, § 27.

21-2928 Bylaws.

(1) The bylaws shall be in a record and, if not stated in the articles of organization, include:

(a) A statement of the capital structure of the limited cooperative association, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each group, class, or other type of member interest, the rights to share in profits or distributions of the limited cooperative association, and the method to admit members;

(b) A statement designating the voting and governance rights, including which members have voting power and any limitations or restrictions on the voting power under sections 21-2939 and 21-2942;

(c) A statement that member interests held by a member are transferable only with the approval of the board of directors or as otherwise provided in the articles of organization or bylaws; and

(d) If investor members are authorized, a statement concerning how profits and losses are apportioned and how distributions are made as between patron members and investor members.

(2) The bylaws of the limited cooperative association may contain any provision for managing and regulating the affairs of the limited cooperative association which is not inconsistent with the articles of organization.

Source: Laws 2007, LB368, § 28.

PART 4

MEMBERS

21-2929 Members.

In order to commence business, a limited cooperative association shall have two or more patron members, except that a limited cooperative association may have only one member if the member is an entity organized under the Nebraska Limited Cooperative Association Act, the Nonstock Cooperative Marketing Act, or sections 21-1301 to 21-1339.

Source: Laws 2007, LB368, § 29; Laws 2008, LB848, § 5.

Cross References

Cooperative corporations, see section 21-1301 et seq.
Cooperative farm land companies, see section 21-1333 et seq.
Nonstock Cooperative Marketing Act, see section 21-1401.

21-2930 Becoming a member.

A person becomes a member:

(1) As provided in the articles of organization and bylaws;

(2) As the result of merger or consolidation under section 21-29,122; or

(3) With the consent of all the members.

Source: Laws 2007, LB368, § 30; Laws 2008, LB848, § 6.

21-2931 No right or power as member to bind limited cooperative association.

A member does not have the right or power as a member to act for or bind the limited cooperative association.

Source: Laws 2007, LB368, § 31.

21-2932 No liability as member for limited cooperative association obligations.

Unless otherwise provided by the articles of organization, an obligation of a limited cooperative association, whether arising in contract, tort, or otherwise, is not the obligation of a member. A member is not personally liable, by way of contribution or otherwise, for an obligation of the limited cooperative association solely by reason of being a member.

Source: Laws 2007, LB368, § 32.

21-2933 Right of member and former member to information.

(1) On ten days' demand, made in a record received by the limited cooperative association, a member may inspect and copy required information under subdivisions (1) through (7) of section 21-2910 during regular business hours in the limited cooperative association's principal office. A demand to inspect and copy records shall be in good faith and for a proper purpose. A member may demand the same information under subdivisions (1) through (7) of section 21-2910 no more than once during a twelve-month period.

(2) On demand, made in a record received by the limited cooperative association, a member may obtain from the limited cooperative association and inspect and copy required information if the demand is just and reasonable. A demand to inspect and copy records is just and reasonable if:

(a) The member seeks the information for a proper purpose reasonably related to the member's interest as a member;

(b) The demand includes a description, with reasonable particularity, of the information sought and the purpose for seeking the information; and

(c) The information sought is directly connected to the member's purpose.

(3) Within ten days after receiving a demand pursuant to subdivision (2)(b) of this section, the limited cooperative association shall inform, in a record, the member that made the demand:

(a) Of what information the limited cooperative association will provide in response to the demand;

(b) Of the reasonable time and place that the limited cooperative association will provide the information; and

(c) That the limited cooperative association will decline to provide any demanded information and the limited cooperative association's reasons for declining.

(4) A person dissociated as a member pursuant to section 21-2982 may inspect and copy required information during regular business hours in the limited cooperative association's principal office if:

(a) The information pertains to the period during which the person was a member;

(b) The person seeks the information in good faith; and

(c) The person complies with this section.

(5) The limited cooperative association shall respond to a demand made pursuant to subsection (4) of this section in the same manner as otherwise provided in this section.

(6) The limited cooperative association may impose reasonable restrictions, including nondisclosure restrictions, on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction, the limited cooperative association has the burden of proving reasonableness.

(7) A limited cooperative association may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A member or person dissociated as a member may exercise the rights under this section through an attorney or other agent. A restriction imposed under this section or by the articles of organization or bylaws on a member or person dissociated as a member applies both to the attorney or other agent and to the member or person dissociated as a member.

(9) The rights stated in this section do not extend to a person as transferee but may be exercised by the legal representative of an individual under legal disability who is a member or person dissociated as a member.

Source: Laws 2007, LB368, § 33.

21-2934 Annual members' meetings.

(1) The members of the limited cooperative association shall meet annually as provided in the articles of organization or bylaws or at the direction of the board of directors not inconsistent with the articles of organization or bylaws.

(2) Annual members' meetings may be held in or out of this state at the place stated in the articles of organization or bylaws or by the board of directors in accordance with the articles of organization or bylaws.

(3) The board of directors shall report or cause to be reported at the annual members' meeting the business and financial condition as of the close of the most recent fiscal year.

(4) Unless otherwise provided by the articles of organization or bylaws, the board of directors shall designate the presiding officer of the annual members' meeting.

Source: Laws 2007, LB368, § 34.

21-2935 Special members' meetings.

(1) Special members' meetings shall be called:

(a) As provided in the articles of organization or bylaws;

(b) By a majority vote of the board of directors;

(c) By demand in a record signed by members holding at least twenty percent of the votes of any class or group entitled to be cast on the matter that is the purpose of the meeting; or

(d) By demand in a record signed by members holding at least twenty percent of all votes entitled to be cast on the matter that is the purpose of the meeting.

(2) Any voting member may withdraw its demand under this section before the receipt by the limited cooperative association of demands sufficient to require a special members' meeting.

(3) A special members' meeting may be held in or out of this state at the place stated in the articles of organization or bylaws or by the board of directors in accordance with the articles of organization or bylaws.

(4) Only affairs within the purpose or purposes stated pursuant to subsection (2) of section 21-2965 may be conducted at a special members' meeting.

(5) Unless otherwise provided by the articles of organization or bylaws, the presiding officer of the meeting shall be designated by the board of directors.

Source: Laws 2007, LB368, § 35; Laws 2008, LB848, § 7.

21-2936 Notice of members' meetings.

(1) The limited cooperative association shall notify each member of the time, date, and place of any annual or special members' meeting not less than ten nor more than fifty days before the meeting.

(2) Unless the articles of organization or bylaws otherwise provide, notice of an annual members' meeting need not include a description of the purpose or purposes of the meeting.

(3) Notice of a special members' meeting shall include a description of the purpose or purposes of the meeting as contained in the demand under section 21-2935 or as voted upon by the board of directors under such section.

Source: Laws 2007, LB368, § 36.

21-2937 Waiver of members' meeting notice.

(1) A member may waive notice of any meeting of the members either before, during, or after the meeting.

(2) A member's participation in a meeting is waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 2007, LB368, § 37.

21-2938 Quorum.

Unless the articles of organization or bylaws provide otherwise, ten percent, but not less than five nor more than fifty of the members, need to be present at an annual or special members' meeting to constitute a quorum.

Source: Laws 2007, LB368, § 38.

21-2939 Voting by patron members; voting by investor members.

(1) Each patron member has one vote, but the articles of organization or bylaws may provide additional voting power to members on the basis of patronage under section 21-2941 and may provide for voting by district, group, or class under section 21-2956.

(2) If the articles of organization provide for investor members, each investor member has one vote, unless the articles of organization or bylaws otherwise provide. The articles of organization or bylaws may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

(3) If a limited cooperative association has both patron and investor members:

(a) The aggregate voting power of all patron members shall not be less than fifty-one percent of the entire voting power entitled to vote, but the articles of organization or bylaws may reduce the collective voting power of patron members to not less than fifteen percent of the entire voting power entitled to vote; and

(b) The entire aggregate voting power of patron members shall be voted as determined by the majority vote of patron members voting at the members' meeting.

Source: Laws 2007, LB368, § 39; Laws 2008, LB848, § 8.

21-2940 Action without a meeting.

(1) Unless otherwise provided by the articles of organization or bylaws, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on such action consents to the action in a record.

(2) Consent may be withdrawn by a member in a record at any time before the limited cooperative association receives a consent from each member entitled to vote.

(3) The consent record of any action may specify the effective date or time of the action.

Source: Laws 2007, LB368, § 40.

21-2941 Determination of voting power of patron member.

The articles of organization or bylaws may provide additional voting power be allocated for each patron member for:

(1) Actual, estimated, or potential patronage or any combination thereof;

(2) Equity allocated or held by a patron member in the limited cooperative association; or

(3) Any combination of subdivisions (1) and (2) of this section.

Source: Laws 2007, LB368, § 41.

21-2942 Voting by investor members.

If the articles of organization or bylaws provide for investor members, each investor member has one vote except as otherwise provided by the articles of organization or bylaws.

Source: Laws 2007, LB368, § 42.

21-2943 Manner of voting.

(1) Proxy voting by members is prohibited.

(2) Delegate voting based upon geographical district, group, or class is not voting by proxy under this section.

(3) The articles of organization or bylaws may provide for member voting by secret ballot delivered by mail or other means.

(4) The articles of organization or bylaws may provide for members to attend meetings or conduct members' meetings through the use of any means of communication, if all members attending the meeting can simultaneously communicate with each other during the meeting.

Source: Laws 2007, LB368, § 43.

21-2944 Districts and delegates; classes of members.

(1) The articles of organization or bylaws may provide:

(a) For the formation of districts and the conduct of members' meetings by districts and that elections of directors may be held at district meetings; or

(b) That districts may elect district delegates to represent and vote for the district in annual and special meetings of members.

(2) A delegate selected under subdivision (1)(b) of this section has one vote subject to subsection (3) of this section.

(3) The articles of organization or bylaws may provide additional voting power be allocated to each district, group, or class or delegate for the aggregate of the number of patron members in each district, group, or class as provided under section 21-2941.

Source: Laws 2007, LB368, § 44.

PART 5

MEMBER INTEREST

21-2945 Member interest.

A member's interest:

(1) Consists of: (a) Governance rights; (b) financial rights; and (c) the right or obligation, if any, to do business with the limited cooperative association;

(2) Is personal property; and

(3) May be in certificated or uncertificated form.

Source: Laws 2007, LB368, § 45; Laws 2008, LB848, § 9.

21-2946 Patron and investor member interests.

(1) Subject to subsection (2) of this section, member interests shall be patron member interests.

(2) The articles of organization or bylaws may establish investor member interests.

Source: Laws 2007, LB368, § 46.

21-2947 Transferability of member interest.

(1) Unless otherwise provided in the articles of organization or bylaws and subject to subsection (2) of this section, member interests are not transferable.

The terms of the restriction on transferability shall be set forth in the limited cooperative association articles of organization or bylaws, the member records of the limited cooperative association, and shall be conspicuously noted on any certificates evidencing a member's interest.

(2) A member may transfer its financial rights in the limited cooperative association unless the transfer is restricted or prohibited by the articles of organization or bylaws.

(3) The transferee of a member's financial rights has, to the extent transferred, the right to share in the allocation of surplus, profits, or losses and to receive the distributions to the member transferring the interest.

(4) The transferee does not become a member upon transfer of a member's financial rights unless it is admitted as a member by the limited cooperative association.

(5) A limited cooperative association need not give effect to a transfer under this section until the limited cooperative association has notice of the transfer.

(6) A transfer of a member's financial rights in violation of a restriction or prohibition on transfer contained in the articles of organization or bylaws is void.

Source: Laws 2007, LB368, § 47.

21-2948 Security interest.

(1) An investor member or transferee may grant a security interest in financial rights in a limited cooperative association, but not in the governance rights in such association.

(2) A patron member shall not grant a security interest in financial rights or governance rights in a limited cooperative association.

(3) The granting of a security interest in financial rights is not considered a transfer for purposes of section 21-2947. Upon foreclosure of a security interest in financial rights a person obtaining the financial rights shall only obtain financial rights subject to the security interest and shall not obtain any governance rights or other rights with respect to the limited cooperative association.

(4) The limitation of this section to financial rights shall not apply in the case of a member interest that is not subject to a restriction or prohibition on transfer under the articles of organization or bylaws.

Source: Laws 2007, LB368, § 48.

PART 6

MARKETING CONTRACTS

21-2949 Marketing contract, defined; authority.

In this section and sections 21-2950 to 21-2952, marketing contract means a contract between a limited cooperative association and another person that need not be a patron member:

(1) Requiring the other person to sell, or deliver for sale or marketing on the person's behalf, a specified part of the person's products, commodities, or goods exclusively to or through the limited cooperative association or any facilities furnished by the association; or

(2) Authorizing the limited cooperative association to act for the person in any manner with respect to the products, commodities, or goods.

Source: Laws 2007, LB368, § 49; Laws 2008, LB848, § 10.

21-2950 Marketing contract.

(1) If a marketing contract provides for the sale of products, commodities, or goods to a limited cooperative association, the sale transfers title absolutely, except for security interests properly perfected, to the association upon delivery or at any other specific time expressly provided by the contract.

(2) A marketing contract may:

(a) Authorize a limited cooperative association to create an enforceable security interest in the products, commodities, or goods delivered; and

(b) Allow the limited cooperative association to sell the products, commodities, or goods delivered and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.

Source: Laws 2007, LB368, § 50; Laws 2008, LB848, § 11.

21-2951 Duration of marketing contract; termination.

The initial duration of a marketing contract may not exceed ten years, but the contract may be made self-renewing for additional periods not exceeding five years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in a record at least ninety days before the end of the current term.

Source: Laws 2007, LB368, § 51; Laws 2008, LB848, § 12.

21-2952 Remedies for breach or anticipating repudiation of contract.

(1) A marketing contract may liquidate damages to be paid to a limited cooperative association for a breach or anticipatory repudiation of the marketing contract but only at an amount or at a formula that is reasonable in light of the actual or then anticipated harm caused by the breach or to be caused by the anticipatory repudiation. The provision may be enforced as liquidated damages and is not to be considered a penalty.

(2) If there is a breach or anticipatory repudiation of a marketing contract, the limited cooperative association may seek an injunction to prevent the further breach or an anticipatory repudiation of the contract and the specific performance of the contract.

(3) In the case of a marketing contract between a limited cooperative association and a patron member, the articles of organization or bylaws may also provide additional remedies for the remedies under subsections (1) and (2) of this section.

(4) Nothing in this section shall restrict a limited cooperative association from seeking any other remedy at law or equity in the enforcement of a marketing contract.

Source: Laws 2007, LB368, § 52; Laws 2008, LB848, § 13.

PART 7

DIRECTORS AND OFFICERS

21-2953 Existence and powers of board of directors.

(1) A limited cooperative association shall have a board of directors consisting of three or more directors as set forth in the articles of organization or bylaws unless the number of members is less than three. If there are fewer than three members, the number of directors shall not be less than the number of members in the limited cooperative association.

(2) The affairs of the limited cooperative association shall be managed by, or under the direction of, the board of directors. The board of directors may adopt policies and procedures that are not in conflict with the articles of organization, the bylaws, and the Nebraska Limited Cooperative Association Act.

(3) A director does not have agency authority on behalf of the limited cooperative association solely by being a director.

Source: Laws 2007, LB368, § 53; Laws 2008, LB848, § 14.

21-2954 No liability as director for limited cooperative association's obligations.

An obligation of a limited cooperative association, whether arising in contract, tort, or otherwise, is not the obligation of a director. A director is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited cooperative association solely by reason of being a director.

Source: Laws 2007, LB368, § 54.

21-2955 Qualifications of directors and composition of board.

(1) A director shall be an individual or individual representative of a member that is not an individual.

(2) The articles of organization or bylaws may provide for qualification of directors subject to this section.

(3) Except as otherwise provided in the articles of organization or bylaws and subject to subsections (4) and (5) of this section, each director shall be a member of the limited cooperative association or a designee of a member that is not an individual.

(4) Unless otherwise provided in the articles of organization or bylaws, a director may be an officer or employee of the limited cooperative association.

(5) If the limited cooperative association is permitted to have nonmember directors by its articles of organization or bylaws, the number of nonmember directors shall not exceed:

(a) One director, if there are two, three, or four directors; and

(b) One-fifth of the total number of directors, if there are five or more directors.

Source: Laws 2007, LB368, § 55; Laws 2008, LB848, § 15.

21-2956 Election of directors.

(1) At least fifty percent of the board of directors of a limited cooperative association shall be elected exclusively by patron members.

(2) Subject to the provisions of subsection (1) of this section, the articles of organization or bylaws may provide for the election of all or a specified number of directors by the holders of one or more groups of classes of members' interests.

(3) Subject to the provisions of subsection (1) of this section, the articles of organization or bylaws may provide for the nomination or election of directors by geographic district directly or by district delegates.

(4) Cumulative voting is prohibited unless otherwise provided in the articles of organization or bylaws.

(5) Except as otherwise provided by the articles of organization, bylaws, or section 21-2961, member directors shall be elected at an annual members' meeting.

(6) Nonmember directors shall be elected in the same manner as member directors unless the articles of organization or bylaws provide for a different method of selection.

Source: Laws 2007, LB368, § 56; Laws 2008, LB848, § 16.

21-2957 Term of director.

(1) A director's term expires at the annual members' meeting following the director's election unless otherwise provided in the articles of organization or bylaws. The term of a director shall not exceed three years.

(2) Unless otherwise provided in the articles of organization or bylaws, a director may be reelected for subsequent terms.

(3) A director continues to serve as director until a successor director is elected and qualified or until the director is removed, resigns, or dies.

Source: Laws 2007, LB368, § 57.

21-2958 Resignation of director.

(1) A director may resign at any time by giving notice in a record to the limited cooperative association.

(2) A resignation is effective when notice is received by the limited cooperative association unless the notice states a later effective date.

Source: Laws 2007, LB368, § 58.

21-2959 Removal of director.

Unless the articles of organization or bylaws otherwise provide, the following rules apply:

(1) Members may remove a director with or without cause;

(2) A member or members holding at least twenty-five percent of the total voting power entitled to be voted in the election of the director may demand removal of a director by a signed petition submitted to the officer of the limited cooperative association charged with keeping its records;

(3) Upon receipt of a petition for removal of a director, an officer or the board of directors shall:

(a) Call a special members' meeting to be held within ninety days after receipt of the petition by the association; and

(b) Mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal notice of the meeting which complies with section 21-2936;

(4) A director against whom a petition has been submitted shall be informed in a record of the petition within a reasonable time before the members' meeting at which the members consider the petition; and

(5) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

Source: Laws 2007, LB368, § 59; Laws 2008, LB848, § 17.

21-2960 Suspension of director by board.

(1) The board of directors may suspend a director, if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the limited cooperative association and the director is engaged in:

(a) Fraudulent conduct with respect to the limited cooperative association or its members;

(b) Gross abuse of the position of the director;

(c) Intentional infliction of harm on the limited cooperative association; or

(d) Any other behavior, act, or omission as provided by the articles of organization or bylaws.

(2) A suspension under subsection (1) of this section is effective for thirty days unless the board of directors calls and gives notice of a special members' meeting for removal of the director before the end of the thirty-day period in which case the suspension is effective until adjournment of the special meeting or the director is removed.

(3) After suspension, a director may be removed pursuant to section 21-2959.

Source: Laws 2007, LB368, § 60; Laws 2008, LB848, § 18.

21-2961 Vacancy on board.

(1) Unless the articles of organization or bylaws otherwise provide, a vacancy on the board of directors shall be filled:

(a) By majority vote of the remaining directors until the next annual members' meeting or special members' meeting held for that purpose; and

(b) For the unexpired term by members at the next annual members' meeting or special members' meeting called for that purpose.

(2) If the vacating director was elected by a group or class of members or by group, class, or district:

(a) The appointed director shall be of that group, class, or district; and

(b) The election of the director for the unexpired term shall be conducted in the same manner as would the election for that position without a vacancy.

Source: Laws 2007, LB368, § 61.

21-2962 Compensation of directors.

Unless the articles of organization or bylaws otherwise provide, the board of directors may fix the remuneration of directors and nondirector committee members.

Source: Laws 2007, LB368, § 62.

21-2963 Meetings.

(1) The board of directors shall meet at least annually and may hold meetings in or outside this state.

(2) Unless otherwise provided in the articles of organization or bylaws, the board of directors may permit directors to attend board meetings or conduct board meetings through the use of any means of communication, if all directors attending the meeting can communicate with each other during the meeting.

Source: Laws 2007, LB368, § 63.

21-2964 Action without meeting.

(1) Unless prohibited by the articles of organization or bylaws, any action that may be taken by the board of directors may be taken without a meeting if each director consents to action in a record.

(2) Consent under subsection (1) of this section may be withdrawn by a director in a record at any time before the limited cooperative association receives a record of consent from each director.

(3) The record of consent for any action may specify the effective date or time of the action.

Source: Laws 2007, LB368, § 64.

21-2965 Meetings and notice.

(1) Unless otherwise provided by the articles of organization or bylaws, the board of directors may establish a time and place for regular board meetings and notice of the time, place, or purpose of those meetings is not required.

(2) Unless otherwise provided by the articles of organization or bylaws, special meetings of the board of directors shall be preceded by at least three days' notice of the time, date, and place of the meeting. The notice shall contain a statement of the purpose of the special meeting and the meeting shall be limited to the matters contained in the statement.

Source: Laws 2007, LB368, § 65.

21-2966 Waiver of notice of meeting.

(1) Unless otherwise provided in the articles of organization or bylaws, a director may waive any required notice of a meeting of the board of directors in a record before, during, or after the meeting.

(2) Unless otherwise provided in the articles of organization or bylaws, a director's participation in a meeting is waiver of notice of that meeting, unless the director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 2007, LB368, § 66.

21-2967 Quorum.

(1) Unless otherwise provided in the articles of organization or bylaws, a majority of the fixed number of directors on the board of directors constitutes a quorum for the management of the affairs of the limited cooperative association.

(2) If a quorum is in attendance at the beginning of the meeting, any action taken by the board of directors present is valid even if the withdrawal of directors originally present results in the number of directors being less than the number required for a quorum.

Source: Laws 2007, LB368, § 67.

21-2968 Voting.

Each director has one vote for purposes of decisions made by the board of directors.

Source: Laws 2007, LB368, § 68.

21-2969 Committees.

(1) Unless otherwise provided by the articles of organization or bylaws, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.

(2) Unless otherwise provided by the articles of organization or bylaws, an individual appointed to serve on a committee need not be a director or member of the limited cooperative association. An individual serving on a committee has the same rights, duties, and obligations as a director serving on a committee.

(3) Unless otherwise provided by the articles of organization or bylaws, each committee may exercise the powers as delegated by the board of directors except that no committee may:

(a) Approve allocations or distributions except according to a formula or method prescribed by the board of directors;

(b) Approve or propose to members action requiring approval of members; or

(c) Fill vacancies on the board of directors or any of its committees.

Source: Laws 2007, LB368, § 69.

21-2970 Standards of conduct and liability.

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the limited cooperative association.

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the limited cooperative association whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member, if the director reasonably believes the committee merits confidence.

(3) A director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director shall not be liable for any action taken as a director or any failure to take any action if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 2007, LB368, § 70; Laws 2008, LB706, § 1.

21-2971 Conflict of interest.

Except as otherwise provided in section 21-2970, the Business Corporation Act governs conflicts of interests between a director or member of a committee of the board of directors and the limited cooperative association.

Source: Laws 2007, LB368, § 71.

Cross References

Business Corporation Act, see section 21-2001.

21-2972 Right of director to information.

A director may obtain, inspect, and copy all information regarding the state of activities and financial condition of the limited cooperative association and other information regarding the activities of the limited cooperative association reasonably related to the performance of the director's duties as director but not for any other purpose or in any manner that would violate any duty to the limited cooperative association.

Source: Laws 2007, LB368, § 72.

21-2973 Other considerations of directors.

Unless otherwise provided in the articles of organization or bylaws, a director, in determining the best interests of the limited cooperative association, may consider the interests of employees, customers, and suppliers of the limited cooperative association and of the communities in which the limited cooperative association operates and the long-term and short-term interests of the limited cooperative association and its members.

Source: Laws 2007, LB368, § 73.

21-2974 Appointment and authority of officers.

(1) A limited cooperative association has the offices provided in its articles of organization or bylaws or established by the board of directors consistent with the articles of organization or bylaws.

(2) The articles of organization or bylaws or the board of directors shall designate one of the officers for preparing all records required by section 21-2910 for the authentication of records.

(3) Officers have the authority and shall perform the duties as the articles of organization or bylaws prescribe or as the board of directors determines is consistent with the articles of organization or bylaws.

(4) The election or appointment of an officer does not of itself create a contract with the officer.

(5) Unless otherwise provided in the articles of organization or bylaws an individual may simultaneously hold more than one office in the limited cooperative association.

Source: Laws 2007, LB368, § 74.

21-2975 Resignation and removal of officers.

(1) The board of directors may remove an officer at any time with or without cause.

(2) An officer may resign at any time in a record giving notice to the limited cooperative association. The resignation is effective when the notice is given unless the notice specifies a later time.

Source: Laws 2007, LB368, § 75.

PART 8

INDEMNIFICATION

21-2976 Indemnification.

Indemnification of any individual who has incurred liability, is a party, or is threatened to be made a party because of the performance of duties to, or activity on behalf of, the limited cooperative association is governed by the Business Corporation Act.

Source: Laws 2007, LB368, § 76.

Cross References

Business Corporation Act, see section 21-2001.

PART 9

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

21-2977 Members' contributions.

The articles of organization or bylaws may establish the amount, manner, or method of determining any member contribution requirements for members or may authorize the board of directors to establish the manner and terms of any contributions for members.

Source: Laws 2007, LB368, § 77.

21-2978 Forms of contribution and valuation.

(1) Unless otherwise provided in the articles of organization or bylaws, the contributions of a member may consist of tangible or intangible property or other benefit to the limited cooperative association, including money, services performed or to be performed, promissory notes, other agreements to contribute cash or property, and contracts to be performed.

(2) The receipt and acceptance of contributions and the valuation of contributions shall be reflected in the limited cooperative association's required records pursuant to section 21-2910.

(3) Unless otherwise provided in the articles of organization or bylaws, the board of directors shall value the contributions received or to be received. The determination by the board of directors on valuation is conclusive for purposes of determining whether the member's contribution obligation has been fully met.

Source: Laws 2007, LB368, § 78; Laws 2008, LB848, § 19.

21-2979 Contribution agreements.

(1) A contribution agreement entered into before formation of the limited cooperative association is irrevocable for six months unless:

(a) Otherwise provided by the agreement; or

(b) All parties to the agreement consent to the revocation.

(2) Upon default by a party to a contribution agreement entered into before formation, the limited cooperative association, once formed, may:

(a) Collect the amount owed as any other debt; or

(b) Unless otherwise provided in the agreement, rescind the agreement if the debt remains unpaid more than twenty days after the limited cooperative association demands payment from the party in a record.

Source: Laws 2007, LB368, § 79.

21-2980 Allocation of profits and losses.

(1) Subject to subsection (2) of this section, the articles of organization or bylaws shall provide for the allocation of net proceeds, savings, margins, profits, and losses between classes or groups of members.

(2)(a) Unless the articles of organization or bylaws otherwise provide, patron members shall be allocated at least fifty percent of the net proceeds, savings, margins, profits, and losses in any fiscal year. The articles of organization or bylaws shall not reduce the percentage allocated to patron members to less than fifteen percent of the net proceeds.

(b) For purposes of this subsection, the following rules apply:

(i) Amounts paid or due on contracts for the delivery to the association by patron members of products, goods, or services are not considered amounts allocated to patron members; and

(ii) Amounts paid, due, or allocated to investor members as a stated, fixed return on equity are not considered amounts allocated to investor members.

(3) Unless otherwise provided in the articles of organization or bylaws, in order to determine the amount of net proceeds, savings, margins, and profits, the board of directors may set aside a portion of the revenue, whether or not allocated to members, after accounting for other expenses, for purposes of:

(a) Creating or accumulating a capital reserve; and

(b) Creating or accumulating reserves for specific purposes, including expansion and replacement of capital assets and other necessary business purposes.

(4) Subject to subsection (5) of this section and the articles of organization or bylaws, the board of directors shall allocate the amount remaining after the allocations under subsections (1) through (3) of this section:

(a) To patron members annually in accordance with the ratio of each member's patronage during the period to total patronage of all patron members during the period; and

(b) To investor members, if any, in accordance with the ratio of each investor member's limited contribution to the total initial contribution of all investor members.

(5) For purposes of allocation of net proceeds, savings, margins, profits, and losses to patron members, the articles of organization or bylaws may establish allocation units based on function, division, district, department, allocation units, pooling arrangements, members' contributions, or other methods.

Source: Laws 2007, LB368, § 80; Laws 2008, LB848, § 20.

21-2981 Distributions.

(1) Unless otherwise provided by the articles of organization or bylaws and subject to subsection (2) of this section, the board of directors may authorize, and the limited cooperative association may make, distributions to members.

(2) Unless otherwise provided by the articles of organization or bylaws, distributions to members may be made in the form of cash, capital credits, allocated patronage equities, revolving fund certificates, the limited cooperative association's own securities or other securities, or in any other manner.

Source: Laws 2007, LB368, § 81.

21-2981.01 Distributions to members; redemption or repurchase authorized; how treated.

Property distributed under subsection (2) of section 21-2981, other than cash, may be redeemed or repurchased as provided in the articles of organization or bylaws but no redemption or repurchase may be made without full and final authorization by the board of directors, which may be withheld for any reason in the board's sole discretion. The redemption or repurchase will be treated as a distribution under section 21-2981.

Source: Laws 2008, LB848, § 21.

21-2981.02 Limit on distributions.

(1) A limited cooperative association shall not make a distribution if, after the distribution:

(a) The limited cooperative association would not be able to pay its debts as they become due in the ordinary course of the association's activities; or

(b) The limited cooperative association's assets would be less than the sum of its total liabilities.

(2) A limited cooperative association may base a determination that a distribution is not prohibited under subsection (1) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other methods that are reasonable in the circumstances.

(3) Except as otherwise provided in subsection (4) of this section, the effect of a distribution allowed under subsection (2) of this section is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the date money or other property is transferred or debt is incurred by the association; and

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

(ii) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

(4) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(5) For purposes of this section, distribution does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

Source: Laws 2008, LB848, § 22.

21-2981.03 Prohibited distribution; director liability; member or holder of financial rights liability; actions authorized; statute of limitation.

(1) A director who consents to a distribution made in violation of section 21-2981 is personally liable to the limited cooperative association for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the director failed to comply with section 21-2970 or 21-2971.

(2) A member or holder of financial rights which received a distribution knowing that the distribution to the member or holder was made in violation of section 21-2981.02 is personally liable to the limited cooperative association but only to the extent that the distribution received by the member or holder exceeded the amount that could have been properly paid under section 21-2981.02.

(3) A director against whom an action is commenced under subsection (1) of this section may:

(a) Implead in the action any other director that is liable under subsection (1) of this section and compel contribution from the person; and

(b) Implead in the action any person that is liable under subsection (2) of this section and compel contribution from the person in the amount the person received as described in such subsection.

(4) An action under this section is barred if it is not commenced within two years after the distribution.

Source: Laws 2008, LB848, § 23.

PART 10

DISSOCIATION

21-2982 Member's dissociation; power of estate of member.

(1) A member does not have a right to withdraw as a member of a limited cooperative association but has the power to withdraw.

(2) Unless otherwise provided by the articles of organization or bylaws, a member is dissociated from a limited cooperative association upon the occurrence of any of the following events:

(a) The limited cooperative association's having notice in a record of the person's express will to withdraw as a member or to withdraw on a later date specified by the person;

(b) An event provided in the articles of organization or bylaws as causing the person's dissociation as a member;

(c) The person's expulsion as a member pursuant to the articles of organization or bylaws;

(d) The person's expulsion as a member by the board of directors if:

(i) It is unlawful to carry on the limited cooperative association's activities with the person as a member;

(ii) Subject to section 21-2947, there has been a transfer of all of the person's financial rights in the limited cooperative association;

(iii) The person is a corporation or association whether or not organized under the Nebraska Limited Cooperative Association Act; and:

(A) The limited cooperative association notifies the person that it will be expelled as a member because it has filed a statement of intent to dissolve or articles of dissolution, it has been administratively or judicially dissolved, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its organization; and

(B) Within ninety days after the person receives the notification described in subdivision (2)(d)(iii)(A) of this section, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) The person is a limited liability company, association, whether or not organized under the act, or partnership that has been dissolved and whose business is being wound up;

(e) In the case of a person who is an individual, the person's death;

(f) In the case of a person that is a trust, distribution of the trust's entire financial rights in the limited cooperative association, but not merely by the substitution of a successor trustee;

(g) In the case of a person that is an estate, distribution of the estate's entire financial interest in the limited cooperative association, but not merely by the substitution of a successor personal representative;

(h) Termination of a member that is not an individual, partnership, limited liability company, limited cooperative association, whether or not organized under the act, corporation, trust, or estate; or

(i) The limited cooperative association's participation in a merger or consolidation, if, under the plan of merger or consolidation as approved under section 21-29,122, the person ceases to be a member.

Source: Laws 2007, LB368, § 82; Laws 2008, LB848, § 24.

21-2983 Effect of dissociation as member.

(1) Upon a person's dissociation as a member:

(a) A person dissociated pursuant to section 21-2982 does not have further rights as a member; and

(b) Subject to sections 21-2947 and 21-2948, any financial rights owned by the person in the person's capacity as a member immediately before dissociation are owned by the person as a transferee who is not admitted as a member after dissociation.

(2) A person's dissociation as a member does not of itself discharge the person from any obligation to the limited cooperative association which the person incurred while a member.

Source: Laws 2007, LB368, § 83.

PART 11

DISSOLUTION

21-2984 Dissolution.

Except as otherwise provided in sections 21-2986 and 21-2987, a limited cooperative association is dissolved and its activities shall be wound up only upon the occurrence of any of the following:

(1) The happening of an event or the coming of a time specified in the articles of organization;

(2) The action of the organizers, board of directors, or members under sections 21-2986 and 21-2987;

(3) The passage of ninety days after the dissociation of a member, resulting in the limited cooperative association having less than two members, unless before the end of the period the limited cooperative association admits at least one member in accordance with its articles of organization or bylaws; or

(4) The filing of a declaration by the Secretary of State under section 21-2994.

Source: Laws 2007, LB368, § 84.

21-2985 Judicial dissolution.

A district court may dissolve a limited cooperative association or order any action that under the circumstances is appropriate and equitable:

(1) In a proceeding by the Attorney General, if it is established that:

(a) The limited cooperative association obtained its articles of organization through fraud; or

(b) The limited cooperative association has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a member, if it is established that:

(a) The directors are deadlocked in the management of the limited cooperative association's affairs, the members are unable to break the deadlock, and irreparable injury to the limited cooperative association is occurring or is threatened because of the deadlock;

(b) The directors or those in control of the limited cooperative association have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual members' meetings, to elect successors to directors whose terms have expired; or

(d) The assets of the limited cooperative association are being misapplied or wasted; or

(3) In a proceeding by the limited cooperative association to have its voluntary dissolution continued under judicial supervision.

Source: Laws 2007, LB368, § 85.

21-2986 Voluntary dissolution before commencement of activity.

A majority of the organizers or initial directors of a limited cooperative association that has not yet begun activity or the conduct of its affairs may dissolve the limited cooperative association.

Source: Laws 2007, LB368, § 86.

21-2987 Voluntary dissolution by the board and members.

In order to voluntarily dissolve:

(1) A resolution to dissolve shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws;

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The resolution required by subdivision (1) of this section;

(b) A recommendation that the members vote in favor of the resolution, unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;

(c) If the board makes no recommendation, the basis of that decision; and

(d) A notice of the meeting in the same manner as a special members' meeting;

(3) Subject to section 21-2939, the resolution to dissolve shall be approved by at least a two-thirds vote of patron members voting at the meeting and at least two-thirds vote of investor members voting at the meeting; and

(4) Unless otherwise provided in the resolution, the limited cooperative association is dissolved upon approval under subdivision (3) of this section.

Source: Laws 2007, LB368, § 87.

21-2988 Articles of dissolution.

(1) A limited cooperative association that has dissolved or is about to dissolve shall deliver to the Secretary of State for filing articles of dissolution that state:

(a) The name of the limited cooperative association;

(b) The date that the limited cooperative association dissolved or when it will dissolve; and

(c) Any other information it deems relevant.

(2) A person has notice of a limited cooperative association's dissolution the later of ninety days after the filing of the statement or the effective date under subdivision (1)(b) of this section.

Source: Laws 2007, LB368, § 88.

21-2989 Winding up of activities.

(1) A limited cooperative association continues after dissolution only for purposes of winding up its activities.

(2) In winding up its activities, the limited cooperative association shall:

(a) Discharge its liabilities, settle and close its activities, and marshal and distribute its assets; and

(b) File articles of dissolution indicating it is winding up, preserve the limited cooperative association or its property as a going concern for a reasonable time, prosecute and defend actions and proceedings, transfer limited cooperative association property, settle disputes by mediation or arbitration, and perform other necessary acts.

(3) On the application of the limited cooperative association, any member, or a holder of financial rights the district court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited cooperative association's activities, if:

(a) After a reasonable time, the limited cooperative association has not executed winding up under subsection (2) of this section; or

(b) The applicant establishes other good cause.

Source: Laws 2007, LB368, § 89.

21-2990 Distribution of assets in winding up limited cooperative association.

(1) In winding up a limited cooperative association's business, unless otherwise stated in the articles of organization or bylaws, the assets of the limited cooperative association shall be applied to discharge its obligations to creditors, including members who are creditors. Any remaining assets shall be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (2) of this section.

(2) Each member is entitled to a distribution from the limited cooperative association of any remaining assets in the proportion of the member's financial interests to the total financial interests of members of the limited cooperative association after all other obligations are satisfied.

Source: Laws 2007, LB368, § 90.

21-2991 Known claims against dissolved limited cooperative association.

(1) A dissolved limited cooperative association may dispose of the known claims against it by following the procedure described in subsection (2) of this section.

(2) A dissolved limited cooperative association may notify its known claimants of the dissolution in a record. The notice shall:

(a) Specify the information required to be included in a claim;

(b) Provide a mailing address to which the claim is to be sent;

(c) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against a dissolved limited cooperative association is barred if the requirements of subsection (2) of this section are met and:

(a) The limited cooperative association has not been notified in a record of the claim; or

(b) In the case of a claim that is timely received but rejected by the dissolved limited cooperative association, the claimant does not commence an action to enforce the claim against the limited cooperative association within ninety days after the receipt of the notice of the rejection, if the notice of rejection states that the claim will be barred unless brought against the limited cooperative association within ninety days after receipt of the notice of rejection.

(4) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that is contingent on that date.

Source: Laws 2007, LB368, § 91.

21-2992 Other claims against dissolved limited cooperative association.

(1) A dissolved limited cooperative association shall publish notice of its dissolution and may request persons having claims against the limited cooperative association to present them in accordance with the notice.

(2) The notice shall:

(a) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited cooperative association's principal office is located or, if it has none in this state, in the county in which the limited cooperative association's designated office is or was last located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) State that a claim against the limited cooperative association is barred unless an action to enforce the claim is commenced within three years after publication of the notice.

(3) If a dissolved limited cooperative association publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred, unless the claimant commences an action to enforce the claim against the dissolved limited cooperative association within three years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under section 21-2991;

(b) A claimant whose claim was timely sent to the dissolved limited cooperative association but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) Against the dissolved limited cooperative association, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member or transferee of financial rights to the extent of that person's proportionate share of the claim or the limited cooperative association's assets distributed to the

member or transferee in liquidation, whichever is less, but a person's total liability for all claims under this subsection does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited cooperative association.

Source: Laws 2007, LB368, § 92; Laws 2008, LB848, § 25.

21-2993 Court proceeding.

(1) A dissolved limited cooperative association that has published a notice under section 21-2991 or 21-2992 may file an application with the district court where the dissolved limited cooperative association's principal office is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved limited cooperative association or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved limited cooperative association, are reasonably estimated to arise after the effective date of dissolution.

(2) Notice of the proceeding shall be given by the dissolved limited cooperative association to each known claimant holding a contingent claim within ten days after the filing of the application of the limited cooperative association.

(3) The court may appoint a receiver to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such receiver, including all reasonable expert witness fees, shall be paid by the dissolved limited cooperative association.

(4) Provision by the dissolved limited cooperative association for security in the amount and the form ordered by the court under section 21-2992 shall satisfy the dissolved limited cooperative association's obligations with respect to claims that are contingent, have not been made known to the dissolved limited cooperative association, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member who received a distribution.

Source: Laws 2007, LB368, § 93.

21-2994 Administrative dissolution.

(1) The Secretary of State may dissolve a limited cooperative association administratively if the limited cooperative association does not, within sixty days after the due date:

(a) Pay any fee, tax, or penalty due to the Secretary of State under the Nebraska Limited Cooperative Association Act or other law;

(b) Deliver its biennial report to the Secretary of State;

(c) Have a registered agent or registered office in this state; or

(d) Notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(2) If the Secretary of State determines that a ground exists for administratively dissolving a limited cooperative association, the Secretary of State shall file a record of the determination and serve the limited cooperative association with a copy of the filed record.

(3) If, within sixty days after service of the copy, the limited cooperative association does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each uncorrected ground determined by the Secretary of State does not exist, the Secretary of State shall administratively dissolve the limited cooperative association by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The Secretary of State shall serve the limited cooperative association with a copy of the filed declaration.

(4) A limited cooperative association administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 21-2989 and 21-2990 and to notify claimants under sections 21-2991 and 21-2992.

(5) The administrative dissolution of a limited cooperative association does not terminate the authority of its agent for service of process.

Source: Laws 2007, LB368, § 94.

21-2995 Reinstatement following administrative dissolution.

(1) A limited cooperative association that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall be delivered to the Secretary of State for filing and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908.

(2) If the Secretary of State determines that (a) the application contains the information required by subsection (1) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

(a) Prepare a declaration of reinstatement that states this determination;

(b) Sign and file the original of the declaration of reinstatement; and

(c) Serve the limited cooperative association with a copy.

(3) When reinstatement becomes effective it relates back to and takes effect as of the effective date of the administrative dissolution and the limited cooperative association may resume or continue its activities as if the administrative dissolution had never occurred.

Source: Laws 2007, LB368, § 95; Laws 2012, LB854, § 8.
Operative date January 1, 2013.

21-2996 Denial of reinstatement; appeal.

(1) If the Secretary of State denies a limited cooperative association's application for reinstatement following administrative dissolution, the Secretary of State shall prepare, sign, and file a notice that explains the reason or reasons

for denial and serve the limited cooperative association with a copy of the notice.

(2) Within thirty days after service of the notice of denial, the limited cooperative association may appeal the denial of reinstatement by petitioning the district court to set aside the dissolution. The petition shall be served on the Secretary of State and contain a copy of the Secretary of State's declaration of dissolution, the limited cooperative association's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved limited cooperative association or may take other action the court considers appropriate.

Source: Laws 2007, LB368, § 96.

PART 12

ACTIONS BY MEMBERS

21-2997 Direct action by member.

(1) Subject to subsection (2) of this section, a member may maintain a direct action against the limited cooperative association, an officer, or a director to enforce the rights and otherwise protect the interests of the member, including rights and interests under the articles of organization or bylaws.

(2) A member maintaining a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited cooperative association.

Source: Laws 2007, LB368, § 97.

21-2998 Derivative action.

A member may maintain a derivative action to enforce a right of a limited cooperative association if the member adequately represents the interests of the limited cooperative association and if:

(1) The member first makes a demand on the limited cooperative association, requesting that it bring an action to enforce the right, and the limited cooperative association does not bring the action within a reasonable time; and

(2) Ninety days have expired after the date the demand was made unless the member has earlier been notified that the demand has been rejected by the limited cooperative association or unless irreparable injury to the limited cooperative association would result by waiting for the expiration of the time.

Source: Laws 2007, LB368, § 98.

21-2999 Proper plaintiff.

A derivative action may be maintained only by a person that is a member at the time the action is commenced and:

(1) That was a member when the conduct giving rise to the action occurred; or

(2) Whose status as a member devolved upon the person by operation of law from a person that was a member at the time of the conduct.

Source: Laws 2007, LB368, § 99.

21-29,100 Complaint.

In a derivative action, the complaint shall state with particularity:

(1) The date and content of the plaintiff's demand and the limited cooperative association's response to the demand; and

(2) If ninety days have not expired under subdivision (2) of section 21-2998, that irreparable injury to the limited cooperative association would result by waiting for the expiration of the time.

Source: Laws 2007, LB368, § 100.

21-29,101 Proceeds and expenses.

(1) Except as otherwise provided in subsection (2) of this section:

(a) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited cooperative association and not to the derivative plaintiff; and

(b) If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited cooperative association.

(2) If a derivative action is successful, in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited cooperative association.

Source: Laws 2007, LB368, § 101.

PART 13

FOREIGN COOPERATIVES

21-29,102 Governing law.

(1) The laws of the state or other jurisdiction under which a foreign limited cooperative association is organized govern relations among the members of the foreign limited cooperative association and between the members and the foreign limited cooperative association.

(2) A foreign limited cooperative association shall not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited cooperative association is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited cooperative association to engage in any activity or exercise any power that a limited cooperative association cannot engage in or exercise in this state.

Source: Laws 2007, LB368, § 102.

21-29,103 Application for certificate of authority.

(1) A foreign limited cooperative association may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall state:

(a) The name of the foreign limited cooperative association and, if the name does not comply with section 21-2908, an alternative name adopted pursuant to section 21-29,106;

(b) The name of the state or other jurisdiction under whose law the foreign limited cooperative association is organized;

(c) The street and mailing addresses of the foreign limited cooperative association's designated office and, if the laws of the jurisdiction under which the foreign limited cooperative association is organized require the foreign limited cooperative association to maintain an office in that jurisdiction, the street and mailing addresses of the required office;

(d) The name and street and mailing addresses of the foreign limited cooperative association's agent for service of process in this state; and

(e) The name and street and mailing addresses of each of the foreign limited cooperative association's current directors and officers.

(2) A foreign limited cooperative association shall deliver with the completed application a certificate of good standing or existence or a similar record signed by the Secretary of State or other official having custody of the foreign limited cooperative association's publicly filed records in the state or other jurisdiction under whose law the foreign limited cooperative association is organized.

Source: Laws 2007, LB368, § 103.

21-29,104 Activities not constituting transacting business.

(1) Activities of a foreign limited cooperative association which do not constitute transacting business in this state within the meaning of this section include:

(a) Maintaining, defending, and settling an action or proceeding;

(b) Holding meetings of its members or carrying on any other activity concerning its internal affairs;

(c) Maintaining accounts in financial institutions;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited cooperative association's own securities or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, and maintaining property so acquired;

(i) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; and

(j) Transacting business in interstate commerce.

(2) For purposes of this section, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited cooperative association to service of process, taxation, or regulation under any other law of this state.

Source: Laws 2007, LB368, § 104.

21-29,105 Filing of certificate of authority.

Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of the Nebraska Limited Cooperative Association Act, the Secretary of State, upon payment of all filing fees, shall file the application, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited cooperative association or its representative.

Source: Laws 2007, LB368, § 105.

21-29,106 Noncomplying name of foreign cooperative.

(1) A foreign limited cooperative association whose name does not comply with section 21-2908 shall not obtain a certificate of authority until it adopts, for purposes of transacting business in this state, an alternative name that complies with such section. A foreign limited cooperative association that adopts an alternative name under this subsection and then obtains a certificate of authority with the name need not comply with sections 21-2907 and 21-2908. After obtaining a certificate of authority with an alternative name, a foreign limited cooperative association shall transact business in this state under the name unless the foreign limited cooperative association is authorized under sections 21-2907 and 21-2908 to transact business in this state under another name.

(2) If a foreign limited cooperative association authorized to transact business in this state changes its name to one that does not comply with sections 21-2907 and 21-2908, it shall not thereafter transact business in this state until it complies with subsection (1) of this section and obtains an amended certificate of authority.

Source: Laws 2007, LB368, § 106.

21-29,107 Revocation of certificate of authority.

(1) A certificate of authority of a foreign limited cooperative association to transact business in this state may be revoked by the Secretary of State in the manner provided in subsections (2) and (3) of this section if the foreign limited cooperative association does not:

(a) Pay, within sixty days after the due date, any fee, tax, or penalty due to the Secretary of State under the Nebraska Limited Cooperative Association Act or other law;

(b) Deliver, within sixty days after the due date, its biennial report required under section 21-2994;

(c) Appoint and maintain an agent for service of process as required by section 21-29,103; or

(d) Deliver for filing a statement of a change under section 21-2914 within thirty days after a change has occurred in the name or address of the agent.

(2) To revoke a certificate of authority, the Secretary of State shall prepare, sign, and file a certificate of revocation and send a copy to the foreign limited cooperative association's registered agent for service of process in this state, or if the foreign limited cooperative association does not appoint and maintain an agent for service of process in this state, to the foreign limited cooperative association's designated office. The notice shall state:

(a) The revocation's effective date, which shall be at least sixty days after the date the Secretary of State sends the copy; and

(b) The foreign limited cooperative association's noncompliance with subsection (1) of this section which is the reason for the revocation.

(3) The authority of the foreign limited cooperative association to transact business in this state ceases on the effective date of the certificate of revocation unless before that date the foreign limited cooperative association cures each failure to comply with subsection (1) of this section stated in the notice. If the foreign limited cooperative association cures the failures, the Secretary of State shall so indicate on the filed notice.

Source: Laws 2007, LB368, § 107.

21-29,108 Cancellation of certificate of authority; effect of failure to have certificate.

(1) To cancel its certificate of authority to transact business in this state, a foreign limited cooperative association shall deliver to the Secretary of State for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 21-2919.

(2) A foreign limited cooperative association transacting business in this state shall not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(3) The failure of a foreign limited cooperative association to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited cooperative association or prevent the foreign limited cooperative association from defending an action or proceeding in this state.

(4) A member of a foreign limited cooperative association is not liable for the obligations of the foreign limited cooperative association solely by reason of the foreign limited cooperative association's having transacted business in this state without a certificate of authority.

(5) If a foreign limited cooperative association transacts business in this state without a certificate of authority or cancels its certificate of authority, it may be served in accordance with section 21-2916 for rights of action arising out of the transaction of business in this state.

Source: Laws 2007, LB368, § 108.

21-29,109 Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited cooperative association from transacting business in this state in violation of the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB368, § 109.

PART 14

AMENDMENT OF ARTICLES OF ORGANIZATION OR BYLAWS

21-29,110 Authority to amend articles of organization or bylaws; rights of member.

(1) A limited cooperative association may amend its articles of organization or bylaws.

(2) Unless the articles of organization or bylaws provide otherwise, a member of a limited cooperative association does not have vested property rights resulting from any provision in the articles of organization or bylaws, including provisions relating to management, control, capital structure, distribution, entitlement, purpose, or duration of the limited cooperative association.

Source: Laws 2007, LB368, § 110; Laws 2008, LB848, § 26.

21-29,111 Notice and action on amendment of articles of organization or bylaws.

To amend its articles of organization or bylaws:

(1) A proposed amendment shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws; and

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The proposed amendment;

(b) A recommendation that the members approve the amendment unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;

(c) If the board makes no recommendation, the basis of that decision;

(d) Any condition of its submission of the amendment to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting.

Source: Laws 2007, LB368, § 111.

21-29,112 Change to amendment of articles of organization or bylaws at meeting.

(1) No substantive change to the proposed amendment of the articles of organization or bylaws shall be made at the members' meeting at which the vote occurs.

(2) Subject to subsection (1) of this section, any amendment of the amendment need not be separately voted upon by the board of directors.

(3) The vote to adopt an amendment to the amendment is the same as that required to pass the proposed amendment.

Source: Laws 2007, LB368, § 112.

21-29,113 Approval of amendment.

(1) An amendment to the articles of organization shall be approved by at least a two-thirds vote of members voting at the meeting.

(2) An amendment to the bylaws shall be approved by at least a majority vote of members voting at the meeting and by at least a majority of investor members voting at the meeting.

Source: Laws 2007, LB368, § 113.

21-29,114 Vote affecting group, class, or district of members.

Members shall vote as a separate group, if a proposed amendment affects the group, class, or district of members in:

(1) The equity capital structure of the limited cooperative association, including the rights of the limited cooperative association's members to share in profits or distributions, and the relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting groups of similarly situated members;

(2) The transferability of members' interests;

(3) The manner or method of allocation of profits or losses among members;

(4) The quorum for a meeting and rights of voting and governance not including the modification of district boundaries which may, unless otherwise provided in the articles of organization or operating agreement, be determined by the board of directors; or

(5) The terms for admission of new members.

Source: Laws 2007, LB368, § 114.

21-29,115 Emergency bylaws; procedure for adoption.

(1) Unless the articles of organization provide otherwise, the board of directors may adopt bylaws to be effective only in an emergency described in subsection (4) of this section. The emergency bylaws may be amended or repealed by the members and may make all provisions necessary for managing the limited cooperative association during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) The regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Action taken by the limited cooperative association in good faith in accordance with the emergency bylaws:

(a) Binds the limited cooperative association; and

(b) May not be used to impose liability on a director, officer, employee, or agent of the limited cooperative association.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of a catastrophic event.

Source: Laws 2007, LB368, § 115.

21-29,116 Amendment or restatement of articles of organization.

(1) To amend or restate its articles of organization, a limited cooperative association shall deliver to the Secretary of State for filing an amendment or restatement of the articles of organization stating:

(a) The name of the limited cooperative association;

(b) The date of filing of its initial articles of organization; and

(c) The changes the amendment makes to the articles of organization as most recently amended or restated.

(2) A limited cooperative association shall promptly deliver to the Secretary of State for filing an amendment to the articles of organization to reflect the appointment of a person to wind up the limited cooperative association's activities under sections 21-2989 and 21-2990.

(3) An organizer that knows that any information in filed articles of organization was false when the articles were filed or has become false due to changed circumstances shall promptly:

(a) Cause the articles to be amended; and

(b) Deliver to the Secretary of State an amendment for filing.

(4) Articles of organization may be amended at any time for any other proper purpose as determined by the limited cooperative association.

(5) Restated articles of organization shall be delivered to the Secretary of State for filing in the same manner as an amendment.

(6) Subject to section 21-2919, an amendment or restated article is effective when filed by the Secretary of State.

Source: Laws 2007, LB368, § 116.

PART 15

CONVERSION, MERGER, AND CONSOLIDATION

21-29,117 Merger and consolidation; terms, defined.

For purposes of sections 21-29,117 to 21-29,127:

(1) Constituent limited cooperative association means a limited cooperative association that is a party to a merger or consolidation;

(2) Constituent organization means an organization, other than a limited cooperative association, that is a party to a merger or consolidation;

(3) Governing statute of an organization means the statute that governs the organization's internal affairs;

(4) Organization means a limited cooperative association, limited cooperative association governed by a law other than the Nebraska Limited Cooperative Association Act, a general partnership, a limited liability partnership, a limited partnership, a limited liability company, a business trust, a corporation, a cooperative, or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit;

(5) Personal liability means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization's governing statute solely by reason of co-owning, having an interest in, or being a member of the organization; or

(b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or for specified debts, liabilities, and other

obligations of the organization solely by reason of co-owning, having an interest in, or being a member of the organization; and

(6) Surviving organization means an organization into which one or more other organizations are merged or consolidated. A surviving organization may exist before the merger or consolidation or be created by the merger or consolidation.

Source: Laws 2007, LB368, § 117; Laws 2008, LB848, § 27.

21-29,118 Repealed. Laws 2008, LB 848, § 35.

21-29,119 Repealed. Laws 2008, LB 848, § 35.

21-29,120 Repealed. Laws 2008, LB 848, § 35.

21-29,121 Repealed. Laws 2008, LB 848, § 35.

21-29,122 Merger or consolidation.

(1) Any one or more limited cooperative associations may merge or consolidate with or into any one or more limited cooperative associations, limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations, and any one or more limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations may merge or consolidate with or into any one or more limited cooperative associations.

(2) A plan of merger or consolidation shall be in a record and shall include:

(a) The name and form of each constituent organization;

(b) The name and form of the surviving organization and, if the surviving organization is to be created by the merger or consolidation, a statement to that effect;

(c) The terms and conditions of the merger or consolidation, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) If the surviving organization is to be created by the merger or consolidation, the surviving organization's organizational documents;

(e) If the surviving organization is not to be created by the merger or consolidation, any amendments to be made by the merger or consolidation to the surviving organization's organizational documents; and

(f) If a member of a constituent limited cooperative association will have personal liability with respect to a surviving organization, the identity by descriptive class or other reasonable manner of the member.

Source: Laws 2007, LB368, § 122; Laws 2008, LB848, § 28.

21-29,123 Notice and action on plan of merger or consolidation by constituent limited cooperative association.

(1) Unless otherwise provided in the articles of organization or bylaws, the plan of merger or consolidation shall be approved by a majority vote of the board of directors.

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The plan of merger or consolidation;

(b) A recommendation that the members approve the plan of merger or consolidation unless the board makes a determination because of conflicts of interest or other special circumstances that it should not make such a recommendation;

(c) If the board makes no recommendation, the basis for that decision;

(d) Any condition of its submission of the plan of merger or consolidation to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting.

Source: Laws 2007, LB368, § 123; Laws 2008, LB848, § 29.

21-29,124 Approval or abandonment of merger or consolidation by members of constituent limited cooperative association.

(1) Unless the articles of organization or bylaws provide for a greater quorum and subject to section 21-2939, a plan of merger or consolidation shall be approved by at least a two-thirds vote of patron members voting under section 21-2939 and by at least a two-thirds vote of investor members, if any, voting under section 21-2942.

(2) Subject to any contractual rights, after a merger or consolidation is approved, and at any time before a filing is made under section 21-29,126, a constituent limited cooperative association may amend the plan of merger or consolidation or abandon the planned merger or consolidation:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan.

Source: Laws 2007, LB368, § 124; Laws 2008, LB848, § 30.

21-29,125 Merger or consolidation with subsidiary.

(1) Unless the articles of organization or bylaws of the limited cooperative association or articles of organization or bylaws of the other organization otherwise provide, a limited cooperative association that owns at least ninety percent of each class of the voting power of a subsidiary organization may merge or consolidate the subsidiary into itself or into another subsidiary.

(2) The limited cooperative association owning at least ninety percent of the subsidiary organization before the merger or consolidation shall notify each other owner of the subsidiary, if any, of the merger within ten days after the effective date of the merger or consolidation.

Source: Laws 2007, LB368, § 125; Laws 2008, LB848, § 31.

21-29,126 Filings required for merger or consolidation; effective date.

(1) After each constituent organization has approved a merger or consolidation, articles of merger or consolidation shall be signed on behalf of each other preexisting constituent organization by an authorized representative.

(2) The articles of merger or consolidation shall include:

(a) The name and form of each constituent organization and the jurisdiction of its governing statute;

(b) The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger or consolidation, a statement to that effect;

(c) The date the merger or consolidation is effective under the governing statute of the surviving organization;

(d) If the surviving organization is to be created by the merger or consolidation:

(i) If it will be a limited cooperative association, the limited cooperative association's articles of organization; or

(ii) If it will be an organization other than a limited cooperative association, the organizational document that creates the organization;

(e) If the surviving organization preexists the merger or consolidation, any amendments provided for in the plan of merger or consolidation for the organizational document that created the organization;

(f) A statement as to each constituent organization that the merger or consolidation was approved as required by the organization's governing statute;

(g) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the Secretary of State may use for the purposes of service of process; and

(h) Any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited cooperative association shall deliver the articles of merger or consolidation for filing in the office of the Secretary of State.

(4) A merger or consolidation becomes effective under this section:

(a) If the surviving organization is a limited cooperative association, upon the later of:

(i) Compliance with subsection (3) of this section; or

(ii) Subject to section 21-2919, as specified in the articles of merger or consolidation; or

(b) If the surviving organization is not a limited cooperative association, as provided by the governing statute of the surviving organization.

Source: Laws 2007, LB368, § 126; Laws 2008, LB848, § 32.

21-29,127 Effect of merger or consolidation.

When a merger or consolidation becomes effective:

(1) The surviving organization continues or comes into existence;

(2) Each constituent organization that merges or consolidates into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger or consolidation had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger or consolidation, the terms and conditions of the plan take effect;

(8) Except as otherwise agreed, if a constituent limited cooperative association ceases to exist, the merger or consolidation does not dissolve the limited cooperative association for purposes of section 21-2987;

(9) If the surviving organization is created by the merger or consolidation:

(a) If it is a limited cooperative association, the articles of organization become effective; or

(b) If it is an organization other than a limited cooperative association, the organizational document that creates the organization becomes effective; and

(10) If the surviving organization exists before the merger or consolidation, any amendments provided for in the articles of merger or consolidation for the organizational document that created the organization become effective.

Source: Laws 2007, LB368, § 127; Laws 2008, LB848, § 33.

21-29,128 Repealed. Laws 2008, LB 848, § 35.

PART 16

DISPOSITION OF ASSETS

21-29,129 Disposition of assets.

Member approval by at least two-thirds of the patron members voting under section 21-2939 and by at least a two-thirds vote of the investor members, if voting, under section 21-2942, is required for a limited cooperative association to sell, lease, exchange, or otherwise dispose of all or substantially all of the assets of the limited cooperative association.

Source: Laws 2007, LB368, § 129.

21-29,130 Notice and action on disposition of assets.

To dispose of assets subject to section 21-29,129:

(1) The proposed disposition shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws; and

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member notice of a special meeting of the members as required by section 21-2935 that sets forth:

(a) The terms of the proposed disposition;

(b) A recommendation that the members approve the disposition unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;

(c) If the board makes no recommendation, the basis of that decision;

(d) Any condition of its submission of the proposed disposition to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting under sections 21-2935 and 21-2936.

Source: Laws 2007, LB368, § 130.

21-29,131 Vote on disposition of assets.

Disposition of assets subject to section 21-29,129 shall be consented to by:

(1) At least two-thirds vote of patron members voting under section 21-2939; and

(2) At least a two-thirds vote of investor members, if any, under section 21-2942.

Source: Laws 2007, LB368, § 131.

PART 17

MISCELLANEOUS PROVISIONS

21-29,132 Exemption from Securities Act of Nebraska.

Member interests offered or sold by a limited cooperative association are exempt from the Securities Act of Nebraska to the extent interests offered or sold by other types of organizations are exempt under subdivision (15) of section 8-1111.

Source: Laws 2007, LB368, § 132.

Cross References

Securities Act of Nebraska, see section 8-1123.

21-29,133 Immunities, rights, and privileges.

Limited cooperative associations have the same immunities, rights, and privileges provided other types of associations formed under other laws of this state and shall be exempt from those laws to the same extent, but only to the same extent, as those entities organized under the Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339 are exempt.

Source: Laws 2007, LB368, § 133.

Cross References

Nonstock Cooperative Marketing Act, see section 21-1401.

21-29,134 Secretary of State; powers.

The Secretary of State shall have all powers reasonably necessary to perform the duties required of him or her under the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB368, § 134.

CHAPTER 22
COUNTIES

Article.
1. Names and Boundaries of Counties. 22-101 to 22-198.
2. Formation of New Counties. 22-201 to 22-221.
3. Relocation of County Seat. 22-301 to 22-303.
4. Consolidation of Counties and Offices. 22-401 to 22-418.

Cross References

Constitutional provisions:
Cannot be reduced to less than 400 square miles, see Article IX, section 1, Constitution of Nebraska.
Electors must approve county division, see Article IX, section 2, Constitution of Nebraska.
Legislature may adjust boundaries when in doubt, see Article IX, section 2, Constitution of Nebraska.
Preexisting debts, consolidated counties remain liable, see Article IX, section 3, Constitution of Nebraska.
Preexisting debts, detached part added to another remains liable for its proportion, see Article IX, section 3, Constitution of Nebraska.
Private property not liable for municipal debts, see Article VIII, section 7, Constitution of Nebraska.
County government and officers, see Chapter 23.
For provisions of boundary compacts, see Appendix.

ARTICLE 1
NAMES AND BOUNDARIES OF COUNTIES

Section
22-101. Adams.
22-102. Antelope.
22-103. Arthur.
22-104. Banner.
22-105. Blaine.
22-106. Boone.
22-107. Box Butte.
22-108. Boyd.
22-109. Brown.
22-110. Buffalo.
22-111. Burt.
22-112. Butler.
22-113. Cass.
22-114. Cedar.
22-115. Chase.
22-116. Cherry.
22-117. Cheyenne.
22-118. Clay.
22-119. Colfax.
22-120. Cuming.
22-121. Custer.
22-122. Dakota.
22-123. Dawes.
22-124. Dawson.
22-125. Deuel.
22-126. Dixon.
22-127. Dodge.
22-128. Douglas.
22-129. Dundy.
22-130. Fillmore.
22-131. Franklin.
22-132. Frontier.

22-101 Adams.

The county of Adams is bounded as follows: Commencing at the southwest corner of township five, north, of range twelve, west; thence east to the southeast corner of township five, north, of range nine, west; thence north to the northeast corner of township eight, north, of range nine, west; thence west to the northwest corner of township eight, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 2, p. 212; R.S.1913, § 813; C.S.1922, § 715; C.S.1929, § 25-102; R.S.1943, § 22-101.

22-102 Antelope.

The county of Antelope is bounded as follows: Commencing at the southwest corner of township twenty-three, north, of range eight, west; thence east to the southeast corner of township twenty-three, north, of range five, west; thence north to the northeast corner of township twenty-eight, north, of range five, west; thence west to the northwest corner of township twenty-eight, north, of range eight, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 3, p. 212; R.S.1913, § 814; C.S.1922, § 716; C.S.1929, § 25-103; R.S.1943, § 22-102.

22-103 Arthur.

The county of Arthur is bounded as follows: Commencing at the southeast corner of township seventeen, north, range thirty-six, west of the sixth principal meridian; thence north on the range line between ranges thirty-five and thirty-six to the northeast corner of township twenty, north, range thirty-six, west; thence west along the fifth standard parallel to the northwest corner of township twenty, north, range forty, west; thence south along the range line between ranges forty and forty-one, west, to the southwest corner of township seventeen, north, range forty, west; thence east along the fourth standard parallel to the place of beginning.

Source: Laws 1887, c. 21, § 1, p. 344; Laws 1895, c. 23, § 1, p. 124; R.S.1913, § 815; Laws 1921, c. 231, § 1, p. 822; C.S.1922, § 717; Laws 1925, c. 155, § 1, p. 393; C.S.1929, § 25-104; R.S.1943, § 22-103.

Act of 1913, making provision for organization of Arthur County, is not unconstitutional. State ex rel. Martin v. Hawkins, 95 Neb. 740, 146 N.W. 1044 (1914).

Arthur County, until organized, was attached to McPherson. Robinson v. State, 71 Neb. 142, 98 N.W. 694 (1904).

22-104 Banner.

The county of Banner is bounded as follows: Commencing at the southeast corner of section thirty-six, in township seventeen, north, of range fifty-three,

west of the sixth principal meridian; thence due north on the range line between range fifty-two and range fifty-three, to the northeast corner of section twenty-four, township twenty, north, range fifty-three, west; thence due west on the section line to the point where said section line intersects the east line of State of Wyoming; thence south along the west line of the State of Nebraska, to a point where said state line intersects the township line between townships sixteen and seventeen, north, of range fifty-eight, west; thence due east on said township line to the place of beginning.

Source: Formed from Cheyenne County under Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; R.S.1913, § 816; C.S.1922, § 718; C.S.1929, § 25-105; R.S.1943, § 22-104.

22-105 Blaine.

The county of Blaine is bounded as follows: Commencing at the southeast corner of township twenty-one, range twenty-one, running thence north to the northeast corner of township twenty-four, range twenty-one; thence west to the northwest corner of township twenty-four, range twenty-five; thence south to the southwest corner of township twenty-one, range twenty-five; thence east to the southeast corner of township twenty-one, range twenty-one, to the place of beginning.

Source: Laws 1885, c. 31, § 1, p. 205; R.S.1913, § 817; C.S.1922, § 719; C.S.1929, § 25-106; R.S.1943, § 22-105.

22-106 Boone.

The county of Boone is bounded as follows: Commencing at the southwest corner of township eighteen, north, of range eight, west; thence east along the northern boundary of the Pawnee reservation, to a point where the dividing line between ranges four and five, west, intersect the same; thence north to the northeast corner of township twenty-two, north, of range five, west; thence west to the northwest corner of township twenty-two, north, of range eight, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 4, p. 213; R.S.1913, § 818; C.S.1922, § 720; C.S.1929, § 25-107; R.S.1943, § 22-106.

22-107 Box Butte.

The county of Box Butte is bounded as follows: Commencing at the southeast corner of township twenty-four, north, range forty-seven, west; thence north to the northeast corner of township twenty-eight, north, range forty-seven, west; thence west to the northwest corner of township twenty-eight, north, range fifty-two, west; thence south to the southwest corner of township twenty-four, north, range fifty-two, west; thence east to the place of beginning.

Source: Formed from Dawes County under Laws 1879, § 10, p. 355, by vote of electors Nov. 2, 1886; R.S.1913, § 819; C.S.1922, § 721; C.S.1929, § 25-108; R.S.1943, § 22-107.

22-108 Boyd.

The county of Boyd is bounded as follows: Commencing at a point in the middle of the main channel of the Niobrara River intersected by the range line between eight and nine west; thence north on said range line to the middle of

the main channel of the Missouri River; thence up the main channel of said river to a point intersected by forty-third north parallel; thence west on said parallel to a point intersected by the range line between ranges sixteen and seventeen; thence south on said line to a point in the middle of the main channel of the Niobrara River; thence down the main channel of said river to the place of beginning.

Source: Laws 1891, c. 20, § 2, p. 224; R.S.1913, § 821; C.S.1922, § 723; C.S.1929, § 25-110; R.S.1943, § 22-108.

22-109 Brown.

The county of Brown is bounded as follows: Commencing at the southeast corner of section thirty-two, township twenty-five, north, range twenty, west; thence north along said line to the northeast corner of section five, township twenty-eight, range twenty; thence west to the southeast corner of section thirty-two, township twenty-nine, range twenty; thence north to the center of the channel of the Niobrara River on the section line between sections twenty and twenty-one, township thirty-two, range twenty, west; thence in a westerly direction up the channel of the Niobrara River to a point in the center of said channel, intersected by the line between ranges twenty-four and twenty-five; thence south along said range line to the southwest corner of township twenty-five; thence east along the south line of township twenty-five to place of beginning.

Source: Laws 1883, c. 31, § 1, p. 198; R.S.1913, § 822; C.S.1922, § 724; C.S.1929, § 25-111; R.S.1943, § 22-109.

22-110 Buffalo.

The county of Buffalo is bounded as follows: Commencing at a point where the dividing line between ranges twelve and thirteen crosses the southern channel of the Platte River; thence up said channel to a point where the dividing line between ranges eighteen and nineteen intersects the same; thence north along said line to the third standard parallel; thence east along said parallel to the northeast corner of township twelve, north, of range thirteen, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 7, p. 213; R.S.1913, § 823; C.S.1922, § 725; C.S.1929, § 25-112; R.S.1943, § 22-110.

22-111 Burt.

The county of Burt is bounded as follows: Commencing at a point where the north line of sections twenty-one, twenty-two, and twenty-three, township twenty-four, north, range ten, east of the sixth principal meridian intersects the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence west along said section lines to the northwest corner of said section twenty-one; thence south along the west line of said sections twenty-one, twenty-eight, and thirty-three to the south boundary line of Omaha Indian reservation; thence west on the south boundary line of said reservation to the line dividing ranges seven and eight, east; thence south on said line to the south line of township twenty-one, north, range eight, east; thence east on said line to the northeast corner of section six, township twenty, north, range nine, east; thence south on section lines to the southwest corner of section twenty, township twenty, north, range nine, east; thence east

by section lines to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; and thence northerly along said boundary line to the place of beginning.

Source: G.S.1873, c. 12, § 5, p. 213; Laws 1889, c. 4, § 1, p. 73; R.S.1913, § 824; C.S.1922, § 726; C.S.1929, § 25-113; R.S.1943, § 22-111; Laws 1955, c. 65, § 1, p. 211.

22-112 Butler.

The county of Butler is bounded as follows: Commencing at the southeast corner of township 13 north, range 4 east of the sixth principal meridian; thence north to the northeast corner of section 1, township 16 north, range 4 east; thence east to the southeast corner of section 36, township 17 north, range 4 east; thence north to a point on the east line of section 12, township 17 north, range 4 east, said point being 3826.58 feet south of the northeast corner of said section 12; thence westerly along the approximate middle of the Platte River, as shown in a survey by Richard L. Ronkar and Marvin L. Svoboda, dated November 25, 2002, and described as follows, assuming the east line of said section 12 to have a bearing of N 02° 00' 09'' W; thence S 87° 05' 20'' W, 5303.84 feet; thence S 60° 42' 54'' W, 3499.34 feet; thence S 51° 23' 46'' W, 3119.84 feet; thence S 64° 51' 45'' W, 3555.38 feet; thence S 89° 20' 58'' W, 1647.52 feet; thence S 50° 34' 21'' W, 6032.08 feet; thence S 41° 15' 33'' W, 4659.91 feet; thence S 44° 39' 35'' W, 4912.16 feet; thence S 86° 23' 58'' W, 4230.37 feet; thence S 81° 25' 49'' W, 2159.16 feet; thence S 87° 58' 51'' W, 7158.93 feet; thence S 54° 23' 37'' W, 9629.02 feet; thence S 44° 41' 16'' W, 3006.31 feet; thence S 68° 04' 45'' W, 2463.21 feet; thence S 55° 58' 42'' W, 1719.30 feet; thence S 88° 24' 06'' W, 3797.21 feet; thence S 70° 01' 06'' W, 2615.16 feet; thence S 61° 41' 41'' W, 2023.42 feet; thence S 75° 32' 12'' W, 1889.81 feet; thence N 89° 21' 04'' W, 2850.07 feet; thence S 69° 54' 10'' W, 6774.29 feet; thence N 84° 47' 29'' W, 1169.64 feet; thence N 55° 45' 56'' W, 5076.04 feet; thence N 76° 22' 27'' W, 1755.30 feet; thence S 74° 42' 27'' W, 3647.51 feet; thence S 78° 13' 28'' W, 3012.24 feet; thence N 88° 59' 00'' W, 2383.36 feet; thence N 86° 01' 43'' W, 5433.64 feet, to a point on the east line of section 1, township 16 north, range 1 east, said point being 3711.01 feet south of the northeast corner of said section 1 and proceeding westerly, assuming the east line of said section 1 to have a bearing of N 02° 06' 22'' E; thence N 70° 23' 02'' W, 3275.26 feet; thence N 45° 07' 33'' W, 3033.40 feet; thence N 53° 29' 12'' W, 3663.43 feet; thence N 73° 40' 09'' W, 2182.88 feet; thence S 87° 03' 33'' W, 2685.73 feet; thence S 74° 49' 57'' W, 4926.62 feet; thence S 64° 42' 15'' W, 5633.14 feet; thence N 70° 16' 39'' W, 3725.32 feet; thence N 70° 17' 54'' W, 5359.26 feet, to a point on the west line of township 17 north, range 1 east, said point being 904.43 feet north of the southwest corner of said township; thence south to the southwest corner of township 13 north, range 1 east; thence east to the place of beginning.

Source: G.S.1873, c. 12, § 6, p. 213; Laws 1879, § 1, p. 109; R.S.1913, § 825; C.S.1922, § 727; C.S.1929, § 25-114; R.S.1943, § 22-112; Laws 2000, LB 349, § 1; Laws 2003, LB 90, § 1.

22-113 Cass.

The county of Cass is bounded as follows: Commencing at the southwest corner of township ten, north, range nine, east; thence east to the eastern

boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence north along said eastern boundary line until it intersects the Platte River; thence up said Platte River until it intersects the line dividing townships twelve and thirteen, north, the last time; thence west to the northwest corner of township twelve, north, range ten, east; thence south two miles; thence west six miles; and thence south to the place of beginning.

Source: G.S.1873, c. 12, § 8, p. 213; R.S.1913, § 826; C.S.1922, § 728; C.S.1929, § 25-115; R.S.1943, § 22-113; Laws 1955, c. 65, § 2, p. 212.

Middle of main channel is boundary between Sarpy and Cass Counties. State ex rel. Pankonin v. County Comrs. of Cass County, 58 Neb. 244, 78 N.W. 494 (1899).

22-114 Cedar.

The county of Cedar is bounded as follows: Commencing at a point in the middle of the main channel of the Missouri River, at which the line dividing ranges one and two, west, crosses said river; thence south to the southwest corner of township twenty-nine, north, of range one, west; thence east to the southeast corner of township twenty-nine, north, of range one, west; thence south to the southeast corner of township twenty-eight, north, of range one, west; thence east to the southeast corner of township twenty-eight, north, of range three, east; thence north to the middle of the main channel of the Missouri River; thence up said channel to the place of beginning.

Source: G.S.1873, c. 12, § 9, p. 214; Laws 1875, § 1, p. 73; R.S.1913, § 827; C.S.1922, § 729; C.S.1929, § 25-116; R.S.1943, § 22-114.

22-115 Chase.

The county of Chase is bounded as follows: Commencing at a point where the first standard parallel intersects the west boundary line of the State of Nebraska; thence east to the southeast corner of township five, north, of range thirty-six; thence north to the northeast corner of township eight, north, of range thirty-six; thence west to the west boundary line of the State of Nebraska; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 67, p. 225; R.S.1913, § 828; C.S.1922, § 730; C.S.1929, § 25-117; R.S.1943, § 22-115.

22-116 Cherry.

The county of Cherry is bounded as follows: Commencing at the southeast corner of township twenty-five, north, of range twenty-five, west, of the sixth principal meridian; thence west to the southwest corner of township twenty-five, north, of range forty; thence north on the east line of Sheridan County to the northern boundary line of the State of Nebraska; thence east along said boundary line to the range line between ranges twenty-four and twenty-five; thence south on said range line to the point of beginning.

Source: Laws 1883, c. 32, § 1, p. 199; R.S.1913, § 829; C.S.1922, § 731; C.S.1929, § 25-118; R.S.1943, § 22-116; Laws 1947, c. 59, § 1, p. 194.

22-117 Cheyenne.

The county of Cheyenne shall consist of that territory lying between the west boundary line of Deuel County and a part of Garden County, and the east boundary line of Kimball County and a part of Banner County; the south boundary line of Morrill County and the boundary line between the State of Nebraska and the State of Colorado.

Source: G.S.1873, c. 12, § 10, p. 214; R.S.1913, § 830; C.S.1922, § 732; C.S.1929, § 25-119; R.S.1943, § 22-117.

22-118 Clay.

The county of Clay is bounded as follows: Commencing at the southwest corner of township five, north, of range eight, west; thence east to the southeast corner of township five, north, of range five, west; thence north to the northeast corner of township eight, north, of range five, west; thence west to the northwest corner of township eight, north, of range eight, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 11, p. 214; R.S.1913, § 831; C.S.1922, § 733; C.S.1929, § 25-120; R.S.1943, § 22-118.

22-119 Colfax.

The county of Colfax is bounded as follows: Commencing at the northwest corner of township 20 north, range 2 east of the sixth principal meridian; thence easterly on the north line of township 20 north, ranges 2, 3, and 4 east to the northeast corner of said township 20 north, range 4 east; thence southerly on the east line of townships 20, 19, 18, and 17 north, range 4 east, to a point on the east line of section 12, township 17 north, range 4 east, said point being 3826.58 feet south of the northeast corner of said section 12; thence westerly along the approximate middle of the Platte River, as shown in a survey by Richard L. Ronkar and Marvin L. Svoboda, dated November 25, 2002, and described as follows, assuming the east line of said section 12 to have a bearing of N 02° 00' 09'' W; thence S 87° 05' 20'' W, 5303.84 feet; thence S 60° 42' 54'' W, 3499.34 feet; thence S 51° 23' 46'' W, 3119.84 feet; thence S 64° 51' 45'' W, 3555.38 feet; thence S 89° 20' 58'' W, 1647.52 feet; thence S 50° 34' 21'' W, 6032.08 feet; thence S 41° 15' 33'' W, 4659.91 feet; thence S 44° 39' 35'' W, 4912.16 feet; thence S 86° 23' 58'' W, 4230.37 feet; thence S 81° 25' 49'' W, 2159.16 feet; thence S 87° 58' 51'' W, 7158.93 feet; thence S 54° 23' 37'' W, 9629.02 feet; thence S 44° 41' 16'' W, 3006.31 feet; thence S 68° 04' 45'' W, 2463.21 feet; thence S 55° 58' 42'' W, 1719.30 feet; thence S 88° 24' 06'' W, 3797.21 feet; thence S 70° 01' 06'' W, 2615.16 feet; thence S 61° 41' 41'' W, 2023.42 feet; thence S 75° 32' 12'' W, 1889.81 feet; thence N 89° 21' 04'' W, 2850.07 feet; thence S 69° 54' 10'' W, 6774.29 feet; thence N 84° 47' 29'' W, 1169.64 feet; thence N 55° 45' 56'' W, 5076.04 feet; thence N 76° 22' 27'' W, 1755.30 feet; thence S 74° 42' 27'' W, 3647.51 feet; thence S 78° 13' 28'' W, 3012.24 feet; thence N 88° 59' 00'' W, 2383.36 feet; thence N 86° 01' 43'' W, 5433.64 feet, to a point on the east line of section 1, township 16 north, range 1 east, said point being 3711.01 feet south of the northeast corner of said section 1; thence north, to the northeast corner of section 1, township 16 north, range 1 east; thence east, to the southwest corner of section 31, township 17 north, range 2 east; thence northerly on the west line of townships 17, 18, 19, and 20 north, range 2 east, to the place of beginning.

Source: G.S.1873, c. 12, § 12, p. 214; R.S.1913, § 832; C.S.1922, § 734; C.S.1929, § 25-121; R.S.1943, § 22-119; Laws 2003, LB 90, § 2.

22-120 Cuming.

The county of Cuming is bounded as follows: Commencing at the southwest corner of township twenty-one, north, of range four, east; thence east to the southeast corner of township twenty-one, north, of range seven, east; thence north to the northeast corner of township twenty-four, north, of range seven, east; thence west to the northwest corner of township twenty-four, north, of range four, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 13, p. 214; R.S.1913, § 833; C.S.1922, § 735; C.S.1929, § 25-122; R.S.1943, § 22-120.

22-121 Custer.

The county of Custer is bounded as follows: Commencing at the southeast corner of township thirteen, north, of range seventeen, west, of the sixth principal meridian; thence north to the northeast corner of township twenty, north, of range seventeen, west; thence west to the northwest corner of township twenty, north, of range twenty-five, west; thence south to the southwest corner of township thirteen, north, of range twenty-five, west; thence east to the place of beginning.

Source: Laws 1877, § 1, p. 211; R.S.1913, § 834; C.S.1922, § 736; C.S.1929, § 25-123; R.S.1943, § 22-121.

22-122 Dakota.

The county of Dakota is bounded as follows: Commencing at the most westerly point where the township line between townships twenty-nine and thirty, north, intersects the state boundary line between the State of Nebraska and the State of South Dakota; thence west along said line to the northwest corner of section three, township twenty-nine, north, range six, east; thence south by section lines to the north line of Thurston County; thence east along the north line of Thurston County to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence northerly along said state boundary line to the point where said boundary line is intersected by the east boundary line of the State of South Dakota; and thence westerly along the middle of the main channel of the Missouri River to the place of beginning.

Source: G.S.1873, c. 12, § 14, p. 214; Laws 1905, c. 43, § 1, p. 286; R.S.1913, § 835; C.S.1922, § 737; C.S.1929, § 25-124; R.S.1943, § 22-122; Laws 1955, c. 65, § 3, p. 212.

22-123 Dawes.

The county of Dawes is bounded as follows: Commencing at the southeast corner of township twenty-nine, north, of range forty-seven, west of the sixth principal meridian; thence west to the southwest corner of township twenty-nine, north, of range fifty-two west; thence north on the range line between ranges fifty-two and fifty-three to the northern boundary line of the State of Nebraska; thence east along said boundary to the line between ranges forty-six and forty-seven west; thence south on said range line to the point of beginning.

Source: Laws 1885, c. 32, § 1, p. 206; R.S.1913, § 836; Laws 1921, c. 231, § 2, p. 823; C.S.1922, § 738; C.S.1929, § 25-125; R.S.1943, § 22-123.

22-124 Dawson.

The county of Dawson is bounded as follows: Commencing at the southwest corner of township nine, north, of range twenty-five, west; thence east to the center of the south channel of the Platte River; thence down said channel to a point where the dividing line between ranges eighteen and nineteen intersects the same; thence north along said dividing line to the northeast corner of township twelve, north, of range nineteen, west; thence west to the northwest corner of township twelve, north, of range twenty-five, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 15, p. 215; R.S.1913, § 837; C.S.1922, § 739; C.S.1929, § 25-126; R.S.1943, § 22-124.

22-125 Deuel.

The county of Deuel is bounded as follows: Commencing at the point where the line between ranges forty-one and forty-two, west of the sixth principal meridian intersects the south boundary of Nebraska, eighty-two links west of the monument at the northeast corner of Colorado; thence west along the south boundary line of the State of Nebraska to its intersection with the line between ranges forty-six and forty-seven west; thence north along said range line to the third standard parallel to the north boundary of township twelve, north, on the third standard parallel; thence east along said parallel to the southeast corner of section thirty-two, township thirteen, north, of range forty-six west; thence north on section lines to the northwest corner of section four, township fourteen, north, of range forty-six west; thence east on township lines to the northeast corner of section six, township fourteen, north, range forty-one west; thence south on section lines to the third standard parallel; thence east along said parallel to the northeast boundary of township twelve, range forty-two; thence south on the line between ranges forty-one and forty-two to the place of beginning.

Source: Formed from Cheyenne County under Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; Laws 1895, c. 24, § 1, p. 125; R.S.1913, § 838; Laws 1921, c. 231, § 3, p. 823; C.S.1922, § 740; C.S.1929, § 25-127; R.S.1943, § 22-125.

22-126 Dixon.

The county of Dixon is bounded as follows: Commencing at the southwest corner of township twenty-seven, north, of range four, east; thence east to the line dividing sections thirty-three and thirty-four in township twenty-seven, north, of range six, east; thence north to the dividing line between townships twenty-nine and thirty, north, of range six, east; thence east to the middle of the main channel of the Missouri River; thence up said channel to a point where the dividing line between ranges three and four east, intersects the same; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 16, p. 215; R.S.1913, § 839; C.S.1922, § 741; C.S.1929, § 25-128; R.S.1943, § 22-126.

22-127 Dodge.

The county of Dodge is bounded as follows: Commencing at the intersection of the line dividing ranges four and five, east, with the south bank of the Platte

River; thence easterly along the south bank of the Platte River to the fourth standard parallel; thence east along said parallel to the southeast corner of section thirty-one, township seventeen, north, range ten, east; thence north on section lines, three miles to the northeast corner of section nineteen, township seventeen, north, of range ten, east; thence west on section lines two miles to southwest corner of section thirteen, township seventeen, range nine, east; thence north on section lines, one mile to northwest corner of section thirteen, last aforesaid; thence west on section line one mile to southwest corner of section eleven, township seventeen, north, range nine, east; thence north on section lines one mile to northwest corner of said section eleven, last aforesaid; thence west on section lines one mile to the southwest corner of section three, township seventeen, range nine, east; thence north on section lines one mile to the northwest corner of said section three; thence west on section line one mile to northwest corner of section four, township seventeen, range nine, east; thence north on section line one mile to northeast corner of section thirty-two, township eighteen, range nine, east; thence west one-half mile on section line to northwest corner of the northeast quarter of section thirty-two, township eighteen, range nine, east; thence north on half section line two miles to the southeast corner of the southwest quarter of section seventeen, township eighteen, range nine, east; thence west on section line one-half mile to southwest corner of section seventeen, township eighteen, range nine, east; thence north on section lines fifteen miles to northeast corner of section six, township twenty, range nine, east; thence west along the fifth standard parallel to the northwest corner of township twenty, north of range five, east; thence south by the line dividing ranges four and five, east, to the place of beginning.

Source: G.S.1873, c. 12, § 17, p. 215; Laws 1875, § 1, p. 71; R.S.1913, § 840; C.S.1922, § 742; C.S.1929, § 25-129; R.S.1943, § 22-127.

Boundary line is not the river, but imaginary line in the river. Dodge County v. Saunders County, 70 Neb. 442, 97 N.W. 617 (1903).

22-128 Douglas.

The county of Douglas is bounded as follows: Commencing at a point on the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943, two miles south of the dividing line between townships fourteen and fifteen, north; thence north and following said eastern boundary line to the north boundary line of township sixteen; thence west to a point in the middle of the main channel of the Platte River; thence down said channel to a point two miles due south of the dividing line between townships fourteen and fifteen; and thence east to the place of beginning.

Source: G.S.1873, c. 12, § 18, p. 215; R.S.1913, § 841; C.S.1922, § 743; C.S.1929, § 25-130; R.S.1943, § 22-128; Laws 1955, c. 65, § 4, p. 213.

22-129 Dundy.

The county of Dundy is bounded as follows: Commencing at the southwest corner of the state; thence east to the southeast corner of township one, north, of range thirty-six; thence north to the northeast corner of township four, north, of range thirty-six; thence west to the west boundary line of the State of Nebraska; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 66, p. 225; R.S.1913, § 842; C.S.1922, § 744; C.S.1929, § 25-131; R.S.1943, § 22-129.

22-130 Fillmore.

The county of Fillmore is bounded as follows: Commencing at the southwest corner of township five, north, of range four, west; thence east to the southeast corner of township five, north, of range one, west; thence north to the northeast corner of township eight, north, of range one, west; thence west to the northwest corner of township eight, north, of range four, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 20, p. 216; R.S.1913, § 843; C.S.1922, § 745; C.S.1929, § 25-132; R.S.1943, § 22-130.

22-131 Franklin.

The county of Franklin is bounded as follows: Commencing at the southwest corner of township one, north, of range sixteen, west; thence east to the southeast corner of township one, north, of range thirteen, west; thence north to the first standard parallel; thence west to the northwest corner of township four, north, of range sixteen, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 19, p. 216; R.S.1913, § 844; C.S.1922, § 746; C.S.1929, § 25-133; R.S.1943, § 22-131.

22-132 Frontier.

The county of Frontier is bounded as follows: Commencing at the southwest corner of township five, north, of range thirty, west; thence east to the southeast corner of township five, north, of range twenty-five, west; thence north to the northeast corner of township five, north, of range twenty-five, west; thence east to the southeast corner of township six, north, of range twenty-four, west; thence north to the northeast corner of township eight, north, of range twenty-four, west; thence west to the northwest corner of township eight, north, of range thirty, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 21, p. 216; R.S.1913, § 845; C.S.1922, § 747; C.S.1929, § 25-134; R.S.1943, § 22-132.

22-133 Furnas.

The county of Furnas shall contain that territory described as townships one, two, three and four, north, of ranges twenty-one, twenty-two, twenty-three, twenty-four and twenty-five, west.

Source: G.S.1873, c. 12, § 63, p. 224; R.S.1913, § 846; C.S.1922, § 748; C.S.1929, § 25-135; R.S.1943, § 22-133.

22-134 Gage.

The county of Gage is bounded as follows: Commencing at the southeast corner of township one, north, of range eight, east; thence north to the northeast corner of township six, north, of range eight, east; thence west to the northwest corner of township six, north, of range five, east; thence south along the range line, dividing ranges four and five, east, to the southern boundary line of the state; and thence east along the state line to the place of beginning.

Source: G.S.1873, c. 12, § 22, p. 216; R.S.1913, § 847; C.S.1922, § 749; C.S.1929, § 25-136; R.S.1943, § 22-134.

22-135 Garden.

The county of Garden is bounded as follows: Commencing at the southeast corner of section thirty-one, township fifteen, north, range forty-one west of the sixth principal meridian; thence north on section lines to the northeast corner of section six, township sixteen north, range forty-one, west; thence east on the fourth standard parallel to the southeast corner of township seventeen north, range forty-one, west; thence north along the range line between ranges forty and forty-one to the northeast corner of township twenty, north, range forty-one, west; thence west along the fifth standard parallel to the southeast corner of section thirty-three, township twenty-one north, range forty-one, west; thence north on section lines to the northeast corner of section four, township twenty-three, north, range forty-one, west, on south boundary of Sheridan County; thence west on said boundary line to the northwest corner of section four in township twenty-three, north, range forty-six, west; thence south to the township line between townships twenty and twenty-one, north, range forty-six, west; thence east on said township line to the northwest corner of section four, in township twenty, north, range forty-six, west; thence south to township line between townships sixteen and seventeen, north; thence east to the northwest corner of section four, township sixteen, north, range forty-six, west; thence south to the township line between the townships fourteen and fifteen, north; thence east on said township line to the place of beginning.

Source: Formed from Deuel County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 2, 1909; R.S.1913, § 848; Laws 1921, c. 231, § 4, p. 824; C.S.1922, § 750; Laws 1925, c. 155, § 2, p. 394; C.S.1929, § 25-137; R.S.1943, § 22-135.

Boundary line between Garden and Grant Counties established. State ex rel. Reed v. Garden County, 103 Neb. 142, 170 N.W. 835 (1919), rehearing denied 130 Neb. 145, 171 N.W. 299 (1919).

22-136 Garfield.

The county of Garfield is bounded as follows: Commencing at the southeast corner of township numbered twenty-one, north, of range thirteen, west, of the sixth principal meridian; thence north to the northeast corner of township numbered twenty-four in range thirteen, west; thence west to the northwest corner of township numbered twenty-four, in range sixteen, west; thence south to the southwest corner of township numbered twenty-one, north, in range sixteen, west; thence east to the place of beginning.

Source: Formed from Wheeler County by vote of electors pursuant to Laws 1879, § 10, p. 355, and proclamation of Governor, Oct. 4, 1884; R.S.1913, § 849; C.S.1922, § 751; C.S.1929, § 25-138; R.S.1943, § 22-136.

22-137 Gosper.

The county of Gosper is bounded as follows: On the east by Phelps County, on the south by Furnas County, on the west by Frontier County, on the north by Dawson County.

Source: Laws 1881, c. 36, p. 215; R.S.1913, § 850; C.S.1922, § 752; C.S.1929, § 25-139; R.S.1943, § 22-137.

22-138 Grant.

The county of Grant is bounded as follows: Commencing at the southeast corner of township twenty-one, north of range thirty-six, west of the sixth

principal meridian; thence north on said range line to the northeast corner of township twenty-four, north of range thirty-six, west; thence west along the south line of Cherry County to the east line of Sheridan County; thence south along the east line of Sheridan County to the southwest corner of township twenty-four, north, range forty, west; thence west along the south line of Sheridan County to the northwest corner of section three, range forty-one, west; thence south on section lines to the southwest corner of section thirty-four, township twenty-one, north, range forty-one, west, on the fifth standard parallel; thence east along said parallel to the place of beginning.

Source: Laws 1887, c. 22, § 1, p. 345; Laws 1895, c. 25, § 1, p. 126; R.S.1913, § 851; Laws 1921, c. 231, § 5, p. 824; C.S.1922, § 753; C.S.1929, § 25-140; R.S.1943, § 22-138.

Boundary line between Garden and Grant Counties established. State ex rel. Reed v. Garden County, 103 Neb. 142, 170 N.W. 835 (1919), rehearing denied 130 Neb. 145, 171 N.W. 299 (1919).

22-139 Greeley.

The county of Greeley is bounded as follows: Commencing at the southwest corner of township seventeen, north, of range twelve, west; thence east to the southeast corner of township seventeen, north, of range nine, west; thence north to the northeast corner of township twenty, north, of range nine, west; thence west to the northwest corner of township twenty, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 23, p. 216; R.S.1913, § 852; C.S.1922, § 754; C.S.1929, § 25-141; R.S.1943, § 22-139.

22-140 Hall.

The county of Hall is bounded as follows: Commencing at the southwest corner of township nine, north, of range twelve, west; thence east to the southeast corner of township nine, north, of range nine, west; thence north to the northeast corner of township twelve, north, of range nine, west; thence west to the northwest corner of township twelve, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 25, p. 217; R.S.1913, § 853; C.S.1922, § 755; C.S.1929, § 25-142; R.S.1943, § 22-140.

22-141 Repealed. Laws 2011, LB 556, § 4.

22-141.01 Hamilton.

The county of Hamilton is bounded as follows: Beginning at the northeast meander corner of section 24, township 14 north, range 5 west of the sixth principal meridian; thence south on the line dividing ranges 4 and 5 west to a point on the line dividing townships 8 and 9 north; thence west on the line dividing townships 8 and 9 north to a point on the line dividing ranges 8 and 9 west; thence north on the line dividing ranges 8 and 9 west to the northwest corner of section 7, township 10 north, range 8 west; thence continuing north on the line dividing ranges 8 and 9 west on a bearing of north 1 degree, 6 minutes, 39 seconds west a distance of 3963.32 feet to a point in the south channel of the Platte River; thence north 26 degrees, 16 minutes, 43 seconds east, 4477.82 feet; thence north 39 degrees, 25 minutes, 34 seconds east, 6937.24 feet; thence north 40 degrees, 17 minutes, 8 seconds east, 9415.04 feet;

thence north 56 degrees, 16 minutes, 12 seconds east, 3118.09 feet; thence north 33 degrees, 12 minutes, 56 seconds east, 5522.78 feet; thence north 45 degrees, 37 minutes, 50 seconds east, 3233.20 feet; thence north 55 degrees, 58 minutes, 45 seconds east, 12217.41 feet; thence north 32 degrees, 21 minutes, 1 second east, 9051.98 feet; thence north 23 degrees, 37 minutes, 16 seconds east, 3540.46 feet; thence north 59 degrees, 9 minutes, 4 seconds east, 4326.45 feet; thence north 51 degrees, 17 minutes, 37 seconds east, 11127.53 feet; thence south 39 degrees, 36 minutes, 35 seconds east, 464.59 feet; thence north 69 degrees, 18 minutes, 17 seconds east, 1452.28 feet; thence north 55 degrees, 51 minutes, 51 seconds east, 430.40 feet; thence south 77 degrees, 28 minutes, 17 seconds east, 528.85 feet; thence north 79 degrees, 21 minutes, 55 seconds east, 703.44 feet; thence north 27 degrees, 24 minutes, 27 seconds east, 367.28 feet; thence north 41 degrees, 50 minutes, 18 seconds east, 1122.47 feet; thence north 19 degrees, 40 minutes, 41 seconds east, 484.15 feet; thence north 41 degrees, 23 minutes, 30 seconds east, 474.86 feet; thence north 25 degrees, 6 minutes, 30 seconds west, 474.90 feet; thence north 68 degrees, 41 minutes, 38 seconds east, 2605.28 feet; thence north 38 degrees, 57 minutes, 26 seconds east, 9143.17 feet; thence north 57 degrees, 14 minutes, 34 seconds east, 5953.39 feet; thence north 50 degrees, 23 minutes, 34 seconds east, 2012.96 feet; thence north 35 degrees, 48 minutes, 29 seconds east, 1723 feet; thence north 25 degrees, 20 minutes, 59 seconds east, 3001.08 feet; thence north 39 degrees, 17 minutes, 44 seconds east, 2592.82 feet; thence north 27 degrees, 22 minutes, 47 seconds east, 2701.44 feet; thence north 52 degrees, 49 minutes, 38 seconds east, 3343.12 feet; thence north 59 degrees, 44 minutes, 14 seconds east, 9560.61 feet; thence south 28 degrees, 46 minutes, 42 seconds east, 2145.07 feet; thence north 54 degrees, 22 minutes, 14 seconds east, 1262.88 feet; thence north 64 degrees, 12 minutes, 47 seconds east, 2172.54 feet; thence north 75 degrees, 0 minutes, 21 seconds east, 3411.91 feet; thence north 57 degrees, 50 minutes, 44 seconds east, 6229.53 feet; thence north 69 degrees, 35 minutes, 2 seconds east, 3924.66 feet; thence north 60 degrees, 34 minutes, 32 seconds east, 7862.89 feet; thence north 41 degrees, 43 minutes, 47 seconds east, 2178.62 feet; thence north 47 degrees, 29 minutes, 27 seconds east, 2293.19 feet; thence north 20 degrees, 33 minutes, 22 seconds east, 1357.03 feet; thence north 37 degrees, 36 minutes, 34 seconds east, 10909.57 feet; thence north 29 degrees, 57 minutes, 43 seconds east, 10064.70 feet; thence south 1 degree, 57 minutes, 32 seconds east, 987.20 feet to the point of beginning. Note all bearings are based on state plane coordinates used for Merrick and Hamilton Counties. All distances are converted to ground.

Source: Laws 2011, LB556, § 1.

22-142 Harlan.

The county of Harlan is bounded as follows: Commencing at the southwest corner of township one, north, of range twenty, west; thence east to the southeast corner of township one, north, of range seventeen, west; thence north to the northeast corner of township four, north, of range seventeen, west; thence west to the northwest corner of township four, north, of range twenty, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 24, p. 217; R.S.1913, § 855; C.S.1922, § 757; C.S.1929, § 25-144; R.S.1943, § 22-142.

22-143 Hayes.

The county of Hayes is bounded as follows: Commencing at the northeast corner of township eight, range thirty-one, west; thence west to the northwest corner of township eight, range thirty-five; thence south to the southwest corner of township five, range thirty-five; thence east to the southeast corner of township five, range thirty-one; thence north to the place of beginning.

Source: Laws 1877, § 1, p. 212; R.S.1913, § 856; C.S.1922, § 758; C.S. 1929, § 25-145; R.S.1943, § 22-143.

22-144 Hitchcock.

The county of Hitchcock shall contain that territory described as townships one, two, three and four, north, of ranges thirty-one, thirty-two, thirty-three, thirty-four and thirty-five, west.

Source: G.S.1873, c. 12, § 65, p. 225; R.S.1913, § 857; C.S.1922, § 759; C.S.1929, § 25-146; R.S.1943, § 22-144.

22-145 Holt.

The county of Holt is bounded as follows: Commencing at the southwest corner of township twenty-five, north, of range sixteen, west; thence east to the southeast corner of township twenty-five, north, of range nine, west; thence north to the middle of the main channel of the Niobrara River, thence up said channel to a point where the second guide meridian intersects the same; thence south along said second guide meridian, to the place of beginning.

Source: G.S.1873, c. 12, § 27, p. 217; R.S.1913, § 858; C.S.1922, § 760; C.S.1929, § 25-147; R.S.1943, § 22-145.

Attempt to extend boundary in 1883 was void. State ex rel. Norton v. Van Camp and Kruse, 36 Neb. 9, 54 N.W. 113 (1893).

22-146 Hooker.

The county of Hooker is bounded as follows: Commencing at the southeast corner of township twenty-one, north, of range thirty-one, west, of the sixth principal meridian; thence north along the west boundary line of Thomas County to the northeast corner of township twenty-four, north, of range thirty-one, west; thence west along the south line of Cherry County to the northwest corner of township twenty-four, north, of range thirty-five, west; thence south along the east boundary line of Grant County to the southwest corner of township twenty-one, north, of range thirty-five, west; thence east along the north boundary line of McPherson County to the place of beginning.

Source: Laws 1889, c. 1, § 1, p. 69; R.S.1913, § 859; C.S.1922, § 761; C.S.1929, § 25-148; R.S.1943, § 22-146.

22-147 Howard.

The county of Howard is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range twelve, west; thence east to the southeast corner of township thirteen, north, of range nine, west; thence north to the northeast corner of township sixteen, north, of range nine, west; thence west to the northwest corner of township sixteen, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 28, p. 217; R.S.1913, § 860; C.S.1922, § 762; C.S.1929, § 25-149; R.S.1943, § 22-147.

22-148 Jefferson.

The county of Jefferson is bounded as follows: Commencing at the southwest corner of township one, north, of range one, east; thence east to the southeast corner of township one, north, of range four, east; thence north to the northeast corner of township four, north, of range four, east; thence west to the northwest corner of township four, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 29, p. 217; R.S.1913, § 861; C.S.1922, § 763; C.S.1929, § 25-150; R.S.1943, § 22-148.

22-149 Johnson.

The county of Johnson is bounded as follows: Commencing at the southwest corner of township four, north, of range nine, east; thence east to the southeast corner of section thirty-three in township four, north, of range twelve, east; thence north by section lines to the northeast corner of section four in township six, north, of range twelve, east; thence west to the northwest corner of township six, north, of range nine, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 30, p. 218; R.S.1913, § 862; C.S.1922, § 764; C.S.1929, § 25-151; R.S.1943, § 22-149.

22-150 Kearney.

The county of Kearney is bounded on the north by the middle of the south channel of the Platte River; on the east, by the line dividing ranges twelve and thirteen, west; on the south, by the first standard parallel; on the west by the line dividing ranges sixteen and seventeen, west.

Source: G.S.1873, c. 12, § 31, p. 218; R.S.1913, § 863; C.S.1922, § 765; C.S.1929, § 25-152; R.S.1943, § 22-150.

22-151 Keith.

The county of Keith is bounded as follows: Commencing at the northeast corner of township sixteen, north, of range thirty-five, west, sixth principal meridian; thence south along the range line to the southeast corner of township thirteen, north, of range thirty-five, west, on the third standard parallel; thence east along the parallel to the northeast corner of township twelve, north, of range thirty-five, west; thence south three miles to the southeast corner of section thirteen, township twelve, north; thence west by section lines to the northwest corner of section nineteen, township twelve, north, of range forty-one west; thence north along the range line to the third standard parallel; thence west along said parallel to the southwest corner of section thirty-two, range forty-one, west; thence north by section lines to the northwest corner of section five, township sixteen, north, on the fourth standard parallel; thence east along said parallel to the place of beginning.

Source: G.S.1873, c. 12, § 68, p. 225; R.S.1913, § 864; Laws 1921, c. 231, § 6, p. 825; C.S.1922, § 766; C.S.1929, § 25-153; R.S.1943, § 22-151.

22-152 Keya Paha.

The county of Keya Paha is bounded as follows: Commencing in the middle of the channel of the Niobrara River where the line dividing ranges sixteen and

seventeen, west, of sixth principal meridian crosses said Niobrara River; thence north to the forty-third parallel of north latitude; thence west along said parallel of north latitude to the line dividing range twenty-four from range twenty-five, west, of sixth principal meridian; thence south along said line to the middle of the channel of the Niobrara River; thence down the middle of the channel of the Niobrara River to the place of beginning.

Source: Formed from Brown County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 4, 1884; Laws 1893, c. 13, § 1, p. 146; R.S.1913, § 865; C.S.1922, § 767; C.S.1929, § 25-154; R.S.1943, § 22-152.

22-153 Kimball.

The county of Kimball is bounded as follows: Commencing at the northeast corner of section three in township number sixteen, north, of range fifty-three, west; thence due west on the township line between townships sixteen and seventeen, north, to a point where said line intersects the east boundary line of the State of Wyoming; thence south along the west boundary line of the State of Nebraska to a point where the said line intersects the north boundary line of the State of Colorado; thence east along the south boundary line of the State of Nebraska to a point where said line intersects a line extending due north on the section line between sections sixteen and seventeen, township twelve, north, range fifty-three, west; thence north to the northwest corner of section four, in township twelve, north, of range fifty-three, west; thence due east to the southeast corner of section thirty-four in township thirteen, north, of range fifty-three, west; and thence due north to the place of beginning.

Source: Formed from Cheyenne County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; R.S.1913, § 866; C.S.1922, § 768; C.S.1929, § 25-155; R.S.1943, § 22-153.

22-154 Knox.

The county of Knox is bounded as follows: Commencing at the southwest corner of township twenty-nine, north, of range eight, west; thence east to the southeast corner of township twenty-nine, north, of range two, west; thence north to the middle of the main channel of the Missouri River; thence along the middle of the main channel of said river to the point where the dividing line between ranges eight and nine, west, intersects the same; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 33, p. 218, § 60, p. 224; Laws 1883, c. 34, § 1, p. 201; R.S.1913, § 867; C.S.1922, § 769; C.S.1929, § 25-156; R.S.1943, § 22-154.

22-155 Lancaster.

The county of Lancaster is bounded as follows: Commencing at the southwest corner of township seven, north, of range five, east; thence east to southeast corner of township seven, north, of range eight, east; thence north to the northeast corner of township twelve, north, of range eight, east; thence west to the northwest corner of township twelve, north, of range five, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 32, p. 218; R.S.1913, § 868; C.S.1922, § 770; C.S.1929, § 25-157; R.S.1943, § 22-155.

22-156 Lincoln.

The county of Lincoln is bounded as follows: Commencing at the southwest corner of township nine, north, of range thirty-four, west; thence east to the southeast corner of township nine, north, of range twenty-six, west; thence north to the fourth standard parallel; thence west to a point where the dividing line between ranges thirty-four and thirty-five intersects the same; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 34, p. 218; R.S.1913, § 869; C.S.1922, § 771; C.S.1929, § 25-158; R.S.1943, § 22-156.

22-157 Logan.

The county of Logan is bounded as follows: Commencing at the southeast corner of township seventeen, north, of range twenty-six, west, of the sixth principal meridian; running thence west along the north line of Lincoln County to the southwest corner of township seventeen, north, range twenty-nine, west; thence north to the northwest corner of township twenty, north, range twenty-nine, west; thence east to the northeast corner of township twenty, north, range twenty-six, west; thence south along the west line of Custer County to the point of beginning.

Source: Laws 1885, c. 33, § 1, p. 207; R.S.1913, § 870; C.S.1922, § 772; C.S.1929, § 25-159; R.S.1943, § 22-157.

22-158 Loup.

The county of Loup is bounded as follows: Commencing at the northeast corner of township twenty-four, north, of range seventeen, west; thence west to the northwest corner of township twenty-four, north, of range twenty, west; thence south to the southwest corner of township twenty-one, north, of range twenty, west; thence east to the southeast corner of township twenty-one, north, of range seventeen, west; thence north to the place of beginning.

Source: Laws 1883, c. 35, § 1, p. 202; R.S.1913, § 871; C.S.1922, § 773; C.S.1929, § 25-160; R.S.1943, § 22-158.

22-159 Madison.

The county of Madison is bounded as follows: Commencing at the southeast corner of township twenty-one, north, of range one, west; thence north to the northeast corner of township twenty-four, north, of range one, west; thence west to the northwest corner of township twenty-four, north, of range four, west; thence south to the southwest corner of township twenty-one, north, of range four, west; thence east to the place of beginning.

Source: G.S.1873, c. 12, § 35, p. 218; R.S.1913, § 872; C.S.1922, § 774; C.S.1929, § 25-161; R.S.1943, § 22-159.

22-160 McPherson.

The county of McPherson is bounded as follows: Commencing at the southeast corner of township seventeen, north, of range thirty, west, of the sixth principal meridian; thence north along the west boundary line of Logan County to northeast corner of township twenty, north, of range thirty, west; thence west along said township line to the northwest corner of township twenty, north, of range thirty-five, west; thence south on said range line to southwest

corner of township seventeen, north, of range thirty-five, west; thence east along the north boundary line of Lincoln County to the place of beginning.

Source: Laws 1887, c. 23, § 1, p. 346; R.S.1913, § 873; C.S.1922, § 775; C.S.1929, § 25-162; R.S.1943, § 22-160.

22-161 Repealed. Laws 2009, LB 131, § 3.

22-161.01 Merrick.

The county of Merrick is bounded as follows: Beginning at the northeast corner of township 16 north, range 3 west; thence west on the dividing line of townships 16 and 17 north, to the boundaries of the Pawnee Indian reservation; thence by the boundaries of said reservation passing by its south side around to the north line of township 16 north; thence west, to the northwest corner of township 16 north, range 8 west; thence south between ranges 8 and 9 to the meander corner of section 31, township 11 north, range 8 west; thence south on the dividing line of ranges 8 and 9 west on an assumed bearing of south 0 degrees, 53 minutes, 49 seconds east, 3603.44 feet to a point in the south channel of the Platte River; thence north 26 degrees, 16 minutes, 43 seconds east, 4477.82 feet; thence north 39 degrees, 25 minutes, 34 seconds east, 6937.24 feet; thence north 40 degrees, 17 minutes, 8 seconds east, 9415.04 feet; thence north 56 degrees, 16 minutes, 12 seconds east, 3118.10 feet; thence north 33 degrees, 12 minutes, 56 seconds east, 5522.78 feet; thence north 45 degrees, 37 minutes, 50 seconds east, 3233.20 feet; thence north 55 degrees, 58 minutes, 45 seconds east, 12217.41 feet; thence north 32 degrees, 21 minutes, 1 second east, 9051.98 feet; thence north 23 degrees, 37 minutes, 16 seconds east, 3540.46 feet; thence north 59 degrees, 9 minutes, 4 seconds east, 4326.45 feet; thence north 51 degrees, 17 minutes, 37 seconds east, 11127.53 feet; thence south 39 degrees, 36 minutes, 35 seconds east, 464.59 feet; thence north 69 degrees, 18 minutes, 17 seconds east, 1452.28 feet; thence north 55 degrees, 51 minutes, 51 seconds east, 430.40 feet; thence south 77 degrees, 28 minutes, 17 seconds east, 528.85 feet; thence north 79 degrees, 21 minutes, 55 seconds east, 703.44 feet; thence north 27 degrees, 24 minutes, 27 seconds east, 367.28 feet; thence north 41 degrees, 50 minutes, 18 seconds east, 1122.47 feet; thence north 19 degrees, 40 minutes, 41 seconds east, 484.15 feet; thence north 41 degrees, 23 minutes, 30 seconds east, 474.86 feet; thence north 25 degrees, 6 minutes, 30 seconds west, 474.90 feet; thence north 68 degrees, 41 minutes, 38 seconds east, 2605.28 feet; thence north 38 degrees, 57 minutes, 26 seconds east, 9143.18 feet; thence north 57 degrees, 14 minutes, 34 seconds east, 5953.39 feet; thence north 50 degrees, 23 minutes, 34 seconds east, 2012.96 feet; thence north 35 degrees, 48 minutes, 29 seconds east, 1723 feet; thence north 25 degrees, 20 minutes, 59 seconds east, 3001.08 feet; thence north 39 degrees, 17 minutes, 44 seconds east, 2592.82 feet; thence north 27 degrees, 22 minutes, 47 seconds east, 2701.44 feet; thence north 52 degrees, 49 minutes, 38 seconds east, 3343.12 feet; thence north 59 degrees, 44 minutes, 14 seconds east, 9560.61 feet; thence south 28 degrees, 46 minutes, 42 seconds east, 2145.07 feet; thence north 54 degrees, 22 minutes, 14 seconds east, 1262.88 feet; thence north 64 degrees, 12 minutes, 47 seconds east, 2172.54 feet; thence north 75 degrees, 0 minutes, 21 seconds east, 3411.91 feet; thence north 57 degrees, 50 minutes, 44 seconds east, 6229.53 feet; thence north 69 degrees, 35 minutes, 2 seconds east, 3924.66 feet; thence north 60 degrees, 34 minutes, 32 seconds east, 7862.89 feet; thence north 41 degrees, 43 minutes, 47 seconds

east, 2178.62 feet; thence north 47 degrees, 29 minutes, 27 seconds east, 2293.19 feet; thence north 20 degrees, 33 minutes, 22 seconds east, 1357.03 feet; thence north 37 degrees, 36 minutes, 34 seconds east, 10909.57 feet; thence north 29 degrees, 57 minutes, 43 seconds east, 10064.70 feet; thence north 1 degree, 57 minutes, 34 seconds west, 769.03 feet to a point in the middle of the south channel of the Platte River, such point being 2132.77 feet north of the southwest corner of the northwest quarter of section 19, township 14 north, range 4 west; thence continuing in the middle of the south channel of the Platte River and assuming the west line of section 19 to have a bearing of south 1 degree, 46 minutes, 44 seconds east; the next 35 courses on such thread of stream; thence south 84 degrees, 28 minutes, 19 seconds east, 60.66 feet; thence north 29 degrees, 30 minutes, 32 seconds east, 130.51 feet; thence south 70 degrees, 11 minutes, 42 seconds east, 131.06 feet; thence north 40 degrees, 23 minutes, 29 seconds east, 27.01 feet; thence north 31 degrees, 48 minutes, 41 seconds west, 130.23 feet; thence north 38 degrees, 43 minutes, 26 seconds east, 153.67 feet; thence south 71 degrees, 56 minutes, 45 seconds east, 194.99 feet; thence north 64 degrees, 11 minutes, 17 seconds east, 153.41 feet; thence north 56 degrees, 6 minutes, 19 seconds east, 108.65 feet; thence north 9 degrees, 37 minutes, 55 seconds east, 60.66 feet; thence north 55 degrees, 53 minutes, 26 seconds east, 184.62 feet; thence south 89 degrees, 4 minutes, 41 seconds east, 267.50 feet; thence north 22 degrees, 39 minutes, 9 seconds east, 124.70 feet; thence north 53 degrees, 36 minutes, 57 seconds east, 149.13 feet; thence north 37 degrees, 5 minutes, 51 seconds west, 124.10 feet; thence north 47 degrees, 57 minutes, 2 seconds east, 65.57 feet; thence south 36 degrees, 3 minutes, 53 seconds east, 301.87 feet; thence north 46 degrees, 48 minutes, 49 seconds east, 115.81 feet; thence north 4 degrees, 29 minutes, 24 seconds west, 72.26 feet; thence north 59 degrees, 37 minutes, 54 seconds east, 102.28 feet; thence north 6 degrees, 30 minutes, 41 seconds west, 317.85 feet; thence north 37 degrees, 40 minutes, 28 seconds east, 182.50 feet; thence north 31 degrees, 10 minutes, 30 seconds west, 119.52 feet; thence north 52 degrees, 46 minutes, 4 seconds east, 95.33 feet; thence north 73 degrees, 10 minutes, 0 seconds east, 64.89 feet; thence south 16 degrees, 50 minutes, 0 seconds east, 109.48 feet; thence south 80 degrees, 32 minutes, 59 seconds east, 109.60 feet; thence north 23 degrees, 1 minute, 57 seconds east, 150.01 feet; thence north 56 degrees, 56 minutes, 49 seconds east, 162.33 feet; thence north 2 degrees, 13 minutes, 20 seconds east, 105.50 feet; thence north 55 degrees, 41 minutes, 50 seconds east, 367.42 feet; thence north 11 degrees, 8 minutes, 4 seconds east, 126.97 feet; thence north 60 degrees, 16 minutes, 1 second east, 247.07 feet; thence north 25 degrees, 36 minutes, 31 seconds east, 486.91 feet; thence south 86 degrees, 4 minutes, 13 seconds east, 477.93 feet and ending at a point that is perpendicular to the northeast corner of such section 19; thence continuing on the county line between Polk and Merrick counties adjacent to section 17 and section 8, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of said section 17, and assuming the north line of section 19, township 14 north, range 4 west to have a bearing of north 87 degrees, 50 minutes, 16 seconds east; thence north 43 degrees, 19 minutes, 4 seconds west, 2576.37 feet to the point of beginning; thence north 46 degrees, 40 minutes, 56 seconds east, 922.93 feet; thence north 57 degrees, 57 minutes, 4 seconds east, 777.42 feet; thence north 22 degrees, 53 minutes, 36 seconds east, 341.40 feet; thence north 52 degrees, 26 minutes, 41 seconds east, 268.04 feet; thence north 27 degrees, 48 minutes, 39 seconds east, 466.41 feet; thence north 42 degrees, 10 minutes, 35 seconds

east, 496.04 feet; thence north 52 degrees, 16 minutes, 36 seconds east, 297.07 feet; thence north 31 degrees, 18 minutes, 19 seconds east, 243.80 feet; thence north 49 degrees, 41 minutes, 58 seconds east, 265.23 feet; thence north 60 degrees, 19 minutes, 0 seconds east, 350.21 feet; thence north 44 degrees, 11 minutes, 59 seconds west, 543.34 feet; thence north 51 degrees, 2 minutes, 28 seconds east, 2051.44 feet; thence north 32 degrees, 40 minutes, 47 seconds west, 482.44 feet; thence north 42 degrees, 17 minutes, 15 seconds east, 177.59 feet; thence north 8 degrees, 12 minutes, 7 seconds east, 284.77 feet; thence north 59 degrees, 57 minutes, 4 seconds east, 806.17 feet; thence north 79 degrees, 30 minutes, 49 seconds east, 393.73 feet; thence south 66 degrees, 48 minutes, 41 seconds east, 90.99 feet; thence north 75 degrees, 13 minutes, 56 seconds east, 224.90 feet; thence north 51 degrees, 45 minutes, 30 seconds east, 177.92 feet; thence north 28 degrees, 41 minutes, 5 seconds east, 174.26 feet to a point that is perpendicular to the northeast corner of government lot 4 of said section 8; thence north 36 degrees, 51 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1242.20 feet and ending at the geographical centerline of said Platte River; thence continuing on the county line between Polk and Merrick counties adjacent to section 9, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of government lot 4 in said section 9, and assuming the south line of the southwest quarter of said section 9 to have a bearing of south 89 degrees, 53 minutes, 34 seconds west; thence north 0 degrees, 16 minutes, 54 seconds east, and on the west line of government lots 4 and 3, 1487.75 feet to the original meander line of the Platte River; thence north 35 degrees, 17 minutes, 2 seconds west, and perpendicular to the geographical centerline of said Platte River, 2859.02 feet to the point of beginning, said point being on said geographical centerline; thence north 54 degrees, 42 minutes, 58 seconds east, and on said geographical centerline, 888.27 feet; thence north 58 degrees, 11 minutes, 51 seconds east, and on said geographical centerline, 1487.03 feet; thence north 40 degrees, 30 minutes, 0 seconds east, and on said geographical centerline, 1281.69 feet and ending at a point that is perpendicular to the northwest corner of government lot 1 in said section 9; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southeast corner of government lot 5 in said section 4, and assuming the east line of government lots 3 and 5 in said section 4 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence south 89 degrees, 24 minutes, 52 seconds west, and on the south line of government lots 5 and 4, 3102.76 feet to a point on the original south meander line of the Platte River; thence north 49 degrees, 30 minutes, 0 seconds west, and perpendicular to the geographical centerline of said Platte River, 1321.25 feet to the point of beginning, said point being on the geographical centerline of said Platte River, the next 7 courses on said centerline; thence north 40 degrees, 30 minutes, 0 seconds east, 348.74 feet to a three-fourths seconds rebar with cap; thence north 39 degrees, 16 minutes, 11 seconds east, 1420.98 feet to a three-fourths seconds rebar with cap; thence north 38 degrees, 14 minutes, 59 seconds east, 1222.76 feet to a three-fourths seconds rebar with cap; thence north 36 degrees, 4 minutes, 35 seconds east, 426.21 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 8 minutes, 26 seconds east, 779.07 feet to a three-fourths seconds rebar with cap; thence north 44 degrees, 45 minutes, 1 second east, 505.14 feet to a three-fourths seconds rebar with cap; thence north 42 degrees,

56 minutes, 58 seconds east, 685.04 feet and ending at a point that is perpendicular to the northeast corner of government lot 2 in said section 4; thence continuing on the county line between Polk and Merrick counties adjacent to section 3, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 2 in said section 4, and assuming the east line of said government lot 2 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence north 47 degrees, 3 minutes, 2 seconds west, and perpendicular to the geographical centerline of the Platte River, 848.52 feet to the point of beginning, said point being on said geographical centerline; thence north 42 degrees, 56 minutes, 58 seconds east, and on said geographical centerline, 750.96 feet; thence north 33 degrees, 22 minutes, 23 seconds east, and on said geographical centerline, 434.94 feet and ending at a point that is perpendicular to the northwesterly corner of government lot 4 in said section 3; thence continuing on the county line between Polk and Merrick counties adjacent to section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southeast quarter of section 34, and assuming the south line of said southeast quarter to have a bearing of north 89 degrees, 10 minutes, 38 seconds east; thence south 88 degrees, 55 minutes, 33 seconds west, 1780.73 feet to the calculated meander corner; thence north 56 degrees, 37 minutes, 37 seconds west, and perpendicular to the geographical centerline of the Platte River, 912.40 feet to the point of beginning; the next 13 courses on the geographical centerline of said Platte River; thence north 33 degrees, 22 minutes, 23 seconds east, 148.31 feet; thence north 42 degrees, 32 minutes, 16 seconds east, 450.87 feet; thence north 35 degrees, 36 minutes, 3 seconds east, 461.73 feet; thence north 21 degrees, 44 minutes, 33 seconds east, 652.02 feet; thence north 22 degrees, 47 minutes, 50 seconds east, 723.43 feet; thence north 17 degrees, 25 minutes, 48 seconds east, 480.50 feet; thence north 18 degrees, 58 minutes, 22 seconds east, 315.96 feet; thence north 28 degrees, 41 minutes, 27 seconds east, 513.70 feet; thence north 10 degrees, 53 minutes, 32 seconds east, 365.66 feet; thence north 31 degrees, 12 minutes, 36 seconds east, 686.04 feet; thence north 29 degrees, 6 minutes, 28 seconds east, 479.52 feet; thence north 11 degrees, 9 minutes, 24 seconds east, 688.60 feet; thence north 35 degrees, 54 minutes, 48 seconds east, 1209.26 feet and ending at a point that is perpendicular to the meander corner, the northeast corner of the northeast quarter of section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 26 and 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southwest quarter of section 26, and assuming the south line of said southwest quarter to have a bearing of south 89 degrees, 32 minutes, 23 seconds west; thence north 53 degrees, 20 minutes, 6 seconds west, 2455.61 feet to the point of beginning, said point being on the geographical centerline of the Platte River; the next 14 courses on said geographical centerline; thence north 29 degrees, 1 minute, 35 seconds east, 191.87 feet; thence north 41 degrees, 18 minutes, 40 seconds east, 943.72 feet; thence north 42 degrees, 12 minutes, 23 seconds east, 1208.49 feet; thence north 43 degrees, 8 minutes, 28 seconds east, 905.77 feet; thence north 54 degrees, 19 minutes, 20 seconds east, 731.56 feet; thence north 57 degrees, 13 minutes, 41 seconds east, 684.45 feet; thence north 56 degrees, 14 minutes, 20 seconds east, 120.34 feet; thence north 53 degrees, 9 minutes, 36 seconds

east, 598.24 feet; thence north 62 degrees, 7 minutes, 10 seconds east, 707.55 feet; thence north 59 degrees, 58 minutes, 43 seconds east, 563.34 feet; thence north 49 degrees, 11 minutes, 46 seconds east, 482.37 feet; thence north 57 degrees, 18 minutes, 21 seconds east, 762.06 feet; thence north 71 degrees, 32 minutes, 53 seconds east, 481.69 feet; thence north 61 degrees, 27 minutes, 48 seconds east, 250.65 feet and ending at a point that is perpendicular to the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the east line of said government lot 5 to have a bearing of south 0 degrees, 1 minute, 56 seconds east; thence north 28 degrees, 32 minutes, 12 seconds west, and perpendicular to the geographical centerline of the Platte River, 1225.57 feet to the point of beginning, said point being on said geographical centerline; the next 5 courses on said geographical centerline; thence north 61 degrees, 27 minutes, 48 seconds east, 759.65 feet; thence north 54 degrees, 45 minutes, 25 seconds east, 1538.51 feet; thence north 58 degrees, 5 minutes, 44 seconds east, 1675.34 feet; thence north 53 degrees, 15 minutes, 23 seconds east, 1844.73 feet; thence north 46 degrees, 46 minutes, 34 seconds east, 622.22 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 17, 18, and 19, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 1 of section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the north line of government lot 1 of section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, to have a bearing of north 56 degrees, 3 minutes, 25 seconds east; thence north 43 degrees, 13 minutes, 26 seconds west, and perpendicular to the geographical centerline of the Platte River, 901.44 feet to the point of beginning, said point being on the geographical centerline; the next 12 courses on said geographical centerline; thence north 46 degrees, 46 minutes, 34 seconds east, 347.92 feet; thence north 52 degrees, 38 minutes, 26 seconds east, 626.31 feet; thence north 41 degrees, 44 minutes, 8 seconds east, 334.55 feet; thence north 51 degrees, 2 minutes, 44 seconds east, 972.55 feet; thence north 40 degrees, 15 minutes, 33 seconds east, 731.79 feet; thence north 36 degrees, 26 minutes, 23 seconds east, 970.59 feet; thence north 36 degrees, 32 minutes, 36 seconds east, 908.72 feet; thence north 58 degrees, 27 minutes, 57 seconds east, 258.30 feet; thence north 42 degrees, 48 minutes, 50 seconds east, 367.48 feet; thence north 43 degrees, 54 minutes, 57 seconds east, 2682.73 feet; thence north 41 degrees, 38 minutes, 34 seconds east, 398.76 feet; thence north 40 degrees, 45 minutes, 24 seconds east, 416.25 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 8 and 9, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 5 of said section 8, and assuming the

south line of said lot 5 to have a bearing of south 89 degrees, 33 minutes, 8 seconds east; thence north 49 degrees, 14 minutes, 36 seconds west, and perpendicular to the geographical centerline of the Platte River, 1386.78 feet to the point of beginning, said point being on the geographical centerline of said Platte River; the next 26 courses on said geographical centerline; thence north 59 degrees, 9 minutes, 30 seconds east, 435.97 feet; thence north 41 degrees, 24 minutes, 58 seconds east, 144.83 feet; thence north 45 degrees, 47 minutes, 4 seconds east, 298.37 feet; thence north 44 degrees, 1 minute, 35 seconds east, 399.35 feet; thence north 31 degrees, 41 minutes, 6 seconds east, 220.66 feet; thence north 29 degrees, 20 minutes, 52 seconds east, 420.71 feet; thence north 46 degrees, 4 minutes, 0 seconds east, 343.05 feet; thence north 39 degrees, 58 minutes, 42 seconds east, 489.14 feet; thence north 30 degrees, 8 minutes, 23 seconds east, 370.70 feet; thence north 47 degrees, 40 minutes, 21 seconds east, 243.26 feet; thence north 49 degrees, 27 minutes, 19 seconds east, 381.66 feet; thence north 42 degrees, 43 minutes, 37 seconds east, 193.07 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 171.32 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 299.06 feet; thence north 54 degrees, 43 minutes, 13 seconds east, 293.59 feet; thence north 47 degrees, 48 minutes, 38 seconds east, 273.99 feet; thence north 60 degrees, 50 minutes, 29 seconds east, 259.30 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 647.78 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 308.91 feet; thence north 33 degrees, 44 minutes, 23 seconds east, 205.67 feet; thence north 42 degrees, 59 minutes, 37 seconds east, 103.53 feet; thence north 49 degrees, 59 minutes, 5 seconds east, 573.10 feet; thence north 48 degrees, 3 minutes, 27 seconds east, 250.06 feet; thence north 55 degrees, 30 minutes, 20 seconds east, 251.45 feet; thence north 36 degrees, 29 minutes, 4 seconds east, 256.44 feet; thence north 50 degrees, 34 minutes, 37 seconds east, 170.89 feet and ending at a point that is perpendicular to the southwest corner of government lot 4 of section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 4 of said section 4, and assuming the south line of said lot 4 to have a bearing of south 89 degrees, 38 minutes, 18 seconds east; thence north 39 degrees, 25 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1662.07 feet to the point of beginning, said point being on said geographical centerline; the next 7 courses on said geographical centerline; thence north 53 degrees, 46 minutes, 58 seconds east, 330.14 feet; thence north 58 degrees, 57 minutes, 3 seconds east, 253.55 feet; thence north 44 degrees, 28 minutes, 51 seconds east, 250.91 feet; thence north 50 degrees, 4 minutes, 7 seconds east, 250.02 feet; thence north 56 degrees, 38 minutes, 46 seconds east, 252.04 feet; thence north 45 degrees, 40 minutes, 51 seconds east, 250.51 feet; thence north 43 degrees, 26 minutes, 50 seconds east, 286.41 feet to a point on the west line of north thunderbird lake subdivision extended north; thence south 33 degrees, 33 minutes, 56 seconds east, and on the west line of said subdivision, 1762.06 feet to the southwest corner of said subdivision; thence north 52 degrees, 27 minutes, 34 seconds east, and on the south line of said subdivision, 258.17 feet; thence north 50 degrees, 24 minutes, 39 seconds east, and on the south line of said subdivision, 784.82 feet; thence north 4 degrees, 21 minutes, 44 seconds east, and on the south line of said subdivision, 229.01 feet; thence north 50 degrees, 51 minutes, 33 seconds east, 509.80 feet; thence north 6 degrees, 13 minutes, 43 seconds

west, and on the south line of said subdivision, 284.97 feet; thence north 67 degrees, 25 minutes, 50 seconds east, 902.92 feet to a point on the west right-of-way line of said highway number 39; thence north 23 degrees, 0 minutes, 50 seconds west, and on the west right-of-way line of said highway number 39, 226.15 feet; thence north 23 degrees, 41 minutes, 10 seconds west, and on the west right-of-way line of said highway number 39, 305.60 feet; thence north 33 degrees, 36 minutes, 5 seconds west, and on the west right-of-way line of said highway number 39, 305.56 feet; thence north 23 degrees, 14 minutes, 0 seconds west, and on the west right-of-way line of said highway number 39, 299.38 feet; thence north 22 degrees, 6 minutes, 20 seconds west, and on the west right-of-way line of said highway number 39, 116.44 feet; thence north 67 degrees, 53 minutes, 40 seconds east, 260.58 feet and ending at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision; thence continuing on the county line between Polk and Merrick counties in section 3, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Beginning at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet and ending at the east line of said section 3; thence continuing on the county line between Polk and Merrick counties in section 2, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, and in sections 30 and 31, township 16 north, range 2 west of the sixth principal meridian, Polk County, Nebraska, and in sections 35 and 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at a point on the westline of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet to the point of beginning, said point being on the west line of said section 2; the next 13 courses on the thread of stream of the south channel of the Platte River; thence north 76 degrees, 31 minutes, 56 seconds east, 1282.77 feet; thence north 64 degrees, 49 minutes, 59 seconds east, 1003.62 feet; thence north 66 degrees, 16 minutes, 54 seconds east, 771.67 feet; thence north 64 degrees, 24 minutes, 8 seconds east, 987.84 feet; thence north 62 degrees, 32 minutes, 13 seconds east, 765.60 feet; thence north 82 degrees, 40 minutes, 10 seconds east, 881.63 feet; thence north 66 degrees, 25 minutes, 46 seconds east, 407.59 feet; thence north 51 degrees, 51 minutes, 31 seconds east, 644.83 feet; thence north 62 degrees, 11 minutes, 14 seconds east, 438.62 feet; thence north 79 degrees, 50 minutes, 8 seconds east, 1220.74 feet; thence north 68 degrees, 59 minutes, 38 seconds

east, 1125.78 feet; thence north 58 degrees, 55 minutes, 8 seconds east, 1012.63 feet; thence north 73 degrees, 48 minutes, 20 seconds east, 926.49 feet to the east line of section 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence north on the dividing line between ranges two and three west to the south bank of the north channel of the Platte River; thence northeasterly along the south bank of such Platte River to the east line of range 1 west; thence south and on the east line of range 1 west to the southeast corner of township 13 north, range 1 west; thence west on the south line of township 13 north, to the point of beginning.

Source: Laws 2009, LB131, § 1; Laws 2011, LB556, § 2.

22-162 Morrill.

The county of Morrill is bounded as follows: Commencing at the southwest corner of section eighteen, township seventeen, north, range fifty-two, west; thence north along the range line, between ranges fifty-two and fifty-three to the fifth standard parallel; thence east along said parallel to the southwest corner of section thirty-three, township twenty-one, north, range fifty-two, west; thence north along section lines to the northwest corner of section four, township twenty-three, north, range fifty-two west; thence east along the line between townships twenty-three and twenty-four to the northeast corner of section five, township twenty-three, north, range forty-six west; thence south along section lines to the southeast corner of section thirty-two, on the fifth standard parallel; thence east along said parallel to the northeast corner of section five, township twenty, north, range forty-six, west; thence south along section lines to the northeast corner of Cheyenne County, at the southeast corner of section seventeen, township seventeen, north, range forty-six, west; thence west along the north line of Cheyenne County to the place of beginning.

Source: Formed from Cheyenne County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 3, 1908; R.S.1913, § 875; Laws 1921, c. 231, § 7, p. 826; C.S.1922, § 777; C.S.1929, § 25-164; R.S.1943, § 22-162.

22-163 Nance.

The county of Nance shall include all that territory included in and known as the Pawnee Indian reservation. It shall also include all of sections numbered six, seven, eighteen, nineteen, thirty and thirty-one, in township seventeen, north, of range eight, west, of the sixth principal meridian.

Source: Laws 1879, § 1, p. 148; Laws 1881, c. 37, § 1, p. 217; R.S.1913, §§ 876, 877; C.S.1922, §§ 778, 779; C.S.1929, §§ 25-165, 25-166; R.S.1943, § 22-163.

22-164 Nemaha.

The county of Nemaha is bounded as follows: Commencing at the southwest corner of section thirty-four in township four, north, of range twelve, east; thence north by section lines to the northwest corner of section three in township six, north, of range twelve, east; thence east by the line dividing townships six and seven, north, to its first intersection with the state boundary; thence around the old channel of the Missouri River and including the land known as McKissick's Island, by the eastern boundary of the state to the

intersection thereof with the line dividing townships three and four, north; and thence west by the line to the place of beginning.

Source: G.S.1873, c. 12, § 37, p. 219; R.S.1913, § 879; C.S.1922, § 781; C.S.1929, § 25-168; R.S.1943, § 22-164; Laws 1998, LB 59, § 1.

22-165 Nuckolls.

The county of Nuckolls is bounded as follows: Commencing at the southwest corner of township one, north, of range eight, west; thence east along the base line to the southeast corner of said township in range five, west; thence north to the northeast corner of township four, north, of range five, west; thence west to the northwest corner of said township in range eight, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 38, p. 219; R.S.1913, § 880; C.S.1922, § 782; C.S.1929, § 25-169; R.S.1943, § 22-165.

22-166 Otoe.

The county of Otoe is bounded as follows: Commencing at the southwest corner of township seven, north, range nine, east; thence east to the middle of the main channel of the Missouri River as established by the original government survey of 1857; thence up said channel until it intersects the southern boundary of the State of Iowa; thence continuing north along the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943 until said boundary line intersects the dividing line between townships nine and ten; thence west to the northwest corner of township nine, north, range nine, east; and thence south to the place of beginning.

Source: G.S.1873, c. 12, § 39, p. 219; R.S.1913, § 881; C.S.1922, § 783; C.S.1929, § 25-170; R.S.1943, § 22-166; Laws 1955, c. 65, § 5, p. 213.

22-167 Pawnee.

The county of Pawnee is bounded as follows: Commencing at the southwest corner of township one, north, of range nine, east; thence east to the southeast corner of said township in range twelve, east; thence north to the northeast corner of township three, north, of range twelve, east; thence west to the northwest corner of township three, north, of range nine, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 40, p. 219; R.S.1913, § 882; C.S.1922, § 784; C.S.1929, § 25-171; R.S.1943, § 22-167.

22-168 Perkins.

The county of Perkins is bounded as follows: Commencing at the southwest corner of township nine, north, of range forty-two, west, on the west boundary of Nebraska; thence east to the southeast corner of township nine, north, of range thirty-five, west; thence north to the northeast corner of section twenty-four, township twelve, west; thence west on section lines to the northwest corner of section nineteen, in township twelve, north, of range forty-one, west; thence south along the west line of said section nineteen to its intersection with the south boundary of Nebraska; thence east along said boundary line to the

monument at the northeast corner of Colorado; thence south along the west boundary of Nebraska to the place of beginning.

Source: Formed from Keith County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 8, 1887; R.S.1913, § 883; Laws 1921, c. 231, § 8, p. 826; C.S.1922, § 785; C.S.1929, § 25-172; R.S.1943, § 22-168.

22-169 Phelps.

The county of Phelps is bounded as follows: Commencing at the southwest corner of township five, north, of the base line, and range twenty, west, of the sixth principal meridian; thence running north to the middle of the south channel of the Platte River; thence running in an easterly direction along the middle of the south channel until it reaches the line dividing the sixteenth and seventeenth ranges, west, of the said sixth principal meridian; thence south to the southeast corner of townships five, north, and seventeen, west, as aforesaid; thence west to the place of beginning.

Source: G.S.1873, c. 12, § 57, p. 223; R.S.1913, § 884; C.S.1922, § 786; C.S.1929, § 25-173; R.S.1943, § 22-169.

22-170 Pierce.

The county of Pierce is bounded as follows: Commencing at the southwest corner of township twenty-five, north, of range four, west; thence east to the southeast corner of township twenty-five, north, of range one, west; thence north to the northeast corner of township twenty-eight, north, of range one, west; thence west to the northwest corner of township twenty-eight, north, of range four, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 41, p. 220; R.S.1913, § 885; C.S.1922, § 787; C.S.1929, § 25-174; R.S.1943, § 22-170.

22-171 Platte.

The county of Platte is bounded as follows: Commencing at a point on the east line of township 16 north, range 1 east, said point being 3711.01 feet south of the northeast corner of section 1, of said township, and assuming the east line of said section 1 to have a bearing of N 02° 06' 22'' E; thence N 70° 23' 02'' W, 3275.26 feet; thence N 45° 07' 33'' W, 3033.40 feet; thence N 53° 29' 12'' W, 3663.43 feet; thence N 73° 40' 09'' W, 2182.88 feet; thence S 87° 03' 33'' W, 2685.73 feet; thence S 74° 49' 57'' W, 4926.62 feet; thence S 64° 42' 15'' W, 5633.14 feet; thence N 70° 16' 39'' W, 3725.32 feet; thence N 70° 17' 54'' W, 5359.26 feet, to a point on the west line of township 17 north, range 1 east, said point being 904.43 feet north of the southwest corner of said township, thence south to the south bank of the main channel of the Platte River; thence west along said south bank to its intersection with the line dividing ranges 2 and 3 west; thence north by said line to the northwest corner of township 16 north, of range 2 west; thence west on the 4th standard parallel to the eastern boundary of the former Pawnee Indian Reservation; thence west and north by the boundaries of said reservation to the line dividing ranges 4 and 5 west; thence north to the northwest corner of township 20 north, of range 4 west; thence

east by the 5th standard parallel to the line dividing ranges 1 and 2 east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 43, p. 220; R.S.1913, § 886; C.S.1922, § 788; C.S.1929, § 25-175; R.S.1943, § 22-171; Laws 2000, LB 349, § 2; Laws 2003, LB 90, § 3.

22-172 Repealed. Laws 2009, LB 131, § 3.

22-172.01 Polk.

The county of Polk is bounded as follows: Beginning at the southwest corner of township 13 north, range 4 west; thence north, and on the west line of range 4 west, to the southwest corner of the northwest quarter of section 19, township 14 north, range 4 west of the sixth principal meridian; thence north 1 degree, 46 minutes, 44 seconds west (assumed bearing), and on the west line of the northwest quarter of said section 19, 2132.77 feet to the thread of stream of the south channel of the Platte River; the next 35 courses on said thread of stream; thence south 84 degrees, 28 minutes, 19 seconds east, 60.66 feet; thence north 29 degrees, 30 minutes, 32 seconds east, 130.51 feet; thence south 70 degrees, 11 minutes, 42 seconds east, 131.06 feet; thence north 40 degrees, 23 minutes, 29 seconds east, 27.01 feet; thence north 31 degrees, 48 minutes, 41 seconds west, 130.23 feet; thence north 38 degrees, 43 minutes, 26 seconds east, 153.67 feet; thence south 71 degrees, 56 minutes, 45 seconds east, 194.99 feet; thence north 64 degrees, 11 minutes, 17 seconds east, 153.41 feet; thence north 56 degrees, 6 minutes, 19 seconds east, 108.65 feet; thence north 9 degrees, 37 minutes, 55 seconds east, 60.66 feet; thence north 55 degrees, 53 minutes, 26 seconds east, 184.62 feet; thence south 89 degrees, 4 minutes, 41 seconds east, 267.50 feet; thence north 22 degrees, 39 minutes, 9 seconds east, 124.70 feet; thence north 53 degrees, 36 minutes, 57 seconds east, 149.13 feet; thence north 37 degrees, 5 minutes, 51 seconds west, 124.10 feet; thence north 47 degrees, 57 minutes, 2 seconds east, 65.57 feet; thence south 36 degrees, 3 minutes, 53 seconds east, 301.87 feet; thence north 46 degrees, 48 minutes, 49 seconds east, 115.81 feet; thence north 4 degrees, 29 minutes, 24 seconds west, 72.26 feet; thence north 59 degrees, 37 minutes, 54 seconds east, 102.28 feet; thence north 6 degrees, 30 minutes, 41 seconds west, 317.85 feet; thence north 37 degrees, 40 minutes, 28 seconds east, 182.50 feet; thence north 31 degrees, 10 minutes, 30 seconds west, 119.52 feet; thence north 52 degrees, 46 minutes, 4 seconds east, 95.33 feet; thence north 73 degrees, 10 minutes, 0 seconds east, 64.89 feet; thence south 16 degrees, 50 minutes, 0 seconds east, 109.48 feet; thence south 80 degrees, 32 minutes, 59 seconds east, 109.60 feet; thence north 23 degrees, 1 minute, 57 seconds east, 150.01 feet; thence north 56 degrees, 56 minutes, 49 seconds east, 162.33 feet; thence north 2 degrees, 13 minutes, 20 seconds east, 105.50 feet; thence north 55 degrees, 41 minutes, 50 seconds east, 367.42 feet; thence north 11 degrees, 8 minutes, 4 seconds east, 126.97 feet; thence north 60 degrees, 16 minutes, 1 second east, 247.07 feet; thence north 25 degrees, 36 minutes, 31 seconds east, 486.91 feet; thence south 86 degrees, 4 minutes, 13 seconds east, 477.93 feet and ending at a point that is perpendicular to the northeast corner of said section 19; thence continuing on the county line between Polk and Merrick counties adjacent to section 17 and section 8, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of said section 17, and assuming the north line of section 19, township 14 north, range

4 west to have a bearing of north 87 degrees, 50 minutes, 16 seconds east; thence north 43 degrees, 19 minutes, 4 seconds west, 2576.37 feet to the point of beginning; thence north 46 degrees, 40 minutes, 56 seconds east, 922.93 feet; thence north 57 degrees, 57 minutes, 4 seconds east, 777.42 feet; thence north 22 degrees, 53 minutes, 36 seconds east, 341.40 feet; thence north 52 degrees, 26 minutes, 41 seconds east, 268.04 feet; thence north 27 degrees, 48 minutes, 39 seconds east, 466.41 feet; thence north 42 degrees, 10 minutes, 35 seconds east, 496.04 feet; thence north 52 degrees, 16 minutes, 36 seconds east, 297.07 feet; thence north 31 degrees, 18 minutes, 19 seconds east, 243.80 feet; thence north 49 degrees, 41 minutes, 58 seconds east, 265.23 feet; thence north 60 degrees, 19 minutes, 0 seconds east, 350.21 feet; thence north 44 degrees, 11 minutes, 59 seconds west, 543.34 feet; thence north 51 degrees, 2 minutes, 28 seconds east, 2051.44 feet; thence north 32 degrees, 40 minutes, 47 seconds west, 482.44 feet; thence north 42 degrees, 17 minutes, 15 seconds east, 177.59 feet; thence north 8 degrees, 12 minutes, 7 seconds east, 284.77 feet; thence north 59 degrees, 57 minutes, 4 seconds east, 806.17 feet; thence north 79 degrees, 30 minutes, 49 seconds east, 393.73 feet; thence south 66 degrees, 48 minutes, 41 seconds east, 90.99 feet; thence north 75 degrees, 13 minutes, 56 seconds east, 224.90 feet; thence north 51 degrees, 45 minutes, 30 seconds east, 177.92 feet; thence north 28 degrees, 41 minutes, 5 seconds east, 174.26 feet to a point that is perpendicular to the northeast corner of government lot 4 of said section 8; thence north 36 degrees, 51 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1242.20 feet and ending at the geographical centerline of said Platte River; thence continuing on the county line between Polk and Merrick counties adjacent to section 9, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of government lot 4 in said section 9, and assuming the south line of the southwest quarter of said section 9 to have a bearing of south 89 degrees, 53 minutes, 34 seconds west; thence north 0 degrees, 16 minutes, 54 seconds east, and on the west line of government lots 4 and 3, 1487.75 feet to the original meander line of the Platte River; thence north 35 degrees, 17 minutes, 2 seconds west, and perpendicular to the geographical centerline of said Platte River, 2859.02 feet to the point of beginning, said point being on said geographical centerline; thence north 54 degrees, 42 minutes, 58 seconds east, and on said geographical centerline, 888.27 feet; thence north 58 degrees, 11 minutes, 51 seconds east, and on said geographical centerline, 1487.03 feet; thence north 40 degrees, 30 minutes, 0 seconds east, and on said geographical centerline, 1281.69 feet and ending at a point that is perpendicular to the northwest corner of government lot 1 in said section 9; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southeast corner of government lot 5 in said section 4, and assuming the east line of government lots 3 and 5 in said section 4 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence south 89 degrees, 24 minutes, 52 seconds west, and on the south line of government lots 5 and 4, 3102.76 feet to a point on the original south meander line of the Platte River; thence north 49 degrees, 30 minutes, 0 seconds west, and perpendicular to the geographical centerline of said Platte River, 1321.25 feet to the point of beginning, said point being on the geographical centerline of said Platte River, the next 7 courses on said centerline; thence north 40 degrees, 30 minutes, 0 seconds east, 348.74 feet to a three-fourths seconds rebar with cap; thence north 39 degrees, 16

minutes, 11 seconds east, 1420.98 feet to a three-fourths seconds rebar with cap; thence north 38 degrees, 14 minutes, 59 seconds east, 1222.76 feet to a three-fourths seconds rebar with cap; thence north 36 degrees, 4 minutes, 35 seconds east, 426.21 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 8 minutes, 26 seconds east, 779.07 feet to a three-fourths seconds rebar with cap; thence north 44 degrees, 45 minutes, 1 second east, 505.14 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 56 minutes, 58 seconds east, 685.04 feet and ending at a point that is perpendicular to the northeast corner of government lot 2 in said section 4; thence continuing on the county line between Polk and Merrick counties adjacent to section 3, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 2 in said section 4, and assuming the east line of said government lot 2 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence north 47 degrees, 3 minutes, 2 seconds west, and perpendicular to the geographical centerline of the Platte River, 848.52 feet to the point of beginning, said point being on said geographical centerline; thence north 42 degrees, 56 minutes, 58 seconds east, and on said geographical centerline, 750.96 feet; thence north 33 degrees, 22 minutes, 23 seconds east, and on said geographical centerline, 434.94 feet and ending at a point that is perpendicular to the northwesterly corner of government lot 4 in said section 3; thence continuing on the county line between Polk and Merrick counties adjacent to section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southeast quarter of section 34, and assuming the south line of said southeast quarter to have a bearing of north 89 degrees, 10 minutes, 38 seconds east; thence south 88 degrees, 55 minutes, 33 seconds west, 1780.73 feet to the calculated meander corner; thence north 56 degrees, 37 minutes, 37 seconds west, and perpendicular to the geographical centerline of the Platte River, 912.40 feet to the point of beginning; the next 13 courses on the geographical centerline of said Platte River; thence north 33 degrees, 22 minutes, 23 seconds east, 148.31 feet; thence north 42 degrees, 32 minutes, 16 seconds east, 450.87 feet; thence north 35 degrees, 36 minutes, 3 seconds east, 461.73 feet; thence north 21 degrees, 44 minutes, 33 seconds east, 652.02 feet; thence north 22 degrees, 47 minutes, 50 seconds east, 723.43 feet; thence north 17 degrees, 25 minutes, 48 seconds east, 480.50 feet; thence north 18 degrees, 58 minutes, 22 seconds east, 315.96 feet; thence north 28 degrees, 41 minutes, 27 seconds east, 513.70 feet; thence north 10 degrees, 53 minutes, 32 seconds east, 365.66 feet; thence north 31 degrees, 12 minutes, 36 seconds east, 686.04 feet; thence north 29 degrees, 6 minutes, 28 seconds east, 479.52 feet; thence north 11 degrees, 9 minutes, 24 seconds east, 688.60 feet; thence north 35 degrees, 54 minutes, 48 seconds east, 1209.26 feet and ending at a point that is perpendicular to the meander corner, the northeast corner of the northeast quarter of section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 26 and 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southwest quarter of section 26, and assuming the south line of said southwest quarter to have a bearing of south 89 degrees, 32 minutes, 23 seconds west; thence north 53 degrees, 20 minutes, 6 seconds west, 2455.61 feet to the point of beginning, said point being on the geographical centerline of the Platte River; the next 14

courses on said geographical centerline; thence north 29 degrees, 1 minute, 35 seconds east, 191.87 feet; thence north 41 degrees, 18 minutes, 40 seconds east, 943.72 feet; thence north 42 degrees, 12 minutes, 23 seconds east, 1208.49 feet; thence north 43 degrees, 8 minutes, 28 seconds east, 905.77 feet; thence north 54 degrees, 19 minutes, 20 seconds east, 731.56 feet; thence north 57 degrees, 13 minutes, 41 seconds east, 684.45 feet; thence north 56 degrees, 14 minutes, 20 seconds east, 120.34 feet; thence north 53 degrees, 9 minutes, 36 seconds east, 598.24 feet; thence north 62 degrees, 7 minutes, 10 seconds east, 707.55 feet; thence north 59 degrees, 58 minutes, 43 seconds east, 563.34 feet; thence north 49 degrees, 11 minutes, 46 seconds east, 482.37 feet; thence north 57 degrees, 18 minutes, 21 seconds east, 762.06 feet; thence north 71 degrees, 32 minutes, 53 seconds east, 481.69 feet; thence north 61 degrees, 27 minutes, 48 seconds east, 250.65 feet and ending at a point that is perpendicular to the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the east line of said government lot 5 to have a bearing of south 0 degrees, 1 minute, 56 seconds east; thence north 28 degrees, 32 minutes, 12 seconds west, and perpendicular to the geographical centerline of the Platte River, 1225.57 feet to the point of beginning, said point being on said geographical centerline; the next 5 courses on said geographical centerline; thence north 61 degrees, 27 minutes, 48 seconds east, 759.65 feet; thence north 54 degrees, 45 minutes, 25 seconds east, 1538.51 feet; thence north 58 degrees, 5 minutes, 44 seconds east, 1675.34 feet; thence north 53 degrees, 15 minutes, 23 seconds east, 1844.73 feet; thence north 46 degrees, 46 minutes, 34 seconds east, 622.22 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 17, 18, and 19, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 1 of section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the north line of government lot 1 of section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, to have a bearing of north 56 degrees, 3 minutes, 25 seconds east; thence north 43 degrees, 13 minutes, 26 seconds west, and perpendicular to the geographical centerline of the Platte River, 901.44 feet to the point of beginning, said point being on the geographical centerline; the next 12 courses on said geographical centerline; thence north 46 degrees, 46 minutes, 34 seconds east, 347.92 feet; thence north 52 degrees, 38 minutes, 26 seconds east, 626.31 feet; thence north 41 degrees, 44 minutes, 8 seconds east, 334.55 feet; thence north 51 degrees, 2 minutes, 44 seconds east, 972.55 feet; thence north 40 degrees, 15 minutes, 33 seconds east, 731.79 feet; thence north 36 degrees, 26 minutes, 23 seconds east, 970.59 feet; thence north 36 degrees, 32 minutes, 36 seconds east, 908.72 feet; thence north 58 degrees, 27 minutes, 57 seconds east, 258.30 feet; thence north 42 degrees, 48 minutes, 50 seconds east, 367.48 feet; thence north 43 degrees, 54 minutes, 57 seconds east, 2682.73 feet; thence north 41 degrees, 38 minutes, 34 seconds east, 398.76 feet; thence north 40

degrees, 45 minutes, 24 seconds east, 416.25 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 8 and 9, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 5 of said section 8, and assuming the south line of said lot 5 to have a bearing of south 89 degrees, 33 minutes, 8 seconds east; thence north 49 degrees, 14 minutes, 36 seconds west, and perpendicular to the geographical centerline of the Platte River, 1386.78 feet to the point of beginning, said point being on the geographical centerline of said Platte River; the next 26 courses on said geographical centerline; thence north 59 degrees, 9 minutes, 30 seconds east, 435.97 feet; thence north 41 degrees, 24 minutes, 58 seconds east, 144.83 feet; thence north 45 degrees, 47 minutes, 4 seconds east, 298.37 feet; thence north 44 degrees, 1 minute, 35 seconds east, 399.35 feet; thence north 31 degrees, 41 minutes, 6 seconds east, 220.66 feet; thence north 29 degrees, 20 minutes, 52 seconds east, 420.71 feet; thence north 46 degrees, 4 minutes, 0 seconds east, 343.05 feet; thence north 39 degrees, 58 minutes, 42 seconds east, 489.14 feet; thence north 30 degrees, 8 minutes, 23 seconds east, 370.70 feet; thence north 47 degrees, 40 minutes, 21 seconds east, 243.26 feet; thence north 49 degrees, 27 minutes, 19 seconds east, 381.66 feet; thence north 42 degrees, 43 minutes, 37 seconds east, 193.07 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 171.32 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 299.06 feet; thence north 54 degrees, 43 minutes, 13 seconds east, 293.59 feet; thence north 47 degrees, 48 minutes, 38 seconds east, 273.99 feet; thence north 60 degrees, 50 minutes, 29 seconds east, 259.30 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 647.78 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 308.91 feet; thence north 33 degrees, 44 minutes, 23 seconds east, 205.67 feet; thence north 42 degrees, 59 minutes, 37 seconds east, 103.53 feet; thence north 49 degrees, 59 minutes, 5 seconds east, 573.10 feet; thence north 48 degrees, 3 minutes, 27 seconds east, 250.06 feet; thence north 55 degrees, 30 minutes, 20 seconds east, 251.45 feet; thence north 36 degrees, 29 minutes, 4 seconds east, 256.44 feet; thence north 50 degrees, 34 minutes, 37 seconds east, 170.89 feet and ending at a point that is perpendicular to the southwest corner of government lot 4 of section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 4 of said section 4, and assuming the south line of said lot 4 to have a bearing of south 89 degrees, 38 minutes, 18 seconds east; thence north 39 degrees, 25 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1662.07 feet to the point of beginning, said point being on said geographical centerline; the next 7 courses on said geographical centerline; thence north 53 degrees, 46 minutes, 58 seconds east, 330.14 feet; thence north 58 degrees, 57 minutes, 3 seconds east, 253.55 feet; thence north 44 degrees, 28 minutes, 51 seconds east, 250.91 feet; thence north 50 degrees, 4 minutes, 7 seconds east, 250.02 feet; thence north 56 degrees, 38 minutes, 46 seconds east, 252.04 feet; thence north 45 degrees, 40 minutes, 51 seconds east, 250.51 feet; thence north 43 degrees, 26 minutes, 50 seconds east, 286.41 feet to a point on the west line of north thunderbird lake subdivision extended north; thence south 33 degrees, 33 minutes, 56 seconds

east, and on the west line of said subdivision, 1762.06 feet to the southwest corner of said subdivision; thence north 52 degrees, 27 minutes, 34 seconds east, and on the south line of said subdivision, 258.17 feet; thence north 50 degrees, 24 minutes, 39 seconds east, and on the south line of said subdivision, 784.82 feet; thence north 4 degrees, 21 minutes, 44 seconds east, and on the south line of said subdivision, 229.01 feet; thence north 50 degrees, 51 minutes, 33 seconds east, 509.80 feet; thence north 6 degrees, 13 minutes, 43 seconds west, and on the south line of said subdivision, 284.97 feet; thence north 67 degrees, 25 minutes, 50 seconds east, 902.92 feet to a point on the west right-of-way line of said highway number 39; thence north 23 degrees, 0 minutes, 50 seconds west, and on the west right-of-way line of said highway number 39, 226.15 feet; thence north 23 degrees, 41 minutes, 10 seconds west, and on the west right-of-way line of said highway number 39, 305.60 feet; thence north 33 degrees, 36 minutes, 5 seconds west, and on the west right-of-way line of said highway number 39, 305.56 feet; thence north 23 degrees, 14 minutes, 0 seconds west, and on the west right-of-way line of said highway number 39, 299.38 feet; thence north 22 degrees, 6 minutes, 20 seconds west, and on the west right-of-way line of said highway number 39, 116.44 feet; thence north 67 degrees, 53 minutes, 40 seconds east, 260.58 feet and ending at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision; thence continuing on the county line between Polk and Merrick counties in section 3, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Beginning at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet and ending at the east line of said section 3; thence continuing on the county line between Polk and Merrick counties in section 2, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, and in sections 30 and 31, township 16 north, range 2 west of the sixth principal meridian, Polk County, Nebraska, and in sections 35 and 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet to the point of beginning, said point being on the west line of said section 2; the next 13 courses on the thread of stream of the south channel of the Platte River; thence north 76 degrees, 31 minutes, 56 seconds east, 1282.77 feet; thence north 64 degrees, 49 minutes, 59 seconds east, 1003.62 feet; thence north 66 degrees, 16

minutes, 54 seconds east, 771.67 feet; thence north 64 degrees, 24 minutes, 8 seconds east, 987.84 feet; thence north 62 degrees, 32 minutes, 13 seconds east, 765.60 feet; thence north 82 degrees, 40 minutes, 10 seconds east, 881.63 feet; thence north 66 degrees, 25 minutes, 46 seconds east, 407.59 feet; thence north 51 degrees, 51 minutes, 31 seconds east, 644.83 feet; thence north 62 degrees, 11 minutes, 14 seconds east, 438.62 feet; thence north 79 degrees, 50 minutes, 8 seconds east, 1220.74 feet; thence north 68 degrees, 59 minutes, 38 seconds east, 1125.78 feet; thence north 58 degrees, 55 minutes, 8 seconds east, 1012.63 feet; thence north 73 degrees, 48 minutes, 20 seconds east, 926.49 feet to the east line of section 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence north on the dividing line between ranges two and three west to the south bank of the north channel of the Platte River; thence northeasterly along the south bank of said Platte River to the east line of range 1 west; thence south, and on the east line of range 1 west to the southeast corner of township thirteen north, range one west; thence west on the south line of township 13 north, to the point of beginning.

Source: Laws 2009, LB131, § 2.

22-173 Red Willow.

The county of Red Willow shall contain that territory described as townships one, two, three and four, north, of ranges twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty, west.

Source: G.S.1873, c. 12, § 64, p. 224; R.S.1913, § 888; C.S.1922, § 790; C.S.1929, § 25-177; R.S.1943, § 22-173.

22-174 Richardson.

The county of Richardson is bounded as follows: Commencing at the southwest corner of township one, north, of range thirteen, east; thence east to the middle of the main channel of the Missouri River; thence up said channel until it intersects the line dividing townships three and four, north; thence west to the northwest corner of township three, north, of range thirteen, east; and thence south to the place of beginning.

Source: G.S.1873, c. 12, § 44, p. 220; R.S.1913, § 889; C.S.1922, § 791; C.S.1929, § 25-178; R.S.1943, § 22-174; Laws 1998, LB 59, § 2.

22-175 Rock.

The county of Rock is bounded as follows: Commencing at the center of the channel of the Niobrara River, on the section line between sections twenty and twenty-one, township thirty-two, range twenty, west, of the sixth principal meridian; thence south on the said section line to the southwest corner of section thirty-three, township twenty-nine, range twenty, west; thence east to the northwest corner of section four, township twenty-eight, range twenty, west; thence south to the southwest corner of section thirty-three, township twenty-five, range twenty, west; thence east to the range line between ranges sixteen and seventeen; thence north on said range to the middle of the channel of the Niobrara River; thence up the center of the channel of said river to the place of beginning.

Source: Formed from Brown County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; R.S.1913, § 890; C.S.1922, § 792; C.S.1929, § 25-179; R.S.1943, § 22-175.

22-176 Saline.

The county of Saline is bounded as follows: Commencing at the southwest corner of township five, north, of range one, east; thence east to the southeast corner of township five, north, of range four, east; thence north to the northeast corner of township eight, north, of range four, east; thence west to the northwest corner of township eight, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 45, p. 221; R.S.1913, § 891; C.S.1922, § 793; C.S.1929, § 25-180; R.S.1943, § 22-176.

22-177 Sarpy.

The county of Sarpy is bounded as follows: Commencing at a point in the main channel of the Platte River, on the north line of section seventeen, township fourteen, north, range ten, east, the said point being now the northwest corner of said Sarpy County; thence due east to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence south along said eastern boundary line of the State of Nebraska to a point due east of the main channel of the Platte River, where the same flows into the Missouri River; and thence up the middle of the said channel of the Platte River to the place of beginning.

Source: G.S.1873, c. 12, § 46, p. 221; R.S.1913, § 892; C.S.1922, § 794; C.S.1929, § 25-181; R.S.1943, § 22-177; Laws 1951, c. 43, § 1, p. 154; Laws 1955, c. 65, § 6, p. 213.

Boundaries of Sarpy County do not exclude air base located therein. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

Middle of river is boundary between Cass and Sarpy Counties. State ex rel. Pankonin v. County Comrs. of Cass County, 58 Neb. 244, 78 N.W. 494 (1899).

22-178 Saunders.

The county of Saunders is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range five, east; thence east to the southeast corner of township thirteen, north, of range eight, east; thence south two miles; thence east six miles; thence north two miles; thence east to the center of the main channel of the Platte River; thence up the center of said main channel until it intersects the north line of township sixteen, north, of range eight, east, which is the northwest corner of Douglas County; thence west along said north boundary of township sixteen, north, to its intersection with the right bank of the Platte River; thence up said right bank until it intersects the line dividing ranges four and five, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 47, p. 221; R.S.1913, § 893; Laws 1921, c. 231, § 9, p. 827; C.S.1922, § 795; C.S.1929, § 25-182; R.S.1943, § 22-178.

Platte River is in both Dodge and Saunders Counties. Dodge County v. Saunders County, 70 Neb. 442, 97 N.W. 617 (1903).

22-179 Scotts Bluff.

The county of Scotts Bluff is bounded as follows: Commencing at the northeast corner of section five, in township twenty-three, north, of range fifty-two, west, of the sixth principal meridian; thence west by township lines to a point where the said line intersects the west boundary line of the State of

Nebraska; thence south along the west boundary line of the State of Nebraska to a point on the section line between sections eighteen and nineteen, in township twenty, north, of range fifty-eight, west; thence due east on said section line to the southeast corner of section thirteen, in township twenty, north, of range fifty-three, west; thence north on the range line between ranges fifty-two and fifty-three, west to the northeast corner of section one, in township twenty, north, of range fifty-three, west; thence east to the southeast corner of section thirty-two, in township twenty-one, north, of range fifty-two, west; and thence due north to the place of beginning.

Source: Formed from Cheyenne County pursuant to Laws 1879, § 10, p. 355, by vote of electors Nov. 6, 1888; R.S.1913, § 894; Laws 1921, c. 231, § 10, p. 827; C.S.1922, § 796; C.S.1929, § 25-183; R.S.1943, § 22-179.

22-180 Seward.

The county of Seward is bounded as follows: Commencing at the southwest corner of township nine, north, of range one, east; thence east to the southeast corner of township nine, north, of range four, east; thence north to the northeast corner of township twelve, north, of range four, east; thence west to the northwest corner of township twelve, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 48, p. 221; R.S.1913, § 895; C.S.1922, § 797; C.S.1929, § 25-184; R.S.1943, § 22-180.

22-181 Sheridan.

The county of Sheridan is bounded as follows: Commencing at the southeast corner of township twenty-four, north, of range forty-one, west, of the sixth principal meridian; thence west to the southwest corner of township twenty-four, north, of range forty-six; thence north on the range line between ranges forty-six and forty-seven to the northern boundary line of the State of Nebraska; thence east along said boundary line to the range line between ranges forty and forty-one; thence south on said range line to the point of beginning.

Source: Laws 1885, c. 34, § 1, p. 208; R.S.1913, § 896; C.S.1922, § 798; C.S.1929, § 25-185; R.S.1943, § 22-181.

22-182 Sherman.

The county of Sherman is bounded as follows: Commencing at the southwest corner of township thirteen, north, of range sixteen, west; thence east to the southeast corner of township thirteen, north, of range thirteen, west; thence north to the northeast corner of township sixteen, north, of range thirteen, west; thence west to the northwest corner of township sixteen, north, of range sixteen, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 49, p. 221; R.S.1913, § 897; C.S.1922, § 799; C.S.1929, § 25-186; R.S.1943, § 22-182.

22-183 Sioux.

The county of Sioux is bounded as follows: Commencing at the southeast corner of township twenty-four, north, of range fifty-three, west, of the sixth principal meridian; thence west to the western boundary line of the State of

Nebraska; thence north along the said boundary line to the northwest corner of the State of Nebraska; thence east on the northern boundary line of the State of Nebraska to the range line between ranges fifty-two and fifty-three; thence south to the place of beginning.

Source: Laws 1885, c. 35, § 1, p. 209; R.S.1913, § 898; C.S.1922, § 800; C.S.1929, § 25-187; R.S.1943, § 22-183.

22-184 Stanton.

The county of Stanton is bounded as follows: Commencing at the southwest corner of township twenty-one, north, of range one, east; thence east to the southeast corner of township twenty-one, north, of range three, east; thence north to the northeast corner of township twenty-four, north, of range three, east; thence west to the northwest corner of township twenty-four, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 50, p. 221; R.S.1913, § 899; C.S.1922, § 801; C.S.1929, § 25-188; R.S.1943, § 22-184.

22-185 Thayer.

The county of Thayer is bounded as follows: Commencing at the southwest corner of township one, north, of range four, west; thence east to the southeast corner of township one, north, of range one, west; thence north along the sixth principal meridian to the first standard parallel; thence west to the northwest corner of township four, north, of range four, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 51, p. 222; R.S.1913, § 900; C.S.1922, § 802; C.S.1929, § 25-189; R.S.1943, § 22-185.

22-186 Thomas.

The county of Thomas is bounded as follows: Commencing at the southeast corner of township twenty-one, north, of range twenty-six, west, of the sixth principal meridian, running thence north along the west line of Blaine County to the northeast corner of township twenty-four, north, of range twenty-six, west; thence west along the south line of Cherry County to the northwest corner of township twenty-four, north, of range thirty, west; thence south along said range line, to the southwest corner of township twenty-one, north, of range thirty, west; thence east along the north line of Logan County to the place of beginning.

Source: Laws 1887, c. 24, § 1, p. 347; R.S.1913, § 901; C.S.1922, § 803; C.S.1929, § 25-190; R.S.1943, § 22-186.

22-187 Thurston.

The county of Thurston is bounded as follows: Commencing at a point where the west boundary of the Omaha Indian reservation intersects the south line of section thirty-four, township twenty-five, north, range five, east of the sixth principal meridian; thence east to the northeast corner of township twenty-four, north, range seven, east; thence south to the south line of the Omaha Indian reservation as originally surveyed; thence east along said line to the line between sections thirty-two and thirty-three, township twenty-four, north, range ten, east; thence north to the northwest corner of section twenty-one, township

twenty-four, north, range ten, east; thence east to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence in a northwesterly direction along said boundary line to its intersection with the north line of the Winnebago Indian reservation, in township twenty-seven, north, range ten, east; thence west along the north line of said reservation to an intersection with the line between sections thirty-three and thirty-four, township twenty-seven, north, range six, east; thence south to the southwest corner of section thirty-four, township twenty-seven, north, range six, east; thence west to the west boundary of said Winnebago Indian reservation; and thence south along the west line of the Winnebago and Omaha Indian reservations to the place of beginning.

Source: Laws 1889, c. 3, § 1, p. 71; R.S.1913, § 902; Laws 1921, c. 231, § 11, p. 828; C.S.1922, § 804; C.S.1929, § 25-191; R.S.1943, § 22-187; Laws 1955, c. 65, § 7, p. 214.

22-188 Valley.

The county of Valley is bounded as follows: Commencing at the southwest corner of township seventeen, north, of range sixteen, west; thence east to the southeast corner of township seventeen, north, of range thirteen, west; thence north to the northeast corner of township twenty, north, of range thirteen, west; thence west to the northwest corner of township twenty, north, of range sixteen, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 52, p. 222; R.S.1913, § 903; C.S.1922, § 805; C.S.1929, § 25-192; R.S.1943, § 22-188.

22-189 Washington.

The county of Washington is bounded as follows: Commencing at the northeast corner of section thirty, township twenty, north, range nine, east; thence east on a line parallel with the dividing line between townships nineteen and twenty, and two miles north of the same, to the eastern boundary line of the State of Nebraska as established by the Iowa-Nebraska Boundary Compact of 1943; thence south along the eastern boundary line of the State of Nebraska to a point where the dividing line between townships sixteen and seventeen intersects the same; thence west to the southeast corner of section thirty-one, township seventeen, north, range ten, east; thence north on section lines three miles, to the northeast corner of section nineteen, township seventeen, north, range ten, east; thence west on section lines two miles to the southwest corner of section thirteen, township seventeen, range nine, east; thence north on section lines one mile, to northwest corner of section thirteen, last aforesaid; thence west on section line one mile to southwest corner of section eleven, township seventeen, north, range nine, east; thence north on section line one mile, to the northwest corner of said section eleven, last aforesaid; thence west on section lines one mile, to the southwest corner of section three, township seventeen, north, range nine, east; thence north on section lines one mile, to the northwest corner of said section three; thence west on section line one mile, to the northwest corner of section four, township seventeen, north, range nine, east; thence north on section line one mile, to the northeast corner of section thirty-two, township eighteen, north, range nine, east; thence west one-half mile on section line, to the northwest corner of the northeast quarter of section thirty-two, township eighteen, north, range nine, east; thence north on the half

section line two miles, to the southeast corner of the southwest quarter of section seventeen, township eighteen, north, range nine, east; thence west on section line one-half mile, to the southwest corner of section seventeen, township eighteen, north, range nine, east; and thence north to the place of beginning.

Source: G.S.1873, c. 12, § 53, p. 222; Laws 1887, c. 25, § 1, p. 348; R.S. 1913, § 904; C.S.1922, § 806; C.S.1929, § 25-193; R.S.1943, § 22-189; Laws 1955, c. 65, § 8, p. 215.

Boundary of state, when middle of river, follows gradual changes, but not sudden changes of channel. Rober v. Michelsen, 82 Neb. 48, 116 N.W. 949 (1908).

22-190 Wayne.

The county of Wayne is bounded as follows: Commencing at the southwest corner of township twenty-five, north, of range one, east; thence east to the southeast corner of section thirty-four, township twenty-five, north, of range five, east; thence north to the northeast corner of section three, township twenty-six, north, of range five, east; thence west to the northeast corner of township twenty-six, north, of range three, east; thence north to the northeast corner of township twenty-seven, north, of range three, east; thence west to the northwest corner of township twenty-seven, north, of range one, east; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 54, p. 222; Laws 1889, c. 2, § 1, p. 70; R.S.1913, § 905; C.S.1922, § 807; C.S.1929, § 25-194; R.S.1943, § 22-190.

Boundary of Wayne County was not affected by act of 1881, since boundaries could not be changed without vote of people. Wayne County v. Cobb, 35 Neb. 231, 52 N.W. 1102 (1892).

22-191 Webster.

The county of Webster is bounded as follows: Commencing at the southwest corner of township one, north, of range twelve, west; thence east to the southeast corner of township one, north, of range nine, west; thence north to the northeast corner of township four, north, of range nine, west; thence west to the northwest corner of township four, north, of range twelve, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 55, p. 222; R.S.1913, § 906; C.S.1922, § 808; C.S.1929, § 25-195; R.S.1943, § 22-191.

22-192 Wheeler.

The county of Wheeler is bounded as follows: Commencing at the southeast corner of township twenty-one, north, of range nine, west of the sixth principal meridian; running thence north to the northeast corner of township twenty-four, north, of range nine, west; thence west to the northwest corner of township twenty-four, north, of range twelve, west; thence south to the southwest corner of township twenty-one, north, of range twelve, west; thence east to the place of beginning.

Source: Laws 1877, § 2, p. 211; R.S.1913, § 907; C.S.1922, § 809; C.S. 1929, § 25-196; R.S.1943, § 22-192.

22-193 York.

The county of York is bounded as follows: Commencing at the southwest corner of township nine, north, of range four, west; thence east to the southeast corner of township nine, north, of range one, west; thence north to the northeast corner of township twelve, north, of range one, west; thence west to the northwest corner of township twelve, north, of range four, west; thence south to the place of beginning.

Source: G.S.1873, c. 12, § 56, p. 223; R.S.1913, § 908; C.S.1922, § 810; C.S.1929, § 25-197; R.S.1943, § 22-193.

22-194 Boundary streams; change in channel; old channel governs.

Where any county is bounded by the middle of the channel of any stream or watercourse, and by reason of any change of such channel any island or tract of land shall be thrown to the other side of such bounding channel, after the original organization and establishment of the boundaries of any county, the old channel of the stream or watercourse shall, for all county and state purposes, be deemed the channel thereof.

Source: Laws 1879, § 3, p. 353; R.S.1913, § 910; C.S.1922, § 812; C.S. 1929, § 25-199; R.S.1943, § 22-194.

22-195 County map; how made; where deposited.

A copy of the field notes of the original survey of each county by the United States shall be procured, and a map of the county shall be constructed in accordance therewith on a scale of not less than one inch to a mile, and laid off in townships and sections. Such map and field notes shall be deposited in the office of the county clerk, and be by him preserved. Whenever the boundaries of any county are changed, the necessary alteration in such map may be made, or a new map of the county may be made if the county board so directs.

Source: Laws 1879, § 42, p. 367; R.S.1913, § 911; C.S.1922, § 813; C.S.1929, § 25-1,100; R.S.1943, § 22-195.

Monuments of original government survey, if found, control location of section corners. Runkle v. Welty, 86 Neb. 680, 126 N.W. 139 (1910).

22-196 Counties; boundary changes; how effected.

Whenever the county boards of adjoining counties shall desire to submit a proposal for change of the boundaries between such counties, the boards may by resolution entered on their records provide a joint survey and maps of the existing and proposed boundaries. At the next general election thereafter each of said county boards shall submit the question of the proposed change in boundaries to the qualified voters at such election.

Source: Laws 1921, c. 231, § 12, p. 828; C.S.1922, § 814; C.S.1929, § 25-1,101; R.S.1943, § 22-196.

22-197 Counties; boundary changes; election; notice.

Notices of such election shall contain a map of the existing and the proposed boundary with statement of the territory to be transferred and the reasons for such proposed change and shall be posted with the other notices of the general election.

Source: Laws 1921, c. 231, § 13, p. 829; C.S.1922, § 815; C.S.1929, § 25-1,102; R.S.1943, § 22-197.

Cross References

For notice of election, see section 32-802.

22-198 Counties; boundary changes; ballot; form; effect.

The ballots used at such election in each county affected shall contain the following form:

For proposed change of county boundaries . . . . . .

Against proposed change of county boundaries . . . . . .

If the majority of those voting upon the question in each county affected thereby shall be in favor of said proposed change then said proposed boundaries shall be the legal boundaries of said counties on and after the first day of January following such election; *Provided,* all assessments and collections of taxes and judicial or other proceedings commenced prior to said first day of January shall be continued, prosecuted, and completed in the same manner as if no change in boundary had been made.

Source: Laws 1921, c. 231, § 14, p. 829; C.S.1922, § 816; C.S.1929, § 25-1,103; R.S.1943, § 22-198.

ARTICLE 2

FORMATION OF NEW COUNTIES

Section

22-201 New county; formation; petition; election.

Whenever it is desired to form a new county or counties out of one of the then existing counties, a petition praying for the formation of such new county or counties, stating and describing the territory proposed to be taken for such new county or counties, together with the name of such proposed new county or counties, signed by a majority of the legal voters residing in the territory to be taken from such county, shall be presented to the county board of such county to be affected by such division. If it appears that such new county or counties can be constitutionally formed, and each shall contain not less than

four hundred and fifty square miles, it shall be the duty of such county board to make an order providing for the submission of the question of the erection of such new county or counties to a vote of the people of the county to be affected, at the next succeeding general election. The notice shall be given, the votes canvassed, and the returns made up as in the case of election of county officers. The form of the ballot to be used in the determination of such question shall be as follows: For new county, and Against new county.

Source: Laws 1879, § 10, p. 355; Laws 1895, c. 26, § 1, p. 127; R.S.1913, § 912; C.S.1922, § 818; C.S.1929, § 25-201; R.S.1943, § 22-201.

Cross References

For canvass and return of votes, see Chapter 32, article 10.
For notice of election, see section 32-802.

Proposition to form two new counties, if conflicting in territory, may not be submitted at same election. State ex rel. Pennell v. Armstrong, 30 Neb. 493, 46 N.W. 618 (1890).

Proposition to form two new counties, not conflicting in territory, may be submitted at same election. State ex rel. Anderson v. Newman, 24 Neb. 40, 38 N.W. 40 (1888).

22-202 New county; formation; officers; election.

If it shall appear that a majority of all the votes cast at any such election in the county interested is in favor of the formation of such new county or counties, the county clerk of the county shall certify the same to the Secretary of State, stating in such certificate the name, territorial contents, and boundaries of such new county or counties. Whereupon the Secretary of State shall notify the Governor of the result of such election, whose duty it shall be to order an election of county officers for such new county or counties, at such time as he shall designate, and he may, when necessary, fix the place of holding election, notice of which shall be given in such manner as the Governor shall direct. At such election the qualified voters of the new county or counties shall elect all county officers for the county or counties, except as hereinafter provided, who shall be commissioned and qualified in the same manner as such officers are in other counties in this state. Such officers shall continue in office until the next general election for such officers, and until their successors are elected and qualified, and they shall have all the jurisdiction and perform all the duties which are or may be conferred upon such officers in other counties in this state.

Source: Laws 1879, § 11, p. 356; Laws 1889, c. 5, § 2, p. 74; Laws 1897, c. 21, § 1, p. 186; R.S.1913, § 913; C.S.1922, § 819; C.S.1929, § 25-202; R.S.1943, § 22-202.

Requirement of majority is a constitutional limitation only. State ex rel. Packard v. Nelson, 34 Neb. 162, 51 N.W. 648 (1892).

Jurisdiction and duties of officers over territory included in new county cease on its organization. State ex rel. Malloy v. Clevenger, 27 Neb. 422, 43 N.W. 243 (1889).

Officers hold only until next election or until successors are elected and qualified. State ex rel. Nichols v. Fields, 26 Neb. 393, 41 N.W. 988 (1889).

22-203 County seat; location; designation on ballot.

At such election, provided for by section 22-202, the voters of the county shall determine the permanent location of the county seat. For this purpose each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed, the place having a majority of all the votes polled shall be the county seat, and public notice of the location shall be given by the county board within thirty days, by posting up notices in three several

places in each precinct in the county, and a copy of such notice shall be recorded by the county clerk in the book of miscellaneous records.

Source: G.S.1873, c. 12, § 81, p. 229; R.S.1913, § 914; C.S.1922, § 820; C.S.1929, § 25-203; R.S.1943, § 22-203.

22-204 County seat; location; special election.

If no one place has a majority of all the votes polled, as provided by section 22-203, it shall be the duty of the county board within one month after the officers elected at the first election have qualified according to law, to order a special election and give ten days' notice thereof by posting up three notices in each precinct in said county, at which election votes shall be taken by ballot between the three highest places voted for at the first election. If no choice is made at such election, notice of another election shall be given as above provided for, to decide between the two places having the highest number of votes in the last election; and the place having the highest number of votes shall be the county seat.

Source: G.S.1873, c. 12, § 83, p. 229; R.S.1913, § 915; C.S.1922, § 821; C.S.1929, § 25-204; R.S.1943, § 22-204.

22-205 Elections; laws governing.

The votes for the county officers and for the location of the county seat of said new county cast at the first election, provided for in sections 22-202 and 22-203, shall be canvassed and returns made by the county clerk or county clerks of the county or counties from which the new county was formed, as provided by law in other cases.

Source: Laws 1879, § 13, p. 357; R.S.1913, § 916; C.S.1922, § 822; C.S.1929, § 25-205; R.S.1943, § 22-205.

Cross References

For canvass and return of votes, see Chapter 32, article 10.

22-206 Township or precinct officers; continuance in office.

All the township or precinct officers who were previously elected and qualified in the county or counties from which such new county has been formed, whose term of office shall not have expired at the time of the election, and whose residence shall be embraced within the limits of the new county, shall continue in office until their terms of office shall expire, and until their successors shall be elected and qualified.

Source: Laws 1879, § 12, p. 357; R.S.1913, § 917; C.S.1922, § 823; C.S.1929, § 25-206; R.S.1943, § 22-206; Laws 1972, LB 1032, § 110.

22-207 County seat; location; void election; resubmission.

In any county where an election has been held to determine the permanent location of the county seat of such county, and the election shall be declared void by any court of competent jurisdiction in an action instituted for that purpose, the county board of said county shall submit the question of locating the county seat to the qualified voters of the county at the next general election

to be held sixty days after the entering of such judgment, as if no election had ever been held in such county.

Source: G.S.1873, c. 12, § 82, p. 229; Laws 1883, c. 24, § 1, p. 185; R.S.1913, § 918; C.S.1922, § 824; C.S.1929, § 25-207.

22-208 County seat; location upon public land; site; acquisition.

Whenever any county seat shall be located upon any public lands of the United States, it shall be the duty of the county board to enter or purchase a quarter section of land at the place so designated, at the expense of and for the use of the county, within three months thereafter, if the land be subject to private entry; if not, the board shall claim the same as a preemption under the laws of the United States, for the use of the county.

Source: G.S.1873, c. 12, § 85, p. 230; R.S.1913, § 919; C.S.1922, § 825; C.S.1929, § 25-208; R.S.1943, § 22-208.

22-209 County seat; site; surveying; platting.

Such lands shall be surveyed into lots, squares, streets and alleys, and platted and recorded in the county clerk's office; and lots necessary for public buildings shall be reserved by the board for that purpose.

Source: G.S.1873, c. 12, § 86, p. 230; R.S.1913, § 920; C.S.1922, § 826; C.S.1929, § 25-209; R.S.1943, § 22-209.

22-210 County seat; site; lots; sale.

The remainder of the lots shall be offered at public sale by the sheriff of the county to the highest bidder at such time as the county board may designate. Notice of such sale shall be posted up in three public places of the county. The terms of sale shall be determined by the county board and they may dispose of lots at private sale upon such terms as they may deem best.

Source: G.S.1873, c. 12, § 87, p. 230; R.S.1913, § 921; C.S.1922, § 827; C.S.1929, § 25-210; R.S.1943, § 22-210; Laws 1996, LB 299, § 15.

22-211 County seat; site; lots; certificate of purchase.

Purchasers of the aforesaid lots shall receive a certificate of purchase from the sheriff, entitling the holder to a deed for the same, when payment in full shall be made according to law. If the purchaser of any lot fails to pay for the same within the time required by the county board, not to exceed one year in any case, the right of the purchaser to such lot shall be forfeited, and the same shall be again sold by the county board as hereinbefore provided.

Source: G.S.1873, c. 12, § 88, p. 230; R.S.1913, § 922; C.S.1922, § 828; C.S.1929, § 25-211; R.S.1943, § 22-211.

22-212 County seat; lots; sale; fund; how used.

The proceeds of the sale of such lots, after deducting all necessary expenses, shall be paid into the county treasury and constitute a fund for the erection of

public buildings for the use of the county at the county seat, and shall be used for no other purpose whatever.

Source: G.S.1873, c. 12, § 89, p. 230; R.S.1913, § 923; C.S.1922, § 829; C.S.1929, § 25-212; R.S.1943, § 22-212.

22-213 Oath of office; counties, when deemed organized; judicial district, how determined.

The oath of office may be administered to the several county officers of such new county by any person authorized by law to administer oaths. As soon as the county officers are duly qualified, the county shall be regarded as legally organized, and for judicial purposes shall be deemed and taken as belonging to the district in which the new county, or the greater part thereof, is embraced, and terms of the district court shall be held at such place in the new county as the county board thereof shall designate, until the county seat thereof shall be permanently located.

Source: Laws 1879, § 14, p. 357; R.S.1913, § 924; C.S.1922, § 830; C.S.1929, § 25-213; R.S.1943, § 22-213.

22-214 Judicial proceedings; transfer; judgments and liens, effect.

The courts of any county or counties from which such new county is erected may, by proper order, transfer any suit or other legal proceeding affecting real estate in such new county to the proper court of such new county, or may transfer any suit and all papers and records pertaining thereto to such new county, when all parties thereto are residents of such new county; but all judgments and other liens in the county or counties from which such new county was erected shall have the same effect as if no new county had been erected.

Source: Laws 1879, § 15, p. 357; R.S.1913, § 925; C.S.1922, § 831; C.S.1929, § 25-214; R.S.1943, § 22-214.

22-215 County assets and liabilities, how divided.

All the property, both real and personal, and all debts and liabilities and choses in action of every kind belonging to the county or counties from which such new county was formed shall be divided by the several county boards of the counties interested between the county or counties from which such new county is formed and the new county in proportion to the taxable value of property for the last preceding year which has been taken from such original county or counties and carried to such new county. If such boards cannot agree upon such division, they may refer the matters of difference to arbitrators or the right to such property may be settled by a suit in the district court brought by either party for that purpose. In case the property cannot be divided or removed, the county receiving the same shall pay to the other a proportionate value for the same.

Source: Laws 1879, § 16, p. 358; R.S.1913, § 926; C.S.1922, § 832; C.S.1929, § 25-215; R.S.1943, § 22-215; Laws 1979, LB 187, § 90; Laws 1992, LB 719A, § 91.

Balance in bridge fund divided in proportion to the relative assessed valuation of counties. Western Bridge & Construction Co. v. Cheyenne County, 91 Neb. 206, 136 N.W. 36 (1912).

Balance agreed as due from one county may be sued for without presentation to board. Perkins County v. Keith County, 58 Neb. 323, 78 N.W. 630 (1899).

In action to recover proper proportion of value of real property retained by old county, it is no defense to show that land was originally conveyed by a deed with conditions. Brown County v. Rock County, 51 Neb. 277, 70 N.W. 943 (1897).

22-216 New county; records; how made up.

The county clerk of the new county shall transcribe in books prepared for that purpose, from the records of the county or counties from which the new county is formed, all deeds, mortgages, leases, and title papers of every description, with the certificate of acknowledgment thereto, and the date of filing the same for record, of lands lying in the new county, which were previously recorded in the county or counties from which the new county was formed; and the clerk shall be allowed by such new county such compensation as his services are reasonably worth. The clerk of such new county shall also prepare a numerical index of the lands and lots in such new county in the same manner as county clerks are by law directed to prepare and keep such index.

Source: Laws 1879, § 17, p. 358; R.S.1913, § 927; C.S.1922, § 833; C.S.1929, § 25-216; R.S.1943, § 22-216.

Cross References

For numerical index form and contents, see sections 23-1513 and 23-1514.

First county clerk of newly organized county who compiles numerical index is entitled to compensation therefor. Bastedo v. Boyd County, 57 Neb. 100, 77 N.W. 387 (1898).

22-217 New county; records; duty of clerk; evidentiary effect.

The clerk shall note at the end of each paper he shall transcribe the book and page from which the same was transcribed, and shall make a correct double index of the records; and on the completion of his duties he shall return the books to the county clerk of the county or counties from which the new county was formed, with his certificate attached thereto, showing that he has complied with the law; whereupon they shall be taken and considered to all intents and purposes as books of records of deeds, mortgages, and title papers for the new county. Copies of the record, certified by the officer having the custody of the same, shall be evidence in all courts and places, in the same manner that copies of records are evidence in other cases, and with like effect.

Source: Laws 1879, § 18, p. 359; R.S.1913, § 928; C.S.1922, § 834; C.S.1929, § 25-217; R.S.1943, § 22-217.

22-218 Territory; transfer to another county; petition.

When a majority of the legal voters, residing upon any territory, shall petition the county board of their own county, and also of the county to which they desire such territory to be transferred, for leave to have such territory transferred to such county, it shall be the duty of the several county boards so petitioned to submit the question at the next general election in the counties; *Provided,* no such petition shall be granted until after the expiration of three years from last submission of the question.

Source: Laws 1879, § 4, p. 354; Laws 1885, c. 36, § 1, p. 210; Laws 1889, c. 5, § 1, p. 74; R.S.1913, § 929; C.S.1922, § 835; C.S.1929, § 25-218; R.S.1943, § 22-218.

Where county has exercised undisputed jurisdiction for many years over portion of unorganized district under void act, the court, in exercise of sound public policy, will refuse to change boundary line. State ex rel. Halligan v. Clary, 100 Neb. 324, 160 N.W. 107 (1916).

22-219 Territory; transfer to another county; election; notice.

Notices of such election shall contain a description of the territory proposed to be transferred, the names of the counties from and to which such transfer is intended to be made, and shall be posted with the other notices for general elections.

Source: Laws 1879, § 5, p. 354; R.S.1913, § 930; C.S.1922, § 836; C.S. 1929, § 25-219; R.S.1943, § 22-219.

22-220 Territory; transfer to another county; election; ballot; conditions.

The ballots used in the elections may be in the following form: For transferring territory, and Against transferring territory. If a majority of the voters voting upon the question in the county from which the territory is proposed to be taken, and a majority of the voters of the county to which the same is proposed to be transferred, shall be For transferring territory, then the territory shall be transferred to and become a part of the county to which it is proposed to transfer the same, on and after the first day of January succeeding such election, and shall be subject to all the laws, rules, and regulations thereof; *Provided,* all assessments and collections of taxes, and judicial or other proceedings commenced prior to the first day of January, shall be continued, prosecuted and completed in the same manner as if no transfer had been made; and all township or precinct officers within the transferred territory shall continue to hold their respective offices within the county to which they may be transferred, until their respective terms of office expire.

Source: Laws 1879, § 6, p. 354; R.S.1913, § 931; C.S.1922, § 837; C.S. 1929, § 25-220; R.S.1943, § 22-220.

22-221 Territory; transfer to another county; debts; adjustment.

No transferred territory under the provisions of sections 22-218 to 22-220 shall be released from the payment of its proportion of the debts of the county from which such territory is transferred. Such proportionate indebtedness from such transferred territory shall be collected by the county to which such territory is transferred, at an equal or greater rate than is levied and collected in the county from which such territory was transferred, such rate to be ascertained by the certificate of the county clerk of the last-named county, and when so collected, to be paid over to the county entitled thereto. The territory so transferred shall not be taxed for the payment of any indebtedness of the county to which the territory is transferred, incurred previous to the transfer.

Source: Laws 1879, § 8, p. 355; R.S.1913, § 932; C.S.1922, § 838; C.S. 1929, § 25-221; R.S.1943, § 22-221.

ARTICLE 3

RELOCATION OF COUNTY SEAT

Cross References

Constitutional provisions:
Legislature shall not pass any law locating or changing county seats, see Article III, section 18, Constitution of Nebraska.

Section
22-301. Petition.
22-302. Election.
22-303. Offices and records; transfer; violations; penalty.

22-301 Petition.

Whenever the inhabitants of any county are desirous of changing their county seat and upon the petition therefor being presented to the county board, which petition shall name some one city, town, village or place to which it is desired to remove the county seat, signed by the resident electors of the county equal in number to three-fifths of all votes cast in the county at the last general election held therein, and containing in addition to the names of the petitioners the section, township and range on which, or the town or city in which the petitioners reside, with their age and time of residence in the county, it shall be the duty of such board to forthwith call a special election in the county for the purpose of submitting to the qualified electors thereof the question of the removal of the county seat to the one city, town, village or place named in the petition.

Source: Laws 1875, § 1, p. 159; R.S.1913, § 939; Laws 1917, c. 169, § 1, p. 380; C.S.1922, § 845; C.S.1929, § 25-301; R.S.1943, § 22-301.

22-302 Election.

Notice of the time and place of holding the election shall be given in the same manner, and the election shall be conducted in all respects the same as is provided by the law relating to general elections for county purposes. There shall be printed on the ballots the name of the city, town, village or place which is the present county seat, and the name of the one city, town, village or place to which it is proposed to move the county seat. The electors shall vote for one of the two places named on the ballot, and if the one place to which it is proposed to move the county seat shall receive three-fifths of all the votes cast at the election, such city, town, village or place shall become and remain the county seat of the county from and after the first day of the third month next succeeding such election. The question of relocation and division of any county within the state shall not be again submitted to the electors for the period of ten years from and after the date of any such election.

Source: Laws 1917, c. 169, § 2, p. 380; C.S.1922, § 846; C.S.1929, § 25-302; R.S.1943, § 22-302.

22-303 Offices and records; transfer; violations; penalty.

When any such county seat shall have been relocated it shall be the duty of all county officers to forthwith remove their respective offices and all county records and property in their charge to the place where said county seat shall have been relocated. Any county officer who shall refuse to comply with any of the provisions of sections 22-301 to 22-303 shall be guilty of a Class II misdemeanor, and a conviction of any such officer of such misdemeanor shall work a vacancy in his office.

Source: Laws 1917, c. 169, § 3, p. 381; C.S.1922, § 847; C.S.1929, § 25-303; R.S.1943, § 22-303; Laws 1977, LB 40, § 82.

ARTICLE 4

CONSOLIDATION OF COUNTIES AND OFFICES

Section
22-401. Counties; consolidation, when authorized.
22-402. Consolidation agreement; contents; advisory committee.
22-402.01. Consolidation agreement; hearing; notice.

Section

22-401 Counties; consolidation, when authorized.

Any two or more adjoining counties in the state may (1) consolidate if the number of counties is reduced, (2) consolidate one or more county or township offices, or (3) provide for the joint performance of any common function or service, by complying with the requirements and procedure specified in sections 22-402 to 22-407. If two or more counties are consolidating, any county or part of a county may be added to an adjoining county or counties.

Source: Laws 1933, c. 34, § 1, p. 217; C.S.Supp.,1941, § 25-401; R.S. 1943, § 22-401; Laws 1951, c. 44, § 1, p. 155; Laws 1996, LB 1085, § 9.

Cross References

Compacts between counties for the joint exercise of powers, see section 23-104.01.

22-402 Consolidation agreement; contents; advisory committee.

(1) The county boards of any two or more adjoining counties may enter into a consolidation agreement for the consolidation of such counties or for the consolidation of one or more county or township offices except the office of county commissioner or county supervisor. The county boards of any two or more adjoining counties may enter into a consolidation agreement for the joint performance of any common function or service. A consolidation agreement shall not be considered an interlocal cooperation agreement pursuant to the Interlocal Cooperation Act.

(2) The consolidation agreement shall include (a) the names of the several counties which propose to consolidate, (b) the name or names under which the counties would consolidate which shall distinguish it from the name of any

other county in Nebraska other than the consolidating counties, (c) the manner of financing and allocating all costs associated with the agreement, (d) the property, real and personal, belonging to each county and the fair value thereof in current money of the United States, (e) the indebtedness, bonded and otherwise, of each county and the repayment of the indebtedness after consolidation, (f) the proposed name and location of the county seat of the consolidated county, (g) if the counties have different forms of county organization and government, the proposed form of county organization and government of the consolidated county or counties, and (h) any other terms of the agreement.

(3) If the consolidation agreement provides for the joint performance of any common function or service or the consolidation of one or more county or township offices, the agreement shall also include (a) a description of the function or service which will be performed jointly or the office which will be consolidated, (b) the duration of the agreement, (c) the method for establishing and allocating salaries of holders of consolidated offices, (d) the method for adopting budgets and appropriating money for the joint function, service, or office, (e) the allocation of assets and liabilities pursuant to the agreement, (f) the procedure for amendment of the agreement, (g) the method of withdrawing from the agreement in accordance with section 22-416 and the distribution of assets upon withdrawal, and (h) the method of dissolving the agreement and the distribution of assets or liabilities upon dissolution.

(4) Each county board may appoint an advisory committee composed of three persons to assist the board in the preparation of such agreement.

Source: Laws 1933, c. 34, § 2, p. 217; C.S.Supp.,1941, § 25-402; R.S. 1943, § 22-402; Laws 1951, c. 44, § 2, p. 155; Laws 1996, LB 1085, § 11; Laws 1997, LB 269, § 22.

Cross References

Interlocal Cooperation Act, see section 13-801.

22-402.01 Consolidation agreement; hearing; notice.

The county board of each county proposing to enter into a consolidation agreement shall hold a public hearing on the agreement and shall give notice of the hearing by publication in a newspaper of general circulation in the county once each week for three consecutive weeks prior to the hearing. Final publication shall be within seven calendar days prior to the hearing. The notice shall describe the contents of the agreement and specify that a copy of the agreement may be obtained at no charge at the county clerk's office.

Source: Laws 1996, LB 1085, § 12.

22-402.02 Consolidation agreement; adoption; vote required.

The county board of each county proposing to enter into a consolidation agreement shall adopt the consolidation agreement by a majority vote of the board on the joint or concurrent resolution.

Source: Laws 1996, LB 1085, § 13.

22-402.03 Consolidation of counties or county or township offices; vote required.

If the consolidation agreement provides for the consolidation of counties or for the consolidation of one or more county or township offices, the county

board of each county shall submit the consolidation agreement for approval by the registered voters at the next general election or a special election pursuant to sections 22-404 and 22-405.

Source: Laws 1996, LB 1085, § 14; Laws 1997, LB 269, § 23.

22-402.04 Joint performance of common function or service; vote required; when effective.

(1) If the consolidation agreement provides for the joint performance of any common function or service, the county board of each county may submit the consolidation agreement for approval by the registered voters at the next general election or a special election pursuant to sections 22-404 and 22-405.

(2) If a consolidation agreement is adopted by resolution for the joint performance of any common function or service, the agreement becomes effective on the date specified in the agreement.

Source: Laws 1996, LB 1085, § 15; Laws 1997, LB 269, § 24.

22-403 Consolidation; petition; percentage required; duty of board of county commissioners or supervisors; failure to exercise duty, effect.

(1) If the county board has not taken the initiative to enter into a consolidation agreement under section 22-402, the registered voters of the county may require the board to proceed by filing with the county clerk a petition, signed by registered voters of the county equal in number to ten percent of the total vote cast for Governor at the last general election, directing the board to develop a consolidation agreement pursuant to section 22-402 with the county or counties named in the petition.

(2) The county board shall attempt to develop an agreement under section 22-402 with the county or counties named in the petition within six months after the filing date of the petition. Failure by the county board to make a good faith effort to develop an agreement pursuant to the petition constitutes willful neglect of duty for which the members of the board may be removed from office pursuant to sections 23-2001 to 23-2009. If after good faith attempts to develop an agreement the county board is unable to perfect an agreement within six months after the filing date of the petition, the petition is no longer valid.

Source: Laws 1933, c. 34, § 3, p. 218; C.S.Supp.,1941, § 25-403; R.S. 1943, § 22-403; Laws 1965, c. 92, § 1, p. 398; Laws 1996, LB 1085, § 16.

22-404 Consolidation agreement; publication; availability.

When a consolidation agreement is submitted to the voters for approval, the county board of each county entering into a consolidation agreement shall cause a description of the proposed consolidation agreement to be published in its county prior to the election at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county. Final publication in each county shall be within seven calendar days prior to the election pursuant to section 22-405. Each board shall make a copy of the agreement

available for inspection at the county clerk's office. A person may obtain a copy of the agreement at no charge upon request at the county clerk's office.

Source: Laws 1933, c. 34, § 4, p. 218; C.S.Supp.,1941, § 25-404; R.S. 1943, § 22-404; Laws 1996, LB 1085, § 17.

22-405 Consolidation; election; laws applicable; ballot; form; majority required; when effective; effect on election to remove county seat.

(1) When the publication of the consolidation agreement in each of the counties is completed, each county board shall submit the question of whether to consolidate as proposed in the consolidation agreement to the registered voters at the next general election or at a special election held on the same day in each of the counties which are parties to the agreement.

(2) For the consolidation of counties, the question shall be submitted to the voters in substantially the following form:

''Shall (name of county in which ballot will be voted) consolidate with (name of other county or counties) according to the consolidation agreement previously adopted in such counties? Yes No''.

(3) For the consolidation of one or more county or township offices, the question shall be submitted to the voters in substantially the following form:

''Shall (name of county in which ballot will be voted) enter the consolidation agreement with (name of other county or counties) for the consolidation of the office of (name of office) according to the consolidation agreement previously adopted in such counties? Yes No''.

(4) For the joint performance of any common function or service, the question shall be submitted to the voters in substantially the following form:

''Shall (name of county in which ballot will be voted) enter the consolidation agreement with (name of other county or counties) for the joint performance of (name of function or service) according to the consolidation agreement previously adopted in such counties? Yes No''.

(5) The election shall be conducted in accordance with the Election Act. The election commissioner or county clerk shall certify the results to each county board involved in the agreement. If a majority of the voters of each county voting on the question submitted vote in favor of the consolidation agreement for the consolidation of counties or for the consolidation of one or more county or township offices, the consolidation agreement shall become effective on the first Thursday after the first Tuesday in January following the next general election in which one or more consolidated county or township officers are first elected, and the terms of the incumbents in the offices involved in the agreement shall be deemed to end on that date. If a majority of the voters of each county voting on the question submitted vote in favor of the consolidation agreement for the joint performance of any common function or service, the consolidation agreement becomes effective on the date specified in the consolidation agreement.

(6) The submission of the question of consolidation of counties shall not bar submission of the question of the removal of the county seat under sections

22-301 to 22-303, it being the intention that either proposition may be submitted without reference to submission of the other proposition.

Source: Laws 1933, c. 34, § 5, p. 218; C.S.Supp.,1941, § 25-405; R.S. 1943, § 22-405; Laws 1951, c. 44, § 3, p. 156; Laws 1965, c. 92, § 2, p. 399; Laws 1996, LB 1085, § 18; Laws 1997, LB 269, § 25.

22-405.01 Final approval of consolidation agreement; county boards; duties.

On or before September 10 of the year preceding the effective date of a consolidation agreement, the county boards participating in the consolidation agreement shall adopt by joint or concurrent resolution the budget for the portion of the fiscal year in which the consolidation agreement will be effective. As provided in the consolidation agreement, the county boards shall certify to each county clerk the levies or amounts required to be raised by taxation. In the year in which the general election will be held to first elect consolidated county officers, each county board shall, by joint or concurrent resolution and pursuant to the consolidation agreement, (1) fix the salaries of all elected officers, deputies of elected officers, and appointive officers prior to January 15 and (2) adopt, on or before September 10, the budget for the first complete fiscal year that the counties are consolidated and certify to each county clerk the levies or amounts required to be raised by taxation. On or before September 10 of each year for the duration of the consolidation agreement, each county board shall adopt, by joint or concurrent resolution and pursuant to the agreement, the budget for the consolidated function, service, or office and shall certify to each county clerk the levies or amounts required to be raised by taxation.

Source: Laws 1996, LB 1085, § 19; Laws 1997, LB 269, § 26.

22-405.02 Consolidated county officers; county boards; adjust election district boundaries.

On or before February 15 of the year of the general election at which consolidated county officers are to be elected, the county boards of each county involved in the consolidation agreement shall meet and adjust jointly the boundaries for the election districts for the consolidated offices.

Source: Laws 1996, LB 1085, § 20.

22-406 Consolidated counties; officers; election; terms; appointment.

(1) At the next general election held after the election at which consolidation is approved by the voters, the consolidated county officers shall be elected. Their terms shall begin on the first Thursday after the first Tuesday of January after their election, and the terms of the incumbents in the offices involved in the agreement shall be deemed to end on that date. The term of a consolidated officer shall be four years or until his or her successor is elected and qualified, except that the term of a consolidated officer elected in year 2000 or any fourth year thereafter shall be two years or until his or her successor is elected and qualified.

(2) All appointive county officers shall be appointed by the person, board, or authority upon whom the power to appoint such officers in other counties is conferred. The terms of such officers shall commence on the first Thursday after the first Tuesday of January after the first election of officers for the

consolidated county or counties and shall continue, unless otherwise removed, until their successors have been appointed and qualified.

Source: Laws 1933, c. 34, § 6, p. 219; C.S.Supp.,1941, § 25-406; R.S. 1943, § 22-406; Laws 1951, c. 44, § 4, p. 158; Laws 1996, LB 1085, § 21.

22-407 Consolidated counties; statutory references; rights and liabilities; books and records; money; congressional and legislative districts.

(1) Upon the effective date of the consolidation agreement for the consolidation of counties, the counties involved in the consolidation agreement shall be treated under the name or names and upon the terms and conditions set forth in the consolidation agreement. Except as provided in subsections (6) through (8) of this section, statutory references to the names of the counties as they existed prior to the consolidation agreement shall be deemed to reference the name or names of the consolidated county or counties as set forth in the consolidation agreement.

(2) All rights, privileges, and franchises of each of the several counties, all real and personal property, all rights-of-way, all other interests, and all debts due on whatever account, as well as other things in action, belonging to each of such counties shall be deemed as transferred to and vested in the consolidated county or counties without further act or deed. All records, books, and documents shall be transferred to and vested in the consolidated county if only one county is formed, or if two or more counties are formed, all books, records, and documents shall be transferred pursuant to the consolidation agreement.

(3) The title to real property, either by deed or otherwise, under the laws of this state vested in any of the counties, shall not be deemed to revert or be in any way impaired by reason of this consolidation, but the rights of creditors and all liens upon the property of any of the counties shall be preserved unimpaired. All prior indebtedness of each county shall remain a charge on the taxable property within the territory of each county as it existed prior to consolidation. A special tax levy shall be assessed on the taxable property within the prior county's boundaries to retire all prior indebtedness for that area.

(4) If there are two or more consolidated counties formed, all money on hand and accounts receivable shall be divided between the consolidated counties pursuant to the consolidation agreement.

(5) Suits may be brought and maintained against such consolidated county or counties in any of the courts of this state in the same manner as against any other county. Pursuant to the consolidation agreement, any action or proceeding pending by or against any of the counties consolidated may be prosecuted to judgment and the consolidated county or counties may be substituted in its place.

(6) The boundaries for townships, school districts, and election districts for offices other than the consolidated offices shall continue as prior to consolidation unless and until changed in accordance with law.

(7) Until changed by law, the same district courts shall continue, though it may result in the consolidated county or counties being a part of two or more districts. All such courts shall, however, be held at the place designated as the county seat of the consolidated county or counties, and each such court and the

judge thereof shall continue to have and exercise the same jurisdiction as the court or judge had exercised before such consolidation. If two or more judges have jurisdiction in any consolidated county or counties, they or a majority of them shall exercise the power to appoint officers and fill vacancies as is vested in judges of district courts of other counties.

(8) For the purpose of representation in Congress and in the Legislature, the existing boundaries for congressional and legislative districts shall continue until changed in accordance with law. Such consolidated county or counties shall in all respects, except as provided in sections 22-401 to 22-407, be subject to all the obligations and liabilities imposed and shall possess all the rights, powers, and privileges vested by law in other counties.

Source: Laws 1933, c. 34, § 7, p. 220; C.S.Supp.,1941, § 25-407; R.S. 1943, § 22-407; Laws 1951, c. 44, § 5, p. 158; Laws 1979, LB 187, § 91; Laws 1992, LB 719A, § 92; Laws 1996, LB 1085, § 22.

22-408 Repealed. Laws 1996, LB 1085, § 60.

22-409 Repealed. Laws 1996, LB 1085, § 60.

22-409.01 Repealed. Laws 1996, LB 1085, § 60.

22-410 Repealed. Laws 1996, LB 1085, § 60.

22-411 Approval of consolidation; salary determinations.

Following approval of the consolidation of county or township offices and prior to January 15 of the year in which the general election is held for consolidated offices, the county boards of each county included within such consolidation shall, by joint or concurrent action, establish the salary to be paid to the holder of the consolidated office and shall apportion such salary among the counties in the proportion that the population in each county bears to the population in all such counties or according to the consolidation agreement. In establishing salaries for a consolidated office, the county boards shall use the population of the counties involved according to the most recent federal decennial census. Minimum annual salaries are established by sections 23-1114.02 to 23-1114.07, and the combined population of the counties involved shall be used to determine the class pursuant to section 23-1114.01. The county boards shall further agree upon the actual payment of such salary by a single county and the monthly remittance to such paying county of the proportionate share of each of the other counties.

Source: Laws 1969, c. 139, § 4, p. 639; Laws 1971, LB 44, § 5; Laws 1996, LB 1085, § 23.

22-412 Candidates for consolidated office; election; procedure.

Candidates for the consolidated office shall file with the county clerk or election commissioner of their county of residence. The names of such candidates shall be certified to the appropriate office of each of the other counties to be placed on the primary ballot. At the primary election following the approval of the consolidation of county or township offices, and in the year prior to the expiration of the office or offices consolidated, the two candidates receiving the greater number of votes for the position of consolidated nonpartisan office shall be nominated. If the consolidated office is under the laws of this state a

partisan office, the candidate receiving the greatest number of votes for each political party shall be nominated. The election commissioner or county clerk shall certify the results of the primary election, as well as of the ensuing general election, from his or her county to the election commissioner or county clerk of the county having the largest population involved in the consolidation who shall certify the winner to each of the other counties.

Source: Laws 1969, c. 139, § 5, p. 640; Laws 1971, LB 44, § 6; Laws 1996, LB 1085, § 24.

22-413 Consolidated office; officer; bond; conditions; filing.

An officer of the consolidated counties shall file the same bond required of the same office in a county having a population equivalent to the population of the consolidated counties. Such bond shall be filed in the office of the county clerk of the county designated to make actual payment of his salary and approved by the board of such county. The fact of such filing and approval shall be certified to the county clerk of each of the other consolidated counties.

Source: Laws 1969, c. 139, § 6, p. 640; Laws 1971, LB 44, § 7.

22-414 Officer of consolidated counties; duties.

An officer of consolidated counties shall have the same duties and responsibilities provided by law for the same office in a single county.

Source: Laws 1969, c. 139, § 7, p. 640.

22-415 Officer of consolidated county; legal advisor.

For the purpose of securing necessary legal advice and legal services, the officer of consolidated counties shall be entitled to call upon the county attorney in the county who would have been obligated to provide such advice and services in the particular situation if there were a county officer rather than a consolidated county officer.

Source: Laws 1969, c. 139, § 8, p. 640.

22-416 Consolidated office; withdrawal of county; procedure; effect.

The question of the withdrawal of a county from an agreement for the joint performance of common functions or services or the consolidation of county or township offices shall be placed on the ballot for submission to the voters upon the petition of registered voters equal in number, in the county desiring to so withdraw, to ten percent of the total vote cast for Governor in such county at the preceding general election. The registered voters signing such petitions shall be so distributed as to include ten percent of the registered voters of each of one-half of the voting precincts in the county. Such petitions shall be filed with the election commissioner or county clerk of the county proposed to be withdrawn from the agreement not later than four months preceding the next general election or at a special election. The election commissioner or county clerk shall examine the petitions filed in his or her office to determine whether they are in proper form and signed by a sufficient number of registered voters. Not later than thirty days after the petitions are filed in his or her office, he or she shall certify the determination to the election commissioner or county clerk of each county which is part of the agreement. If the petitions are in proper form and signed by a sufficient number of registered voters, the question of the

withdrawal of the county from the agreement shall be placed on the ballot in the county proposed to be withdrawn from the agreement at the next general election or at a special election called for such purpose and held at least four months after the filing of the petitions. A majority of all votes cast in the affirmative on the question shall be necessary for the withdrawal of the county from the agreement. The election commissioner or county clerk of the county which votes to withdraw from the agreement shall certify the results of the election to the other counties in the agreement. If the agreement involved the consolidation of offices, such withdrawal shall only be effective at the expiration of a term of office of the consolidated counties.

Source: Laws 1969, c. 139, § 9, p. 640; Laws 1971, LB 44, § 8; Laws 1996, LB 1085, § 25; Laws 1997, LB 269, § 27.

22-417 Consolidation of county offices; powers and duties; procedure; hearing; ballot; form; election; term.

(1) Any county may consolidate the office of clerk of the district court, county assessor, county clerk, county engineer, county surveyor, or register of deeds, except that the consolidated officeholder shall meet the qualifications of each office as required by law. The consolidated office shall have the powers and duties provided by law for each office consolidated. The county board may adopt a resolution for the consolidation of any of such offices and submit the issue of the consolidated office to the registered voters for approval at the next general election or at a special election called for such purpose. The county board shall hold a public hearing prior to adoption of a resolution for the consolidation of offices and shall give notice of the hearing by publication in a newspaper of general circulation in the county once each week for three consecutive weeks prior to the hearing. Final publication shall be within seven calendar days prior to the hearing. The notice shall describe the offices to be consolidated and that the holder of the offices to be consolidated shall have his or her term of office end on the first Thursday after the first Tuesday in January following the general election in which the holder of the consolidated office is elected.

(2) The county board shall adopt the resolution for the consolidation of offices by majority vote of the board and shall submit the issue of consolidation to the registered voters for approval at the next general election or at a special election called for such purpose. For each consolidated office submitted for approval, the question shall be submitted to the voters in substantially the following form:

''Shall (name of each office proposed to be consolidated) be consolidated into one consolidated office according to the resolution adopted by the county board of (name of county) on (date of adoption of the resolution by the county board)? Yes No''.

(3) If the majority of the registered voters in the county voting on the question vote in favor of consolidation, the consolidated office shall be filled at the next general election, and the terms of the incumbents shall end on the first Thursday after the first Tuesday in January following the general election in which the holder of the consolidated office is elected.

(4) The term of a consolidated officer shall be four years or until his or her successor is elected and qualified, except that the term of a consolidated officer

elected in the year 2000 or any fourth year thereafter shall be two years or until his or her successor is elected and qualified.

(5) Any election under this section shall be in accordance with the Election Act.

Source: Laws 1996, LB 1085, § 26; Laws 1997, LB 269, § 28.

Cross References

Election Act, see section 32-101.

22-418 Consolidation of counties, offices, or services; county board; duty.

Each county board shall, by January 1, 1998, examine the question of whether property taxes might be reduced through consolidation of counties, offices, or services with another county. The examination shall include a public hearing and a fiscal estimate of property tax savings, if any, anticipated by a consolidation.

Source: Laws 1996, LB 1085, § 10.

CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

Article.

Article.

(c) Dance Halls, Roadhouses, Carnivals, Shows, and Amusement Parks. 23-813 to 23-818.
(d) Public Grounds and Parks. 23-819 to 23-823.

9. Budget.
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(b) Applicable to All Political Subdivisions. 23-921 to 23-934. Transferred.
10. Liability of Counties for Mob Violence. Repealed.
11. Salaries of County Officers. 23-1101 to 23-1118.
12. County Attorney. 23-1201 to 23-1223.
13. County Clerk. 23-1301 to 23-1313.
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15. Register of Deeds. 23-1501 to 23-1528.
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17. Sheriff.
(a) General Provisions. 23-1701 to 23-1720.
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20. Removal of County Officers.
(a) Removal by Judicial Proceedings. 23-2001 to 23-2009.
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(c) Removal of Disabled Officers. 23-2012.
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21. Emergency Seat of Local Government. Transferred or Repealed.
22. Interlocal Cooperation Act. Transferred.
23. County Employees Retirement. 23-2301 to 23-2335.
24. Political Subdivisions Tort Claims Act. Transferred.
25. Civil Service System.
(a) Counties of More than 300,000 Inhabitants. 23-2501 to 23-2516.
(b) Counties of 150,000 to 300,000 Inhabitants. 23-2517 to 23-2533.
(c) Counties of Less than 150,000 Inhabitants. 23-2534 to 23-2544.
(d) Method of Payment to Employees. 23-2545.
26. Public Building Commission. Transferred.
27. Local Governments Revenue Sharing. Transferred.
28. County Corrections. 23-2801 to 23-2811.
29. County Community Buildings. 23-2901 to 23-2915.
30. Political Activities. Transferred.
31. County Purchasing. 23-3101 to 23-3115.
32. County Assessor. 23-3201 to 23-3210.
33. County School Administrator. 23-3301 to 23-3313.
34. Public Defender. 23-3401 to 23-3408.
35. Medical and Multiunit Facilities.
(a) General Provisions. 23-3501 to 23-3527.
(b) Hospital Districts. 23-3528 to 23-3578.
(c) Hospital Authorities. 23-3579 to 23-35,120.
36. Industrial Sewer Construction. 23-3601 to 23-3637.
37. Auditor in Certain Counties. 23-3701.
38. Black-Tailed Prairie Dog Management Act. 23-3801 to 23-3810.

Cross References

Constitutional provisions:

County and township officers, election of, see Article IX, section 4, Constitution of Nebraska.
County courts, established, see Article V, section 1, Constitution of Nebraska.
County officers:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Extra compensation during term, prohibited, see Article III, section 19, Constitution of Nebraska.
Terms of office, see Article XVII, section 5, Constitution of Nebraska.
County taxes, limitation, see Article VIII, section 5, Constitution of Nebraska.
Division of county, see Article IX, section 2, Constitution of Nebraska.
Fines and penalties, disposition of, see Article VII, section 5, Constitution of Nebraska.
Governmental continuity in emergencies, see Article III, section 29, Constitution of Nebraska.
Impeachment, civil officers, see Article IV, section 5, Constitution of Nebraska.
Industrial development, powers, see Article XIII, section 2, Constitution of Nebraska.

Intergovernmental cooperation, see Article XV, section 18, Constitution of Nebraska.
Public corporations, payment in lieu of taxes, distribution, see Article VIII, section 11, Constitution of Nebraska.
Session laws, distribution to, see Article III, section 27, Constitution of Nebraska.
Stock of corporations, subscription not allowed, see Article XI, section 1, Constitution of Nebraska.
Tax proceeds from motor vehicles, allocation, see Article VIII, section 1, Constitution of Nebraska.
Township organization, adoption by electors, see Article IX, section 5, Constitution of Nebraska.

Agricultural societies, County Agricultural Society Act, see section 2-250.
Assistance, public, see Chapter 68.
Bids for public work, opened in bidders' presence at hour bids closed, see Chapter 73.
Bonds of indebtedness:
Aid to destitute, see Chapter 10, article 8.
Compromise of indebtedness, see Chapter 10, article 3.
County bonds, in general, see Chapter 10.
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Interlocal Cooperation Act, see section 13-801.
Public building commission, see sections 13-1306 to 13-1310.
Refunding bonds, see Chapter 10, article 6.
Registration and cancellation, see Chapter 10, article 2.
Boundaries of, see Chapter 22, article 1.
Budget Act, Nebraska, see section 13-501.
Claims against county, see the Political Subdivisions Tort Claims Act, section 13-901.
Commissioners and supervisors:
Election and term of office, see sections 32-528 and 32-529.
Election by district, see section 32-554.
Communication system, public safety, see the Nebraska Public Safety Communication System Act, section 86-401.
Community nurse, home health nurse, see section 71-1637.
Consolidation of counties, see Chapter 22, article 4.
Counties under township organization:
Bridges:
Defective, see section 39-833.
Expense borne by county, see section 39-1521.
Roads in townships, tax levy or issue bonds, see section 39-1905 et seq.
Warrants, investment of township sinking funds, see section 77-2339.
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Aid to prospect for coal, see sections 57-106 and 57-107.
Alcoholic liquors at retail, licensees outside cities and villages, see section 53-134.
Capture of criminals, reward, see section 29-414.
Drainage proceedings, see Chapter 31.
Equalization of tax assessments, see Chapter 77, article 15.
Poor, duties of county, see Chapter 68, article 1.
Sinking funds, invest in warrants, see section 77-2336.
Soldiers assistance, see Chapter 80, article 1.
Soldiers' burial and markers, see sections 80-105 to 80-108.
County court:
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Legislative intent, see section 24-501.
County fairs, see section 2-219 et seq.
County officers, in general:
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Election and term of office, see sections 32-517 to 32-531.
Fees and clerical assistance, see Chapter 33.
Vacancies, see sections 32-560 to 32-567.
County seat, relocation of, see Chapter 22, article 3.
Emergency Seat of Local Government Act, Nebraska, see section 13-701.
Fairs, see section 2-219 et seq.
Formation of counties, see Chapter 22, article 2.
Gasoline tax, allocation, see section 39-2215.
Indian tribes, joint agreements with, see the State-Tribal Cooperative Agreements Act, section 13-1501.
Industrial areas, designation and zoning, see sections 13-1111 to 13-1120.
Interlocal Cooperation Act, see section 13-801.
Interstate conservation and recreational improvement districts, see sections 13-1001 to 13-1006.
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Joint agreements with other local governmental units, see Interlocal Cooperation Act, section 13-801.
Joint agreements with tribal governments, see the State-Tribal Cooperative Agreements Act, section 13-1501.
Joint city and county building, see section 16-6,100.01 et seq.
Jury commissioner, see section 25-1625.
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Inmates of public institutions, clothing for paupers, see section 83-143.
Judgments, payment of, see sections 77-1619 to 77-1623.
Persons with mental illness, support of, see section 83-351.
Roads and bridges, damages arising from defects, see sections 39-802 to 39-833.
Library, free public, county may establish, see Chapter 51, article 2.
Mosquito extermination in counties containing a city of the primary class, see sections 71-2917 and 71-2918.
Political activities, prohibition, see section 23-1736.
Political Subdivisions Tort Claims Act, see section 13-901.
Public assistance, see Chapter 68.

Public building commission, see section 13-1301 et seq.
Public meetings, requirements, see Open Meetings Act, section 84-1407.
Public safety communication system, see the Nebraska Public Safety Communication System Act, section 86-401.
Public transportation, authority to operate, see the Nebraska Public Transportation Act, section 13-1201.
Records Management Act, see section 84-1220.
Revenue sharing, see section 13-601 et seq.
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Maintenance, see Chapter 39, article 18.
Organization and administration, see Chapter 39, article 15.
Road finances, see Chapter 39, article 19.
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Contract with county for use of buses, see section 13-1208.
Districts, formation of, see Chapter 79, article 4.
Sinking funds, investment of, see sections 77-2339 and 77-2341.
Soldiers and sailors:
Assistance, see Chapter 80, article 1.
Burial and markers, see sections 80-105 to 80-108.
Memorial monuments, see Chapter 80, article 2.
State-Tribal Cooperative Agreements Act, see section 13-1501.
Taxation:
County lien on real estate for unpaid taxes, see sections 77-1901 to 77-1903.
County purchase at tax sale, see sections 77-1809 to 77-1811.
County tax levy, see Chapter 77, article 16.

ARTICLE 1
GENERAL PROVISIONS

(a) CORPORATE POWERS

(b) POWERS AND DUTIES OF COUNTY BOARD

(c) COMMISSIONER SYSTEM

(a) CORPORATE POWERS

23-101 Counties; corporate name.

Each county, established in this state according to the laws thereof, shall be a body politic and corporate, by the name and style of The county of ....., and by that name may sue and be sued, plead and shall be impleaded, defend and be defended against, in any court having jurisdiction of the subject matter, either in law or equity, or other place where justice shall be administered.

Source: Laws 1879, § 20, p. 359; R.S.1913, § 948; C.S.1922, § 848; C.S.1929, § 26-101; R.S.1943, § 23-101.

1. Status of county
2. Suit by county
3. Suit against county
4. Pleadings
5. Liability of county

1. Status of county

A county is a governmental subdivision of the state, corporate in character, and created and organized for public purposes. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

A county is not a ''municipal corporation'', as the term is used in section 7, Article VIII, of the Constitution, and imposition of gasoline tax on counties is not prohibited. State v. Cheyenne County, 127 Neb. 619, 256 N.W. 67 (1934).

A county is a body politic and corporate. Cheney v. County Board of Commissioners of Buffalo County, 123 Neb. 624, 243 N.W. 881 (1932).

A county, even though a body politic and corporate, is a creature of statute and has only such powers as are conferred by Legislature. Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851 (1928).

2. Suit by county

County is proper party defendant in suit to enjoin collection of alleged void tax. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

County's interest in Supreme Court Reports is not sufficient to maintain replevin. Clifford v. Hall County, 60 Neb. 506, 83 N.W. 661 (1900).

3. Suit against county

A county must be sued in the name designated by statute. Jameson v. Plischke, 184 Neb. 97, 165 N.W.2d 373 (1969).

Suit was brought where no warrant was issued. Strong v. Thurston County, 84 Neb. 86, 120 N.W. 922 (1909).

Action to recover a money judgment upon county warrant may be maintained when the money for payment of such warrant has been collected and wrongfully applied by the county authorities. Thurston County v. McIntyre, 75 Neb. 335, 106 N.W. 217 (1905).

Suit authorized where board has not exclusive jurisdiction. Ayres v. Thurston County, 63 Neb. 96, 88 N.W. 178 (1901).

4. Pleadings

Demurrer is not proper pleading to raise question of authority when suing. Otoe County v. Dorman, 71 Neb. 408, 98 N.W. 1064 (1904).

5. Liability of county

County is not liable for negligent acts of officers unless made so by statute. Hopper v. Douglas County, 75 Neb. 329, 106 N.W. 330 (1905).

23-102 County seal; use.

The board shall procure and keep a seal, with such emblems and devices as it may think proper, which may be either an engraved or ink stamp seal and

which shall be the seal of the county, and no other seal shall be used by the county clerk, except where the county clerk is ex officio clerk of the district court, in which case he shall use the seal of said court in all matters and proceedings therein. The impression or representation of said seal by stamp shall be a sufficient sealing in all cases where sealing is required.

Source: Laws 1879, § 46, p. 368; R.S.1913, § 949; C.S.1922, § 849; C.S.1929, § 26-102; R.S.1943, § 23-102; Laws 1971, LB 653, § 2.

23-103 Powers; how exercised.

The powers of the county as a body corporate or politic, shall be exercised by a county board, to wit: In counties under township organization by the board of supervisors, which shall be composed of the town and such other supervisors as are or may be elected pursuant to law; in counties not under township organization by the board of county commissioners. In exercising the powers of the county, the board of supervisors or the board of county commissioners, as the case may be, may enter into compacts with the respective board or boards of another county or counties to exercise and carry out jointly any power or powers possessed by or conferred by law upon each board separately.

Source: Laws 1879, § 21, p. 359; R.S.1913, § 950; C.S.1922, § 850; C.S.1929, § 26-103; R.S.1943, § 23-103; Laws 1953, c. 48, § 1, p. 173.

Powers of a county are required to be exercised by the county board. State ex rel. Johnson v. County of Gage, 154 Neb. 822, 49 N.W.2d 672 (1951).

County board has plenary jurisdiction to make all contracts for county within scope of powers. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

Purchase by commissioners of electric refrigerator for county jail is proper exercise of power. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

"Body corporate or politic" construed. Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851 (1928).

23-104 Powers.

Each county shall have power: (1) To purchase and hold the real and personal estate necessary for the use of the county; (2) to purchase, lease, lease with option to buy, acquire by gift or devise, and hold for the benefit of the county real estate sold by virtue of judicial proceedings in which the county is plaintiff or is interested; (3) to hold all real estate conveyed by general warranty deed to trustees in which the county is the beneficiary, whether the real estate is situated in the county so interested or in some other county or counties of the state; (4) to sell, convey, exchange, or lease any real or personal estate owned by the county in such manner and upon such terms and conditions as may be deemed in the best interest of the county; (5) to enter into compacts with other counties to exercise and carry out powers possessed by or conferred by law upon each county separately; and (6) to make all contracts and to do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers, except that no lease agreement for the rental of equipment shall be entered into if the consideration for all lease agreements for the fiscal year exceeds one-tenth of one percent of the total taxable value of the taxable property of the county.

Source: Laws 1879, § 22, p. 359; Laws 1889, c. 61, § 1, p. 491; R.S.1913, § 951; C.S.1922, § 851; C.S.1929, § 26-104; R.S.1943, § 23-104; Laws 1953, c. 48, § 2, p. 174; Laws 1963, c. 109, § 1, p. 437; Laws 1967, c. 116, § 1, p. 364; Laws 1979, LB 187, § 92; Laws 1992, LB 1063, § 13; Laws 1992, Second Spec. Sess., LB 1, § 13.

1. Powers authorized
2. Powers not authorized
3. Miscellaneous

1. Powers authorized

A county, through its county board, has authority to contract with the state Auditor of Public Accounts to achieve a county audit required by section 23-1608. County of York v. Johnson, 230 Neb. 403, 432 N.W.2d 215 (1988).

Unless otherwise provided for by law, county boards have implied power to employ agents or servants required for county purposes. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

Purchase by commissioners of electric refrigerator for county jail is proper exercise of power. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

County board's lease for ninety-nine years of county's real estate, not used or needed for actual purposes, is valid. Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851 (1928).

County board is clothed not only with powers expressly conferred upon them by statute, but also with such powers as are requisite to enable them to discharge official duties devolved upon them by law. Wherry v. Pawnee County, 88 Neb. 503, 129 N.W. 1013 (1911).

County board has the power to pay traveling expenses of county attorney incurred in prosecuting criminal offenses. Berryman v. Schalander, 85 Neb. 281, 122 N.W. 990 (1909).

Unless prohibited by statute, county may sue to enforce all contracts. Johnson County v. Chamberlain Banking House, 74 Neb. 549, 104 N.W. 1061 (1905).

2. Powers not authorized

Selling of crushed rock produced by county to general public was not authorized. State ex rel. Johnson v. County of Gage, 154 Neb. 822, 49 N.W.2d 672 (1951).

Counties are not permitted to indulge in real estate business on competitive basis. City of Grand Island v. Willis, 142 Neb. 686, 7 N.W.2d 457 (1943).

Counties are without power to contract with townships to construct and maintain township roads for an agreed consideration. Lynn v. Kearney County, 121 Neb. 122, 236 N.W. 192 (1931).

3. Miscellaneous

Contract ''concerns'' county which relates or belongs to county, its business or affairs. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

23-104.01 Compacts; conditions; limitations; powers.

Compacts between counties for the joint exercise of powers may be made only upon compliance with the following conditions and subject to the following limitations:

(1) The terms of the obligation imposed by the compact shall be reduced to writing, shall be required to be signed by a majority of the board of supervisors or commissioners of each county that is a party thereto, and after being so signed, shall be filed and recorded in the office of the county clerk of each county that is a party thereto;

(2) The powers that may be exercised and the obligations that may be incurred by each party under the compact shall be definitely set forth and specified therein;

(3) The powers that may be contracted to be exercised under the compact shall only be those imposed by law upon the county as such or upon its board of supervisors or county commissioners and shall not extend to or include powers specifically conferred upon and required to be carried out by other elected officers of the county;

(4) The share of the expense to be paid by each county in carrying out the compact shall be allocated and set forth in the compact and provision made for the payment thereof;

(5) Final action upon the allowance and payment of any claims and obligations against each county shall be reserved to and remain a function of the board of supervisors or commissioners of each county that is a party to the compact;

(6) The levy and collection of taxes to pay the claims and obligations allowed shall be reserved to and remain a function of each county that is a party to the contract; and

(7) The compact shall be subject to the Interlocal Cooperation Act.

Source: Laws 1953, c. 48, § 3, p. 174; Laws 1996, LB 1085, § 27.

Cross References

Consolidation of common functions and services, see section 22-401 et seq.
Interlocal Cooperation Act, see section 13-801.

23-104.02 Counties containing a city of the primary class; public grounds; powers.

Any county in which is located a city of the primary class shall have power to purchase, hold, and improve public grounds and parks within the limits of the county, to provide for the protection and preservation of the same, to provide for the planting and protection of shade or ornamental trees, to erect and construct or aid in the erection and construction of statues, memorials, and works of art upon any public grounds, and to receive donations and bequests of money or property for the above purposes in trust or otherwise.

Source: Laws 1961, c. 83, § 1, p. 293.

23-104.03 Power to provide protective services.

Each county shall have the authority (1) to plan, initiate, fund, maintain, administer, and evaluate facilities, programs, and services that meet the rehabilitation, treatment, care, training, educational, residential, diagnostic, evaluation, community supervision, and protective service needs of dependent, aged, blind, disabled, ill, or infirm persons, persons with a mental disorder, and persons with mental retardation domiciled in the county, (2) to purchase outright by installment contract or by mortgage with the power to borrow funds in connection with such contract or mortgage, hold, sell, and lease for a period of more than one year real estate necessary for use of the county to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, (3) to lease personal property necessary for such facilities, programs, and services, and such lease may provide for installment payments which extend over a period of more than one year, notwithstanding the provisions of section 23-132 or 23-916, (4) to enter into compacts with other counties, state agencies, other political subdivisions, and private nonprofit agencies to exercise and carry out the powers to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, and (5) to contract for such services from agencies, either public or private, which provide such services on a vendor basis. Compacts with other public agencies pursuant to subdivision (4) of this section shall be subject to the Interlocal Cooperation Act.

Source: Laws 1971, LB 599, § 1; Laws 1972, LB 1266, § 1; Laws 1985, LB 393, § 15; Laws 1986, LB 1177, § 4.

Cross References

Interlocal Cooperation Act, see section 13-801.

23-104.04 Commission on the status of women; establish; fund.

Any county may establish and fund a commission on the status of women. Such commission shall advise the county board on the existence of social, economic, and legal barriers affecting women and ways to eliminate such barriers.

Source: Laws 1980, LB 780, § 1.

23-104.05 Commission on the status of women; purposes.

The purpose of a commission established under section 23-104.04 shall be to emphasize studying the changing and developing roles of women in American society including:

(1) Recognition of socioeconomic factors that influence the status of women;

(2) Development of individual potential;

(3) Encouragement of women to utilize their capabilities and assume leadership roles;

(4) Coordination of efforts of numerous women's organizations interested in the welfare of women;

(5) Identification and recognition of contributions made by Nebraska women to the community, state, and nation;

(6) Implementation of this section when improved working conditions, financial security, and legal status of both sexes are involved; and

(7) Promotion of legislation to improve any situation when implementation of subdivisions (1) to (6) of this section indicates a need for change.

Source: Laws 1980, LB 780, § 2.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-105 County property; control; duty of county board; annual inventory.

The county boards of the several counties shall have the power to take and have the care and custody of all the real and personal estate owned by the county; and, in connection with the foregoing, to file and to require each county officer of the county to file the annual inventory statements with respect to county personal property, as required by sections 23-346 to 23-350.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 350; Laws 1905, c. 44, § 1, p. 287; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 73; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 273; Laws 1929, c. 60, § 2, p. 231; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 134; Laws 1933, c. 36, § 1, p. 236; Laws 1939, c. 28, § 5, p. 144; Laws 1941, c. 48, § 2, p. 235; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(1), p. 224; R.S.1943, § 23-105.

Under former law county had power of examination of its own records and could contract with auditor for that purpose. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

Purchase by commissioners of electric refrigerator for county jail is proper exercise of power. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

Where one of county commissioners has moved out of his district into that of another commissioner, and where he continues to act as member of county board, the fact of such removal does not render order of board void. Horton v. Howard, 97 Neb. 575, 150 N.W. 633 (1915).

County as corporate body has power to cancel twenty-five year lease with consent of lessee, and to execute a new lease for a longer period. Lancaster County v. Lincoln Aud. Assn., 87 Neb. 87, 127 N.W. 226 (1910).

Court of equity will not interfere unless board exceeds powers. Roberts v. Thompson, 82 Neb. 458, 118 N.W. 106 (1908).

Board cannot transact business except at regular or special meetings. Morris v. Merrell, 44 Neb. 423, 62 N.W. 865 (1895).

Regular or special meetings must be held at county seat. Merrick County v. Batty, 10 Neb. 176, 4 N.W. 959 (1880).

23-106 County funds; management; establish petty cash fund; purpose; power of county board.

(1) The county board shall manage the county funds and county business except as otherwise specifically provided.

(2) The county board shall have the authority to establish a petty cash fund for such county for the purpose of making payments for subsidiary general

operational expenditures and purchases. Such county board shall set, by resolution of the board, the amount of money to be carried in such petty cash fund and the dollar limit of an expenditure from such fund and such amount shall be stated in the fiscal policy of the county board budget message.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 350; Laws 1905, c. 44, § 1, p. 287; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 73; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 273; Laws 1929, c. 60, § 2, p. 231; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 134; Laws 1933, c. 36, § 1, p. 236; Laws 1939, c. 28, § 5, p. 144; Laws 1941, c. 48, § 2, p. 235; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(2), p. 224; R.S.1943, § 23-106; Laws 1976, LB 686, § 1; Laws 1978, LB 643, § 1.

A county board in managing county business may employ necessary agents or servants to carry out duties not imposed by law upon others. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

County board has duty to deduct personal taxes from claims allowed. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

County board may make all contracts within scope of powers of county acting as a body corporate. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

Board has power to employ and pay for clerical assistance to county attorney. Emberson v. Adams County, 93 Neb. 823, 142 N.W. 294 (1913).

Implied powers of county board stated. Wherry v. Pawnee County, 88 Neb. 503, 129 N.W. 1013 (1911); Berryman v. Schalander, 85 Neb. 281, 122 N.W. 990 (1909).

Powers of board are construed strictly. Morton v. Carlin, 51 Neb. 202, 70 N.W. 966 (1897).

Appointments are not a judicial act of board. Prather v. Hart, 17 Neb. 598, 24 N.W. 282 (1885).

Board has no power to alter amount of fees. Kemerer v. State ex rel. Garber, 7 Neb. 130 (1878).

Contracts should be let to lowest bidder. People ex rel. Putnam v. Commissioners of Buffalo County, 4 Neb. 150 (1875).

23-107 Public grounds and buildings; sale or lease; terms; illegal sale; when validated.

The county board shall have power to make all orders respecting the property of the county; to keep the county buildings insured; to sell the public grounds or buildings of the county, and purchase other properties in lieu thereof; *Provided*, that the county board may, if it deems it for the best interests of the county, sell county property upon such terms of credit as shall be determined upon by resolution of the board; but any deferred payment shall be for not more than two-thirds of the purchase price, which shall be secured by note or notes, and a first mortgage upon the property so sold, and shall draw not less than six percent interest per annum from date until paid, the interest to be paid annually. The county board shall also have the power to sell or negotiate, without recourse upon the county, the notes and mortgages so taken; but they shall not be sold for less than par value including accrued interest. If, for any reason, such sale of the public grounds by a county board was irregular, illegal, or void, and the purchaser of such public grounds or his grantees have been in open, notorious, undisputed, continuous and adverse possession thereof for more than ten years, and during which ten years the county board has not refunded or offered to refund the purchase price, then in all such cases the county board is authorized and empowered and, when requested by the proper person, is required to convey to the purchaser of such grounds or his grantees, by good and sufficient deed without cost, the fee simple title to the public grounds so irregularly or illegally sold.

Source: Laws 1879, § 24, p. 360; Laws 1887, c. 26, § 1, p. 350; Laws 1905, c. 44, § 1, p. 287; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 73; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 273; Laws 1929, c. 60, § 2, p. 231; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 134; Laws 1933, c. 36, § 1, p. 236; Laws 1939, c. 28, § 5, p. 144;

Laws 1941, c. 48, § 2, p. 235; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(3), p. 224; R.S.1943, § 23-107; Laws 1961, c. 84, § 1, p. 294; Laws 1971, LB 698, § 1; Laws 1975, LB 125, § 1; Laws 1977, LB 363, § 1.

This section is not applicable to property acquired under the Industrial Development Act of 1961. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

Option of lessee to purchase county's land in case of contemplated sale does not avoid lease for ninety-nine years, since no sale is involved. Lindburg v. Bennett, 117 Neb. 66, 219 N.W. 851 (1928).

Board may buy but not mortgage the poor farm. Stewart v. Otoe County, 2 Neb. 177 (1873).

23-107.01 Real estate owned by county; sale or lease; terms and procedures.

(1) Except as provided in section 80-329, any county board has power to sell or lease real estate owned by the county and not required for county purposes at a fair market value regardless of the value of the property. The county board of such county shall hold an open and public hearing prior to any such sale or lease at which any interested party may appear and speak for or against the sale or lease and raise any issue regarding the fair market value of the property as determined by the county board. Public notice of any such public hearing shall be run once each week for two consecutive weeks prior to the hearing date in any newspaper or legal publication distributed generally throughout the county.

(2) The county board shall set a date of sale which shall be within two months of the date of public hearing pursuant to subsection (1) of this section and shall offer such real estate for sale or lease to the highest bidder.

(3) The county board shall cause to be printed and published once at least ten days prior to the sale or lease in a legal newspaper in the county an advertisement for bids on the property to be sold or leased. The advertisement shall state the legal description and address of the real estate and that the real estate shall be sold or leased to the highest bidder.

(4) If the county board receives no bids or if the bids received are substantially lower than the fair market value, the county board may negotiate a contract for sale or lease of the real estate if such negotiated contract is in the best interests of the county.

Source: Laws 1975, LB 125, § 2; Laws 1976, LB 805, § 1; Laws 1979, LB 187, § 93; Laws 1980, LB 184, § 10; Laws 1997, LB 396, § 1.

23-108 Roads; establishment; abandonment; eminent domain.

The county board shall have power to lay out, alter or discontinue any road running through its county, to vacate or discontinue public roads running parallel and adjacent to state or federal highways not more than four hundred yards from said highway, or any part thereof, or any abandoned or unused road or part thereof, and for such purpose may acquire title to lands therein, either by gift, prescription, dedication, the exercise of the right of eminent domain, purchase or lease, and may perform such duties concerning roads as may be prescribed by law; *Provided,* that the county board shall not vacate or discontinue any public road or any part thereof which is within the area of the zoning jurisdiction of a city of the metropolitan, primary or first class without the prior approval of the governing body of such city.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 351; Laws 1905, c. 44, § 1, p. 288; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 73; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 274; Laws 1929,

c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 236; Laws 1939, c. 28, § 5, § 145; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(4), p. 225; R.S.1943, § 23-108; Laws 1971, LB 192, § 1.

Cross References

For acquisition of property by eminent domain for county road purposes, see section 39-1701 et seq.

Dedication of road was not sufficiently shown. Nelson v. Reick, 96 Neb. 486, 148 N.W. 331 (1914).

23-109 Claims; audit; settlement; imprest system of accounting.

(1) The county board shall have power to examine and settle all accounts against the county and all accounts concerning the receipts and expenditures of the county.

(2) The county board may adopt by resolution an imprest system of accounting for the county and authorize the county clerk to establish an imprest vendor, payroll, or other account for the payment of county warrants in accordance with any guidelines issued by the Auditor of Public Accounts.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 351; Laws 1905, c. 44, § 1, p. 288; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 74; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 274; Laws 1929, c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 145; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(5), p. 225; R.S.1943, § 23-109; Laws 1997, LB 34, § 1.

Even though county board acts ministerially in allowing claim, it has authority to deduct unpaid personal taxes. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

Board may audit and settle claims when work is completed though no warrant may issue until after levy has been made. Central Bridge & Construction Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220 (1921).

Claims for tort or for unliquidated damages may be filed with county board. Wherry v. Pawnee County, 88 Neb. 503, 129 N.W. 1013 (1911).

County boards are given power to examine and settle all accounts against the county. Cass County v. Sarpy County, 83 Neb. 435, 119 N.W. 685 (1909).

Allowance of claims when no money is in treasury or tax levy made does not exceed powers. State ex rel. McDonald v. Farrington, 80 Neb. 628, 114 N.W. 1100 (1908).

Power to act upon claims is derived from this section. State ex rel. Thomas Clock Co. v. Board of County Comrs. of Cass County, 60 Neb. 566, 83 N.W. 733 (1900).

Order disallowing claims, reconsidered, is not an adjudication. Dean v. Saunders County, 55 Neb. 759, 76 N.W. 450 (1898).

Board acts judicially in allowance of claims. Heald v. Polk County, 46 Neb. 28, 64 N.W. 376 (1895).

Board may disallow claims. Boone County v. Armstrong, 23 Neb. 764, 37 N.W. 626 (1888).

23-110 City or village plat; vacation.

The county board shall have power to authorize the vacation of any city or village plat when the same is not within an incorporated city or village, on the petition of two-thirds of the owners thereof.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 351; Laws 1905, c. 44, § 1, p. 288; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 74; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 274; Laws 1929, c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 145; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(6), p. 225; R.S.1943, § 23-110.

23-111 City or village plat; change; when authorized.

The county board shall have power to change the name of any city or village plat on the petition of a majority of the local voters residing therein, when the inhabitants thereof have not become a body corporate.

Source: Laws 1879, § 23, p. 360; Laws 1887, c. 26, § 1, p. 351; Laws 1905, c. 44, § 1, p. 288; R.S.1913, § 952; Laws 1915, c. 17, § 1, p. 74; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 273; Laws 1929, c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 145; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(7), p. 225; R.S.1943, § 23-111.

23-112 Claims or judgments; power to compromise.

The county board shall have power to settle by compromise or by accepting in full settlement thereof less than the face or full amount on any claim, judgment or demand in favor of the county, on which said claim, judgment or demand no payment or payments have been made or recovered during a full period of five years from and after the date or dates on which said claim, judgment or demand became due and enforceable, and execute full acquittance or receipt for said claim, judgment or demand, or to sell, at public or private sale, any claim, judgment or demand in favor of a county for cash, at the best price obtainable in the judgment of said board, and execute and deliver a proper transfer or assignment of said claim, judgment or demand so sold; *Provided,* that no member of the board may be personally interested, directly or indirectly, in the purchase of any such claim, judgment or demand.

Source: Laws 1915, c. 17, § 1, p. 74; C.S.1922, § 852; Laws 1925, c. 93, § 1, p. 274; Laws 1929, c. 60, § 2, p. 232; C.S.1929, § 26-105; Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 145; Laws 1941, c. 48, § 2, p. 235; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(8), p. 225; R.S. 1943, § 23-112.

23-113 Transferred to section 12-805.

23-113.01 Transferred to section 12-806.

23-113.02 Transferred to section 12-806.01.

23-113.03 County board; general duties.

The county board shall have power as a board, or as individuals, to perform such other duties as may from time to time be imposed by general law.

Source: Laws 1943, c. 57, § 1(14), p. 227; R.S.1943, § 23-116.02; R.S. 1943, (1987), § 23-116.02.

23-114 Zoning regulations; when authorized; powers; manufactured homes; limitation of jurisdiction.

(1) The county board shall have power: (a) To create a planning commission with the powers and duties set forth in 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; (b) to make, adopt, amend, extend, and implement a county comprehensive development plan; (c) to adopt a zoning resolution, which shall have the force and effect of law; and (d) to cede and transfer jurisdiction pursuant to section 13-327 over

land otherwise subject to the authority of the county board pursuant to this section.

(2) The zoning resolution may regulate and restrict: (a) The location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, house trailers, and automobile trailers; (b) the percentage of lot areas which may be occupied; (c) building setback lines; (d) sizes of yards, courts, and other open spaces; (e) the density of population; (f) the uses of buildings; and (g) the uses of land for agriculture, forestry, recreation, residence, industry, and trade, after considering factors relating to soil conservation, water supply conservation, surface water drainage and removal, or other uses in the unincorporated area of the county. If a zoning resolution or regulation affects the Niobrara scenic river corridor as defined in section 72-2006, the Niobrara Council shall act on the measure as provided in section 72-2010.

(3)(a) The county board shall not adopt or enforce any zoning resolution or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The county board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The county board may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The county board may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(4) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the

United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

(5) Special districts or zones may be established in those areas subject to seasonal or periodic flooding, and such regulations may be applied as will minimize danger to life and property.

(6) The powers conferred by this section shall not be exercised within the limits of any incorporated city or village nor within the area over which a city or village has been granted or ceded zoning jurisdiction and is exercising such jurisdiction. At such time as a city or village exercises control over an unincorporated area by the adoption or amendment of a zoning ordinance, the ordinance or amendment shall supersede any resolution or regulation of the county.

Source: Laws 1941, c. 48, § 2, p. 237; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(10), p. 226; R.S.1943, § 23-114; Laws 1957, c. 381, § 1, p. 1325; Laws 1967, c. 117, § 1, p. 366; Laws 1994, LB 511, § 4; Laws 1996, LB 1044, § 57; Laws 1998, LB 1073, § 6; Laws 1999, LB 822, § 4; Laws 2000, LB 1234, § 10; Laws 2002, LB 729, § 12; Laws 2012, LB709, § 1.
Effective date July 19, 2012.

Cross References

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

If the mode or manner by which a certain action is to be taken is prescribed in a statute or charter, that method must generally be followed. State ex rel. Musil v. Woodman, 271 Neb. 692, 716 N.W.2d 32 (2006).

If there is a conflict between a comprehensive plan and a zoning ordinance, the latter is controlling when questions of a citizen's property rights are at issue. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

City zoning plan covering property within two miles of city limits supersedes county zoning regulations respecting that area. Deans v. West, 189 Neb. 518, 203 N.W.2d 504 (1973).

Owner's right to use property is subject to reasonable regulation; the burden is on one who attacks the validity of a zoning ordinance to prove facts which establish its invalidity. Stahla v. Board of Zoning Adjustment of Hall County, 186 Neb. 219, 182 N.W.2d 209 (1970).

County board has authority to adopt zoning resolution. City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

Counties are empowered to adopt a comprehensive zoning plan by resolution. Crane v. Board of County Commissioners of Sarpy County, 175 Neb. 568, 122 N.W.2d 520 (1963).

Zoning resolution adopted by county board must be published. Board of Commissioners of Sarpy County v. McNally, 168 Neb. 23, 95 N.W.2d 153 (1959).

23-114.01 County planning commission; appointment; qualifications; terms; vacancies; compensation; expenses; powers; duties; appeal.

(1) In order to avail itself of the powers conferred by section 23-114, the county board shall appoint a planning commission to be known as the county planning commission. The members of the commission shall be residents of the county to be planned and shall be appointed with due consideration to geographical and population factors. Since the primary focus of concern and control in county planning and land-use regulatory programs is the unincorporated area, a majority of the members of the commission shall be residents of unincorporated areas, except that this requirement shall not apply to joint planning commissions. Members of the commission shall hold no county or municipal office, except that a member may also be a member of a city, village, or other type of planning commission. The term of each member shall be three years, except that approximately one-third of the members of the first commission shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years. All members shall hold office until their successors are appointed. Members of the commission may be removed by a

majority vote of the county board for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause upon written charges being filed with the county board and after a public hearing has been held regarding such charges. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired terms by individuals appointed by the county board. Members of the commission shall be compensated for their actual and necessary expenses incurred in connection with their duties in an amount to be fixed by the county board. Reimbursement for mileage shall be made at the rate provided in section 81-1176. Each county board may provide a per diem payment for members of the commission of not to exceed fifteen dollars for each day that each such member attends meetings of the commission or is engaged in matters concerning the commission, but no member shall receive more than one thousand dollars in any one year. Such per diem payments shall be in addition to and separate from compensation for expenses.

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

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

(4) In all counties in the state, the county planning commission may grant conditional uses or special exceptions to property owners for the use of their property if the county board of commissioners or supervisors has officially and generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the county zoning regulations as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The applicant for a conditional use permit or special exception for a livestock operation specifically identified in the county zoning regulations as a classification of use which may require special conditions or requirements to be met within an area of a county

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

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

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

Source: Laws 1967, c. 117, § 2, p. 366; Laws 1975, LB 410, § 22; Laws 1978, LB 186, § 8; Laws 1981, LB 204, § 21; Laws 1982, LB 601,

§ 1; Laws 1991, LB 259, § 1; Laws 1996, LB 1011, § 6; Laws 2003, LB 754, § 3; Laws 2004, LB 973, § 3; Laws 2010, LB970, § 1.

Subsection (5) of this section provides for a right of appeal to the district court from a decision by the county planning commission or county board of commissioners or supervisors, without setting forth any procedure for prosecuting the appeal. Therefore, the appeal procedure in section 25-1937 is also implicated. In re Application of Olmer, 275 Neb. 852, 752 N.W.2d 124 (2008).

If there is a conflict between a comprehensive plan and a zoning ordinance, the latter is controlling when questions of a citizen's property rights are at issue. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

23-114.02 Comprehensive development plan; purpose.

The general plan for the improvement and development of the county shall be known as the comprehensive development plan and shall, among other elements, include:

(1) A land-use element which designates the proposed general distribution, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;

(2) The general location, character, and extent of existing and proposed major streets, roads, and highways, and air and other transportation routes and facilities;

(3) When a new comprehensive plan or a full update to an existing comprehensive plan is developed on or after July 15, 2010, but not later than January 1, 2015, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community; and

(4) The general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services.

The comprehensive development plan shall consist of both graphic and textual material and shall be designed to accommodate anticipated long-range future growth which shall be based upon documented population and economic projections.

Source: Laws 1967, c. 117, § 3, p. 368; Laws 2010, LB997, § 4.

23-114.03 Zoning regulations; purpose; districts.

Zoning regulations shall be adopted or amended by the county board only after the adoption of the county comprehensive development plan by the county board and the receipt of the planning commission's specific recommendations. Such zoning regulations shall be consistent with an adopted comprehensive development plan and designed for the purpose of promoting the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Nebraska, including, among others, such specific purposes as:

(1) Developing both urban and nonurban areas;

(2) Lessening congestion in the streets or roads;

(3) Reducing the waste of excessive amounts of roads;

(4) Securing safety from fire and other dangers;

(5) Lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters;

(6) Providing adequate light and air;

(7) Preventing excessive concentration of population and excessive and wasteful scattering of population or settlement;

(8) Promoting such distribution of population, such classification of land uses, and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply, and other public requirements;

(9) Protecting the tax base;

(10) Protecting property against blight and depreciation;

(11) Securing economy in governmental expenditures;

(12) Fostering the state's agriculture, recreation, and other industries;

(13) Encouraging the most appropriate use of land in the county; and

(14) Preserving, protecting, and enhancing historic buildings, places, and districts.

Within the area of jurisdiction and powers established by section 23-114, the county board may divide the county into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of nonfarm buildings or structures and the use, conditions of use, or occupancy of land. All such regulations shall be uniform for each class or kind of land or buildings throughout each district, but the regulations in one district may differ from those in other districts. An official map or maps indicating the districts and regulations shall be adopted, and within fifteen days after adoption of such regulations or maps, they shall be published in book or pamphlet form or once in a legal newspaper published in and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. Such regulations shall also be spread in the minutes of the proceedings of the county board and such map or maps filed with the county clerk. The county board may decide whether buildings located on farmsteads used as residences shall be subject to such county's zoning regulations and permit requirements.

For purposes of this section and section 23-114.04, nonfarm buildings are all buildings except those buildings utilized for agricultural purposes on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year.

Source: Laws 1967, c. 117, § 4, p. 368; Laws 1986, LB 960, § 18; Laws 1999, LB 822, § 5; Laws 2001, LB 366, § 1; Laws 2006, LB 808, § 6; Laws 2012, LB709, § 2.
Effective date July 19, 2012.

The farm building exemption contained in this section prohibits counties from requiring building permits on buildings utilized for agricultural purposes on a farmstead of 20 acres or more which produces $1,000 or more of farm products per year. Premium Farms v. County of Holt, 263 Neb. 415, 640 N.W.2d 633 (2002).

An official zoning map or a zoning plan adopted as part of county zoning regulations which incorporate the map by reference must be published in book or pamphlet form or in legal newspaper. Deans v. West, 189 Neb. 518, 203 N.W.2d 504 (1973).

Under the 1967 act, a county engaged in zoning ought to adopt a comprehensive development plan within a reasonable time. Bagley v. County of Sarpy, 189 Neb. 393, 202 N.W.2d 841 (1972).

23-114.04 Zoning regulations; enforcement; county zoning administrator; appoint; compensation; permits; fees.

(1) The county board shall provide for enforcement of the zoning regulations within its county by requiring the issuance of permits prior to the erection, construction, reconstruction, alteration, repair, or conversion of any nonfarm building or structure within a zoned area, and the county board may provide for the withholding of any permit if the purpose for which it is sought would conflict with zoning regulations adopted for the particular district in which the building or structure is situated or in which it is proposed to be erected. All plats for subdivisions in the area outside the corporate limits of cities and villages and outside of an unincorporated area wherein a city or village has been granted subdivision jurisdiction and is exercising such jurisdiction must be approved by the county planning commission.

(2) The county board may establish and appoint a county zoning administrator, who may also serve as a building inspector, and may fix his compensation or may authorize any administrative official of the county to assume the functions of such position in addition to his regular duties. The county board may also fix a reasonable schedule of fees for the issuance of permits under the provisions of subsection (1) of this section. The permits shall not be issued unless the plans of and for the proposed erection, construction, reconstruction, alteration, use or change of use, including sanitation, plumbing and sewage disposal, are filed in writing in the building inspector's office and such plans fully conform to all zoning regulations then in effect.

Source: Laws 1967, c. 117, § 5, p. 370; Laws 1975, LB 410, § 23.

23-114.05 County zoning; violations; penalty; injunction.

The erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile trailer, or land in violation of sections 23-114 to 23-114.04, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 or of any regulation made by the county board under such sections shall be a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating such sections or any regulation of the county board or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit shall be guilty of a Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the county board or the proper local authorities of the county, as well as any owner or owners of real estate within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections.

Source: Laws 1967, c. 117, § 6, p. 370; Laws 1975, LB 410, § 24; Laws 1977, LB 40, § 83; Laws 1991, LB 15, § 10; Laws 1993, LB 121, § 162; Laws 1999, LB 822, § 6; Laws 2012, LB709, § 3.
Effective date July 19, 2012.

The plain language of this section establishes that an appeal to a board of adjustment is not the exclusive remedy for challenging a land use alleged to be in violation of zoning regulations. Conley v. Brazer, 278 Neb. 508, 772 N.W.2d 545 (2009).

This section provides a procedure whereby ''affected'' owners of real estate may petition to enjoin proposed solid waste disposal operations alleged to be in violation of county zoning ordinances. Omaha Fish and Wildlife Club, Inc. v. Community Refuse, Inc., 208 Neb. 110, 302 N.W.2d 379 (1981).

County brought action hereunder against municipal airport authority seeking to enforce county zoning regulations. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Since a request for specific performance is outside the scope of a petition in error, a proceeding for specific performance under this section may not be instituted by a petition in error. Griess v. Clay Cty. Bd. of Supervisors, 11 Neb. App. 910, 662 N.W.2d 638 (2003).

23-114.06 County planning commission; notice to military installation.

When a county planning commission appointed pursuant to section 23-114.01 is considering the adoption or amendment of a zoning ordinance or the approval of the platting or replatting of any development of real estate, the commission shall notify any military installation which is located within the county if the county has received a written request for such notification from the military installation. The county planning commission shall deliver the notification to the military installation at least ten days prior to the meeting of the county planning commission at which the proposal is to be considered.

Source: Laws 2010, LB279, § 4.

23-115 Repealed. Laws 2012, LB 709, § 5.

23-115.01 Repealed. Laws 2012, LB 709, § 5.

23-115.02 Repealed. Laws 2012, LB 709, § 5.

23-116 Insect pests; plant diseases; control; cooperation with federal and state agencies.

The county board shall have power to cooperate with the Nebraska Department of Agriculture, the University of Nebraska Institute of Agriculture and Natural Resources, or the United States Department of Agriculture in the control or eradication of insect pests or plant diseases for the protection of agricultural or horticultural crops within the county and to expend money from the general fund for this purpose.

Source: Laws 1941, c. 48, § 2, p. 237; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(12), p. 227; R.S.1943, § 23-116; Laws 1969, c. 146, § 1, p. 703; Laws 1991, LB 663, § 33.

23-116.01 Repealed. Laws 1985, LB 393, § 18.

23-116.02 Transferred to section 23-113.03.

23-117 Clerks; assistants of county officer; service in more than one office; when.

The clerks or assistants of any county officer may be required by the county board to serve or assist without additional pay in any other county office than that to which they were appointed, whenever the county board may deem it advisable and expedient for the efficient and economical administration of the affairs of the county.

Source: Laws 1923, c. 37, § 1, p. 151; C.S.1929, § 26-106; R.S.1943, § 23-117; Laws 1947, c. 62, § 1, p. 197; Laws 1967, c. 118, § 1, p. 379.

23-118 Repealed. Laws 1977, LB 363, § 2.

23-119 Property tax; limitation.

It shall be the duty of the county board of each county to cause to be annually levied and collected taxes authorized by law for county purposes. The levy shall be subject to the limit established by section 77-3442.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 352; Laws 1909, c. 30, § 1, p. 210; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 75; Laws 1919, c. 66, § 1, p. 174; Laws 1919, c. 67, § 1, p. 178; Laws 1921, c. 144, § 1, p. 614; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 345; Laws 1939, c. 28, § 8, p. 147; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-119; Laws 1992, LB 719A, § 93; Laws 1996, LB 1114, § 36.

Cross References

Constitutional limitation, see Article VIII, section 5, Constitution of Nebraska.
Election to exceed limit, see sections 23-125 to 23-130.

1. Constitutionality
2. Duties
3. Mandamus to compel performance
4. Fiscal management

1. Constitutionality

LB 1003, Eighty-second Legislature, First Session (sections 23-2601 to 23-2612), does not amend this section and therefor does not violate Article III, section 14, Constitution of Nebraska. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

Amendatory act of 1889 was constitutional. Bonnell v. County of Nuckolls, 32 Neb. 189, 49 N.W. 225 (1891).

2. Duties

Duty to levy taxes implies power to contract to aid in carrying out duty imposed. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

Purchase by commissioners of electric refrigerator for county jail is proper exercise of power. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

3. Mandamus to compel performance

Mandamus to compel claim included in estimate is not an adjudication of its merits. State ex rel. Marquett Deweese & Hall v. Baushausen, 49 Neb. 558, 68 N.W. 950 (1896).

It is the duty of the county board to provide funds to pay judgment by levying a special tax. Jackson v. Board of Supervisors of Washington County, 34 Neb. 680, 52 N.W. 169 (1892).

Mandamus lies to compel board to include in estimate claims allowed. State ex rel. Wessel v. Weir, 33 Neb. 35, 49 N.W. 785 (1891).

Mandamus lies to include in estimate outstanding allowed claims. State ex rel. Clarke v. Cather, 22 Neb. 792, 36 N.W. 157 (1888).

Mandamus does not lie until board fails to do its duty. State ex rel. Miller v. Sovereign, 17 Neb. 173, 22 N.W. 353 (1885).

Mandamus lies to keep records according to law. State ex rel. Tutton v. Eberhardt, 14 Neb. 201, 15 N.W. 320 (1883).

Mandamus does not lie to compel action on claims where no estimate or levy is made. Board of County Comrs. of Lancaster County v. State ex rel. Miller, 13 Neb. 523, 14 N.W. 517 (1882).

4. Fiscal management

Maximum limit is fixed which a county may levy for county purposes. Chicago, B. & Q. R. R. Co. v. County of Box Butte, 166 Neb. 603, 90 N.W.2d 72 (1958).

''Ensuing year'', as used herein, refers to fiscal or calendar year. State ex rel. Polk County v. Marsh, 106 Neb. 760, 184 N.W. 901 (1921).

''Ensuing year'' refers to the fiscal or calendar year. Central Bridge & Constr. Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220 (1921).

Legislature has forbidden levy in excess of percentage of valuation. Cunningham v. Douglas County, 104 Neb. 405, 177 N.W. 742 (1920).

Warrant is not payable out of general fund of subsequent year, unless included in estimate of latter year, or unless sufficient remains to pay such warrant. State ex rel. Mann v. Clark, 79 Neb. 263, 112 N.W. 857 (1907).

Bridge fund levy is valid though not included in estimate. State ex rel. Newman v. Wise, 12 Neb. 313, 11 N.W. 329 (1882).

Taxes collected do not apply to old claims unless included in estimate. State ex rel. Hitchcock v. Harvey, 12 Neb. 31, 10 N.W. 406 (1881).

23-120 Provide buildings; tax; levy authorized.

(1) The county board shall acquire, purchase, construct, renovate, remodel, furnish, equip, add to, improve, or provide a suitable courthouse, jail, and other county buildings and a site or sites therefor and for such purposes borrow money and issue the bonds of the county to pay for the same. Agreements entered into under section 25-412.03 shall be deemed to be in compliance with this section. The board shall keep such buildings in repair and provide suitable

rooms and offices for the accommodation of the several courts of record, Nebraska Workers' Compensation Court or any judge thereof, Commissioner of Labor for the conduct and operation of the state free employment service, county board, county clerk, county treasurer, county sheriff, clerk of the district court, county surveyor, county agricultural agent, and county attorney if the county attorney holds his or her office at the county seat and shall provide suitable furniture and equipment therefor. All such courts which desire such accommodation shall be suitably housed in the courthouse.

(2) No levy exceeding (a) two million dollars in counties having in excess of two hundred fifty thousand inhabitants, (b) one million dollars in counties having in excess of one hundred thousand inhabitants and not in excess of two hundred fifty thousand inhabitants, (c) three hundred thousand dollars in counties having in excess of thirty thousand inhabitants and not in excess of one hundred thousand inhabitants, or (d) one hundred fifty thousand dollars in all other counties shall be made within a one-year period for any of the purposes specified in subsection (1) of this section without first submitting the proposition to a vote of the people of the county at a general election or a special election ordered by the board for that purpose and obtaining the approval of a majority of the legal voters thereon.

(3)(a) The county board of any county in this state may, when requested so to do by petition signed by at least a majority of the legal voters in the county based on the average vote of the two preceding general elections, make an annual levy of not to exceed seventeen and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in the county for any of the purposes specified in subsection (1) of this section.

(b) If a county on the day it first initiates a project for any of the purposes specified in subsection (1) of this section had no bonded indebtedness payable from its general fund levy, the county board may make an annual levy of not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property of the county for a project or projects for any of the purposes specified in subsection (1) of this section without the filing of a petition described in subdivision (3)(a) of this section. The county board shall designate the particular project for which such levy shall be expended, the period of years, which shall not exceed twenty, for which the tax will be levied for such project, and the number of cents of the levy for each year thereof. The county board may designate more than one project and levy a tax pursuant to this section for each such project, concurrently or consecutively, as the case may be, if the aggregate levy in each year and the duration of each levy will not exceed the limitations specified in this subsection. Each levy for a project which is authorized by this subdivision may be imposed for such duration specified by the county board notwithstanding the contemporaneous existence or subsequent imposition of any other levy or levies for another project or projects imposed pursuant to this subdivision and notwithstanding the subsequent issuance by the county of bonded indebtedness payable from its general fund levy.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 352; Laws 1889, c. 10, § 1, p. 83; Laws 1909, c. 20, § 1, p. 210; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 75; Laws 1919, c. 66, § 1, p. 175; Laws 1919, c. 67, § 1, p. 178; Laws 1921, c. 144, § 1, p. 615; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 345; Laws 1939, c. 28, § 8, p. 148; C.S.Supp.,1941, § 26-108;

R.S.1943, § 23-120; Laws 1951, c. 46, § 1, p. 162; Laws 1953, c. 287, § 38, p. 952; Laws 1967, c. 119, § 1, p. 380; Laws 1969, c. 147, § 1, p. 704; Laws 1971, LB 999, § 1; Laws 1975, LB 97, § 5; Laws 1979, LB 187, § 94; Laws 1984, LB 683, § 1; Laws 1986, LB 811, § 9; Laws 1988, LB 853, § 1; Laws 1992, LB 719A, § 94; Laws 1995, LB 286, § 1; Laws 1996, LB 1114, § 37; Laws 1999, LB 272, § 4; Laws 2009, LB294, § 1.

1. Courthouse
2. Jails
3. Courtrooms
4. Miscellaneous

1. Courthouse

Taxes levied for improvement fund could be used to build courthouse. Satterfield v. Britton, 163 Neb. 161, 78 N.W.2d 817 (1956).

Levy for all purposes, including levy for courthouse, cannot exceed constitutional limits. State ex rel. Shelley v. Board of County Commissioners of Frontier County, 156 Neb. 583, 57 N.W.2d 129 (1953).

Manner of submission of question of voting courthouse bonds was incorporated by reference as a part of county fair act. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

Special provision for submitting to voters proposition for bonds for county courthouse controls rather than general provisions; majority vote is sufficient. State ex rel. Polk County v. Marsh, 106 Neb. 760, 184 N.W. 901 (1921).

Request is invalidated by unauthorized condition designating courthouse site, where power to select same is vested in county board. Mylet v. Platte County, 103 Neb. 105, 170 N.W. 615 (1919).

2. Jails

It is one of the duties of the county board to provide a jail and keep it in repair. These duties do not devolve upon a sheriff. O'Dell v. Goodsell, 152 Neb. 290, 41 N.W.2d 123 (1950).

County board may lawfully direct a jail fund to be transferred to a special building fund, to be expended in construction of addition to courthouse, including a jail in such addition which will cost an amount equal to or greater than the amount of the jail fund in the treasury. Otoe County v. Kelly, 130 Neb. 869, 266 N.W. 765 (1936).

Board cannot build jail without vote of people authorizing same. State ex rel. Grady v. Lincoln County, 18 Neb. 283, 25 N.W. 91 (1885).

3. Courtrooms

Compensation courtroom provided by county is not the office of the compensation court, and leaving papers with an employee at such courtroom does not constitute a filing thereof. Dolner v. Peter Kiewit & Sons Co., 143 Neb. 384, 9 N.W.2d 483 (1943).

Provisions for housing municipal courts are covered by another statute. State ex rel. City of Omaha v. Board of County Commissioners of Douglas County, 109 Neb. 35, 189 N.W. 639 (1922).

County board is given the power to provide the necessary offices for use of county. Roberts v. Thompson, 82 Neb. 458, 118 N.W. 106 (1908).

4. Miscellaneous

LB 1003, Eighty-second Legislature, First Session (sections 23-2601 to 23-2612), does not amend this section and therefor does not violate Article III, section 14, Constitution of Nebraska. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

23-121 Office supplies; safes; duty to provide.

The county board shall provide and keep in repair, when the finances of the county will permit, suitable fireproof safes for the county clerk and county treasurer. It shall provide suitable books and stationery for the use of the county board, county clerk, county treasurer, county judge, sheriff, clerk of the district court, county school administrator, county surveyor, and county attorney.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 353; Laws 1909, c. 30, § 1, p. 211; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 76; Laws 1919, c. 66, § 1, p. 176; Laws 1919, c. 67, § 1, p. 179; Laws 1921, c. 144, § 1, p. 616; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 346; Laws 1939, c. 28, § 8, p. 149; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-121; Laws 1999, LB 272, § 5.

Board is not compelled to let printing contract to lowest bidder. State ex rel. Huse & Son v. Dixon County, 24 Neb. 106, 37 N.W. 936 (1888).

23-122 Counties having less than 150,000 inhabitants; proceedings; claims; employee job titles and salaries; publication; rate.

The county board of all counties having a population of less than one hundred fifty thousand inhabitants shall cause to be published, within ten working days after the close of each annual, regular, or special meeting of the board, a brief statement of the proceedings thereof which shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item, in one newspaper of general circulation published in the county and also its proceedings upon the equalization of the assessment roll. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicate the duties and functions of the position. No publication in a newspaper shall be required unless the same can be done at an expense not exceeding three-fourths of the legal rate for advertising notices.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 353; Laws 1909, c. 30, § 1, p. 211; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 76; Laws 1919, c. 66, § 1, p. 176; Laws 1919, c. 67, § 1, p. 179; Laws 1921, c. 144, § 1, p. 616; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 347; Laws 1939, c. 28, § 8, p. 149; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-122; Laws 1947, c. 63, § 1, p. 209; Laws 1953, c. 49, § 1, p. 176; Laws 1959, c. 81, § 1, p. 371; Laws 1974, LB 377, § 1; Laws 1985, LB 547, § 1; Laws 1990, LB 852, § 1; Laws 1996, LB 299, § 16.

Cross References

For legal rate for advertising notices, see section 33-141.

23-123 Repealed. Laws 1979, LB 80, § 116.

23-124 Bridges or buildings; damages; actions to recover.

In all cases where any bridge or any public building, the property of any county within this state, shall be injured or destroyed by any person or persons, either negligently, carelessly or willfully and maliciously, it shall be the duty of the county board, for and in the name of the county, to sue for and recover such damages as shall have occurred by reason thereof, and the money so recovered shall be paid into the treasury of the county, and by the treasurer be credited to the fund out of which such bridge or building was constructed or repaired. The county board shall also examine and approve and perform all duties required to be performed with respect to annual inventory statements prepared by other county officers and filed with the board, with respect to county personal property as provided in sections 23-346 to 23-350.

Source: Laws 1879, § 25, p. 363; Laws 1887, c. 27, § 1, p. 354; Laws 1909, c. 30, § 1, p. 212; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 77; Laws 1919, c. 66, § 1, p. 177; Laws 1919, c. 67, § 1, p. 180; Laws 1921, c. 144, § 1, p. 617; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 347; Laws 1939, c. 28, § 8, p. 150; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-124.

23-125 Additional tax; when authorized; limitation.

Whenever the county board deems it necessary to assess taxes the aggregate of which exceeds the rate of fifty cents on every one hundred dollars of the taxable value of all the taxable property in such county, the county board may,

by an order entered of record, set forth substantially the amount of such excess required and the purpose for which the same will be required, and if for the payment of interest, principal, or both upon bonds, such order shall in a general way designate the bonds and specify the number of years such excess must be levied and provide for the submission of the question of assessing the additional rate required to a vote of the people of the county at the next election for county officers after the adoption of the resolution or at a special election ordered by the county board for that purpose. If the proposition for such additional tax is carried, the same shall be paid in money and in no other manner. The additional tax shall not have a duration greater than five years, except that such five-year limitation shall not apply to any additional tax approved by the voters of the county for payment of principal and interest on bonded indebtedness. The additional tax is excluded from the limitation in section 77-3442 as provided by section 77-3444.

Source: Laws 1879, § 26, p. 363; Laws 1887, c. 28, § 2, p. 356; R.S.1913, § 955; C.S.1922, § 855; C.S.1929, § 26-109; R.S.1943, § 23-125; Laws 1951, c. 47, § 1, p. 164; Laws 1953, c. 287, § 39, p. 954; Laws 1992, LB 719A, § 95; Laws 1999, LB 141, § 3; Laws 2005, LB 263, § 1.

Authority to levy tax in excess of constitutional limit is conferred. State ex rel. Shelley v. Board of County Commissioners of Frontier County, 156 Neb. 583, 57 N.W.2d 129 (1953).

Purpose to authorize taxation beyond constitutional limitation must be stated in proposition. Chicago, B. & Q. R. R. Co. v. County of Gosper, 153 Neb. 805, 46 N.W.2d 147 (1951).

Section does apply to procedure for issuance of bonds under county fair act. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

Board is not authorized to issue refunding bonds under this section. State ex rel. Otoe County v. Babcock, 23 Neb. 802, 37 N.W. 645 (1888).

This section does not apply to bonds issued before 1879. Burlington & M. R. R. Co. v. Saunders County, 17 Neb. 318, 22 N.W. 560 (1885).

23-126 Special tax; submission to voters; notice.

The mode of submitting questions to the people for any purpose authorized by law shall be as follows: The whole question, including the sum desired to be raised, or the amount of tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published for four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted in at least one of the most public places in each election precinct in the county, and in all cases the notice shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted at each place of voting during the day of election.

Source: Laws 1879, § 27, p. 363; R.S.1913, § 956; C.S.1922, § 856; C.S.1929, § 26-110; R.S.1943, § 23-126.

In absence of controlling special provision, section controls borrowing of money by people of county. Lang v. Sanitary District of Norfolk, 160 Neb. 754, 71 N.W.2d 608 (1955).

Mode of submitting improvement of mail route roads is covered by this section. Chicago, B. & Q. R. R. Co. v. County of Gosper, 153 Neb. 805, 46 N.W.2d 147 (1951).

Requirement that notice be published four weeks and that it contain statement of amount desired to be levied is mandatory. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

General provision contained in above section as regards procedure for submitting question of issuing bonds does not apply to erection of courthouse. Majority vote is sufficient. State ex rel. Polk County v. Marsh, 106 Neb. 760, 184 N.W. 901 (1921).

Notice of election and time required to be published stated. State ex rel. Harris v. Hanson, 80 Neb. 738, 117 N.W. 412 (1908).

Publication of notice "during four weeks" means during full period. State v. Cherry County, 58 Neb. 734, 79 N.W. 825 (1899).

Question of issuing bonds under special act must be submitted to vote. In re House Roll No. 284, 31 Neb. 505, 48 N.W. 275 (1891).

Water and paving bonds of cities may be issued only after vote. State ex rel. City of Fremont v. Babcock, 25 Neb. 500, 41 N.W. 450 (1889).

23-127 Bonds or expenditures; submission to voters; tax proposal mandatory.

When the question submitted involves the borrowing or expenditure of money, or issuance of bonds, the proposition of the question must be accompanied by a provision to levy a tax annually for the payment of interest, if any thereon, and no vote adopting the question proposed shall be valid unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

Source: Laws 1879, § 28, p. 364; R.S.1913, § 957; C.S.1922, § 857; C.S.1929, § 26-111; R.S.1943, § 23-127.

Section must be strictly complied with. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928); Keith County v. Ogallala Power & Irr. Co., 64 Neb. 35, 89 N.W. 375 (1902).

Section is mandatory. State ex rel. Berry v. Babcock, 21 Neb. 599, 33 N.W. 247 (1887).

23-128 Special tax; submission to voters; election; laws applicable.

At the time specified in such notice a vote of the qualified electors shall be taken in each precinct at the place designated in such notice. The votes shall be received, and returns thereof made, and the same shall be canvassed by the same officers and in the same manner as required at each general election.

Source: Laws 1879, § 29, p. 364; R.S.1913, § 958; C.S.1922, § 858; C.S.1929, § 26-112; R.S.1943, § 23-128.

Cross References

For canvass and return of votes, see Chapter 32, article 10.

23-129 Special tax; approval by voters; number required; effect.

If it appears that a majority of the total number of votes cast upon the proposition at the election in which the proposition is submitted are in favor of the proposition, except the proposal for bonds as provided in section 23-3501, which require a majority of votes cast upon the proposition at the election at which the proposition is submitted, and it also appears that the requirements of the law have been fully complied with, the same shall be entered at large by the county board upon the book containing the record of its proceedings, and it shall then have power to levy and collect the special tax in the same manner as other county taxes are collected. Propositions thus acted upon cannot be rescinded by the county board.

Source: Laws 1879, § 30, p. 364; R.S.1913, § 959; C.S.1922, § 859; C.S.1929, § 26-113; R.S.1943, § 23-129; Laws 1949, c. 37, § 1, p. 129; Laws 1953, c. 50, § 1, p. 177; Laws 1961, c. 85, § 1, p. 296; Laws 1971, LB 534, § 25; Laws 1996, LB 1114, § 38.

Favorable vote of two-thirds of electors is required to issue bonds of sanitary drainage district. Lang v. Sanitary District of Norfolk, 160 Neb. 754, 71 N.W.2d 608 (1955).

Where levy in excess of constitutional limit is required, two-thirds vote in favor of bond issue is required. State ex rel. Shelley v. Board of County Commissioners of Frontier County, 156 Neb. 583, 57 N.W.2d 129 (1953).

Approval of levy for improvement of mail route road did not of itself authorize levy above constitutional limit. Chicago, B. & Q. R. R. Co. v. County of Gosper, 153 Neb. 805, 46 N.W.2d 147 (1951).

Provisions are not applicable to erection of courthouse. Majority vote is sufficient. State ex rel. Polk County v. Marsh, 106 Neb. 760, 184 N.W. 901 (1921).

Provisions are not applicable to special acts. State ex rel. Douglas County v. Cornell, 54 Neb. 72, 74 N.W. 432 (1898).

Section is applicable to submission of proposition to sell lands of county. Stenberg v. State ex rel. Keller, 50 Neb. 127, 69 N.W. 849 (1897); Stenberg v. State ex rel. Keller, 48 Neb. 299, 67 N.W. 190 (1896).

This section applies to courthouse bonds. Fenton v. Yule, 27 Neb. 758, 43 N.W. 1140 (1889).

Section means two-thirds of total vote cast. State ex rel. Mann v. Anderson, 26 Neb. 517, 42 N.W. 421 (1889).

Purchaser need look no further than record to determine compliance with requirements of the law. Valley County v. McLean, 79 F. 728 (8th Cir. 1897).

23-130 Special tax; fund.

Money raised by the county board pursuant to the provisions of sections 23-119 to 23-129 is specially appropriated and constituted a fund, distinct from all others, in the hands of the county treasurer, until the obligation assumed be discharged.

Source: Laws 1879, § 31, p. 364; R.S.1913, § 960; C.S.1922, § 860; C.S.1929, § 26-114; R.S.1943, § 23-130.

23-131 Warrants; how issued; claims of jurors.

(1) Upon the allowance of any claim or account against the county, the county board shall direct the county clerk to draw a warrant upon the county treasurer in payment thereof. The warrant shall be signed by the chairperson of the county board, except as hereinafter provided, and countersigned by the county clerk. Warrants may also be issued as provided in section 23-1303. All warrants payable to officers or employees of the county and claims or accounts allowed in full shall be delivered by the county clerk upon completion of entries so required in the warrant and distribution records of the officer in charge of such records. If a claim or account is not allowed in full, the warrant shall not be delivered to the party until the time for taking an appeal has expired and, if such appeal be taken, then not until the appeal has been determined.

(2) Jurors in the district courts shall, immediately upon the completion of their services, be entitled to a statement under seal from the clerk of the court wherein their services were rendered, certifying the amount due them for service as jurors in such court. Upon presentation by a juror of the certified statement to the county clerk, the county clerk shall immediately issue a warrant upon the county general fund for the amount due as shown by the certified statement, unless the juror has voluntarily waived such amount due for service as a juror. Before delivery of the warrant, the county clerk shall deduct therefrom the amount of any delinquent personal taxes then due from the juror, except that in a county having a county comptroller, the county board shall direct the comptroller to draw the warrant, and the warrant shall be executed as provided in this section, except that it shall be countersigned and issued by the comptroller. If the county clerk or the county comptroller is unable to issue the warrant to the jurors because of insufficient funds, a record of the date of presentation of the certified statements, together with the names and addresses of the jurors, shall be made by the county clerk or the county comptroller and the amount due thereon shall draw interest until there are sufficient funds upon which to draw and pay the warrants, whereupon each juror shall be immediately notified by registered letter, return receipt requested, that upon presentation of a certified statement for juror's fee, a warrant will be drawn therefor with interest, less whatever delinquent personal taxes are then due from him or her.

Source: Laws 1879, § 33, p. 365; Laws 1907, c. 33, § 1, p. 165; Laws 1911, c. 33, § 1, p. 197; R.S.1913, § 961; C.S.1922, § 861; C.S.1929, § 26-115; Laws 1937, c. 58, § 1, p. 234; C.S.Supp.,1941, § 26-115; R.S.1943, § 23-131; Laws 1961, c. 86, § 1, p. 297; Laws 1969, c. 51, § 81, p. 325; Laws 1971, LB 135, § 1; Laws 1973, LB 38, § 1; Laws 1986, LB 889, § 1; Laws 1999, LB 86, § 10; Laws 2012, LB865, § 1.
Effective date July 19, 2012.

Where landowner appealed order opening road, warrant for payment of damages could not properly be issued. Barrett v. Hand, 158 Neb. 273, 63 N.W.2d 185 (1954).

Delivery of warrant prior to lapse of time for taking taxpayer's appeal, in violation of statute, does not affect taxpayer's right to appeal. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

County treasurer cannot pay out public funds in unauthorized manner, take assignment of claim, be reimbursed by county, and thus indirectly liquidate claim against county. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Amendment of act in 1907 relating to county comptroller sustained as constitutional. Allan v. Kennard, 81 Neb. 289, 116 N.W. 63 (1908).

The allowance by the county board of a claim against the county, even though there is no money in the treasury at the time and no tax levy against which a warrant can be drawn, is irregular, but is not in excess of the power given to examine and settle all claims against the county. State ex rel. McDonald v. Farrington, 80 Neb. 628, 114 N.W. 1100 (1908).

Seal is not always essential if claim is otherwise properly authenticated. Dakota County v. Bartlett, 67 Neb. 62, 93 N.W. 192 (1903).

Account must be allowed before warrant is drawn. Wilson v. State ex rel. Plasters, 53 Neb. 113, 73 N.W. 456 (1897).

Treasurer should not register until after ten days. Means v. Webster, 23 Neb. 432, 36 N.W. 809 (1888).

23-132 Warrants; limitations upon issuance; exceptions.

The county board, after the adoption of the annual county budget statement, may issue warrants against the various funds provided for in such budget statement within the limitations prescribed in this section. It shall be unlawful for the county board of any county to issue any warrants on any fund or contract any indebtedness against any fund, prior to the annual levy made by the county board, in excess of fifty percent of the fund provided for in the adopted budget statement for the ensuing year unless there is money in the treasury to the credit of the proper fund for the payment of the same. After the tax levy has been made by the county board, it shall be unlawful for the county board of any county to (1) issue any warrants for any amount exceeding eighty-five percent of the aggregate of the amount provided by the budget as finally determined when the levy is made unless there is money in the treasury to the credit of the proper fund for the payment of the same or (2) issue any certificate of indebtedness in any form in payment of any account or claim, make any contracts for or incur any indebtedness in any form in payment of any account or claim, or make any contracts for or incur any indebtedness against the county in excess of the amount provided for and appropriated to any or all of the several funds by the annual county budget statement for the current year except as provided in section 13-511.

Source: Laws 1879, § 34, p. 365; Laws 1881, c. 43, § 1, p. 223; Laws 1883, c. 25, § 1, p. 186; R.S.1913, § 962; C.S.1922, § 862; C.S.1929, § 26-116; Laws 1939, c. 22, § 1, p. 121; C.S.Supp.,1941, § 26-116; R.S.1943, § 23-132; Laws 1969, c. 145, § 27, p. 688; Laws 1992, LB 1063, § 14; Laws 1992, Second Spec. Sess., LB 1, § 14.

1. Contracts
2. Warrants
3. Miscellaneous

1. Contracts

Purpose and intent of this section was not only that a contract in contravention thereof was unenforceable, but also any obligation of any other character should also be unenforceable. Warren v. County of Stanton, 147 Neb. 32, 22 N.W.2d 287 (1946).

County was liable for reasonable value of services of auditor making investigation. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

A county board by a contract made with an architect in 1921 cannot bind the county to pay commissions to the architect under a levy made in 1931. Berlinghof v. Lincoln County, 128 Neb. 28, 257 N.W. 373 (1934).

County treasurer undertaking to pay unallowed salary claims against county from sinking fund without warrant cannot take assignments of claims and thereafter recover thereon as valid obligation of county unless sinking funds are reimbursed prior thereto. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Contracts in excess of levy are void. Austin Mfg. Co. v. Colfax County, 67 Neb. 101, 93 N.W. 145 (1903).

After estimate is made, county may anticipate levy and contract indebtedness. Austin Mfg. Co. v. Brown County, 65 Neb. 60, 90 N.W. 929 (1902).

Board does not audit claims unless levy is made or money in treasury. Board of County Comrs. of Lancaster County v. State ex rel. Miller, 13 Neb. 523, 14 N.W. 517 (1882).

2. Warrants

In action against county commissioners to recover money alleged to have been unlawfully expended after the annual tax levy, it must be shown that warrants in excess of the levy for the current year were issued, and that there was no money in the proper fund for their payment. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

Warrants issued in violation of this section are absolutely void. Warren v. Stanton County, 145 Neb. 220, 15 N.W.2d 757 (1944).

County board cannot be compelled by mandamus to issue warrants for an amount exceeding eighty-five percent of the amount levied by tax for the current year except there be money in the proper fund for payment of same. State ex rel. Boxberger v. Burns, 132 Neb. 31, 270 N.W. 656 (1937).

In action against county commissioners to recover money alleged to have been unlawfully expended, it must be shown not only that warrants in excess of eighty-five percent of the amount levied by tax for the current year were issued, but also that there was no money in the proper fund for their payment. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

Warrants are not payable out of levy for subsequent years unless included in estimate, or until after all indebtedness for subsequent year is paid. Roberts v. Thompson, 82 Neb. 458, 118 N.W. 106 (1908).

Warrant issued in excess of statutory limitation is void. National Life Ins. Co. v. Dawes County, 67 Neb. 40, 93 N.W. 187 (1903).

Action on warrant does not accrue until there is money on hand in the fund on which the warrant is drawn, sufficient to pay same, or the authorities have had opportunity to provide for payment and have neglected to do so. Bacon v. Dawes County, 66 Neb. 191, 92 N.W. 313 (1902).

Warrant issued for a purpose not within jurisdiction of board is void. Walsh v. Rogers, 15 Neb. 309, 18 N.W. 135 (1884).

Warrants drawn and unpaid cannot be included in levy in excess of maximum. State ex rel. First Nat. Bank of Beatrice v. Gosper County, 14 Neb. 22, 14 N.W. 801 (1883).

Action held not barred by statute of limitations. State ex rel. Hitchcock v. Harvey, 12 Neb. 31, 10 N.W. 406 (1881); Brewer v. Otoe County, 1 Neb. 373 (1871).

Where warrant is void, there may be recovery of purchase price. Rogers v. Walsh, 12 Neb. 28, 10 N.W. 467 (1881).

Precinct indebtedness may be paid by warrants issued by county. State ex rel. Osborne v. Thorne, 9 Neb. 458, 4 N.W. 63 (1880).

Chairman is not required to sign warrant where there are no funds or levy. Patterson v. State ex rel. Dusenbery, 2 Neb. Unof. 765, 89 N.W. 989 (1902).

3. Miscellaneous

Party prosecuting claim against county is not required to plead and prove that there are sufficient funds in the treasury or taxes levied to authorize board to allow claim, as this is a matter of defense. Sheldon v. Gage County Soc. of Ag., 75 Neb. 485, 106 N.W. 474 (1906).

"Incurring indebtedness" defined. State ex rel. Wessel v. Weir, 33 Neb. 35, 49 N.W. 785 (1891).

23-133 Warrants; specify fund upon which drawn.

Each warrant issued shall specify the fund upon which it is drawn.

Source: Laws 1879, § 35, p. 365; R.S.1913, § 963; C.S.1922, § 863; C.S.1929, § 26-117; Laws 1939, c. 23, § 1, p. 123; C.S.Supp.,1941, § 26-117; R.S.1943, § 23-133; Laws 1963, c. 110, § 1, p. 438.

County treasurer is without authority to liquidate claims against county. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Purpose is to guard against overdrawing. National Life Ins. Co. v. Dawes County, 67 Neb. 40, 93 N.W. 187 (1903).

Officers are liable for warrant in excess of limit. Bacon v. Dawes County, 66 Neb. 191, 92 N.W. 313 (1902).

Warrant must show on face amount levied. Patterson v. State ex rel. Dusenbery, 2 Neb. Unof. 765, 89 N.W. 989 (1902).

23-134 Warrants; issuance in excess of limitations; liability of county board.

Any warrant drawn after eighty-five percent of the amount levied for the year is exhausted, and where there are no funds in the treasury for the payment of the same, shall not be chargeable as against the county, but may be collected by civil action from the county board making the same, or any member thereof.

Source: Laws 1879, § 36, p. 365; Laws 1881, c. 43, § 2, p. 223; R.S.1913, § 964; C.S.1922, § 864; C.S.1929, § 26-118; R.S.1943, § 23-134.

In action against county commissioners to recover money alleged to have been unlawfully expended after the annual tax levy, it must be shown that warrants in excess of the levy for the current year were issued, and that there was no money in the proper fund for their payment. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

No recovery quantum meruit can be had where there is a constitutional or statutory disqualification to make the contract or create the liability. Warren v. County of Stanton, 147 Neb. 32, 22 N.W.2d 287 (1946).

Where warrants on their face disclosed that amount issued exceeded levy authorized, recovery could not be had quantum meruit for the excess. Warren v. County of Stanton, 147 Neb. 32, 22 N.W.2d 287 (1946).

No action can be maintained against county upon warrants issued in violation of this section. Warren v. Stanton County, 145 Neb. 220, 15 N.W.2d 757 (1944).

Where warrants on their face show that amount of levy has been exceeded, county cannot be estopped to deny liability thereon. Warren v. Stanton County, 145 Neb. 220, 15 N.W.2d 757 (1944).

In action against county commissioners to recover money alleged to have been unlawfully expended, it must be shown not only that warrants in excess of eighty-five percent of the amount levied by tax for the current year were issued, but also that there

was no money in the proper fund for their payment. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

23-135 Claims; time of filing; approval of certain purchases; procedure; payment in advance of services; authorized; disallowance of claim; notice; appeal.

(1) All claims against a county shall be filed with the county clerk within ninety days from the time when any materials or labor, which form the basis of the claims, have been furnished or performed, except that (a) the fees of jurors serving in the district courts shall be paid as provided for in section 23-131, (b) payment may be approved as provided in subsection (2) of this section, and (c) payments may be made as provided in subsection (3) of this section. The county board may authorize procedures whereby claims may be filed electronically. The electronic filing shall include the following: Information with respect to the person filing the claim, the basis of the claim, the amount of the claim, the date of the claim, and any other information the county board may require. The county clerk shall keep records of each electronic claim. The records shall be accessible for public viewing in either electronic or printed format.

(2) A county board may by resolution, which resolution constitutes a claim pursuant to subsection (1) of section 23-1303, approve the payment for a particular piece of personal property prior to the receipt of such property by the county. A county board may by resolution approve the payment for a particular piece of real or personal property at the auction at which such property is sold if the resolution states the maximum amount which the county may bid for the particular piece of real or personal property.

(3) The county board may pay in advance of services being rendered if it is pursuant to a contract entered into with the state. Such contract shall meet the requirements of the Interlocal Cooperation Act.

(4) When the claim of any person against the county is disallowed in whole or in part by the county board, such person may appeal from the decision of the board to the district court of such county by causing a written notice to be served on the county clerk within twenty days after making such decision and executing a bond to such county, with sufficient security, to be approved by the county clerk, conditioned for the faithful prosecution of such appeal and the payment of all costs that shall be adjudged against the appellant. Upon the disallowance of any claim, the county clerk shall notify the claimant, his or her agent, or his or her attorney in writing of the fact within five days after such disallowance. Notice mailed within such time shall be deemed sufficient. In a county with a county comptroller, all claims shall be filed with the comptroller and not with the county clerk. The comptroller shall keep records of each electronic claim. The records shall be accessible for public viewing in either electronic or printed format. When an appeal is taken, it shall be the duty of the county clerk to immediately notify the county comptroller of such appeal.

Source: Laws 1879, § 37, p. 366; Laws 1885, c. 37, § 1, p. 211; Laws 1907, c. 33, § 1, p. 165; Laws 1911, c. 33, § 1, p. 198; R.S.1913, § 965; C.S.1922, § 865; C.S.1929, § 26-119; Laws 1935, c. 50, § 1, p. 176; C.S.Supp.,1941, § 26-119; R.S.1943, § 23-135; Laws 1957, c. 59, § 1, p. 276; Laws 1988, LB 828, § 1; Laws 1999, LB 86, § 11; Laws 2003, LB 331, § 1.

Cross References

For tort claims against county, see the Political Subdivisions Tort Claims Act, section 13-901.
Interlocal Cooperation Act, see section 13-801.

1. What are claims

Under the provisions of this section, the Legislature has expressly waived the counties' sovereign immunity with respect to contractual disputes. This section does not apply where the county is not required to make a determination of facts based upon the evidence. Hoiengs v. County of Adams, 245 Neb. 877, 516 N.W.2d 223 (1994).

Any action at law against a county for payment for services or labor which arises out of a contractual relationship is subject to the county claims statute, and any petition stating such a claim but failing to allege compliance with the statutory requirements of this section is demurrable. Jackson v. County of Douglas, 223 Neb. 65, 388 N.W.2d 64 (1986).

This section applies to all claims arising from or out of a contract, and a petition which is subject to its provisions is demurrable unless it shows on its face that the claim was filed with the county clerk within the statutory time. Zeller Sand & Gravel v. Butler Co., 222 Neb. 847, 388 N.W.2d 62 (1986).

Reimbursement of taxes paid for void tax sale certificate is a claim. Farm Investment Co. v. Scotts Bluff County, 125 Neb. 582, 251 N.W. 115 (1933).

Section refers only to claim originating in contract. Douglas County v. Taylor, 50 Neb. 535, 70 N.W. 27 (1897).

Section does not apply to demands arising upon torts. Hollingsworth v. Saunders County, 36 Neb. 141, 54 N.W. 79 (1893).

Costs of redeeming land, wrongfully sold for taxes, is proper claim. Fuller v. Colfax County, 33 Neb. 716, 50 N.W. 1044 (1892).

Taxes paid under protest may form basis of claim. Richardson County v. Hull, 28 Neb. 810, 45 N.W. 53 (1890).

Expense of redeeming land from wrongful sale for taxes is a claim against the county. Richardson County v. Hull, 24 Neb. 536, 39 N.W. 608 (1888).

2. Filing

The purpose of the filing requirement of this section is to provide the county with full information of the rights asserted against it and enable it to make proper investigation concerning the merits of claims against it and to settle those of merit without the expense of litigation. Olson v. County of Lancaster, 230 Neb. 904, 434 N.W.2d 307 (1989).

Requirement that claims shall be filed within ninety days applies only to claims ex contractu. McCollough v. County of Douglas, 150 Neb. 389, 34 N.W.2d 654 (1948).

Requirement for filing within ninety days includes all claims arising ex contractu whether express or implied. Coverdale & Colpitts v. Dakota County, 144 Neb. 166, 12 N.W.2d 764 (1944).

Provisions as to filing claim and time within which filing must be made are both mandatory. Verges v. County of Morrill, 143 Neb. 173, 9 N.W.2d 221 (1943).

Amendment of 1935 requiring claims for materials or labor to be filed within ninety days is constitutional. Consolidated Chemical Laboratories v. County of Cass, 141 Neb. 486, 3 N.W.2d 920 (1942).

Claims must be filed with county clerk, who is also clerk of board of supervisors. Formal pleadings are not necessary in presenting claims. Gibson v. Sherman County, 97 Neb. 79, 149 N.W. 107 (1914).

Action upon a claim for a tort or unliquidated damages may be commenced by filing a claim with the county board. Wherry v. Pawnee County, 88 Neb. 503, 129 N.W. 1013 (1911).

Claim is filed when delivered to clerk. State ex rel. Thomas Clock Co. v. Board of County Comrs. of Cass County, 60 Neb. 566, 83 N.W. 733 (1900).

Claim agreed upon by two counties need not be presented to board before suit. Perkins County v. Keith County, 58 Neb. 323, 78 N.W. 630 (1899).

Claim for an account against a county cannot be sued upon but must be filed. State ex rel. Clark v. Board of County Comrs. of Buffalo County, 6 Neb. 454 (1877).

All claims arising ex contractu against a county must be filed with the county clerk within 90 days. Shaul v. Brenner, 10 Neb. App. 732, 637 N.W.2d 362 (2001).

3. Auditing

This section regulates the exercise of the power granted to examine and settle all accounts against the county. State ex rel. McDonald v. Farrington, 80 Neb. 628, 114 N.W. 1100 (1908).

County board cannot audit claim previous to rendition of service. Wilson v. State ex rel. Plasters, 53 Neb. 113, 73 N.W. 456 (1897).

Board alone has power to audit claims. Gage County v. Hill, 52 Neb. 444, 72 N.W. 581 (1897); Cuming County v. Thiele, 48 Neb. 888, 67 N.W. 883 (1896); State ex rel. Franklin County v. Vincent, 46 Neb. 408, 65 N.W. 50 (1895); Heald v. Polk County, 46 Neb. 28, 64 N.W. 376 (1895); Sioux County v. Jameson, 43 Neb. 265, 61 N.W. 596 (1895).

Board cannot audit claim until warrant can be legally drawn therefor. Lancaster County v. State ex rel. Miller, 13 Neb. 523, 14 N.W. 517 (1882).

Board cannot be compelled by mandamus to audit an account, but may be compelled to act upon it in proper case. State ex rel. Hagberg v. Furnas County, 10 Neb. 361, 6 N.W. 434 (1880).

4. Allowance

County board has exclusive original jurisdiction of claim for attorney's fees for collection of taxes. Strawn v. County of Sarpy, 154 Neb. 844, 49 N.W.2d 677 (1951).

County board has exclusive original jurisdiction to examine and allow a claim against the county arising out of contract. County of Sarpy v. Gasper, 149 Neb. 51, 30 N.W.2d 67 (1947).

Failure to verify claim does not deprive county commissioners of jurisdiction to act on claims against county. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

Equitable relief may be granted where no notice is given claimants that claim for damages, arising out of location of road, is disallowed. Horner v. Eells, 114 Neb. 210, 206 N.W. 733 (1925).

County commissioners may pass on claim though same is not in statutory form. Bartlett v. Dahlsten, 104 Neb. 738, 178 N.W. 636 (1920).

Board acts ministerially where amount is fixed by law. Otoe County v. Stroble, 71 Neb. 415, 98 N.W. 1065 (1904); Crouch v. Pyle, 70 Neb. 60, 96 N.W. 1049 (1903); Mitchell v. Clay County, 69 Neb. 779, 96 N.W. 673 (1903).

Settlement with county officers is conclusive, except for fraud, mistake, or imposition. Wilcox v. Perkins County, 70 Neb. 139, 97 N.W. 236 (1903).

Board acts ministerially when adjusting accounts of county officer, but judicially when allowing claims. Chase County v. Kelly, 69 Neb. 426, 95 N.W. 865 (1903); Trites v. Hitchcock County, 53 Neb. 79, 73 N.W. 215 (1897).

Allowance of claim against ''advertising fund'' constitutes allowance against general fund. Dakota County v. Bartlett, 67 Neb. 62, 93 N.W. 192 (1903).

Board acts ministerially upon claim of officer for salary. Gallaher v. City of Lincoln, 63 Neb. 339, 88 N.W. 505 (1901).

Board acts judicially only on claims they have right to pass upon. Hayes County v. Christner, 61 Neb. 272, 85 N.W. 73 (1901).

Board has exclusive original jurisdiction. In absence of fraud, payment cannot be enjoined. Board of Comrs. of Dixon County v. Barnes, 13 Neb. 294, 13 N.W. 623 (1882); Brown v. Otoe County, 6 Neb. 111 (1877).

No formal judgment need be entered in passing on claims. Black v. Saunders County, 8 Neb. 440, 1 N.W. 144 (1879).

5. Appeal

An appeal from a final order of the county civil service commission is a petition in error, not an original breach of contract action against the county; an employee appealing the order is not required to file a claim with the county under this section. Pierce v. Douglas Cty. Civil Serv. Comm., 275 Neb. 722, 748 N.W.2d 660 (2008).

In order to perfect an appeal to the district court from a county board of equalization, all activities necessary, including the filing of notice of appeal, must be carried out within forty-five days of the adjournment of the board. Knoefler Honey Farms v. County of Sherman, 193 Neb. 95, 225 N.W.2d 855 (1975).

Method of giving notice of appeal in this particular case from freeholders' board, in a county where by law county clerk is ex officio clerk of the district court, held sufficient. Elson v. Harbert, 190 Neb. 437, 208 N.W.2d 703 (1973).

Manner of taking appeal under this section was made applicable to appeals from action of freeholders' board involving school districts. Reiber v. Harris, 179 Neb. 582, 139 N.W.2d 353 (1966).

This section governs manner of appeal from action of county superintendents in reorganization of school districts. Roy v. Bladen School Dist. No. R-31, 165 Neb. 170, 84 N.W.2d 119 (1957).

Before an appeal can be taken, claim must be disallowed, in whole or in part, by the county board. Verges v. County of Morrill, 143 Neb. 173, 9 N.W.2d 221 (1943).

Failure to verify petition on appeal is not a jurisdictional defect. Myers v. Hall County, 130 Neb. 13, 263 N.W. 486 (1935).

Form of notice of appeal is not prescribed by statute, and written notice which causes clerk to make up full transcript is sufficient. State v. Odd Fellows Hall Assn., 123 Neb. 440, 243 N.W. 616 (1932).

Claimant, party having direct interest, must serve notice within twenty days after the board's decision. Sommerville v. Board of Commissioners of Douglas County, 117 Neb. 507, 221 N.W. 433 (1928).

Appeal from board of county supervisors' order, allowing claim against county, brings action to district court for trial de novo. Campbell Co. v. Boyd County, 117 Neb. 186, 220 N.W. 240 (1928); Box Butte County v. Noleman, 54 Neb. 239, 74 N.W. 582 (1898).

Words ''recovery by suit'' include suits instituted by appeal from action of board on claim. Cass County v. Sarpy County, 83 Neb. 435, 119 N.W. 685 (1909).

Where funds can be distributed only upon warrants authorized by board, a claim therefor may be filed and an appeal taken. School Dist. No. 30 of Cuming County v. Cuming County, 81 Neb. 606, 116 N.W. 522 (1908).

Claimant is allowed twenty days from the order of disallowance in which to appeal. Lincoln Township v. Kearney County, 79 Neb. 299, 112 N.W. 608 (1907).

District court should not try appeal until issues are joined by pleadings. Loup County v. Wirsig, 73 Neb. 505, 103 N.W. 56 (1905); Haskell v. Valley County, 41 Neb. 234, 59 N.W. 680 (1894).

Appeal bonds. Requisites and validity. Hitchcock County v. Brown, 73 Neb. 254, 102 N.W. 456 (1905); Holmes v. State, 17 Neb. 73, 22 N.W. 232 (1885); Gage County v. Fulton, 16 Neb. 5, 19 N.W. 781 (1884); Stewart v. Carter, 4 Neb. 564 (1876).

Appeal vacates the decision of board and applies to whole claim. Dakota County v. Borowsky, 67 Neb. 317, 93 N.W. 686 (1903).

Service of notice of appeal is made when delivered to clerk. Jarvis v. Chase County, 64 Neb. 74, 89 N.W. 624 (1902).

Jurisdiction of district court is not original. Shepard v. Easterling, 61 Neb. 882, 86 N.W. 941 (1901).

On appeal to district court, the issues need not be the same as before the board. Sheibley v. Dixon County, 61 Neb. 409, 85 N.W. 399 (1901).

Appeal brings action to district court for trial de novo. Box Butte County v. Noleman, 54 Neb. 239, 74 N.W. 582 (1898).

Appeal to Supreme Court; issues to be decided. State ex rel. Thomas Clock Co. v. Board of County Comrs. of Cass County, 53 Neb. 767, 74 N.W. 254 (1898).

Appeal lies on claim for taxes paid under protest. Chicago, B. & Q. R. R. Co. v. Nemaha County, 50 Neb. 393, 69 N.W. 958 (1897).

Dismissal of appeal is final adjudication. State ex rel. Marquett, Deweese & Hall v. Baushausen, 49 Neb. 558, 68 N.W. 950 (1896).

Taxpayer may appeal. Board of Comrs. of Dixon County v. Barnes, 13 Neb. 294, 13 N.W. 623 (1882).

Appeal is dismissed unless bond is properly approved. Cedar County v. McKinney L. & Inv. Co., 1 Neb. Unof. 411, 95 N.W. 605 (1901).

6. Miscellaneous

Where the salary or compensation of a public officer is fixed by statute, no judicial action in that respect is required, and therefore this section is inapplicable. Heinzman v. County of Hall, 213 Neb. 268, 328 N.W.2d 764 (1983).

Where state and local purposes are commingled, the crucial issue turns upon a determination of whether the controlling purposes are state or local. Counties may be required to pay attorney's fees for one appointed to defend an indigent defendant. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

Claim by defendant county that this statute of limitation applied in this case was not decided because not raised by cross-appeal as required by rules of the Supreme Court. Hays v. County of Douglas, 192 Neb. 580, 223 N.W.2d 143 (1974).

Cited but not discussed. Clark v. Sweet, 183 Neb. 723, 163 N.W.2d 881 (1969).

Claim for attorney's fees in tax foreclosure was barred. Strawn v. County of Sarpy, 156 Neb. 797, 58 N.W.2d 168 (1953).

County treasurer is without authority to liquidate claims against county. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Under former law, this section governed the verification of claims against the county. Uttley v. Sievers, 100 Neb. 59, 158 N.W. 373 (1916).

Claim is not barred until four years from act authorizing county to pay same. Gibson v. Sherman County, 97 Neb. 79, 149 N.W. 107 (1914).

County attorney has authority to bind county for expenses of suit. Christner v. Hayes County, 79 Neb. 157, 112 N.W. 347 (1907).

Members of board are liable for warrant drawn without legal authority. Otoe County v. Stroble, 71 Neb. 415, 98 N.W. 1065 (1904).

23-135.01 Claims; false statements or representations; penalties.

Whoever shall file any claim against any county as provided in section 23-135, knowing said claim to contain any false statement or representation as to a material fact or whoever shall obtain or receive any money or any warrant for money from any county knowing that the claim therefor was based on a false statement or representation as to a material fact, if the amount claimed or money obtained or received, or if the face value of the warrant for money shall be one thousand dollars or more shall be guilty of a Class IV felony. If the amount is more than one hundred dollars but less than one thousand dollars, the person so offending shall be guilty of a Class II misdemeanor. If the amount is less than one hundred dollars, the person so offending shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 59, § 2, p. 277; Laws 1977, LB 40, § 84.

Mere negligence on part of claimant is not enough to sustain a conviction hereunder. State ex rel. Nebraska State Bar Assn. v. Holscher, 193 Neb. 729, 230 N.W.2d 75 (1975).

23-136 Claims; allowance; appeal by taxpayer; procedure.

Any taxpayer may likewise appeal from the allowance of any claim against the county by serving a like notice within ten days and giving a bond similar to that provided for in section 23-135.

Source: Laws 1879, § 38, p. 366; Laws 1885, c. 37, § 1, p. 212; R.S.1913, § 966; C.S.1922, § 866; C.S.1929, § 26-120; R.S.1943, § 23-136.

1. Right to appeal
2. Procedure
3. Effect on warrants
4. Miscellaneous

1. Right to appeal

This ten-day time is applicable to an appeal from the action of the county board of equalization in setting the nonresident high school tuition levy. In re 1981-82 County Tax Levy of Saunders County Bd. of Equal., 214 Neb. 624, 335 N.W.2d 299 (1983).

Taxpayers may appeal from order allowing claim against county, though board's action may be result of compromise of disputed claim. Campbell Co. v. Boyd County, 117 Neb. 186, 220 N.W. 240 (1928).

Taxpayer may appeal from allowance to agricultural society. Sheldon v. Gage County Soc. of Agri., 71 Neb. 411, 98 N.W. 1045 (1904).

2. Procedure

Taxpayer may appeal from allowance of claim by serving notice and giving bond. Reiber v. Harris, 179 Neb. 582, 139 N.W.2d 353 (1966).

Notice of appeal is jurisdictional and taxpayer must serve notice within ten days after board's decision. Sommerville v. Board of County Commissioners of Douglas County, 116 Neb. 282, 216 N.W. 815 (1927).

Judgment is an entirety; appeal puts all in issue. Dakota County v. Borowsky, 67 Neb. 317, 93 N.W. 686 (1903).

Right to appeal does not arise until claim has been allowed. Shepard v. Easterling, 61 Neb. 882, 86 N.W. 941 (1901).

Appeal may be dismissed if made in bad faith. Gage County v. King Bridge Co., 58 Neb. 827, 80 N.W. 56 (1899).

Remedy of appeal is exclusive. Taylor v. Davey, 55 Neb. 153, 75 N.W. 553 (1898).

Bona fide attempt to appeal will not be dismissed on account of informalities or omissions in bond. Rube v. Cedar County, 35 Neb. 896, 53 N.W. 1009 (1892); State ex rel. Hagberg v. County Comrs. of Furnas County, 10 Neb. 361, 6 N.W. 434 (1880).

3. Effect on warrants

Delivery of the warrant in suit prior to lapse of time for taking taxpayer's appeal, in violation of statute, does not affect taxpayer's right of appeal. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

Warrants should not be delivered or registered until time for appeal has expired. Means v. Webster, 23 Neb. 432, 36 N.W. 809 (1888).

4. Miscellaneous

Cited but not discussed. Clark v. Sweet, 183 Neb. 723, 163 N.W.2d 881 (1969).

Taxpayer, in absence of statutory authority, cannot collect attorney fees from county. Minshull v. Sherman County, 95 Neb. 835, 146 N.W. 1009 (1914).

23-137 Claims; appeal; record; trial; costs.

The clerk of the board, upon such appeal being taken and being paid the proper fees therefor, shall make out a complete transcript of the proceedings of

the board relating to the matter of its decision and shall deliver it to the clerk of the district court. The appeal shall be entered, tried, and determined and costs awarded in the manner provided in sections 25-1901 to 25-1937.

Source: Laws 1879, § 39, p. 366; R.S.1913, § 967; C.S.1922, § 867; C.S.1929, § 26-121; R.S.1943, § 23-137; Laws 1991, LB 1, § 2.

In order to perfect an appeal to the district court from a county board of equalization, all activities necessary, including the filing of notice of appeal, must be carried out within forty-five days of the adjournment of the board. Knoefler Honey Farms v. County of Sherman, 193 Neb. 95, 225 N.W.2d 855 (1975).

Cited but not discussed. Clark v. Sweet, 183 Neb. 723, 163 N.W.2d 881 (1969).

Procedure for appeal to the district court from action of a county board of equalization is that prescribed for appeal from justice of peace court to the district court. Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958).

Delivery of the warrant in suit prior to lapse of time for taking taxpayer's appeal, in violation of statute, does not affect taxpayer's right of appeal. Beadle v. Harmon, 130 Neb. 389, 265 N.W. 18 (1936).

District court acquires jurisdiction by appeal from county board's disallowance of claim where claimant gives notice of appeal, furnishes appeal bond and files transcript in office of clerk of district court within time, though the petition on appeal is not filed until a later date. Myers v. Hall County, 130 Neb. 13, 263 N.W. 486 (1935).

An appeal from an order of the county board allowing a claim brings the action to the district court for trial de novo. Campbell Co. v. Boyd County, 117 Neb. 186, 220 N.W. 240 (1928).

Duty to prepare properly and file transcript is primarily enjoined upon county clerk and not upon claimant. Bartlett v. Dahlsten, 104 Neb. 738, 178 N.W. 636 (1920).

District court should not try appeal until issues are joined by pleadings. Loup County v. Wirsig, 73 Neb. 505, 103 N.W. 56 (1905); Haskell v. Valley County, 41 Neb. 234, 59 N.W. 680 (1894).

23-138 Claims; reconsideration.

The provisions of sections 23-135 to 23-137 shall not be so construed as to prevent the county board from once reconsidering their action on any claim, upon due notice to parties interested.

Source: Laws 1879, § 40, p. 366; R.S.1913, § 968; C.S.1922, § 868; C.S.1929, § 26-122; R.S.1943, § 23-138.

A county board may reconsider once its action on the allowance of a claim, upon due notice to interested parties. State ex rel. Allen v. Miller, 138 Neb. 747, 295 N.W. 279 (1940).

Order of board establishing a ditch is not a judicial act and may be reconsidered where no rights have accrued thereunder. State ex rel. Sullivan v. Ross, 82 Neb. 414, 118 N.W. 85 (1908).

Order of disallowance, reconsidered, is not an adjudication of claim. Dean v. Saunders County, 55 Neb. 759, 76 N.W. 450 (1898).

Board may reconsider claim once on notice. Appearance of attorney is a waiver of notice. State ex rel. Marquett, Deweese & Hall v. Baushausen, 49 Neb. 558, 68 N.W. 950 (1896).

Board cannot review or reverse the act of a prior board. Stenberg v. State ex rel. Keller, 48 Neb. 299, 67 N.W. 190 (1896).

23-139 Special tax fund; reversion to general fund.

Whenever a tax is levied for the payment of a specific debt, the amount of such tax collected shall be kept as a separate fund in the county treasury, and expended only in the liquidation of such indebtedness; *Provided*, any surplus remaining in the treasury after full payment of such indebtedness shall be transferred to the general fund of the county.

Source: Laws 1879, § 41, p. 367; R.S.1913, § 969; C.S.1922, § 869; C.S.1929, § 26-123; R.S.1943, § 23-139.

Beneficial owners of taxes enforced by trustee for governmental subdivisions in tax foreclosure suit are entitled to a strict accounting of the avails of the tax foreclosure on the basis of the integrity of separate tax funds involved. Darnell v. City of Broken Bow, 139 Neb. 844, 299 N.W. 274 (1941).

23-140 Debts due county; settlement.

All persons chargeable with money belonging to any county shall render their accounts to and settle with the county board at the time required by law, and pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

Source: Laws 1879, § 43, p. 367; R.S.1913, § 970; C.S.1922, § 870; C.S.1929, § 26-124; R.S.1943, § 23-140.

A county clerk, chargeable with money belonging to the county by collection of fees, is required to render accounts and settle with county board as provided in this section. Hoctor v. State, 141 Neb. 329, 3 N.W.2d 558 (1942).

If the board allows greater compensation than that fixed by law, action is void. Maurer v. Gage County, 72 Neb. 441, 100 N.W. 1026 (1904).

Board acts ministerially in adjusting accounts of county officers. Smith v. Clay County, 71 Neb. 614, 99 N.W. 501 (1904); Mitchell v. Clay County, 69 Neb. 779, 96 N.W. 673 (1903), reversed on rehearing 69 Neb. 795, 98 N.W. 662 (1904).

Action of board allowing officer to retain fees illegally does not make members liable unless they acted corruptly, and such action does not protect officer. Otoe County v. Dorman, 71 Neb. 408, 98 N.W. 1064 (1904).

Mandamus is not proper action to litigate right to retain fees. Maurer v. State ex rel. Gage County, 71 Neb. 24, 98 N.W. 426 (1904).

23-141 Debts due county; action to recover.

If any person thus chargeable shall neglect or refuse to render true accounts or settle as aforesaid, the county board shall adjust the accounts of such delinquent, according to the best information they can obtain, and ascertain the balance due the county, and may institute the proper action to recover such balance so found due.

Source: Laws 1879, § 44, p. 367; R.S.1913, § 971; C.S.1922, § 871; C.S.1929, § 26-125; R.S.1943, § 23-141.

In making adjustment of accounts with county officers, county board acts ministerially, and county may recover from the officer any excess paid. Maurer v. Gage County, 72 Neb. 441, 100 N.W. 1026 (1904).

23-142 Debts due county; failure to pay; penalty; collection.

In such case, the delinquent shall not be entitled to any commission, and shall forfeit and pay to the county a penalty of twenty percent on the amount found due the county. Such penalty shall be added to the amount so found due, and it shall be the duty of the court in which any action is brought to recover the same, to include such penalty in any judgment which may be rendered against the delinquent in such action. Such penalty, when collected, shall be paid into the county treasury for the benefit of the school fund.

Source: Laws 1879, § 45, p. 367; R.S.1913, § 972; C.S.1922, § 872; C.S.1929, § 26-126; R.S.1943, § 23-142.

Board acts ministerially in adjusting officer's fees. Such adjustment is no bar to suit to recover fees unlawfully held. Maurer v. Gage County, 72 Neb. 441, 100 N.W. 1026 (1904); Sheibley v. Dixon County, 61 Neb. 409, 85 N.W. 399 (1901).

Finding by board is not conclusive. Heald v. Polk County, 46 Neb. 28, 64 N.W. 376 (1895).

23-143 Claims; delinquent personal taxes; deduction.

The county board of any county, whenever the account or claim of any person, firm or corporation against the county is presented to them for allowance, shall procure from the county treasurer a certificate of the amount of delinquent personal taxes assessed against the person, firm or corporation in whose favor the account or claim is presented, and shall deduct from any amount found due upon such account or claim the amount of such tax, and shall forthwith issue a warrant for the balance remaining, if any.

Source: Laws 1879, § 48, p. 368; R.S.1913, § 973; C.S.1922, § 873; C.S.1929, § 26-127; Laws 1933, c. 126, § 1, p. 501; C.S.Supp.,1941, § 26-127; R.S.1943, § 23-143.

County board must deduct from claim delinquent personal property taxes. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

Duty to deduct personal taxes rests upon county board, and cannot be delegated to another. State ex rel. Leidigh v. Johnson, 92 Neb. 736, 139 N.W. 669 (1913).

Board may deduct delinquent taxes from judgment on a claim. State ex rel. Hershiser v. Holt County, 89 Neb. 445, 131 N.W. 960 (1911).

23-144 Claims; delinquent personal taxes; deduction; treasurer's receipt.

For any such delinquent personal taxes so set off and deducted from any such account or claim, the board shall issue an order to the county treasurer directing him to draw from the same fund out of which said account or claim should have been paid the amount of said delinquent taxes so set off or deducted, and apply the same upon said delinquent personal taxes in satisfaction thereof; and the said treasurer shall, upon application, receipt therefor to the person whose taxes are so satisfied.

Source: Laws 1879, § 49, p. 368; R.S.1913, § 974; C.S.1922, § 874; C.S.1929, § 26-128; R.S.1943, § 23-144.

Amount deducted from claim should be applied on delinquent taxes. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

Board acts judicially and mandamus will not lie to compel them to make particular decision. State ex rel. Ensey v. Churchill, 37 Neb. 702, 56 N.W. 484 (1893).

23-145 Actions against county; delinquent personal tax; offset.

In any suit against a county, any delinquent personal taxes assessed against the person in whose favor the cause of action accrued, may be set off against any amount claimed in such action.

Source: Laws 1879, § 50, p. 369; R.S.1913, § 975; C.S.1922, § 875; C.S.1929, § 26-129; R.S.1943, § 23-145.

Section is permissive, and does not deprive board of power to deduct the amount of taxes from a judgment rendered in district court. State ex rel. Hershiser v. Holt County, 89 Neb. 445, 131 N.W. 960 (1911).

23-146 Repealed. Laws 1983, LB 370, § 28.

23-147 Repealed. Laws 1983, LB 370, § 28.

(c) COMMISSIONER SYSTEM

23-148 Commissioners; number; election; when authorized.

The county board of commissioners in all counties having not more than three hundred thousand inhabitants shall consist of three persons except as follows:

(1) The registered voters in any county containing not more than three hundred thousand inhabitants may vote at any general election as to whether their county board shall consist of three or five commissioners. Upon the completion of the canvass by the county canvassing board, the proposition shall be decided and, if the number of commissioners is increased from three to five commissioners, vacancies shall be deemed to exist and the procedures set forth in section 32-567 shall be instituted; and

(2) The registered voters of any county under township organization voting to discontinue township organization may also vote as to the number of county commissioners as provided in sections 23-292 to 23-299.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 225; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 77; Laws 1919, c. 69, § 1, p. 182; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-148; Laws 1945, c. 42, § 1, p. 202; Laws 1947, c. 62, § 2, p. 197; Laws 1951, c. 48, § 1, p. 165; Laws 1957, c. 60, § 1, p. 278; Laws 1979, LB 331, § 2; Laws 1985, LB 53, § 1; Laws 1991, LB 789, § 4; Laws 1994, LB 76, § 534; Laws 2008, LB269, § 1.

Cross References

For discontinuance of township organization, see sections 23-292 to 23-299.

Increase in number of commissioner districts requires redistricting. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

Removal of county commissioner out of district, where he continues to act, does not render void any order of county board in which he participates. Horton v. Howard, 97 Neb. 575, 150 N.W. 633 (1915).

Member of board must reside in district from which elected and office becomes vacant when he removes. State ex rel. Malloy v. Skirving, 19 Neb. 497, 27 N.W. 723 (1886).

23-149 Commissioners; number; petition to change; election; ballot; form.

(1) In counties not under township organization, a registered voter may file a petition or petitions for the submission of the question regarding the number of commissioners on the county board. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election.

(2) When the petition or petitions are filed in the office of the county clerk or election commissioner not less than seventy days before the date of any general election, the county clerk or election commissioner shall cause the question to be submitted to the voters of the county at such election and give notice thereof in the general notice of such election. The forms of ballots shall be respectively: For three commissioners and For five commissioners; and the same shall be printed upon the regular ballots cast for officers voted for at such election and shall be counted and canvassed in the same manner.

(3) If a majority of votes cast at the election favor the proposition For five commissioners, thereafter the county shall have five commissioners, and if a majority of the ballots cast at the election favor the proposition For three commissioners, thereafter the county shall have three commissioners.

Source: Laws 1891, c. 21, § 1, p. 226; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 18, § 1, p. 78; Laws 1919, c. 69, § 1, p. 183; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-149; Laws 1969, c. 259, § 1, p. 958; Laws 1973, LB 75, § 1; Laws 1991, LB 789, § 5; Laws 2008, LB269, § 2.

Results of election required change in number of commissioner districts. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

23-150 Commissioners; qualifications.

(1) The commissioners shall be registered voters and residents of their respective districts.

(2) Beginning in 1992, any person seeking nomination or election to the county board of commissioners in a county having more than three hundred thousand inhabitants shall have resided within the district he or she seeks to represent for at least six months immediately prior to the date on which he or she is required to file as a candidate for such office. No person shall be eligible to be appointed to the county board in such counties unless he or she has resided in the district he or she would represent for at least six months prior to assuming office.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 78; Laws 1919, c. 69, § 1, p. 183; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-150; Laws 1991, LB 789, § 6; Laws 1994, LB 76, § 535.

23-151 Commissioner system; districts; number; redistricting; duties of county board; commissioners; election.

(1) Each county under commissioner organization having not more than three hundred thousand inhabitants shall be divided into (a) three districts numbered respectively, one, two, and three, (b) five districts as provided for in sections 23-148 and 23-149 numbered respectively, one, two, three, four, and five, or (c) seven districts as provided for in sections 23-292 to 23-299 numbered respectively, one, two, three, four, five, six, and seven. Each county having more than three hundred thousand inhabitants shall be divided into seven districts numbered respectively, one, two, three, four, five, six, and seven.

(2) Such districts shall consist of two or more voting precincts comprising compact and contiguous territory and embracing a substantially equal division of the population of the county. District boundary lines shall not be subject to alteration more than once every ten years unless the county has a change in population requiring it to be redistricted pursuant to subdivision (3)(a) of this section or unless there is a vote to change from three to five districts as provided for in sections 23-148 and 23-149.

(3)(a) The establishment of district boundary lines pursuant to subsection (1) of this section shall be completed within one year after a county attains a population of more than three hundred thousand inhabitants. Beginning in 2001 and every ten years thereafter, the district boundary lines of any county having more than three hundred thousand inhabitants shall be redrawn, if necessary to maintain substantially equal district populations, by the date specified in section 32-553.

(b) The establishment of district boundary lines and any alteration thereof under this subsection shall be done by the county board. If the county board fails to do so by the applicable deadline, district boundaries shall be drawn by the election commissioner within six months after the deadline established for the drawing or redrawing of district boundaries by the county board. If the election commissioner fails to meet such deadline, the remedies established in subsection (3) of section 32-555 shall apply.

(4) The district boundary lines shall not be changed at any session of the county board unless all of the commissioners are present at such session.

(5) Commissioners shall be elected as provided in section 32-528. Elections shall be conducted as provided in the Election Act.

Source: Laws 1879, § 54, p. 369; Laws 1887, c. 29, § 2, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; Laws 1913, c. 150, § 1, p. 386; R.S.1913, § 979; Laws 1915, c. 19, § 1, p. 78; Laws 1917, c. 16, § 2, p. 78; Laws 1919, c. 69, § 2, p. 183; C.S.1922, § 879; C.S.1929, § 26-133; Laws 1931, c. 39, § 1, p. 132; C.S.Supp.,1941, § 26-133; R.S.1943, § 23-151; Laws 1947, c. 62, § 3, p. 198; Laws 1963, c. 111, § 1, p. 439; Laws 1969, c. 148, § 1, p. 706; Laws 1973, LB 552, § 2; Laws 1978, LB 632, § 3; Laws 1979, LB 331, § 3; Laws 1990, LB 81, § 1; Laws 1991, LB 789, § 7; Laws 1994, LB 76, § 536; Laws 2008, LB268, § 1; Laws 2008, LB269, § 3.

Cross References

Election Act, see section 32-101.

Term population means the whole number of people in the county. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

Act of 1915 was declared unconstitutional because of denial of equal voice in government by manner of formation of election districts. State ex rel. Harte v. Moorhead, 99 Neb. 527, 156 N.W. 1067 (1916).

Under 1913 amendment, county commissioners were elected in even-numbered years for a term of four years. De Larm v. Van Camp, 98 Neb. 857, 154 N.W. 717 (1915).

Change of terms of county commissioners to four years sustained as constitutional. State ex rel. Elsasser v. McDonald, 98 Neb. 59, 151 N.W. 931 (1915).

Commissioners elected prior to amendment of law hold office for four years and until their successors are elected and qualified. Best v. Moorhead, 96 Neb. 602, 148 N.W. 551 (1914), overruling State ex rel. Hensley v. Plasters, 74 Neb. 652, 105 N.W. 1092 (1905).

Under former law, term of county commissioner was three years. State ex rel. O'Gara v. Furley, 95 Neb. 161, 145 N.W. 343 (1914).

Board may change district boundaries, but terms of members are not altered by change. State ex rel. Connolly v. Haverly, 62 Neb. 767, 87 N.W. 959 (1901); State ex rel. Snell v. Westcott, 34 Neb. 84, 51 N.W. 599 (1892).

23-152 Repealed. Laws 1994, LB 76, § 615.

23-153 County board; joint sessions; mileage reimbursement.

(1) The county boards of two or more counties may meet and hold joint sessions for the transaction of joint county business, including, but not limited to, consolidation agreements pursuant to sections 22-401 to 22-416 and 22-418.

(2) When traveling to and from any county board meeting, members of the county board may be reimbursed for mileage at the rate provided in section 81-1176.

Source: Laws 1879, § 56, p. 370; R.S.1913, § 981; C.S.1922, § 881; C.S.1929, § 26-135; R.S.1943, § 23-153; Laws 1969, c. 149, § 1, p. 707; Laws 1984, LB 671, § 1; Laws 1996, LB 1011, § 7; Laws 1996, LB 1085, § 28; Laws 1997, LB 40, § 1; Laws 1997, LB 269, § 29.

23-154 County board; special sessions; notice.

The county clerk shall have the power to call special sessions when the interests of the county demand it, upon giving five days' notice of the time and object of calling the commissioners together, by posting up notices in three public places in the county, or by publication in a newspaper published therein.

Source: Laws 1879, § 57, p. 370; R.S.1913, § 982; C.S.1922, § 882; C.S.1929, § 26-136; R.S.1943, § 23-154.

Failure of clerk to publicize special meeting regarding initiative petition for hospital bond election did not invalidate resulting election. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

Failure of county clerk to make record of call for special meeting of county board does not invalidate call, where it was in fact made and due notice given, and record of county board shows meeting pursuant thereto. Brooks v. MacLean, 95 Neb. 16, 144 N.W. 1067 (1914).

Meetings are presumed to be regularly called. Green v. Lancaster County, 61 Neb. 473, 85 N.W. 439 (1901).

Board can transact business only at regular or called meeting. Morris v. Merrell, 44 Neb. 423, 62 N.W. 865 (1895).

Two members of the board, when agreed, may transact business, and may call an election. State ex rel. Harvey v. Piper, 17 Neb. 614, 24 N.W. 204 (1885).

Board is not confined to business mentioned in call. Commissioners of Kearney County v. Kent, 5 Neb. 227 (1876).

23-155 County board; transaction of business; majority required.

When two only of the commissioners of the board shall attend, and shall be divided on any question, the decision thereof shall be deferred until the next meeting of the board, and then the matter shall be decided by a majority of the board.

Source: Laws 1879, § 58, p. 370; R.S.1913, § 983; C.S.1922, § 883; C.S.1929, § 26-137; R.S.1943, § 23-155.

23-156 County board; chairman; term; duties.

The board of county commissioners at its regular meeting in January of each year shall elect a chairman of the board to serve for the ensuing year, and such chairman shall sign all warrants on the treasurer for money to be paid out of the county treasury.

Source: Laws 1879, § 59, p. 371; Laws 1887, c. 29, § 3, p. 360; Laws 1891, c. 21, § 2, p. 228; R.S.1913, § 984; Laws 1921, c. 154, § 1, p. 636; C.S.1922, § 884; C.S.1929, § 26-138; R.S.1943, § 23-156.

Warrants issued by county board are void if not for purpose within their jurisdiction. Oakley v. Valley County, 40 Neb. 900, 59 N.W. 368 (1894).

23-157 Repealed. Laws 1994, LB 76, § 615.

23-158 Repealed. Laws 1972, LB 1032, § 287.

(d) BORROWING MONEY TO PAY WARRANTS

23-159 Repealed. Laws 1963, c. 339, § 1.

23-160 Repealed. Laws 1963, c. 339, § 1.

23-160.01 Authority to borrow money; conditions.

The county board of each county in this state may borrow money in an amount sufficient to pay all valid, legally existing warrants of the county hereafter drawn on any county fund, which is legally entitled to participate in the annual allocation of revenue, but subject to the following limitations and requirements, to wit:

(1) Money shall not be borrowed in excess of the amount required to pay warrants issued and embraced within the limits imposed by law upon the right of a county to draw and issue warrants.

(2) The money so borrowed may not be used for any purpose other than payment of such warrants.

(3) The obligation thus incurred shall be evidenced by a negotiable promissory note or notes issued in the name of the county, signed by the chairman of the board and witnessed by the county clerk.

(4) The note may run for not more than one year, but shall be callable by the county at any time, and may draw interest at a rate to be determined by the county board.

(5) Such note or notes, before being negotiated, shall be presented to the county treasurer of the county and registered by said officer, and shall be payable out of the revenue collected, received and credited to such fund or funds.

Source: Laws 1943, c. 58, § 1, p. 232; R.S.1943, § 23-160.01; Laws 1976, LB 696, § 1.

23-160.02 Authority to use idle funds.

The county board of any county having more than two hundred thousand population may use money available in any fund of the county, if not presently or in the immediate future needed for the use of such fund, with which to take up, as an investment, legal valid warrants drawn upon any other fund of the county in which there may not be money presently available with which to pay

such warrant; but such taking up of a warrant shall constitute and be deemed a purchase thereof, as an investment of idle money in the fund for which acquired. Any warrant, so taken by way of investment, shall be registered to the credit of the fund from which the money was taken with which to acquire the warrant and shall not draw interest.

Source: Laws 1943, c. 58, § 2, p. 232; R.S.1943, § 23-160.02.

(e) COUNTY ZONING

23-161 Repealed. Laws 1967, c. 117, § 19.

23-162 Repealed. Laws 1967, c. 117, § 19.

23-163 Repealed. Laws 1967, c. 117, § 19.

23-164 Adjacent territory; regulation; hearings; notice by publication; written notice to chairperson of planning commission.

The county board shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, enforced, and, from time to time, amended, supplemented, or changed. No such regulation, restriction, or boundary shall become effective until after public hearings are held by both the county planning commission and county board in relation thereto, when its parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by the publication thereof in a legal newspaper of general circulation in such county one time at least ten days prior to such hearing. Notice of the time and place of such hearing shall also be given in writing to the chairperson of any municipal, county, or joint planning commission in the State of Nebraska which has jurisdiction over land within three miles of the property affected by such action. In the absence of a planning commission, such notice shall be given to the clerks of units of local government in the State of Nebraska having jurisdiction over land within three miles of the property affected by such action.

Source: Laws 1941, c. 131, § 12, p. 511; C.S.Supp.,1941, § 26-152; R.S.1943, § 23-164; Laws 1975, LB 410, § 25; Laws 1996, LB 299, § 17.

Timely objection by a litigant with standing may nullify a rezoning resolution by a county board that has not adopted a comprehensive development plan conformable to statute. Bagley v. County of Sarpy, 189 Neb. 393, 202 N.W.2d 841 (1972).

Board's only statutory power being to grant zoning variances resolution purporting to grant exemption construed to grant variance and action presumed correct until changed by court, and requirement of immediate compliance proper. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-165 Adjacent territory; regulation; amendments; objections; hearings.

Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or to those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendments shall not become effective except by the favorable vote of two-thirds majority of the county board. The

provisions of section 23-164 relative to public hearings and official notice shall apply equally to all changes or amendments.

Source: Laws 1941, c. 131, § 13, p. 511; C.S.Supp.,1941, § 26-153; R.S.1943, § 23-165; Laws 2005, LB 161, § 11.

Timely objection by a litigant with standing may nullify a rezoning resolution by a county board that has not adopted a comprehensive development plan conformable to statute. Bagley v. County of Sarpy, 189 Neb. 393, 202 N.W.2d 841 (1972).

Board's only statutory power being to grant zoning variances resolution purporting to grant exemption construed to grant variance and action presumed correct until changed by court, and requirement of immediate compliance proper. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-166 Repealed. Laws 1967, c. 117, § 19.

23-167 Repealed. Laws 1967, c. 117, § 19.

23-168 Repealed. Laws 1975, LB 410, § 34.

23-168.01 Board of adjustment; members; appointment; qualifications; term; vacancy; rules and regulations; records; open to public.

(1) The county board shall appoint a board of adjustment which shall consist of five members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and be removable for cause by the appointing authority upon written charges and after public hearing. No member of the board of adjustment shall be a member of the county board of commissioners or county board of supervisors. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be appointed by the county board from the membership of the county planning commission, and the loss of membership on the planning commission by such member shall also result in his immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to 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. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed with the county clerk and shall be a public record.

Source: Laws 1967, c. 117, § 8, p. 372; Laws 1975, LB 410, § 26; Laws 1978, LB 186, § 9.

The specific statutory procedure for appealing local administrative decisions to a board of adjustment foreclosed a landowner's ability to appeal by a petition in error the county board of supervisors' denial of a conditional use permit. Mogensen v. Board of Supervisors, 268 Neb. 26, 679 N.W.2d 413 (2004).

23-168.02 Board of adjustment; decision; appeal.

(1) An appeal to the board of adjustment may be taken by any person or persons aggrieved, or by any officer, department, board, or bureau of the county affected by any decision of an administrative officer or planning com-

mission. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the board a notice of appeal specifying the grounds thereof. The officer or agency from whom the appeal is taken shall transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(2) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear at the hearing in person, by agent, or by attorney.

Source: Laws 1967, c. 117, § 9, p. 372.

The specific statutory procedure for appealing local administrative decisions to a board of adjustment foreclosed a landowner's ability to appeal by a petition in error the county board of supervisors' denial of a conditional use permit. Mogensen v. Board of Supervisors, 268 Neb. 26, 679 N.W.2d 413 (2004).

One who enjoys benefit of zoning variance is entitled to notice and hearing before change. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-168.03 Board of adjustment; powers; variance; when permitted; power to reverse or modify action.

(1) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the county board, have only the following powers:

(a) To hear and decide appeals when it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures. The board of adjustment shall have no authority to hear and decide appeals regarding conditional use permits or special exceptions which may be granted pursuant to section 23-114.01;

(b) To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any map; and

(c) When by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the adoption of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation 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 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning regulations, but no such variance shall be authorized unless the board of adjustment finds that: (i) The strict application of the resolution would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (iii) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (iv) the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

(2) No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this section, the board may, in conformity with the provisions of 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, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as shall be proper, and to that end shall have the power of the officer or agency from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

Source: Laws 1967, c. 117, § 10, p. 373; Laws 1969, c. 114, § 2, p. 527; Laws 1975, LB 410, § 27; Laws 1978, LB 186, § 10; Laws 2004, LB 973, § 4.

Cross References

For authorization to act as a zoning board of adjustment for a municipality, see section 19-912.01.

The specific statutory procedure for appealing local administrative decisions to a board of adjustment foreclosed a landowner's ability to appeal by a petition in error the county board of supervisors' denial of a conditional use permit. Mogensen v. Board of Supervisors, 268 Neb. 26, 679 N.W.2d 413 (2004).

A board of supervisors is an administrative agency within the meaning of this section. Niewohner v. Antelope Cty. Bd. of Adjustment, 12 Neb. App. 132, 668 N.W.2d 258 (2003).

Board's only statutory power being to grant zoning variances resolution purporting to grant exemption construed to grant variance and action presumed correct until changed by court, and requirement of immediate compliance proper. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-168.04 Board of adjustment; decision; appeal; procedure.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any officer, department, board, or bureau of the county, may present to the district court for the county a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within fifteen days after the filing of the decision in the office of the board of adjustment. Upon the filing of such petition a summons shall be issued and be served upon the board of adjustment together with a copy of the petition, and return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of the summons, the county board shall file an answer to the petition which shall admit or deny the substantial averments of the petition and matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing the answer, the court shall proceed to hear and determine the cause without delay and shall render judgment according to law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Appeal to the district court shall not

stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

Source: Laws 1967, c. 117, § 11, p. 374.

Verification of a petition under this section is a purely procedural direction which is formal but does not go to the essence of the law with regard to requirements for jurisdiction of the courts. Citizens Opposing Indus. Livestock v. Jefferson Cty., 269 Neb. 725, 695 N.W.2d 435 (2005).

The specific statutory procedure for appealing local administrative decisions to a board of adjustment foreclosed a landowner's ability to appeal by a petition in error the county board of supervisors' denial of a conditional use permit. Mogensen v. Board of Supervisors, 268 Neb. 26, 679 N.W.2d 413 (2004).

Board's only statutory power being to grant zoning variances resolution purporting to grant exemption construed to grant variance and action presumed correct until changed by court, and requirement of immediate compliance proper. Adler v. Lynch, 415 F.Supp. 705 (D. Neb. 1976).

23-169 Repealed. Laws 1967, c. 117, § 19.

23-170 Adjacent territory; regulation; statutes and ordinances; highest standard required by either to govern.

Whenever the regulations made under authority of sections 23-164 to 23-174 require a greater width or size of yard, courts or other open spaces, or require a lower height of building or a less number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of said sections shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open space or require a lower height of building or a less number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such statute or local ordinance or regulations shall govern.

Source: Laws 1941, c. 131, § 18, p. 514; C.S.Supp.,1941, § 26-158; R.S.1943, § 23-170.

23-171 Repealed. Laws 1975, LB 410, § 34.

23-172 Standard codes; adoption; copy on file; area where applicable.

The county board may adopt by resolution, which shall have the force and effect of law, the conditions, provisions, limitations, and terms of a building code, a plumbing code, an electrical code, a fire prevention code, or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing, or using of any building, structure, automobile trailer, house trailer, or cabin trailer. For this purpose, the county board may adopt any standard code which contains rules or regulations printed as a code in book or pamphlet form by reference to such code or portions thereof without setting forth in the resolution the conditions, provisions, limitations, or terms of such code. When such code or any such standard code or portion thereof is incorporated by reference into any resolution, it shall have the same force and effect as though it has been spread at large in such resolution without further or additional publication. One copy of such code or such standard code or portion thereof shall be filed for use and examination by the public in the office of the clerk of such county prior to its adoption. The adoption of any standard code by reference shall be construed to

incorporate such amendments thereof as may be made if the copy of such standard code is kept current in the office of the clerk of the county. If there is no county resolution adopting a plumbing code in effect for such county, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute shall apply to all buildings. Any code adopted and approved by the county board, as provided in this section, or if there is no county resolution adopting a plumbing code in effect for such county, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute, and the building permit requirements or occupancy permit requirements imposed by such code or by sections 23-114.04 and 23-114.05, shall apply to all of the county except within the limits of any incorporated city or village and except within an unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction. Nothing in this section shall be interpreted as creating an obligation for the county to inspect plumbing work done within its jurisdiction to determine compliance with the plumbing code.

Source: Laws 1941, c. 131, § 19, p. 515; C.S.Supp.,1941, § 26-159; R.S.1943, § 23-172; Laws 1961, c. 87, § 6, p. 302; Laws 1963, c. 57, § 5, p. 241; Laws 1967, c. 117, § 12, p. 375; Laws 1975, LB 410, § 28; Laws 1993, LB 35, § 1; Laws 1996, LB 1304, § 3; Laws 2012, LB42, § 3.
Effective date July 19, 2012.

23-173 Zoning resolutions; adoption; publication; printing; effect.

The county board may also pass, approve and publish any other resolution governing and controlling zoning after the zoning district is created and established as provided in section 23-114.03, and when such resolutions are passed and approved, they shall be published as provided in section 23-172. If any resolution is published by printing the same in book or pamphlet form, purporting to be published by authority of the county board, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such resolution, as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Source: Laws 1941, c. 131, § 19, p. 515; C.S.Supp.,1941, § 26-159; R.S.1943, § 23-173; Laws 1967, c. 117, § 13, p. 376; Laws 1975, LB 410, § 29.

23-173.01 Nonconforming use; termination; restoration.

The use of a building, structure, or land, existing and lawful at the time of the enactment of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with the provisions of such regulation or amendment, and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The county board may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution. The county board may, in any zoning regulation, provide for the termination of nonconforming

uses, either by specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance, except that in the case of a legally erected outdoor advertising sign, device, or display, no amortization schedule shall be used.

Source: Laws 1967, c. 117, § 14, p. 376; Laws 1981, LB 241, § 4.

23-174 Violations; penalty.

If any person shall violate any of the provisions of sections 23-164 to 23-174 for which penalty is not elsewhere provided therein, or if any person shall violate any of the provisions of any resolution adopted under the power and authority granted to county boards under section 23-174.01, 23-174.02, 23-174.03, or 23-174.10 or under sections 23-114, 23-172, and 23-173, such person shall be punished upon conviction in the same manner as for violation of section 23-114.05 in accordance with the penalties prescribed therein.

Source: Laws 1941, c. 131, § 19, p. 516; C.S.Supp.,1941, § 26-159; R.S.1943, § 23-174; Laws 1961, c. 87, § 7, p. 303; Laws 1967, c. 117, § 15, p. 377; Laws 1969, c. 151, § 1, p. 710.

23-174.01 County zoning; cities of the primary class; grant of authority.

Every county in which is located a city of the primary class shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village and over which such city or village is exercising such jurisdiction, to regulate and restrict (1) the location, height, bulk, and size of buildings and other structures, (2) the percentage of a lot that may be occupied, (3) the size of yards, courts, and other open spaces, (4) the density of population, and (5) the locations and uses of buildings, structures, and land for trade, industry, business, residences and other purposes. Such county shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village and over which such city or village is exercising such jurisdiction, to divide the county zoned into districts of such number, shape, and area as may be best suited to carry out the purposes of this section, and to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of buildings, structures, or land within the total area zoned or within districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, but regulations applicable to one district may differ from those applicable to other districts. Such zoning regulations shall be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned in accordance with a comprehensive plan. The provisions of section 23-114 which relate to manufactured homes shall apply to such zoning regulations. Such zoning regulations may include reasonable provisions regarding nonconforming uses and their gradual elimination.

Source: Laws 1961, c. 87, § 1, p. 299; Laws 1978, LB 186, § 11; Laws 1994, LB 511, § 5.

23-174.02 Zoning resolution; regulations.

The zoning resolution shall be adopted and amended, and regulations made and promulgated not inconsistent therewith, in the manner provided in sections 23-114, 23-114.03, 23-164, and 23-165.

Source: Laws 1961, c. 87, § 2, p. 300; Laws 1967, c. 117, § 16, p. 377.

23-174.03 County zoning; cities of the primary class; subdivision and platting into lots and streets; approval requirements; definition of terms.

(1) No owner of any real estate located in a county in which is located a city of the primary class, except within the area over which subdivision jurisdiction has been granted to any city or village, and such city or village is exercising such jurisdiction, shall be permitted to subdivide, plat, or lay out such real estate in building lots and streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof by the county board of such county. In lieu of approval by the county board, the county board may designate specific types of plats which may be approved by the county planning commission or the planning director. No plat or subdivision of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same is approved by the county board, the county planning commission, or the planning director of such county. Such a county shall have authority within the area described in this subsection (a) to regulate the subdivision of land for the purpose, whether immediate or future, of transfer of ownership or building development, except that the county shall have no power to regulate subdivision in those instances where the smallest parcel created is more than ten acres in area, (b) to prescribe standards for laying out subdivisions in harmony with the comprehensive plan, (c) to require the installation of improvements by the owner or by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements, and (d) to require the dedication of land for public purposes.

(2) For purposes of this section, subdivision means the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in area.

(3) Subdivision plats shall be approved by the county planning commission on recommendation by the planning director and county engineer and may be submitted to the county board for its consideration and action. The county board may withhold approval of a plat until the county engineer has certified that the improvements required by the regulations have been satisfactorily installed or until a sufficient bond guaranteeing installation of the improvements has been posted with the county or until public improvement districts are created. The county board may provide procedures in land subdivision regulation for appeal by any person aggrieved by any action of the county planning commission or planning director.

Source: Laws 1961, c. 87, § 8, p. 303; Laws 1978, LB 186, § 12; Laws 1980, LB 61, § 3; Laws 2005, LB 9, § 1.

23-174.04 County zoning; cities of the primary class; planning department; planning director.

In every county in which is located a city of the primary class, there shall be created a planning department, which shall consist of a county planning commission, a planning director, and such subordinate employees as are required to administer the planning program set forth in sections 23-174.01 to 23-174.09. The planning director shall serve as the secretary of the county planning commission and as the administrative head of the planning department.

Source: Laws 1961, c. 87, § 9, p. 304.

23-174.05 County; comprehensive plan; requirements; contents.

The general plan for the improvement and development of the county outside of the jurisdiction of any city or village shall be known as the comprehensive plan. This plan for governmental policies and action shall include the pattern and intensity of land use, the provision of public facilities including transportation and other governmental services, the effective development and utilization of human and natural resources, the identification and evaluation of area needs including housing, employment, education, and health and the formulation of programs to meet such needs, surveys of structures and sites determined to be of historic, cultural, archaeological, or architectural significance or value, long-range physical and fiscal plans for governmental policies and action, and coordination of all related plans and activities of the state and local governments and agencies concerned. The comprehensive plan, with the accompanying maps, plats, charts, and descriptive and explanatory materials, shall show the recommendations concerning the physical development pattern of such area, taking into account the availability of and need for conserving land and other irreplaceable natural resources, the preservation of sites of historic, cultural, archaeological, and architectural significance or value, the projected changes in size, movement, and composition of population, the necessity for expanding housing and employment opportunities, and the need for methods of achieving modernization, simplification, and improvements in governmental structures, systems, and procedures related to growth objectives. The comprehensive plan shall, among other things, show:

(1) The general location, character, and extent of existing and proposed streets and highways and railroad, air, and other transportation routes and terminals;

(2) Existing and proposed public ways, parks, grounds, and open spaces;

(3) The general location, character, and extent of schools, school grounds, and other educational facilities and properties;

(4) The general location and extent of existing and proposed public utility installations;

(5) The general location and extent of community development and housing activities; and

(6) The general location of existing and proposed public buildings, structures, and facilities.

The comprehensive plan of the county shall include a land-use plan showing the proposed general distribution and general location of business and industry, residential areas, utilities, and recreational, educational, and other categories of

public and private land uses. The land-use plan shall also show the recommended standards of population density based upon population estimates and providing for activities for which space should be supplied within the area covered by the plan. The comprehensive plan shall include and show proposals for acquisition, extension, widening, narrowing, removal, vacation, abandonment, sale, and other actions affecting public improvements.

Source: Laws 1961, c. 87, § 10, p. 304; Laws 1975, LB 111, § 3.

23-174.06 Planning director; prepare comprehensive plan; review by county planning commission; county board; adopt or modify plan.

The planning director shall be responsible for preparing a comprehensive plan of the county and amendments and extensions thereto, and for submitting such plans and modifications to the county planning commission for its consideration and action. The commission shall review such plans and modifications, and those which the county board may suggest, and, after holding at least one public hearing on each proposed action, shall provide its recommendations to the county board of commissioners within a reasonable period of time. The county board of commissioners shall review the recommendations of the planning commission and, after at least one public hearing on each proposed action, shall adopt or reject such plans in whole or in part and with or without modifications.

Source: Laws 1961, c. 87, § 11, p. 305; Laws 1975, LB 111, § 4.

23-174.07 Change to comprehensive plan; prior consideration by planning department; report.

No resolution which deals with the acquisition, extension, widening, narrowing, removal, vacation, abandonment, sale or other change relating to any public way, transportation, route, ground, open space, building, or structure, or other public improvement of a character included in the comprehensive plan, the subject matter of which has not been reported on by the planning department under the provisions of section 23-174.06, shall be adopted by the county board until such resolution shall first have been referred to the planning department and that department has reported regarding conformity of the proposed action with the comprehensive plan. The department's report shall specify the character and degree of conformity or nonconformity of each proposed action to the comprehensive plan, and a report in writing thereon shall be rendered to the county board within thirty days after the date of receipt of the referral unless a longer period is granted by the county board. If the department fails to render any such report within the allotted time, the approval of the department may be presumed by the county board.

Source: Laws 1961, c. 87, § 12, p. 305.

23-174.08 Zoning resolution; public hearing; notice; approval.

The planning director shall be responsible for the preparation of the zoning resolution and for submitting it to the county planning commission for its consideration and action. The commission shall review the proposed zoning resolution and, after holding at least one public hearing on each proposed action, shall approve or reject it in whole or in part and with or without modifications. When approved by the commission, the proposed resolution shall be submitted to the county board for its consideration, and the zoning

resolution shall become effective when adopted by the county board. The county board of such county may amend, supplement, or otherwise modify the zoning resolution. Any such proposed amendment, supplement, or modification shall first be submitted to the planning commission for its recommendations and report. The planning commission shall hold at least one public hearing with relation thereto, before submitting its recommendations and report. After the recommendations and report of the planning commission have been filed, the county board shall, before enacting any proposed amendment, supplement, or modification, hold a public hearing in relation thereto. Notice of the time and place of hearings above referred to shall be given by publication thereof in a paper of general circulation in the county at least one time at least five days before the date of hearing. Notice with reference to proposed amendments, supplements, or modifications of the zoning resolution shall also be posted in a conspicuous place on or near the property upon which the action is pending. Such notice shall be easily visible from the street or highway, and shall be posted at least five days before the hearing.

Source: Laws 1961, c. 87, § 13, p. 306.

23-174.09 Board of zoning appeals; powers; duties.

There may be created a board of zoning appeals comprised of five members appointed by the county board, which board shall have power to hear and decide appeals from any decision or order of the building inspector or other officers charged with the enforcement of the zoning resolution in those cases where it is alleged that such decision or order is in error. The board shall also have power to decide upon petitions for variances and, subject to such standards and procedures as the county board may provide in the zoning resolution, to vary the strict application of the height, area, parking, or density requirements to the extent necessary to permit the owner a reasonable use of his land in those specific instances where there are peculiar, exceptional, and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned. The board may also have such related duties as the county board may assign. The county board may provide for appeals from a decision of the board.

Source: Laws 1961, c. 87, § 14, p. 307.

Cross References

For authorization to act for a municipality, see section 19-912.01.

23-174.10 Public health, safety, and welfare regulations; county board may adopt.

In any county which has adopted county zoning regulations, the county board, by resolution, may make regulations as may be necessary or expedient to promote the public health, safety, and welfare, including regulations to prevent the introduction or spread of contagious, infectious, or malignant diseases; to provide rules for the prevention, abatement, and removal of nuisances, including the pollution of air and water; and make and prescribe regulations for the construction, location, and keeping in order of all slaughterhouses, stockyards, warehouses, sheds, stables, barns, commercial feedlots, dairies, junk and salvage yards, or other places where offensive matter is kept, or is likely to accumulate. Such regulations shall be not inconsistent with the general laws of

the state and shall apply to all of the county except within the limits of any incorporated city or village, and except within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Source: Laws 1963, c. 105, § 1, p. 430; Laws 1969, c. 151, § 2, p. 710; Laws 1978, LB 807, § 1.

(f) EMPLOYEES' LIABILITY INSURANCE

23-175 County board; county vehicles; liability insurance procurement; effect; applicability.

When a county board employs a person and places in his or her charge and under his or her supervision trucks, automobiles, snowplows, road graders, or other vehicles and authorizes such employee to use them upon a public road, the county board shall purchase liability insurance to protect any such employee against loss occasioned by any acts of negligence resulting from the use of such vehicles or equipment. The insurance shall be purchased by public bidding at least once every three years in a limit of not less than one hundred thousand dollars to cover the bodily injury or injuries of one person and, subject to the limitation to one person, one million dollars to cover bodily injury or injuries to more than one person in the same accident and one hundred thousand dollars to cover property damage. The insurance policy may, in the discretion of the county board, contain a deductible provision for up to one thousand dollars of any claim in which event the county shall be considered a self-insurer for that amount. The insurance and bidding requirements of this section shall not apply to a county which is a member of a risk management pool formed pursuant to the Intergovernmental Risk Management Act. Any judgment against any employee shall not be collectible in whole or in part from any member of the county board.

Source: Laws 1957, c. 61, § 1, p. 279; Laws 1969, c. 138, § 24, p. 636; Laws 1993, LB 66, § 1; Laws 1998, LB 376, § 1.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.

23-175.01 Transferred to section 13-401.

23-176 Repealed. Laws 1969, c. 138, § 28.

(g) DATA PROCESSING EQUIPMENT

23-177 Repealed. Laws 1985, LB 393, § 18.

23-178 Repealed. Laws 1985, LB 393, § 18.

23-179 Repealed. Laws 1985, LB 393, § 18.

(h) INTEREST IN PUBLIC CONTRACTS

23-180 Repealed. Laws 1986, LB 548, § 15.

23-181 Repealed. Laws 1986, LB 548, § 15.

23-182 Repealed. Laws 1986, LB 548, § 15.

23-183 Repealed. Laws 1986, LB 548, § 15.

23-184 Repealed. Laws 1986, LB 548, § 15.

23-185 Repealed. Laws 1986, LB 548, § 15.

(i) MOTOR VEHICLE AND MOTORBOAT SERVICES

23-186 Repealed. Laws 2012, LB 801, § 102.

(j) ORDINANCES

23-187 Subjects regulated; power to enforce.

(1) In addition to the powers granted by section 23-104, a county may, in the manner specified by sections 23-187 to 23-193, regulate the following subjects by ordinance:

(a) Parking of motor vehicles on public roads, highways, and rights-of-way as it pertains to snow removal for and access by emergency vehicles to areas within the county;

(b) Motor vehicles as defined in section 60-339 that are abandoned on public or private property;

(c) Low-speed vehicles as described and operated pursuant to section 60-6,380;

(d) Golf car vehicles as described and operated pursuant to section 60-6,381;

(e) Graffiti on public or private property;

(f) False alarms from electronic security systems that result in requests for emergency response from law enforcement or other emergency responders; and

(g) Violation of the public peace and good order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity.

(2) For the enforcement of any ordinance authorized by this section, a county may impose fines, forfeitures, or penalties and provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties. A county may also authorize such other measures for the enforcement of ordinances as may be necessary and proper. A fine enacted pursuant to this section shall not exceed five hundred dollars for each offense.

Source: Laws 2009, LB532, § 1; Laws 2011, LB289, § 2; Laws 2012, LB1155, § 1.
Operative date January 1, 2013.

23-188 County board; notice; contents; public hearing.

A county board shall provide notice of the time when any county ordinance is set for consideration before the board. Such notice shall appear at least once a week for two weeks in a newspaper published or of general circulation in the county. The notice shall contain the entire wording of the ordinance and the time and place of the public hearing. The last publication of the notice shall be not less than five days nor more than two weeks prior to the time set for the public hearing on the adoption of the ordinance. A county board shall not take final action on the proposed ordinance until after at least one public hearing

has been held thereon by the county board at which public comment regarding the proposed ordinance was permitted.

Source: Laws 2009, LB532, § 2.

23-189 Proof of ordinance; proof of adoption and publication.

A county ordinance may be proved by the certificate of the county clerk under the seal of the county. The adoption and publication of the ordinance shall be sufficiently proved by a certificate under the seal of the county, from the county clerk, showing (1) that such ordinance was adopted and (2) when and in what paper the ordinance was published or when, by whom, and where the ordinance was posted.

Source: Laws 2009, LB532, § 3.

23-190 County ordinance; reading by title; suspension of requirement; adoption; vote required; revision or amendment.

(1) A county ordinance shall be read by title on three different days unless three-fourths of the county board members, following the public hearing on the ordinance, vote to suspend this requirement. If such requirement is suspended, the ordinance shall be read by title or number and then moved for final adoption. Three-fourths of the county board members may require a reading of any such ordinance in full before adoption under either procedure set out in this section. The votes of each member shall be called aloud and recorded. To adopt any ordinance, the concurrence of a majority of the whole number of the members of the county board shall be required.

(2) A county ordinance shall contain no subject which is not clearly expressed in the title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section that is amended is repealed.

Source: Laws 2009, LB532, § 4.

23-191 Style of ordinance; publication.

The style of county ordinances shall be: ''Be it ordained by the county board of the county of . . . . . .,'' and all county ordinances shall, within fifteen days after they are adopted, be published in some newspaper published or of general circulation within the county.

Source: Laws 2009, LB532, § 5.

23-192 Ordinance; territorial application; copy provided to clerk of city and village within county; effective date; change of jurisdiction; effect.

(1) No ordinance adopted pursuant to sections 23-187 to 23-193 shall be effective within the corporate boundaries of any incorporated city or village located in whole or in part within the county. No ordinance adopted pursuant to sections 23-187 to 23-193 shall be effective within the area outside of the corporate boundaries of any city or village in which such city or village has been granted and is exercising powers by ordinance on a similar subject matter. Every county ordinance adopted pursuant to sections 23-187 to 23-193 shall include one section defining the area of the county within which the county ordinance is effective. The ordinance shall be amended to reflect any changes in the area of the county's jurisdiction resulting from (a) annexation by

a city or village, (b) action by a city or village to adopt an ordinance regarding similar subject matter to that of the county ordinance if the city or village ordinance is to be effective in areas beyond its corporate boundary, or (c) any changes in the area of jurisdiction of the city or village regarding such city or village ordinance.

(2) Before a county adopts an ordinance under sections 23-187 to 23-193, the county clerk shall provide a copy of the text of the ordinance to the clerk of each city and village within the county no later than seven days after the first reading of the ordinance or the public hearing on the ordinance, whichever occurs first. Within seven days after receiving a copy of the ordinance, the city or village shall respond to the county and provide a copy of any ordinance specifying where the city or village is enforcing an ordinance on similar subject matter outside its corporate boundaries. Any ordinance adopted by the county shall not be effective in the area in which the city or village is exercising jurisdiction. Prior to the adoption of the county ordinance, the section of the ordinance that defines the area of county jurisdiction shall be amended to show the removal of the area of the jurisdiction of such city or village as indicated in the city or village ordinance provided to the county from the description of the area within which the county ordinance will be effective. An ordinance adopted under sections 23-187 to 23-193 shall not be effective until fifteen days after its adoption.

(3) Any city or village located in whole or in part within a county that has adopted an ordinance pursuant to sections 23-187 to 23-193 which (a) annexes any territory, (b) adopts an ordinance on similar subject matter to that of the county ordinance and extends the jurisdiction of the city or village under such ordinance to areas beyond its corporate boundaries, or (c) changes the area beyond the corporate boundaries of the city or village within which the city or village exercises jurisdiction by ordinance on similar subject matter to that of the county ordinance shall provide to the county clerk a copy of the ordinance establishing and delineating its jurisdiction or any change to that jurisdiction within seven days after the adoption of the relevant city or village ordinance. Upon the effective date of the city or village ordinance, the county ordinance shall cease to be effective within the area in which the city or village has assumed jurisdiction. The county board shall promptly amend its ordinance to reflect the change in the area within which the county ordinance is effective.

Source: Laws 2009, LB532, § 6.

23-193 County attorney; powers; filing of ordinances.

A county attorney may sign and prosecute a complaint in the county court for a violation of an ordinance of the county in which he or she serves as county attorney. No county may prosecute a complaint for a violation of an ordinance unless such county has on file with the court a current copy of the ordinances of such county. Subject to guidelines provided by the State Court Administrator, the court shall prescribe the form in which such ordinances shall be filed.

Source: Laws 2009, LB532, § 7.

ARTICLE 2
COUNTIES UNDER TOWNSHIP ORGANIZATION

Cross References

Constitutional provisions:
Township organization, adoption by electors, see Article IX, section 5, Constitution of Nebraska.

Officers, when elected, see sections 32-529 and 32-530.
Roads under township organization, see sections 39-1518 to 39-1527.

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

Section
23-201. Township organization; adoption.
23-202. Township organization; petition; election.
23-203. When effective.
23-204. Supervisor districts; formation; election of supervisors.
23-205. Supervisor districts; how numbered.
23-206. Supervisor districts; cities and villages.
23-207. Supervisors; first board; how constituted.
23-208. First board of supervisors; organization.
23-209. Board of supervisors; division of county.
23-210. Township; creation from city of second class; petition.
23-211. Township; creation from city of second class; boundaries; alteration.
23-212. Township; change of name.
23-213. Township; names; recording.
23-214. Chairman of township board; appointment; qualifications.
23-215. Town clerk and treasurer; qualifications; bond.
23-216. Repealed. Laws 1973, LB 75, § 20.
23-217. Repealed. Laws 1973, LB 75, § 20.
23-218. Repealed. Laws 1973, LB 75, § 20.
23-219. Town; corporate name.
23-220. Repealed. Laws 1973, LB 75, § 20.
23-221. Repealed. Laws 1973, LB 75, § 20.
23-222. Township officers; when elected; qualifications.
23-222.01. Repealed. Laws 1994, LB 76, § 615.
23-223. Towns; corporate powers.
23-224. Annual town meeting; powers of electors present.
23-225. Town; failure to organize; officers; how appointed.
23-226. Town officers; failure to qualify; effect.
23-227. Annual town meetings; notice; publication.
23-228. Annual town meeting; additional powers of electors.
23-229. Town bylaws and regulations; publication.
23-230. Special town meetings; how called; notice; place; quorum.
23-231. Special town meeting; powers of electors enumerated.
23-232. Repealed. Laws 1973, LB 75, § 20.
23-233. Repealed. Laws 1973, LB 75, § 20.
23-234. Town meeting; minutes; duty of town clerk; duty of town treasurer.
23-235. Repealed. Laws 1973, LB 75, § 20.
23-236. Town meeting; questions; vote required.
23-237. Town meeting; manner of voting.
23-238. Town meeting; qualifications of electors.
23-239. Town meeting; voters; challenges; laws applicable.
23-240. Repealed. Laws 1973, LB 75, § 20.
23-241. Town meeting; minutes; filing.
23-242. Town officers; oath; certificate; filing.
23-243. Town officers; oath; failure to take; effect.
23-244. Repealed. Laws 1973, LB 75, § 20.
23-245. Town officer; retirement; records; transfer.
23-246. Town treasurer; bond; amount; forfeiture; right of action.
23-246.01. Town treasurer; funds; depository.
23-247. Town clerk; duties; penalties, recovery of.
23-248. Poor relief; duty of county board.
23-249. Town clerk; duties and powers; records; papers; oaths.
23-250. Town clerk; budget; prepare.
23-250.01. Repealed. Laws 1999, LB 86, § 17.
23-251. Town clerk; duties; proceedings to raise money; certificate to county clerk.
23-252. Town board; accounts and claims; audit; annual statement.
23-253. Accounts; audit; meetings; notice.
23-254. Accounts; filing; production at town meeting.

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

23-201 Township organization; adoption.

At any general election that may be held in the several counties of the state, the qualified voters in any county may vote for or against township organization in such county.

Source: Laws 1895, c. 28, § 1, p. 131; R.S.1913, § 987; C.S.1922, § 887; C.S.1929, § 26-201; R.S.1943, § 23-201.

1. Officers
2. Vacancies
3. Construction

1. Officers

Township organization is provided for and affords supervisors, who divide the county into townships. Franek v. Butler County, 126 Neb. 797, 254 N.W. 489 (1934).

Under former law, cities entitled to two supervisors voted as one district and for both supervisors. State ex rel. Brown v. Welsh, 62 Neb. 721, 87 N.W. 529 (1901).

Member of board is township officer and should address his resignation to town clerk. State ex rel. Godard v. Taylor, 26 Neb. 580, 42 N.W. 729 (1889).

Commissioners act until supervisors are organized. State ex rel. Lichty v. Musselman, 20 Neb. 174, 29 N.W. 307 (1886).

Adoption of township organization does not shorten term of county officers. State ex rel. Crossley v. Hedlund, 16 Neb. 566, 20 N.W. 876 (1884).

2. Vacancies

Vacancies in cities are filled by mayor and council. State ex rel. Truesdell v. Plambeck, 36 Neb. 401, 54 N.W. 667 (1893).

Vacancies on temporary organization of town should be filled by county clerk. State ex rel. Davis v. Forney, 21 Neb. 223, 31 N.W. 802 (1887).

3. Construction

York County stated to have adopted township form of government. Thompson v. James, 125 Neb. 350, 250 N.W. 237 (1933).

Act of 1895 relating to township organization sustained as constitutional. Van Horn v. State ex rel. Abbott, 46 Neb. 62, 64 N.W. 365 (1895).

The several statutes on township organization should be construed together. Albert v. Twohig, 35 Neb. 563, 53 N.W. 582 (1892).

23-202 Township organization; petition; election.

(1) In counties not under township organization, a registered voter may file a petition or petitions for the submission of the question of township organization. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election.

(2) When the petition or petitions are filed in the office of the county clerk or election commissioner, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the petitions. The questions on the ballot shall be respectively: For changing to township organization with a seven-member county board of supervisors; or Against changing to township organization.

(3) Elections shall be conducted as provided in the Election Act.

Source: Laws 1895, c. 28, § 2, p. 131; R.S.1913, § 988; C.S.1922, § 888; C.S.1929, § 26-202; R.S.1943, § 23-202; Laws 2008, LB269, § 4; Laws 2009, LB434, § 1.

Cross References

Election Act, see section 32-101.

23-203 When effective.

If it shall appear by the returns of said election that a majority of the legal voters of such county voting upon the proposition are for township organization, then the office of county commissioner and the board of county commissioners shall cease to exist on and after the meeting of the supervisors of the county as hereinafter provided, and the county so voting for the adoption of

township organization shall thereafter be governed by and subject to the provisions of sections 23-201 to 23-299.

Source: Laws 1895, c. 28, § 3, p. 131; R.S.1913, § 989; C.S.1922, § 889; Laws 1927, c. 53, § 1, p. 208; C.S.1929, § 26-203; R.S.1943, § 23-203; Laws 1947, c. 64, § 1, p. 210.

23-204 Supervisor districts; formation; election of supervisors.

On the second Tuesday after the election under section 23-201 adopting township organization in any county, the county attorney, county clerk, and county treasurer of the county shall meet at the county seat of such county and shall, within three days from and after the first day of meeting, divide such county into seven districts to be known as supervisor districts. Such districts shall be divided as nearly as possible with regular boundary lines and in regular and compact form and shapes, and each of such districts shall as nearly as possible have the same number of inhabitants as any other district. No voting precinct shall be divided by any such district, except that in counties having cities of over one thousand inhabitants and when such cities have more inhabitants than the average outlying district, the county board shall add enough contiguous territory to such city so that the inhabitants in such city and contiguous territory equal the inhabitants of two of the other districts. The county attorney, county clerk, and county treasurer shall then divide the tract thus segregated into two supervisor districts with population as nearly equal as possible, and when so divided, each of the districts shall elect one supervisor who shall reside in such supervisor district and be nominated and elected by the registered voters residing in that district. If any such city has more than the requisite inhabitants for two supervisor districts, then sufficient outlying territory may be added to such city to make three supervisor districts. The supervisor in each supervisor district in such city shall reside in such supervisor district and be nominated and elected by the registered voters residing in that supervisor district. The remainder of the county outside of such city districts shall be divided so as to create a total of seven supervisor districts, except that if any county under township organization has gone to an at-large basis for election of supervisors under section 32-554, the board of supervisors of such county may stay on the at-large voting basis.

Source: Laws 1895, c. 28, § 4, p. 131; Laws 1911, c. 36, § 1, p. 203; R.S.1913, § 990; Laws 1917, c. 17, § 1, p. 81; C.S.1922, § 890; C.S.1929, § 26-204; R.S.1943, § 23-204; Laws 1947, c. 64, § 2, p. 210; Laws 1973, LB 552, § 3; Laws 1979, LB 331, § 4; Laws 1991, LB 789, § 8; Laws 1994, LB 76, § 537.

Cross References

Election of officers, see sections 32-529 and 32-530.

In redistricting, requirements of approximately equal numbers in each district as provided by this section should be met. State ex rel. Rowe v. Emanuel, 142 Neb. 583, 7 N.W.2d 156 (1942).

This section is controlling in the division of counties with city districts. Van Horn v. State ex rel. Abbott, 46 Neb. 62, 64 N.W. 365 (1895).

There is no authority for existence of township board in cities of first class. Rittenhouse v. Bigelow, 38 Neb. 547, 58 N.W. 534 (1894).

After election adopting township organization, the county judge, county clerk, and county treasurer must divide the county into supervisor districts under rules in this section, but redistricting when required must be done under same rules by the county board. Obermiller v. Siegel, 340 F.Supp. 208 (D. Neb. 1972).

23-205 Supervisor districts; how numbered.

When the county has been divided as provided in section 23-204, the county attorney, county clerk and county treasurer shall at once proceed to number such districts from one to seven and in case of a city district as contemplated in said section, it shall give such city district two numbers, one odd and one even.

Source: Laws 1895, c. 28, § 5, p. 132; R.S.1913, § 991; C.S.1922, § 891; C.S.1929, § 26-205; R.S.1943, § 23-205; Laws 1947, c. 64, § 3, p. 211; Laws 1979, LB 331, § 5.

23-206 Supervisor districts; cities and villages.

In the event any city having one thousand inhabitants or more shall have enough inhabitants to form one supervisor district, then such city shall constitute one district, or in case the number of inhabitants is less than the number in the other districts, then so much contiguous territory shall be added to such city to give it sufficient inhabitants for one supervisor district. Villages may be enumerated with general districts, counting all the inhabitants therein as being within the districts wherein such town or village is situated; *Provided*, no village, or any part thereof, shall be included in or made a part of any supervisor district containing a city having one thousand inhabitants or more, or containing any part of such city.

Source: Laws 1895, c. 28, § 6, p. 133; R.S.1913, § 992; Laws 1917, c. 17, § 2, p. 82; C.S.1922, § 892; C.S.1929, § 26-206; R.S.1943, § 23-206.

23-207 Supervisors; first board; how constituted.

The county attorney, county clerk, and county treasurer shall forthwith appoint seven supervisors, who shall duly qualify and file their oath of office and bond with the county judge within ten days after such appointment.

Source: Laws 1895, c. 28, § 7, p. 133; R.S.1913, § 993; C.S.1922, § 893; C.S.1929, § 26-207; R.S.1943, § 23-207; Laws 1947, c. 64, § 4, p. 211; Laws 1979, LB 331, § 6.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Vacancies are filled by other members of board. State ex rel. Hunker v. West, 62 Neb. 461, 87 N.W. 176 (1901).

23-208 First board of supervisors; organization.

The newly appointed supervisors shall, after their bonds are duly approved, meet the first Tuesday in December following the election adopting township organization. They shall at once organize by electing one of the seven supervisors as chairman, who shall appoint all the necessary committees. From and after such meeting and organization the powers of the county commissioners shall cease and the board so organized shall have all the powers, and perform all and singular the duties performed by county boards as contemplated by law.

Source: Laws 1895, c. 28, § 8, p. 133; R.S.1913, § 994; C.S.1922, § 894; C.S.1929, § 26-208; R.S.1943, § 23-208; Laws 1947, c. 64, § 5, p. 211.

23-209 Board of supervisors; division of county.

When the board of supervisors shall have been organized as stated in section 23-208, they shall at once divide the county into townships. The board of

supervisors shall divide the county into townships of sufficient population and territory to provide a workable township organization.

Source: Laws 1895, c. 28, § 9, p. 134; R.S.1913, § 995; C.S.1922, § 895; C.S.1929, § 26-209; R.S.1943, § 23-209; Laws 1969, c. 152, § 1, p. 718.

In a county under township organization, board of supervisors may create new towns. State ex rel. Town of Ewing v. Town of Golden, 99 Neb. 782, 157 N.W. 971 (1916).

23-210 Township; creation from city of second class; petition.

Wherever a city of the second class in a county under township organization forms a part of one or more townships in any county, the county board of said county is empowered to create a new township out of said city, whenever requested so to do by a petition or petitions signed by sixty percent of the electors of said city, and also by sixty percent of the electors of the outlying part of the township or townships, of which said city forms a part; *Provided, however*, that before final action is taken in such matter by said board, two weeks' notice of the filing of such petition, or petitions, and of the time when and place where a hearing thereon will be had, shall be given by publication in some newspaper published in said city, if any such there be.

Source: Laws 1915, c. 179, § 1, p. 363; C.S.1922, § 896; C.S.1929, § 26-210; R.S.1943, § 23-210.

23-211 Township; creation from city of second class; boundaries; alteration.

If any change is made in the corporate boundaries of any city of the second class, after same has been formed into a separate township, the county board of the county in which said city is situated shall have the power to make corresponding changes in the township boundaries of the said city township without either a petition for or notice of such proposed changes.

Source: Laws 1915, c. 179, § 2, p. 363; C.S.1922, § 897; C.S.1929, § 26-211; R.S.1943, § 23-211.

23-212 Township; change of name.

The board shall also at the meeting mentioned in sections 23-208 and 23-209 designate the name of each town, and may change the name of any town at any other meeting of such board upon a petition of a majority of the voters of such town.

Source: Laws 1895, c. 28, § 10, p. 134; R.S.1913, § 996; C.S.1922, § 898; C.S.1929, § 26-212; R.S.1943, § 23-212; Laws 1961, c. 88, § 1, p. 308.

23-213 Township; names; recording.

The county clerk shall record in a book kept for that purpose the names and boundaries of each town as designated by the county board, and shall forthwith forward an abstract thereof to the Auditor of Public Accounts of this state, who shall make a record of the same.

Source: Laws 1895, c. 28, § 11, p. 134; R.S.1913, § 997; C.S.1922, § 899; C.S.1929, § 26-213; R.S.1943, § 23-213.

Road district is not a political entity. Townships may sue road overseers for breach of duty. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-214 Chairman of township board; appointment; qualifications.

The county board shall also, at the meeting at which it shall fix and name the several townships, appoint for each township some suitable person, who is an elector within the township, as chairman of the township board. The person so appointed shall, on or before the first Tuesday in January next ensuing, take the oath of office and file a bond as provided by law. Such bond shall be approved by the board as provided by law. In case such person shall neglect or refuse to qualify, the county board shall at its regular January meeting appoint another who shall qualify as above stated. The person so appointed shall hold said office until his successor shall be duly elected and qualified as provided by law.

Source: Laws 1895, c. 28, § 12, p. 135; R.S.1913, § 998; C.S.1922, § 900; C.S.1929, § 26-214; R.S.1943, § 23-214; Laws 1957, c. 62, § 1, p. 281; Laws 1969, c. 153, § 1, p. 719; Laws 1973, LB 75, § 2.

23-215 Town clerk and treasurer; qualifications; bond.

The county board shall on or before the third Tuesday in December following the adoption of township organization, appoint for each township one town clerk and one treasurer who are qualified electors residing in the township. Such persons so appointed shall on or before the first Tuesday in January next ensuing take the oath of office and give bond as provided by law. The county board shall approve such bonds at its January meeting or shall meet and approve all bonds given to fill vacancies provided for in this section and section 23-214 before the first day of April next ensuing. In the event the persons appointed shall fail or refuse to qualify by the time named above, the county board shall name some other person or persons possessing the qualifications mentioned in this section. The persons so appointed shall qualify and hold their offices for the term.

Source: Laws 1895, c. 28, § 13, p. 135; R.S.1913, § 999; C.S.1922, § 901; C.S.1929, § 26-215; R.S.1943, § 23-215; Laws 1973, LB 75, § 3.

23-216 Repealed. Laws 1973, LB 75, § 20.

23-217 Repealed. Laws 1973, LB 75, § 20.

23-218 Repealed. Laws 1973, LB 75, § 20.

23-219 Town; corporate name.

The corporate name of each town shall be the town of (name of town), and all acts done by the town and all actions by or against the town shall be in its corporate name.

Source: Laws 1895, c. 28, § 17, p. 136; R.S.1913, § 1003; C.S.1922, § 905; C.S.1929, § 26-219; R.S.1943, § 23-219.

All actions by or against a town are required to be in its corporate name. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-220 Repealed. Laws 1973, LB 75, § 20.

23-221 Repealed. Laws 1973, LB 75, § 20.

23-222 Township officers; when elected; qualifications.

The officers of the township board shall be elected pursuant to the Election Act at the next general election held in November following appointment and shall have the qualifications required by sections 23-214 and 23-215.

Source: Laws 1895, c. 28, § 20, p. 137; R.S.1913, § 1006; C.S.1922, § 908; C.S.1929, § 26-222; R.S.1943, § 23-222; Laws 1994, LB 76, § 538; Laws 1997, LB 764, § 6; Laws 2003, LB 461, § 1.

Cross References

Election Act, see section 32-101.

Road overseer is officer of township. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-222.01 Repealed. Laws 1994, LB 76, § 615.

23-223 Towns; corporate powers.

Every town shall have corporate capacity to exercise the powers granted thereto, or necessarily implied, and no others. It shall have the power (1) to sue and be sued; (2) to acquire, by purchase, gift, or devise, and to hold property, both real and personal, for the use of its inhabitants, and to sell and convey the same; and (3) to make all such contracts as may be necessary in the exercise of the powers of the town. In exercising the powers of the township, it may enter into compacts with another township or townships to purchase and jointly own road equipment.

Source: Laws 1895, c. 28, § 21, p. 137; R.S.1913, § 1007; C.S.1922, § 909; C.S.1929, § 26-223; R.S.1943, § 23-223; Laws 1955, c. 66, § 1, p. 217.

Township is given power to direct the raising of money by taxation for the construction and repairing of roads within the township, and to make contracts necessary to the exercise of such power. State v. Bone Creek Township, 109 Neb. 202, 190 N.W. 586 (1922).

Township is not liable for personal injuries by reason of defective road. Wilson v. Ulysses Township, 72 Neb. 807, 101 N.W. 986 (1904).

In counties under township organization, duty to keep ordinary township highways and culverts in repair is imposed on township. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

23-224 Annual town meeting; powers of electors present.

The electors present at the annual town meeting shall have power:

(1) To make all orders for sale, conveyance, regulation, or use of the corporate property of the town that may be deemed to be conducive to the interests of the inhabitants;

(2) To take all necessary measures and give directions for the exercise of their corporate powers;

(3) To provide for the institution, defense, or disposition of suits at law or in equity in which the town is interested;

(4) To take such action as shall induce the planting and cultivation of trees along the highways in such towns and to protect and preserve trees standing along or on highways;

(5) To construct and keep in repair public wells and to regulate the use thereof;

(6) To prevent the exposure or deposit of offensive or injurious substances within the limits of the town;

(7) To make such bylaws, rules, and regulations as may be deemed necessary to carry into effect the powers herein granted and to impose such fines and penalties, not exceeding twenty dollars for one offense, as shall be deemed proper, except when a fine or penalty is already allowed by law, which fine or penalty shall be imposed by the county court;

(8) To direct the raising of money by taxation, subject to approval by the county board, (a) for constructing and repairing roads and bridges within the town to the extent allowed by law; (b) for the prosecution or defense of suits by or against the town or in which it is interested; (c) for any other purpose required by law; (d) for the purpose of building or repairing bridges over streams dividing the town from any other town; (e) for the compensation of town officers at the rate allowed by law and, when no rate is fixed for such amount, as the electors may direct; and (f) for the care and maintenance of abandoned or neglected cemeteries within the town, except that the town board shall not expend more than one hundred dollars in any one year for such purposes. When any county discontinues township organization, the county shall care for and maintain such abandoned or neglected cemeteries;

(9) To guard against the destruction of property in the town by prairie fire;

(10) To restrain, regulate, or prohibit the running at large of cattle, horses, mules, asses, swine, sheep, and goats and determine when such animals may go at large, if at all. All votes thereon shall be by ballot;

(11) To authorize the distraining, impounding, and sale of cattle, horses, mules, asses, sheep, goats, and swine for penalties incurred and costs of proceedings. The owner of such animals shall have the right to redeem the same from the purchaser thereof at any time within one month from the day of sale by paying the amount of the purchaser's bid, with reasonable costs for their keeping and interest at the rate of seven percent per annum;

(12) To purchase, hold, plat, improve, and maintain grounds for cemetery purposes; to sell and convey lots in such cemeteries for the burial of the dead and to contract with the purchaser to perpetually care for and keep in order the lots so sold; and to elect trustees who shall have power to manage such cemetery under such bylaws as the electors of the township at the annual town meeting shall from time to time adopt. When any county discontinues township organization, the county shall care for and maintain such abandoned or neglected cemeteries; and

(13) To hold an election or town meeting to exceed the levy limits established by section 77-3443.

Source: Laws 1895, c. 28, § 22, p. 137; Laws 1903, c. 36, § 1, p. 285; R.S.1913, § 1008; Laws 1919, c. 60, § 1, p. 166; C.S.1922, § 910; Laws 1927, c. 58, § 1, p. 218; C.S.1929, § 26-224; R.S.1943, § 23-224; Laws 1967, c. 120, § 1, p. 382; Laws 1972, LB 1032, § 111; Laws 1996, LB 1114, § 39.

County may appropriate money for portion of state road through township. State v. Bone Creek Township, 109 Neb. 202, 190 N.W. 586 (1922).

In counties under township organization where no poorhouse has been established, the duty of supporting the poor devolves upon the townships. Custer Township v. Board of Supervisors of Antelope County, 103 Neb. 128, 170 N.W. 600 (1919).

Township, expending money for board and hospital fees, cannot recover same from county. Newark Township v. Kearney County, 99 Neb. 142, 155 N.W. 797 (1915).

County having no poorhouse is liable to another county for care of its poor. Rock County v. Holt County, 78 Neb. 616, 111 N.W. 366 (1907).

In counties under township organization, duty to keep ordinary township highways and culverts in repair is imposed on township. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

Township is not liable for support of poor unless county has not established a poorhouse. Town of Clearwater v. Town of Garfield, 65 Neb. 697, 91 N.W. 496 (1902).

Townships are liable for support of pauper only when made so by statute. Gilligan v. Town of Grattan, 63 Neb. 242, 88 N.W. 477 (1901).

Town is liable on supervisor's contract to support poor whether levy is made or not. Waltham v. Town of Mullally, 27 Neb. 483, 43 N.W. 252 (1889).

23-225 Town; failure to organize; officers; how appointed.

In case any town in any county wherein township organization may be adopted, shall refuse or neglect to organize and elect town officers at the time fixed by law, it shall be the duty of the county board, upon the affidavit of any freeholder resident of said town, filed in the office of the county clerk, setting forth the facts, to proceed at any regular or special meeting of the board and appoint necessary town officers for such town, and the persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same power and be subject to the same duties and penalties as if they had been duly chosen by the electors of the town.

Source: Laws 1895, c. 28, § 23, p. 139; R.S.1913, § 1009; C.S.1922, § 911; C.S.1929, § 26-225; R.S.1943, § 23-225.

23-226 Town officers; failure to qualify; effect.

Whenever it shall be made to appear to the county board that the town officers appointed by them or by any preceding board, as provided in section 23-225, have failed to qualify as required by law, so that such town cannot become organized, the board may annex such town to any adjoining town, and the same town so annexed shall thereafter form and constitute a part of such adjoining town.

Source: Laws 1895, c. 28, § 24, p. 139; R.S.1913, § 1010; C.S.1922, § 912; C.S.1929, § 26-226; R.S.1943, § 23-226.

23-227 Annual town meetings; notice; publication.

The citizens of the several towns of this state, qualified by the Constitution of Nebraska to vote at general elections, shall assemble and hold annual town meetings at their respective towns at the time of the budget hearing as provided by the Nebraska Budget Act. Notice of the time and the place of holding such meeting, after the first meeting, shall be given by the town clerk by publishing the notice in a newspaper in or of general circulation in the town at least ten days prior to the meeting.

Source: Laws 1895, c. 28, § 25, p. 139; Laws 1909, c. 37, § 1, p. 222; R.S.1913, § 1011; C.S.1922, § 913; Laws 1923, c. 139, § 1, p. 341; Laws 1927, c. 54, § 1, p. 209; C.S.1929, § 26-227; R.S.1943, § 23-227; Laws 1963, c. 112, § 1, p. 441; Laws 1973, LB 75, § 4; Laws 1992, LB 1063, § 15; Laws 1992, Second Spec. Sess., LB 1, § 15.

Cross References

Nebraska Budget Act, see section 13-501.

23-228 Annual town meeting; additional powers of electors.

The electors of each town shall have power at their annual town meetings to elect such town officers as may be required to be chosen to direct the institution and defense of suits at law or equity in which such town may be a party in interest; to direct such sum to be raised in such town for the support and maintenance of roads and bridges, or for any other purpose provided by

law as they deem necessary; to take measures and give directions for the exercise of their corporate powers; to impose penalties upon persons offending against any such regulations; and to make rules, regulations, and bylaws necessary to carry into effect the powers herein granted.

Source: Laws 1895, c. 28, § 26, p. 140; R.S.1913, § 1012; C.S.1922, § 914; C.S.1929, § 26-228; R.S.1943, § 23-228.

Township is given power to direct the raising of money by taxation for the construction and repairing of roads within the township, and to make contracts necessary to the exercise of such power. State v. Bone Creek Township, 109 Neb. 202, 190 N.W. 586 (1922).

In counties under township organization, duty to keep ordinary township highways and culverts in repair is imposed on townships. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

23-229 Town bylaws and regulations; publication.

It shall be the duty of the town clerk to cause all bylaws, rules, and regulations of the town, within twenty days after their adoption, to be published by posting in three public places in the town or by one insertion in any newspaper published in the county; but all such bylaws, rules, and regulations shall take effect and be in force from the date of their adoption, unless otherwise directed by the electors of the town.

Source: Laws 1895, c. 28, § 27, p. 140; R.S.1913, § 1013; C.S.1922, § 915; C.S.1929, § 26-229; R.S.1943, § 23-229.

23-230 Special town meetings; how called; notice; place; quorum.

A town meeting shall be held when the town treasurer, town clerk, and the chairman of the board or any two of them together with at least twelve freeholders of the town, shall in writing file in the office of the town clerk a statement that a special meeting is necessary in the best interests of the town setting forth the object of the meeting. The town clerk or, in his absence, the town treasurer shall post notices in five of the most public places of the town giving at least ten days' notice of such special meeting. It shall set forth the objects of the meeting as contained in the statement filed as aforesaid. The place of holding special town meetings shall be at the place where the last annual town meeting was held, but in case such place may be found inconvenient, the meeting may adjourn to the nearest convenient place; *Provided,* not less than one-third of the electors of a town shall constitute a quorum for the transaction of business at any special town meeting.

Source: Laws 1895, c. 28, § 28, p. 140; R.S.1913, § 1014; C.S.1922, § 916; C.S.1929, § 26-230; R.S.1943, § 23-230; Laws 1957, c. 62, § 2, p. 281; Laws 1972, LB 1032, § 112.

23-231 Special town meeting; powers of electors enumerated.

The electors at special town meetings, when properly convened, shall have full power to fill any vacancies in any of the town offices when the same shall not already have been filled by appointment; to provide for raising money for repairing highways or buildings, or repairing bridges in case of emergency, and to direct the repairing or building thereof; to act upon any subject within the power of the electors at any annual town meeting which was postponed at the preceding annual town meeting for want of time, to be considered at a future special town meeting; but special town meetings shall have no power to act upon any subject not embraced in the statement of the notice calling the same.

Source: Laws 1895, c. 28, § 29, p. 141; R.S.1913, § 1015; C.S.1922, § 917; C.S.1929, § 26-231; R.S.1943, § 23-231.

23-232 Repealed. Laws 1973, LB 75, § 20.

23-233 Repealed. Laws 1973, LB 75, § 20.

23-234 Town meeting; minutes; duty of town clerk; duty of town treasurer.

The town clerk elected or appointed shall be the clerk of the town meeting, and shall keep faithfully minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by such meeting. If the town clerk is absent from the town meeting, the town treasurer shall perform the duties of the town clerk. The person keeping the minutes shall sign the same.

Source: Laws 1895, c. 28, § 32, p. 142; R.S.1913, § 1018; C.S.1922, § 920; C.S.1929, § 26-234; R.S.1943, § 23-234; Laws 1973, LB 75, § 5.

23-235 Repealed. Laws 1973, LB 75, § 20.

23-236 Town meeting; questions; vote required.

All questions upon motions made at town meetings shall be determined by a majority of the electors voting, and the presiding officer shall ascertain and declare the result of the votes upon each question.

Source: Laws 1895, c. 28, § 34, p. 142; R.S.1913, § 1020; C.S.1922, § 922; C.S.1929, § 26-236; R.S.1943, § 23-236.

23-237 Town meeting; manner of voting.

When the result of any vote shall, upon such declaration, be questioned by one or more of the electors present, the presiding officer shall make the vote certain by causing the voters to rise and be counted, or by dividing off.

Source: Laws 1895, c. 28, § 35, p. 142; R.S.1913, § 1021; C.S.1922, § 923; C.S.1929, § 26-237; R.S.1943, § 23-237; Laws 1973, LB 75, § 6.

23-238 Town meeting; qualifications of electors.

No person shall be a voter at any town meeting unless he shall be a registered voter, and a resident of the town wherein he shall offer to vote.

Source: Laws 1895, c. 28, § 36, p. 142; R.S.1913, § 1022; C.S.1922, § 924; C.S.1929, § 26-238; R.S.1943, § 23-238; Laws 1973, LB 75, § 7.

23-239 Town meeting; voters; challenges; laws applicable.

If any person offering to vote at any election, or upon any question arising at such town meeting, shall be challenged as an unqualified voter, the presiding officer shall proceed thereupon in like manner as the judges of general elections are required to do, adapting the oath to the circumstances of the town meeting, and the laws in force in regard to false swearing and illegal voting at general elections shall apply to false swearing and illegal voting at town meetings.

Source: Laws 1895, c. 28, § 37, p. 142; R.S.1913, § 1023; C.S.1922, § 925; C.S.1929, § 26-239; R.S.1943, § 23-239.

Cross References

Challenge to voter, see sections 32-926 to 32-932.
Penalties for false swearing and illegal voting, see section 32-1530.

23-240 Repealed. Laws 1973, LB 75, § 20.

23-241 Town meeting; minutes; filing.

The minutes of the proceedings of every town meeting shall be filed in the office of the town clerk within ten days after such town meeting.

Source: Laws 1895, c. 28, § 39, p. 143; R.S.1913, § 1025; C.S.1922, § 927; C.S.1929, § 26-241; R.S.1943, § 23-241; Laws 1973, LB 75, § 8.

23-242 Town officers; oath; certificate; filing.

Every person elected or appointed to the office of town clerk, town treasurer, or town chairman, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe before some authorized person an oath or affirmation to faithfully and impartially perform the duties of his office, as prescribed by law, and shall cause a certificate of the same to be filed in the office of the town clerk.

Source: Laws 1895, c. 28, § 40, p. 143; R.S.1913, § 1026; C.S.1922, § 928; C.S.1929, § 26-242; R.S.1943, § 23-242; Laws 1957, c. 62, § 3, p. 281; Laws 1973, LB 75, § 9.

Statute is applicable to road overseer and neglect of road overseer to comply herewith may be deemed refusal by him to serve in that capacity. State ex rel. Luckey v. Weber, 124 Neb. 84, 245 N.W. 407 (1932).

23-243 Town officers; oath; failure to take; effect.

If any person chosen or appointed to any town office shall neglect to take or subscribe such oath, and cause a certificate thereof to be filed as above required, such neglect shall be deemed to be a refusal to serve.

Source: Laws 1895, c. 28, § 41, p. 143; R.S.1913, § 1027; C.S.1922, § 929; C.S.1929, § 26-243; R.S.1943, § 23-243.

Neglect of road overseer to comply with this section may be deemed refusal by him to serve in that capacity. State ex rel. Luckey v. Weber, 124 Neb. 84, 245 N.W. 407 (1932).

23-244 Repealed. Laws 1973, LB 75, § 20.

23-245 Town officer; retirement; records; transfer.

It shall be the duty of every person retiring from a town office to deliver to his successor in office all the records, books, papers, money, and property belonging to such office held by him.

Source: Laws 1895, c. 28, § 43, p. 143; R.S.1913, § 1029; C.S.1922, § 931; C.S.1929, § 26-245; R.S.1943, § 23-245.

Every person retiring from town office is required to deliver the records and property of his office to his successor. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-246 Town treasurer; bond; amount; forfeiture; right of action.

The town treasurer of each town shall give bond to the town in the sum of two thousand dollars, or double the amount of money that may come into his hands, to be fixed by the town board. Whenever it shall be ascertained that such

bond has been forfeited, suit in the name of such town on said bond may be brought by any resident freeholder of such town.

Source: Laws 1895, c. 28, § 44, p. 143; R.S.1913, § 1030; C.S.1922, § 932; C.S.1929, § 26-246; R.S.1943, § 23-246.

23-246.01 Town treasurer; funds; depository.

All township funds withdrawn from the county treasury, or collected directly by township officers, shall be deposited within ten days in depositories approved for the deposit of county funds of such county in an account in the name of the township.

Source: Laws 1951, c. 49, § 1, p. 166.

23-247 Town clerk; duties; penalties, recovery of.

The town clerk shall prosecute in the name of his town, or otherwise as may be necessary, for all penalties given by law to such town or for its use, and for which no other officer is specially directed to prosecute; and he shall receive all accounts which may be presented to him against the town.

Source: Laws 1895, c. 28, § 45, p. 144; R.S.1913, § 1031; C.S.1922, § 933; C.S.1929, § 26-247; R.S.1943, § 23-247.

23-248 Poor relief; duty of county board.

In all counties the care of the poor shall be under the charge of the county board as provided by law.

Source: Laws 1895, c. 28, § 46, p. 144; R.S.1913, § 1032; Laws 1915, c. 20, § 1, p. 80; C.S.1922, § 934; C.S.1929, § 26-248; R.S.1943, § 23-248.

In counties under township organization, support of poor devolves upon townships. Custer Township v. Board of Supervisors of Antelope County, 103 Neb. 128, 170 N.W. 600 (1919).

23-249 Town clerk; duties and powers; records; papers; oaths.

The town clerk of each town in this state shall have the custody of all records, books and papers of the town, and shall file all certificates of oaths and other papers required by law to be filed in his office. He shall have power to administer the oath of office to all town officers and it is hereby made the duty of the town clerk to administer all oaths which may be required in the transaction of any township business in the town where he may be clerk; *Provided,* nothing herein shall be so construed as to deprive any other person qualified by law from administering said oaths.

Source: Laws 1895, c. 28, § 47, p. 144; R.S.1913, § 1033; C.S.1922, § 935; C.S.1929, § 26-249; R.S.1943, § 23-249.

23-250 Town clerk; budget; prepare.

The town clerk in counties under township organization shall proceed to prepare the township budget as prescribed in the Nebraska Budget Act.

Source: Laws 1913, c. 54, § 1, p. 160; R.S.1913, § 1034; C.S.1922, § 936; C.S.1929, § 26-250; R.S.1943, § 23-250; Laws 1951, c. 49, § 2, p.

166; Laws 1953, c. 52, § 1, p. 180; Laws 1973, LB 75, § 10; Laws 1992, LB 1063, § 16; Laws 1992, Second Spec. Sess., LB 1, § 16; Laws 2002, LB 568, § 8.

Cross References

Nebraska Budget Act, see section 13-501.

23-250.01 Repealed. Laws 1999, LB 86, § 17.

23-251 Town clerk; duties; proceedings to raise money; certificate to county clerk.

The town clerk shall, within ten days after any township meeting at which any action was had for raising money, deliver to the county clerk a certified copy or copies of all entries of votes for the raising of such money, and it shall be the duty of the county clerk to lay all such matters before the county board at their next meeting.

Source: Laws 1895, c. 28, § 49, p. 144; R.S.1913, § 1035; C.S.1922, § 937; C.S.1929, § 26-251; R.S.1943, § 23-251.

23-252 Town board; accounts and claims; audit; annual statement.

In each town, the clerk, the treasurer, and the chairperson of the board shall examine the accounts of the overseers of highways for money received and disbursed by them and shall require all officers to account to such board for any and all such money received and disbursed by such officers in their official capacity. Such board shall examine and audit all charges and claims against the town and the compensation of all town officers. In case of the absence of any of such officers or their failure to attend any meeting of the board, the two attending may appoint any qualified elector to act with them in the place of the absentee, and the appointee shall act, only for such meeting, in the place of such absentee as a member of such board. Each township shall make an annual budget statement as set out in the Nebraska Budget Act. At its expense, the county board may require an audit of the accounts of any township within the county, whenever in its judgment such audit is necessary. The county board may contract with the Auditor of Public Accounts or select a licensed public accountant or certified public accountant or firm of such accountants to conduct the audit. The original copy of the audit shall be filed in the office of the Auditor of Public Accounts.

Source: Laws 1895, c. 28, § 51, p. 145; Laws 1913, c. 54, § 2, p. 161; R.S.1913, § 1036; C.S.1922, § 938; C.S.1929, § 26-252; R.S.1943, § 23-252; Laws 1951, c. 49, § 4, p. 167; Laws 1969, c. 153, § 3, p. 720; Laws 1973, LB 75, § 11; Laws 1985, Second Spec. Sess., LB 29, § 1; Laws 1987, LB 183, § 1.

Cross References

Nebraska Budget Act, see section 13-501.

23-253 Accounts; audit; meetings; notice.

The board shall meet at the town clerk's office or other convenient place for the purpose of examining and auditing the town accounts in each fiscal year at such times as the interest of the town may require. Notices of such meetings

shall be published once at least ten days before such meeting in a legal newspaper of general circulation in the county.

Source: Laws 1895, c. 28, § 52, p. 145; Laws 1913, c. 257, § 1, p. 791; R.S.1913, § 1037; C.S.1922, § 939; Laws 1923, c. 139, § 3, p. 342; C.S.1929, § 26-253; R.S.1943, § 23-253; Laws 1965, c. 97, § 2, p. 416; Laws 1965, c. 98, § 1, p. 417; Laws 1973, LB 75, § 12.

23-254 Accounts; filing; production at town meeting.

The accounts so audited, and those rejected, if any, shall be delivered with the certificates of the auditors, or a majority of them, to the town clerk, to be by him kept on file for the inspection of all persons. They shall also be produced by the town clerk at the next annual town meeting, and shall be there publicly read by him.

Source: Laws 1895, c. 28, § 53, p. 145; R.S.1913, § 1038; C.S.1922, § 940; C.S.1929, § 26-254; R.S.1943, § 23-254.

23-255 Town funds; disbursement; orders; warrants; limitations; registration of warrants.

The town clerk shall draw and sign all orders upon the town treasurer for all money to be disbursed by the township, and all warrants upon the county treasurer for money raised for town purposes, or apportioned to the town by the county or state, and present the same to the chairman of the board, to be countersigned by him, and no warrant shall be paid until so countersigned. No warrant shall be countersigned by the chairman of the board until the amount for which the warrant is drawn is written upon its face. The clerk and chairman of the board shall keep a record in separate books furnished by the county, of the amount, date, purpose for which drawn, and name of person to whom issued, of each warrant signed or countersigned by them. All claims and charges against the town, duly audited and allowed by the town board, shall be paid by order so drawn. No order shall be drawn on the town treasurer in excess of seventy-five percent of the amount of taxes levied for the current year on the property of said town, subject to be expended by said town, unless the money is in the treasury of said town to pay the order so drawn on presentation. When any order drawn as aforesaid is presented to the town treasurer for payment, and is not paid for want of funds, the town treasurer shall endorse on said order presented and not paid for want of funds, and shall note in a book of registration, to be kept for that purpose, the fact of the presentation and nonpayment of said order; and said order shall draw interest at six percent per annum from the date of presentation until there are sufficient funds in the hands of said treasurer to pay the same, after paying all orders drawn against such tax levy presented prior thereto, and said orders shall be paid in the order of their presentation and registration. The money received by the town treasurer as the tax levied in any year shall be applied first in payment of the orders drawn against said levy; and such levy shall be deemed specifically appropriated, so far as the same may be lawfully expended by said town, to the payment of orders drawn against said levy.

Source: Laws 1895, c. 28, § 54, p. 146; Laws 1913, c. 54, § 2, p. 161; R.S.1913, § 1039; C.S.1922, § 941; C.S.1929, § 26-255; R.S.1943, § 23-255; Laws 1969, c. 153, § 4, p. 721.

23-256 Repealed. Laws 1973, LB 75, § 20.

23-257 Claims; certified statement; delivered to town clerk.

The board shall make a certificate to be signed by a majority of its members specifying the value of the claim and to whom the amount is allowed, and shall cause such certificate to be delivered to the town clerk of said town, to be by him kept on file for the inspection of all persons.

Source: Laws 1895, c. 28, § 56, p. 147; R.S.1913, § 1041; C.S.1922, § 943; C.S.1929, § 26-257; R.S.1943, § 23-257; Laws 1973, LB 75, § 13.

23-258 Town funds; general expenditures authorized.

The following shall be deemed town charges: The compensation of town officers for services rendered their respective towns, contingent expenses necessarily incurred for the use and benefit of the town, the money authorized by the vote of the town meeting for any town purposes, and every sum directed by law to be raised for town purposes.

Source: Laws 1895, c. 28, § 57, p. 147; R.S.1913, § 1042; C.S.1922, § 944; C.S.1929, § 26-258; R.S.1943, § 23-258.

In counties under township organization, duty to keep ordinary township highways and culverts in repair is imposed on township. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

23-259 Tax; amount authorized.

The money necessary to defray the town charges of each town shall be levied on the taxable property in such town in the manner prescribed by the Nebraska Budget Act. The rate of taxes for town purposes shall not exceed twenty-eight cents on each one hundred dollars upon the taxable value of the taxable property in such township for all purposes subject to approval of the county board.

Source: Laws 1895, c. 28, § 58, p. 147; Laws 1905, c. 53, § 1, p. 298; R.S.1913, § 1043; C.S.1922, § 945; Laws 1927, c. 170, § 1, p. 504; C.S.1929, § 26-259; R.S.1943, § 23-259; Laws 1947, c. 65, § 1, p. 214; Laws 1953, c. 52, § 3, p. 181; Laws 1953, c. 287, § 40, p. 954; Laws 1957, c. 63, § 1, p. 282; Laws 1973, LB 75, § 14; Laws 1979, LB 187, § 95; Laws 1992, LB 1063, § 17; Laws 1992, Second Spec. Sess., LB 1, § 17; Laws 1996, LB 1114, § 40.

Cross References

Nebraska Budget Act, see section 13-501.

This section provides for certification by the township and levy of taxes for township purposes by the county board. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

23-260 Town board; compensation of officers; fixed by town board.

The members of the town board shall be entitled to a per diem as fixed by the town board at its annual meeting.

Source: Laws 1895, c. 28, §§ 59, 60, p. 148; Laws 1913, c. 54, § 2, p. 162; R.S.1913, § 1044; C.S.1922, § 946; C.S.1929, § 26-260; R.S.1943, § 23-260; Laws 1953, c. 52, § 4, p. 181; Laws 1973, LB 75, § 15.

23-260.01 Repealed. Laws 1959, c. 266, § 1.

23-261 Town officers; official oaths; no fees for administering.

No town officer shall be entitled to any fee or compensation from any individual elected or chosen to a town office for administering to him the oath of office.

Source: Laws 1895, c. 28, § 61, p. 148; R.S.1913, § 1045; C.S.1922, § 947; C.S.1929, § 26-261; R.S.1943, § 23-261; Laws 1969, c. 153, § 5, p. 722.

23-262 Towns; actions by or against; how brought.

When any controversy or cause of action shall exist between any towns of this state, or between any town and individual or corporation, proceedings may be had or suits brought, either at law or in equity, for the purpose of trying and finally settling such controversies. In all such suits and proceedings the town shall sue and be sued by its corporate name, except when town officers shall be authorized by law to sue in their names of office for the benefit of the town.

Source: Laws 1895, c. 28, § 62, p. 148; R.S.1913, § 1046; C.S.1922, § 948; C.S.1929, § 26-262; R.S.1943, § 23-262.

Township can maintain an action for a breach of official duty by a road overseer. Town of Denver v. Myers, 63 Neb. 107, 88 N.W. 191 (1901).

23-263 Towns; actions against; service of process; defense.

In all legal proceedings against the town by name, the first process and all other writs or proceedings required to be served shall be served in the manner provided for service of a summons in a civil action, and whenever any suit or proceedings shall be commenced against the town, it shall be the duty of the town clerk to attend to the defense thereof, and lay before the electors of the town, at the first town meeting, a full statement of such suit or proceedings for their consideration and direction.

Source: Laws 1895, c. 28, § 63, p. 149; R.S.1913, § 1047; C.S.1922, § 949; C.S.1929, § 26-263; R.S.1943, § 23-263; Laws 1983, LB 447, § 12.

Cross References

For service of summons in a civil action, see section 25-505.01.

23-264 Towns; judgments against; payment.

All judgments recovered against a town or against town officers, in actions prosecuted by or against them in their names of office, shall not be collected by execution, but shall be a town charge and when levied and collected shall be paid to the person or persons to whom the same shall have been adjudged.

Source: Laws 1895, c. 28, § 64, p. 149; R.S.1913, § 1048; C.S.1922, § 950; C.S.1929, § 26-264; R.S.1943, § 23-264.

23-265 County supervisors; meetings; supervision of expenditures; road money, how expended.

The county board shall meet at such times and in such manner as provided by law. Each supervisor shall have special charge of the expenditure of money appropriated out of the county treasury by the board for roads, bridges, and culverts within his district, except in city districts when the board shall direct as to which one of the supervisors shall supervise the expenditure of the money

appropriated as aforesaid. Said money so appropriated shall not include any money paid as automobile or motor vehicle registration or license fees and shall not be distributed by said board to the individual members thereof to be by them personally paid out upon their own private account nor in any manner whatever; but shall remain in the county treasury until a claim or claims for labor performed shall be properly verified, approved by said supervisor, filed with the county clerk, allowed by the county board, and a warrant drawn therefor.

Source: Laws 1895, c. 28, § 65, p. 149; R.S.1913, § 1049; C.S.1922, § 951; Laws 1923, c. 44, § 1, p. 159; C.S.1929, § 26-265; R.S. 1943, § 23-265; Laws 1963, c. 113, § 1, p. 442.

Payment to member of county board for directing road work must be out of district road fund, excluding motor vehicle registration or license fees. State ex rel. Maltman v. Adams County, 119 Neb. 826, 231 N.W. 29 (1930).

Townships must keep highways, culverts, etc., in repair. Goes v. Gage County, 67 Neb. 616, 93 N.W. 923 (1903).

23-266 Towns; meetings; provisions inapplicable to cities.

None of the provisions of sections 23-201 to 23-299, with respect to the meetings of electors of their respective towns and their powers, shall apply to towns whose limits are coextensive with cities of the primary, first and second class, but such cities, and the inhabitants thereof, shall continue to be governed by the laws specially applicable thereto, except that the inhabitants thereof shall have such power as is conferred by law or election in the choosing of supervisors, assessors, judges and clerks of election, and other county officers.

Source: Laws 1895, c. 28, § 66, p. 150; R.S.1913, § 1050; C.S.1922, § 952; C.S.1929, § 26-266; R.S.1943, § 23-266.

23-267 Supervisor districts; population as basis for division; how calculated.

For the purpose of ascertaining the number of inhabitants in the several districts provided by section 23-204, the supervisors or commissioners, as the case may be, shall ascertain the whole number of votes cast at the last preceding general election held within the county, and shall multiply the number of votes so cast by five. This result shall be taken as the whole number of inhabitants of the county or any part thereof as the case may be, and the supervisor districts shall be divided upon the foregoing basis and in accordance with the results thus obtained.

Source: Laws 1895, c. 28, § 71, p. 153; R.S.1913, § 1051; C.S.1922, § 953; C.S.1929, § 26-267; R.S.1943, § 23-267.

Legislature did not confine inhabitants or population to legal residents or voters. Ludwig v. Board of County Commissioners of Sarpy County, 170 Neb. 600, 103 N.W.2d 838 (1960).

23-268 County supervisors; election; ballots; residency.

County supervisors shall be elected as provided in section 32-529. Elections shall be conducted as provided in the Election Act. In city districts, the ballots shall state which one of the supervisors is elected for the odd-numbered district and which one for the even-numbered district.

A supervisor elected after November 1986 need not be a resident of the district when he or she files for election as a supervisor from a given district, but a supervisor shall reside in the district in which he or she holds office.

Source: Laws 1895, c. 28, § 69, p. 152; R.S.1913, § 1052; C.S.1922, § 954; C.S.1929, § 26-268; R.S.1943, § 23-268; Laws 1947, c. 64, § 7, p. 212; Laws 1986, LB 812, § 1; Laws 1994, LB 76, § 539.

Cross References

Election Act, see section 32-101.

County supervisors are elected for four years, but have staggered terms of office. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-269 County supervisor districts; boundaries; change.

The supervisor districts may be changed after each state and federal census if it appears from an examination that the population has become unequal among the several districts. In the event of any change or amendment of sections 23-201 to 23-299 which may necessitate a change in the boundaries of such supervisor districts or any one of them, the county board shall make such change in boundary at its next regular meeting after such change or amendment takes effect. Those counties under township organization may change their procedures for electing members to their governing board from district to at large or from at large to district following the provisions of section 32-554.

Source: Laws 1895, c. 28, § 72, p. 153; R.S.1913, § 1053; Laws 1917, c. 17, § 3, p. 82; C.S.1922, § 955; C.S.1929, § 26-269; R.S.1943, § 23-269; Laws 1973, LB 552, § 4; Laws 1991, LB 789, § 9; Laws 1994, LB 76, § 540.

Where census indicated supervisory districts unequal as to population, mandatory duty was imposed upon board of supervisors to redistrict county. State ex rel. Rowe v. Emanuel, 142 Neb. 583, 7 N.W.2d 156 (1942).

After election adopting township organization, the county judge, county clerk, and county treasurer must divide the county into supervisor districts under rules in this section, but redistricting when required must be done under same rules by the county board. Obermiller v. Siegel, 340 F.Supp. 208 (D. Neb. 1972).

23-270 County board; duties; how determined.

In the absence of any special provision governing the board of supervisors, such board shall be governed by and perform all the duties and have all the powers applicable to county boards as provided by the general laws of this state.

Source: Laws 1895, c. 28, § 73, p. 153; R.S.1913, § 1054; C.S.1922, § 956; C.S.1929, § 26-270; R.S.1943, § 23-270.

In a county under township organization, the board of supervisors may create new towns. State ex rel. Town of Ewing v. Town of Golden, 99 Neb. 782, 157 N.W. 971 (1916).

23-271 Township organization; adoption; pending business; disposition.

Any incompleted matter or business pending before any board of county commissioners of any county, upon the adoption of township organization by such county, shall be completed and disposed of by the new board the same as if commenced before it.

Source: Laws 1895, c. 28, § 74, p. 153; R.S.1913, § 1055; C.S.1922, § 957; C.S.1929, § 26-271; R.S.1943, § 23-271.

(b) COUNTY BOARDS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

23-272 County supervisors; meetings.

The regular meetings of the county board shall be held in January.

Source: Laws 1879, § 64, p. 372; Laws 1889, c. 6, § 1, p. 76; R.S.1913, § 1064; C.S.1922, § 966; C.S.1929, § 26-280; R.S.1943, § 23-272; Laws 1997, LB 40, § 2; Laws 2004, LB 323, § 1.

It would not be presumed that county supervisor-elect qualified until first regular meeting. Kerr v. Adams County, 96 Neb. 178, 147 N.W. 683 (1914).

23-273 County supervisors; special meetings; notice.

Special meetings of the county board shall be held only when requested by at least one-third of the members of the board, which request shall be in writing, addressed to the clerk of the board, and specifying the time and object of such meeting. Upon receipt of such request, the clerk shall immediately notify in writing each member of the board of the time and object of such meeting, and shall cause notice of such meeting to be published in some newspaper of the county, if any shall be published therein; *Provided,* no business shall be transacted at any special meeting except such as is specified in the call.

Source: Laws 1879, § 63, p. 371; R.S.1913, § 1065; C.S.1922, § 967; C.S.1929, § 26-281; R.S.1943, § 23-273.

23-274 County supervisors; chairman; duties.

The board at its regular meeting of each year shall organize by choosing one of its number as chairman, who shall preside at all meetings of the board during the year; and in case of his absence at any meeting, the members present shall choose one of their number as temporary chairman.

Source: Laws 1879, § 65, p. 372; R.S.1913, § 1066; C.S.1922, § 968; C.S.1929, § 26-282; R.S.1943, § 23-274.

23-275 County supervisors; certificates of election; where filed.

The supervisors shall severally lay before the board, at the first regular meeting after election, their certificates of election, which shall be examined by the board, and if found regular, shall be filed in the office of the county clerk.

Source: Laws 1879, § 66, p. 372; R.S.1913, § 1067; C.S.1922, § 969; C.S.1929, § 26-283; R.S.1943, § 23-275.

County commissioner-elect would not be presumed to have qualified before regular meeting in January. Kerr v. Adams County, 96 Neb. 178, 147 N.W. 683 (1914).

23-276 County supervisors; additional powers.

In addition to the powers hereinbefore conferred upon all county boards, the board of supervisors shall have power (1) to change the boundaries of towns and to create new towns whenever the board determines that the existing towns are not workable towns and (2) to divide the county into convenient voting precincts and, as occasion may require, erect new ones, subdivide precincts already established, and alter voting precinct lines. When a voting precinct has less than seventy-five registered electors, the board of supervisors shall annex such voting precinct to another voting precinct except when the county is divided into more than two legislative districts. Any precinct having two hundred or more square miles and having more than twenty-five electors shall be excluded from being annexed to another voting precinct.

Source: Laws 1879, § 67, p. 372; R.S.1913, § 1068; C.S.1922, § 970; C.S.1929, § 26-284; R.S.1943, § 23-276; Laws 1953, c. 287, § 41, p. 955; Laws 1969, c. 150, § 2, p. 709; Laws 1969, c. 152, § 2, p. 718; Laws 1979, LB 187, § 96; Laws 1992, LB 719A, § 96; Laws 1996, LB 1114, § 41.

In a county under township organization, board of supervisors may create new towns. State ex rel. Town of Ewing v. Town of Golden, 99 Neb. 782, 157 N.W. 971 (1916).

23-277 County supervisors; quorum.

Two-thirds of all the supervisors elected in any county shall constitute a quorum for the transaction of business, and all questions which shall arise at meetings shall be determined by the votes of a majority of the supervisors present, except in cases otherwise provided for.

Source: Laws 1879, § 68, p. 373; R.S.1913, § 1069; C.S.1922, § 971; C.S.1929, § 26-285; R.S.1943, § 23-277.

A majority of members present at meeting may change township boundaries. Township of Inavale v. Bailey, 35 Neb. 453, 53 N.W. 465 (1892).

If two-thirds of board are present, impeachment proceedings may be heard. State ex rel. Castor v. Board of Supervisors of Saline County, 18 Neb. 422, 25 N.W. 587 (1885).

23-278 Repealed. Laws 1997, LB 269, § 80.

23-279 County supervisors; oaths; chairman may administer.

The chairman of the board of supervisors shall have power to administer an oath to any person concerning any matter submitted to the board, or connected with their powers and duties.

Source: Laws 1879, § 70, p. 373; R.S.1913, § 1071; C.S.1922, § 973; C.S.1929, § 26-287; R.S.1943, § 23-279.

23-280 Repealed. Laws 1973, LB 75, § 20.

23-281 Town; change of name; procedure.

Whenever the county board shall create a new town or change the name of an existing town, the proceedings in giving a name to such new town or changing the name of an existing town, shall be as follows: The proposed name to be given to such new town, or existing town, shall be filed in the office of the Auditor of Public Accounts, there to be retained for at least one year; and the auditor, at any time after the filing of such proposed name, shall, upon application of the board, grant his certificate stating that such proposed name, from information appearing in his office, has not been adopted by any city, town, village or municipal corporation in this state. This certificate must be obtained by the board before any action whatever shall be taken by the board toward making such change of name; and all proceedings instituted in any court or other place, under a name changed, without complying with the provisions of this section, shall be held to be void and of no effect. If such name has been adopted elsewhere in this state, the Auditor of Public Accounts shall so notify the board, whereupon another name shall be filed in his office, which shall there remain in a like manner as hereinbefore provided, and the certificate shall be issued by the auditor immediately after such filing, stating that such name has not been elsewhere adopted; whereupon the board may proceed to make such change of name, and not before. All proceedings pending, and all rights and privileges acquired in the name of such town, by such town, or by any person residing therein, shall be secured to such town or person, and such proceedings continued to final consummation in such name, the same as though the same had not been changed.

Source: Laws 1879, § 72, p. 373; R.S.1913, § 1073; C.S.1922, § 975; C.S.1929, § 26-289; R.S.1943, § 23-281.

(c) TOWNSHIP SUPERVISOR SYSTEM

23-282 Repealed. Laws 1975, LB 453, § 61.

23-283 Repealed. Laws 2008, LB 269, § 14.

23-284 Repealed. Laws 1975, LB 453, § 61.

23-285 Repealed. Laws 1975, LB 453, § 61.

23-286 Repealed. Laws 1975, LB 453, § 61.

23-287 Repealed. Laws 2008, LB 269, § 14.

23-288 Repealed. Laws 1975, LB 453, § 61.

23-289 Repealed. Laws 1975, LB 453, § 61.

23-290 Repealed. Laws 2008, LB 269, § 14.

23-291 Repealed. Laws 2008, LB 269, § 14.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-292 Township organization; how discontinued.

Any county which has township organization shall discontinue the same whenever the majority of the registered voters of the county voting on the question of such discontinuance so decide in the manner provided in sections 23-293 to 23-295.

Source: Laws 1885, c. 43, § 1, p. 235; R.S.1913, § 1056; C.S.1922, § 958; C.S.1929, § 26-272; R.S.1943, § 23-292; Laws 2008, LB269, § 5.

23-293 Township organization; discontinuance; procedure.

(1) In counties under township organization, a registered voter may file a petition or petitions for submission of the question of the discontinuance of township organization to the registered voters of the county. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election. When the petition or petitions are filed in the office of the county clerk or election commissioner, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the petitions.

(2) In counties under township organization, if a resolution supported by a majority of the county board is filed in the office of the county clerk or election commissioner for submission of the question of discontinuance of township organization to the registered voters of the county, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the resolution.

(3) A petition or county board resolution for discontinuance of township organization shall specify whether the county board of commissioners to be formed pursuant to section 23-151 will have five or seven members and that reorganization as a county board of commissioners will be effective at the

expiration of the supervisors' terms of office in January of the third calendar year following the election to discontinue township organization.

Source: Laws 1885, c. 43, § 2, p. 236; Laws 1895, c. 29, § 1, p. 154; R.S.1913, § 1057; C.S.1922, § 959; C.S.1929, § 26-273; R.S.1943, § 23-293; Laws 1973, LB 75, § 18; Laws 1985, LB 422, § 1; Laws 2008, LB269, § 6.

23-294 Township organization; discontinuance; election; ballot; form.

(1) If the petition or county board resolution to discontinue township organization specifies a five-member county board of commissioners pursuant to section 23-293, the questions on the ballot shall be respectively: For discontinuance of township organization and creation of a five-member county board of commissioners; or Against changing to a commissioner form of county government.

(2) If the petition or county board resolution to discontinue township organization specifies a seven-member county board of commissioners pursuant to section 23-293, the questions on the ballot shall be respectively: For discontinuance of township organization and creation of a seven-member county board of commissioners; or Against changing to a commissioner form of county government.

(3) Elections shall be conducted regarding discontinuance of township organization as provided in the Election Act.

Source: Laws 1885, c. 43, § 3, p. 236; R.S.1913, § 1058; C.S.1922, § 960; C.S.1929, § 26-274; R.S.1943, § 23-294; Laws 2008, LB269, § 7; Laws 2009, LB434, § 2.

Cross References

Election Act, see section 32-101.

23-295 Township organization; discontinuance; when effective.

If a majority of the votes cast on the question are for the discontinuance of township organization, then such organization shall cease to exist effective at the expiration of the supervisors' terms of office in January of the third calendar year following such election.

Source: Laws 1885, c. 43, § 4, p. 236; R.S.1913, § 1059; C.S.1922, § 961; C.S.1929, § 26-275; R.S.1943, § 23-295; Laws 2008, LB269, § 8; Laws 2009, LB434, § 3.

23-296 Township organization; cessation; establishment of commissioner system.

When township organization ceases in any county as provided by sections 23-292 to 23-295, a commissioner system shall be established. The county board of commissioners shall have five or seven members as specified in the petition or county board resolution pursuant to section 23-293.

Source: Laws 1885, c. 43, § 5, p. 236; R.S.1913, § 1060; C.S.1922, § 962; C.S.1929, § 26-276; R.S.1943, § 23-296; Laws 1945, c. 42, § 2, p. 203; Laws 2008, LB269, § 9.

23-297 Commissioner system creation; districts; elected members; how treated.

(1) If the voters vote for creation of a seven-member county board of commissioners, the commissioner districts shall be the same districts as the former supervisor districts unless changed at a later date as provided by section 23-149 and the supervisors whose terms have not expired on the effective date of the reorganization prescribed in section 23-293 shall continue in office as commissioners for the remainder of their unexpired terms.

(2)(a) If the voters vote for creation of a five-member county board of commissioners, the county clerk, county treasurer, and county attorney shall meet on the first Saturday after the first Tuesday of January following such election and redistrict the county into five commissioner districts with substantially equal population. Such redistricting shall be completed within thirty days after such initial meeting and shall specify where necessary the newly established districts which the members will serve for the balance of the unexpired terms as designated in subdivision (b) of this subsection. The newly established districts will not be effective until the effective date of the reorganization prescribed in section 23-293 except for purposes of being nominated and elected for office from such districts.

(b)(i) If three members of the county board of supervisors were elected for four-year terms at the election to create a five-member county board of commissioners, each such supervisor shall serve two of such years as a supervisor and two of such years as a commissioner representing the newly established districts as designated under subdivision (a) of this subsection and two commissioners shall be elected for four-year terms from the newly established districts at the next general election.

(ii) If four members of the county board of supervisors were elected for four-year terms at the election to create a five-member county board of commissioners, the three of such supervisors receiving the most votes at such election shall serve two of such years as a supervisor and two of such years as a commissioner representing the newly established districts as designated under subdivision (a) of this subsection, the fourth of such supervisors shall serve a term of two years as a supervisor, and two commissioners shall be elected for four-year terms from the newly established districts at the next general election.

Source: Laws 1885, c. 43, § 6, p. 237; R.S.1913, § 1061; C.S.1922, § 963; C.S.1929, § 26-277; R.S.1943, § 23-297; Laws 1945, c. 42, § 3, p. 203; Laws 1979, LB 331, § 7; Laws 2008, LB269, § 10.

Appointments will not be enjoined on account of irregularities in election, as quo warranto is the proper remedy. Fort v. Thompson, 49 Neb. 772, 69 N.W. 110 (1896).

23-298 Township organization; cessation; commissioners; succeed supervisors.

The board of county commissioners, as herein provided, shall be the legal successor of the board of supervisors in said county. Such board shall thereafter be governed by the laws that shall govern counties not under township organization, and in the same manner that said county would have been governed had not such organization been adopted.

Source: Laws 1885, c. 43, § 7, p. 237; R.S.1913, § 1062; C.S.1922, § 964; C.S.1929, § 26-278; R.S.1943, § 23-298; Laws 1945, c. 42, § 4, p. 204.

23-299 Township organization; cessation; town records; indebtedness and unexpended balances; how discharged.

When township organization is discontinued in any county, the town clerk in each town in such county, as soon as the county board of commissioners is qualified pursuant to section 23-297, shall deposit with the county clerk of the county all town records, papers, and documents pertaining to the affairs of such town and certify to the county clerk the amount of indebtedness of such town outstanding at the time of such discontinuance. The county board shall have full and complete power to settle all the unfinished business of the town as fully as might have been done by the town itself and to dispose of any and all property belonging to such town, the proceeds of which, after paying all indebtedness, shall be disposed of by the county board for the benefit of the taxable inhabitants thereof by such board crediting all unexpended balances of the town to the district road fund and in no other manner. The county board, at such time as provided by law, shall levy a tax upon the taxable property of such town to pay any unliquidated indebtedness it may have outstanding.

Source: Laws 1885, c. 43, § 8, p. 237; R.S.1913, § 1063; C.S.1922, § 965; C.S.1929, § 26-279; R.S.1943, § 23-299; Laws 1945, c. 42, § 5, p. 204; Laws 2008, LB269, § 11.

(e) TERMINATION OF TOWNSHIP BOARD

23-2,100 Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(1) If a township board has become inactive, the county board of supervisors shall hold a public hearing on the issue of termination of the township board. Notice of the hearing shall be published for two consecutive weeks in a newspaper of general circulation in the county. For purposes of this section, a township board has become inactive when two or more board positions are vacant and the county board has been unable to fill such positions in accordance with section 32-567 for six or more months.

(2) If no appointment to the township board has been made within thirty days after the public hearing because no resident of the township has provided written notice to the county board that he or she will serve on the township board, the county board may adopt a resolution to terminate the township board. The resolution shall state the effective date of the termination.

(3) Between the date of the public hearing and the date of termination of the township board, the business of the township shall be handled according to this subsection. No tax distributions shall be made to the township. Such funds shall be held by the county board in a separate township fund and disbursed only to pay outstanding obligations of the township board. All claims against the township board shall be filed with the county clerk and heard by the county board. Upon allowance of a claim, the county board shall direct the county clerk to draw a warrant upon the township fund. The warrant shall be signed by the chairperson of the county board and countersigned by the county clerk.

(4) Upon termination of a township board, the county board shall settle all unfinished business of the township board and shall dispose of all property under ownership of the township. Any proceeds of such sale shall first be disbursed to pay any outstanding obligations of the township, and remaining funds shall be credited to the road fund of the county board. Any remaining township board members serving as of the date of termination shall deposit

with the county clerk all township records, papers, and documents pertaining to the affairs of the township and shall certify to the county clerk the amount of outstanding indebtedness in existence on the date of termination. The county board shall levy a tax upon the taxable property located within the boundaries of the township to pay any outstanding indebtedness not paid for under this subsection or subsection (3) of this section.

(5) If more than fifty percent of the township boards in a county have been terminated, the county board shall file with the election commissioner or county clerk a resolution supporting the discontinuance of the township organization of the county pursuant to subsection (2) of section 23-293.

Source: Laws 2010, LB768, § 1; Laws 2012, LB936, § 1.
Effective date April 11, 2012.

ARTICLE 3

PROVISIONS APPLICABLE TO VARIOUS PROJECTS

(a) RESURVEY OF COUNTY

Section
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23-320.08. Flood control; cooperation with federal government; additional powers; agreements authorized.
23-320.09. Repealed. Laws 1977, LB 510, § 10.

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23-343.09. Repealed. Laws 1987, LB 134, § 9.
23-343.10. Transferred to section 23-3510.
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23-343.45. Repealed. Laws 1987, LB 134, § 9.
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Section

(k) REPAIR OF PUBLIC BUILDINGS

23-344. Repealed. Laws 1996, LB 1114, § 75.

(l) RENTING MACHINERY TO FARMERS

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(m) INVENTORIES

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23-346.01. County supplies in certain counties; annual estimate; perpetual inventory.
23-347. Inventory statement; duty of county officers to make; filing.
23-348. Repealed. Laws 1972, LB 1382, § 9.
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(n) MONUMENTS FOR HISTORIC SITES

23-351. Historic sites; monuments and markers; erection; expenditures authorized.
23-352. Monuments; markers; inscription.
23-353. Monuments; markers; record of location.
23-354. Monuments; markers; eminent domain.
23-355. Monuments; markers; plans; contracts; advisory committee; duties.
23-355.01. Nonprofit county historical association or society; tax levy; requirements; funding request.

(o) DESTRUCTION OF FILES AND RECORDS

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23-357. Repealed. Laws 1969, c. 105, § 11.

(p) ANIMAL DAMAGE CONTROL

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(q) SUPPORT OF INDIANS

23-362. Indians; support; state aid to counties; purpose; conditions; audit; certificate of county assessor; alcohol-related programs; participation by county board.
23-362.01. Indian reservation; county share of funds.
23-362.02. Repealed. Laws 1979, LB 584, § 4.
23-362.03. Repealed. Laws 1983, LB 607, § 8.
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(r) CONSTRUCTION OR REPAIR OF SIDEWALKS

23-365. Sidewalks; outside corporate limits of city or village; construct or repair; tax; levy; notice; construction by owner, when; appropriation.
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23-367. Special assessments; collection.

(s) STREET IMPROVEMENT DISTRICTS

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23-370. Resolution of county board; notice; objections; effect.
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(t) SUBURBAN DEVELOPMENT

23-372. Subdivision of land, defined.
23-373. Subdivisions; platting; approval of county board; exceptions.
23-374. Subdivisions; platting; requirements.

(a) RESURVEY OF COUNTY

23-301 County resurvey; petition; contents; election.

Upon petition filed with the county clerk of any county, signed by twenty percent of the qualified voters of said county as shown by the last preceding election and praying the county board to submit the proposition of ordering a resurvey, in whole or in part, of said county for the purpose of reestablishing the original corners of the United States survey, it shall be the duty of the county board to submit to the voters of the county at the next general election, or a special election, the question whether such resurvey shall be ordered; *Provided,* upon a like petition signed by twenty percent of the voters of any township or townships in said county, according to the government survey thereof, praying for the submission of a like proposition to the voters of said township or townships, it shall be the duty of the county board in like manner to submit the question at the next general election, or a special election, whether a resurvey shall be ordered in said township or townships. In every

case the petition shall set forth in brief form the extent of the resurvey desired and whether it shall be of the township and county lines, or of the county, township and sectional lines, and an estimate as near as may be by the county surveyor of the probable expense of said resurvey. This statement and estimate shall be placed upon the official ballot with the following words thereafter: For resurvey proposition, and Against resurvey proposition.

Source: Laws 1909, c. 36, § 1, p. 219; Laws 1913, c. 153, § 1, p. 392; R.S.1913, § 1108; C.S.1922, § 1042; C.S.1929, § 26-736; R.S. 1943, § 23-301.

23-302 County resurvey; election; canvass of votes.

The vote on the proposition shall be canvassed in the same manner as the vote on county officers. If a majority of the votes upon said proposition shall be in favor of the same, the county board shall within thirty days notify the Board of Educational Lands and Funds who shall require such resurvey to be made under its instructions by such competent deputy state surveyor as it shall appoint, assisted by the county surveyor of the county wherein the work is to be done, and according to the laws governing surveys by the State Surveyor and deputy state surveyors. Such surveys shall be made in accordance with the laws of the United States and the rules and regulations of the United States Department of Interior, Bureau of Land Management, governing the restoration of lost and obliterated corners and the specifications and instructions of the Board of Educational Lands and Funds. The field notes and plats of said resurvey shall be made in the manner and form prescribed by the Bureau of Land Management for the return of field notes and maps of United States surveys, and shall be filed in the office of the county clerk of the county where the work is done and duplicate copies filed in the office of the Board of Educational Lands and Funds at Lincoln, Nebraska, before being paid for; *Provided,* when any integral part of said resurvey is completed upon filing proof of its completion together with plats and field notes for the same approved as provided by law, the county board may allow payment for the part so completed.

Source: Laws 1909, c. 36, § 2, p. 220; R.S.1913, § 1109; Laws 1921, c. 84, § 1, p. 301; C.S.1922, § 1043; C.S.1929, § 26-737; R.S.1943, § 23-302; Laws 1982, LB 127, § 1.

23-303 County resurvey; cost; tax; bonds; submission to voters.

In case the question of said resurvey has been submitted to the voters of the entire county, the cost of said resurvey may be paid out of the county general fund in case there is money there available for that purpose. If not, the cost may be provided for by an issue of bonds or special tax levy, in which case the proposition for bonds or special tax levy shall be submitted to the voters as a part of the resurvey proposition; *Provided,* when a proposition for resurvey has already been submitted to the voters of a county, and a majority have voted in favor of such proposition, it shall be legal for the county board to proceed to make contract for such resurvey in accordance with the provisions of sections 23-301 to 23-303 providing for such contract; *provided further,* in case the question has been submitted to the voters of any one or more governmental townships of any county under the provisions of section 23-301, and a majority have voted in favor of such proposition, the cost of said resurvey may be paid

out of the general fund and said fund may be reimbursed the amount of such expenditure by the assessment of a special tax by the county board of such county equally apportioning the cost of such resurvey upon the area of all real estate in such governmental township or townships according to the acreage in each tract as shown by the original United States survey thereof, and including in addition thereto any accreted lands to such original United States survey as may be shown by the resurvey herein provided.

Source: Laws 1909, c. 36, § 3, p. 221; Laws 1913, c. 153, § 1, p. 392; R.S.1913, § 1110; C.S.1922, § 1044; C.S.1929, § 26-738; R.S.1943, § 23-303.

(b) SPECIAL SURVEY OF IRREGULAR TRACTS

23-304 Irregular tracts of land; survey.

It shall be the duty of the county board of each organized county in the State of Nebraska to cause to be surveyed, by a competent surveyor, all irregular subdivided tracts or lots of land, other than regular government subdivisions, and cause the same to be platted on a scale of not less than ten inches to the mile; *Provided, however,* where any county has in its possession the correct field notes of any such tract or lot of land, a new survey shall not be necessary, but such tracts may be mapped from such field notes.

Source: Laws 1879, § 142, p. 390; R.S.1913, § 1084; C.S.1922, § 1009; C.S.1929, § 26-701; R.S.1943, § 23-304.

Designation of an irregular tract as a certain numbered tax lot meets all requirements for describing irregular tracts, where plat is prepared and filed hereunder showing descriptions corresponding to the tax lot. City of Scottsbluff v. Kennedy, 141 Neb. 728, 4 N.W.2d 878 (1942).

23-305 Irregular tracts of land; survey; maps.

The board shall cause duplicate maps to be made, on which said tracts or lots of land shall be accurately described by lines and numbered from one up to the highest number of such tracts in each section, which numbers together with the number of the section, town and range, shall be distinctly marked. One of said maps shall be conspicuously hung in the office of the county clerk and the other in the office of the county treasurer.

Source: Laws 1879, § 143, p. 390; R.S.1913, § 1085; C.S.1922, § 1010; C.S.1929, § 26-702; R.S.1943, § 23-305.

23-306 Irregular tracts of land; survey; field notes; record.

The board shall also cause to be entered in duplicate, in suitable books to be provided for that purpose, the field notes of all such tracts of land within their respective counties, wherein shall be described each tract according to survey, and each tract shall be therein numbered to correspond with its number on the maps. One of such books of field notes shall be filed in the office of the county clerk, and the other in the office of the county treasurer.

Source: Laws 1879, § 144, p. 390; R.S.1913, § 1086; C.S.1922, § 1011; C.S.1929, § 26-703; R.S.1943, § 23-306.

23-307 Irregular tracts of land; legal description.

When the maps and books of field notes shall be filed as hereinbefore provided, the description of any tract or lot of land described in said maps, by

number, section, town and range, shall be a sufficient and legal description thereof for revenue and all other purposes.

Source: Laws 1879, § 145, p. 391; R.S.1913, § 1087; C.S.1922, § 1012; C.S.1929, § 26-704; R.S.1943, § 23-307.

To prove title to lots numbered for taxation purposes because they are irregular, an owner must present evidence of the survey maps and books of field notes. Vogel v. Bartels, 1 Neb. App. 1113, 510 N.W.2d 529 (1993).

(c) FLOOD CONTROL

23-308 Watercourses; diversion of channel; dams and dikes; when authorized.

Whenever any portion of a county exceeding three hundred and twenty acres in amount is put in peril of destruction by reason of the probable diversion of the channel of any river or watercourse, and whenever a petition stating such fact, signed by twenty freeholders in the precinct, is filed with the county board of such county, it shall be the duty of the county board to view said premises within the succeeding thirty days, and if upon actual view it shall appear that a portion of the county exceeding three hundred and twenty acres is in actual peril of destruction, it may cause to be built any dam, embankment or dike, or aid to such an extent as it may deem proper in the building of any dam, embankment or dike that it may deem necessary for the protection of said land. The amount expended toward such improvements shall be paid out of the general fund of the county.

Source: Laws 1885, c. 38, § 1, p. 213; R.S.1913, § 1103; C.S.1922, § 1025; C.S.1929, § 26-719; R.S.1943, § 23-308.

Cross References

For safety regulations relating to dams and reservoirs, see the Safety of Dams and Reservoirs Act, section 46-1601.

Where middle of stream is boundary, the line follows any gradual change in course of stream unless change is sudden. Nebraska v. Iowa, 145 U.S. 519 (1892).

23-309 Levees; dikes; construction; when authorized.

The supervisors or board of county commissioners of any county in this state shall have the power, as hereinafter provided, to construct, establish or cause to be constructed and established any levee, dike, bank protection or current control in any river or stream wholly within or bordering on the respective counties, and to provide for the maintenance of the same, whenever such project shall be conducive to the public health, convenience, welfare or safety, which purpose shall or may include the protection of lands or property from overflow, wash or bank erosion.

Source: Laws 1921, c. 269, § 1, p. 893; C.S.1922, § 1026; C.S.1929, § 26-720; R.S.1943, § 23-309.

23-310 Levees; dikes; petition of landowners; contents; filing.

Such board of supervisors or county commissioners shall act only upon a written petition signed by the owners of the majority of the land likely to be affected by the proposed levee, dike, bank protection or current control. The petition shall set forth the necessity for the levee, dike, bank protection or current control, a description of its proposed location, and a general statement of the territory likely to be benefited or affected thereby. The petition shall be

accompanied by a bond with sufficient surety or sureties to be approved by the county clerk of said county, conditioned to pay all expenses incurred in case the board does not grant the petition. Such petition may be presented at any regular or special meeting of the board and if sufficient in form the board shall order the same to be filed with the county clerk of said county.

Source: Laws 1921, c. 269, § 2, p. 893; C.S.1922, § 1027; C.S.1929, § 26-721; R.S.1943, § 23-310.

23-311 Levees; dikes; site; surveys and reports; duty of engineer.

It shall be the duty of such board to act promptly upon all such petitions. Upon the filing of the petition with the county clerk, as provided in section 23-310, the county clerk shall transmit a copy thereof to a competent engineer to be selected by the board, who, together with the board of county commissioners or supervisors, shall, as soon as practicable, inspect the proposed locations. If in the opinion of such board and the engineer such levee, dike, bank protection or current control is necessary or advisable, the board shall cause a survey of the proposed project to be made by such engineer, as herein provided. Such survey shall be primarily for the purpose of aiding the board in determining the necessity or advisability of constructing such project, but shall be a complete survey such as will be required for assessment of its costs. Such survey may extend to other lands than those affected by the proposed project for the purpose of determining the best practical method of protecting an area greater than the originally proposed territory. For the purpose of inspection or surveys the county commissioners, board of supervisors, surveyors, engineers, or their employees may enter upon any lands within the proposed territory, or upon any lands which in their judgment are likely to be affected by the proposed project. The surveyor or engineer shall file his report with the county clerk as soon as possible after being so instructed by the board to make such survey. The report shall include an estimated cost of the work together with a preliminary apportionment of individual assessments.

Source: Laws 1921, c. 269, § 3, p. 894; C.S.1922, § 1028; C.S.1929, § 26-722; R.S.1943, § 23-311.

23-312 Levees; dikes; report of engineer; filing; notice of hearing.

As soon as the report of the engineer is filed with the county clerk, it shall be the duty of the county clerk to give notice of the filing thereof by publication for three consecutive weeks in some weekly newspaper published in the county where the improvement is to be made, and state therein the proposed location where the improvement is to be made and the time set for the hearing thereon, of which all persons interested shall take notice. The date for said hearing shall not be more than six weeks from the date of the first publication.

Source: Laws 1921, c. 269, § 4, p. 895; C.S.1922, § 1029; C.S.1929, § 26-723; R.S.1943, § 23-312.

23-313 Levees; dikes; petition; remonstrance; hearing; powers of board.

On or before the day fixed for the hearing of such report the owners of any land affected by the work proposed may remonstrate against said petition and report, which remonstrance shall be verified by affidavit. If more than one party remonstrates, the same shall be consolidated and tried together, and the report of the engineer shall be prima facie evidence of the facts therein stated.

The supervisors or board of commissioners shall try the issue thus formed, and if they find for the remonstrance, the petition and report shall be dismissed at the cost of the petitioners, or shall be so amended as to comply with the findings of the board, which amended petition and report shall stand as final; *Provided,* that if donations shall be made or secured to the satisfaction of the supervisors or board, sufficient with the assessment to exceed the expenses of the work and damages allowed, if any, the petition and report shall not be dismissed, and such donations are hereby authorized to be made. The board shall have power to permit amendments to be made to the petition or report, and to continue the hearing from time to time, so as to subserve the ends of justice.

Source: Laws 1921, c. 269, § 5, p. 895; C.S.1922, § 1030; C.S.1929, § 26-724; R.S.1943, § 23-313.

23-314 Levees; dikes; plan for protection; approval by Director-State Engineer.

If at the time fixed for the hearing of the report, the supervisors or board of commissioners shall find that notice has been given, as required by section 23-312, and further find that the proposed work is of public utility, convenience, welfare or safety, and that the benefits assessed exceed the expenses and damages whatsoever they may be, they shall order that the improvement be made and shall specify therein the nature and extent of the improvement. The report of the engineer as finally adopted by the board shall be designated as the plan for protection and shall be submitted to the Director-State Engineer for his information and approval; *Provided,* that notice of the hour and day of such submission shall be once published in the newspaper selected by the board for other publication notices, at least five days prior thereto. This plan as approved by the Director-State Engineer shall stand as final.

Source: Laws 1921, c. 269, § 6, p. 895; C.S.1922, § 1031; C.S.1929, § 26-725; R.S.1943, § 23-314.

23-315 Levees; dikes; bids; contracts; conditions.

(1) If after the hearing the supervisors or board of county commissioners decide to proceed with the improvement, they shall let the contract for the construction of the work as a whole or in parcels as they may deem best. They shall give notice of the time and place the contract or contracts will be let by publishing for three successive weeks in one or more weekly newspapers published in the county, which notice shall state the specifications, nature, and extent of the improvement, the time within which the work is to be completed, and the allotment or allotments to be let. Sealed proposals shall be received and the work let to the lowest and best responsible bidder. Except as provided in subsection (2) of this section, a bond, in form prepared by the supervisors or board of county commissioners, conditioned for the faithful performance of the contract and executed by the bidder and surety or sureties to the county and to all parties interested in the amount of the bid, shall accompany such bid.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in an

amount determined by the county board of supervisors or commissioners, conditioned for the faithful performance of the contract and executed by the bidder to the county and to all parties interested in the amount of the bid, shall accompany the bid.

Source: Laws 1921, c. 269, § 7, p. 896; C.S.1922, § 1032; C.S.1929, § 26-726; R.S.1943, § 23-315; Laws 1987, LB 211, § 1.

23-316 Levees; dikes; construction; assessments.

As soon as the contract or contracts are let for the construction of the work, the supervisors or board of county commissioners shall assess on all the lands benefited ratably in accordance with the benefits received as confirmed and adjudged as herein provided such sum as may be necessary to pay for the work and all costs and expenses accrued or to accrue, not exceeding the whole benefit upon any one tract.

Source: Laws 1921, c. 269, § 8, p. 896; C.S.1922, § 1033; C.S.1929, § 26-727; R.S.1943, § 23-316.

23-317 Levees; dikes; assessments; entry on tax list; lien.

The board of supervisors or county commissioners shall thereupon cause the assessment so made upon the lands benefited as aforesaid to be entered upon the tax lists of the county as provided in cases of special assessments, which assessment shall constitute a lien on the real estate respectively assessed and shall be collected as other special assessments are collected; *Provided,* that one-tenth of each assessment shall be collected each year for a period of ten years with interest at the rate of seven percent per annum on deferred payments, unless paid in full as herein provided.

Source: Laws 1921, c. 269, § 9, p. 896; C.S.1922, § 1034; C.S.1929, § 26-728; R.S.1943, § 23-317.

23-318 Levees; dikes; assessments; notice.

Within ten days after such work has been completed and approved by the board, the board shall cause a notice to all persons whose lands are benefited by such improvement to be published for three successive weeks in a legal newspaper published and of general circulation in such county or, if no legal newspaper is published in the county, in a legal newspaper of general circulation in the county. Such notice shall fix the time, not more than sixty days from the date of the completion and approval of the work, within which owners of real estate benefited may pay the entire amount assessed against the respective parcels of land benefited and shall state that unless the amount is paid within such time, bonds will be issued for the payment of the special benefits assessed as hereinafter provided.

Source: Laws 1921, c. 269, § 10, p. 897; C.S.1922, § 1035; C.S.1929, § 26-729; R.S.1943, § 23-318; Laws 1986, LB 960, § 19.

23-319 Levees; dikes; bonds; when authorized; term; sinking fund.

After sixty days from the completion and approval of the work it shall be the duty of the county board to issue the bonds of the county in the amount of the assessment remaining unpaid at said time, payable in not to exceed ten equal annual installments with interest on deferred payment at seven percent per

annum, and said special assessment and taxes shall constitute a sinking fund for the payment of the bonds and interest.

Source: Laws 1921, c. 269, § 11, p. 897; C.S.1922, § 1036; C.S.1929, § 26-730; R.S.1943, § 23-319; Laws 1947, c. 15, § 14, p. 91.

23-320 Levees; dikes; assessments; appeal to district court; procedure.

Any person who appeared and filed a remonstrance as to the benefits received by him or her through such improvement or as to the amount of his or her assessment before the supervisors or board of commissioners at the hearing as provided in section 23-313 shall be allowed an appeal to the district court of the county by the same procedure as is provided in section 31-412. On such appeal the only questions that shall be tried shall be the questions raised before the board by the remonstrance. On such trial the report of the engineer shall be admissible in evidence and nothing in this section shall be construed as authorizing or permitting the stoppage, prevention, or delay of the proposed work. If more than one party appeals, the appeals shall be consolidated and tried together and the rights of each appellant separately determined. If the court finds for any appellant upon his or her remonstrance, it shall amend the report and the schedule of the assessment in accordance with its finding. The amended report and schedule shall be filed with the county clerk and a copy forwarded to the Director-State Engineer. If on appeal the court finds against the remonstrants, it shall dismiss the appeal at the cost of appellant.

Source: Laws 1921, c. 269, § 12, p. 897; C.S.1922, § 1037; C.S.1929, § 26-731; R.S.1943, § 23-320; Laws 1989, LB 26, § 1.

23-320.01 Flood control; powers of county board; contracts with federal government; appropriation of funds.

In any county of the State of Nebraska in which the Corps of Engineers of the United States Army, the Bureau of Reclamation, Natural Resources Conservation Service, or other department or agency of the federal government shall be authorized by Congress to construct works for flood control, watershed protection and flood prevention, irrigation, soil and water conservation, drainage, or similar projects, or in cooperation with the programs of natural resources districts, irrigation districts, reclamation districts, or similar agencies, the county board thereof shall, if in its opinion the construction is necessary for the public welfare, have the power to: (1) Enter into an undertaking, in the name of the county, to hold the United States of America free from any damage to persons or property resulting during the construction or after the completion thereof, (2) contract with the federal government, in the name of the county, that when the work is completed the county will maintain, keep in repair, and operate such flood control works or other similar projects, (3) furnish all necessary lands, rights-of-way, and easements, as provided in section 23-320.02, (4) appropriate such funds as may be necessary to fully develop, plan, and carry out a coordinated program of flood control or soil and water resource development for such county, and (5) appropriate such funds as may be necessary to pay the construction costs and expenses in excess of funds to be provided by the federal government.

Source: Laws 1947, c. 77, § 1, p. 241; Laws 1955, c. 67, § 1, p. 218; Laws 1961, c. 89, § 1, p. 310; Laws 1969, c. 154, § 1, p. 722; Laws 1999, LB 403, § 6.

23-320.02 Flood control; acquisition of lands, rights-of-way, and easements; procedure.

In any county, such as described in section 23-320.01, where it is necessary as a condition to the construction of any flood control works or other similar projects as provided in sections 23-320.01 to 23-320.07, that the county furnish the necessary lands, rights-of-way, or easements therefor, the county board is hereby authorized and empowered to acquire such lands, rights-of-way, or easements as may be necessary, and the board is hereby authorized and empowered to acquire the same by purchase or by gift or by the exercise of the right of eminent domain whether the property be within the limits of such county or outside its boundaries. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1947, c. 77, § 2, p. 242; Laws 1951, c. 101, § 68, p. 478; Laws 1961, c. 89, § 2, p. 311; Laws 1969, c. 155, § 1, p. 726; Laws 1981, LB 326, § 13.

Acquisition by city of easements and right-of-way for flood control project was authorized. Gruntorad v. Hughes Bros., 161 Neb. 358, 73 N.W.2d 700 (1955).

23-320.03 Flood control; bonds; amount; term; levy of tax.

Whenever in such county it is necessary to pay any construction costs and expenses in excess of the amounts paid by the federal government or to acquire any lands, rights-of-way, or easements under sections 23-320.01 to 23-320.06, the cost thereof and expenses connected therewith shall be defrayed by the issuance of general obligation bonds of the county, to be issued by the county board of such county without the necessity of an election, either in one issue or in separate issues from time to time as may be necessary and as determined by the county board of the county. The proceeds of the bonds shall be used for such purposes and no other except as otherwise provided in such sections. The aggregate of any such bonds so issued shall not be in excess of two-tenths of one percent of the taxable valuation of the county. All bonds issued under such sections shall mature in annual installments over a period of not more than twenty-five years, and it shall be the duty of the county board of such county to make an annual levy on all the taxable property in such county for the retirement of the principal and interest thereof as the same become due. The bonds provided for in such sections shall not be subject to nor included in any restrictions or limitations upon the amount of bonded indebtedness of the county contained in any other law affecting the county.

Source: Laws 1947, c. 77, § 3, p. 242; Laws 1965, c. 99, § 1, p. 418; Laws 1969, c. 154, § 2, p. 723; Laws 1979, LB 187, § 97; Laws 1992, LB 719A, § 97.

23-320.04 Flood control; liability on indemnity agreements; how paid; insurance.

Any loss, damage or expense for which the county or the county board may be liable by reason of having entered into an indemnity agreement or undertaking to protect and defend the federal government against loss or damage resulting from or growing out of such flood control works or other similar projects, may be paid for by said county from any funds on hand received from the sale of the bonds issued under the provisions of sections 23-320.01 to 23-320.07; *Provided,* that said county board may for the purpose of saving and

protecting the county from any such loss, damage or expense, apply for and purchase from any insurance or indemnity company authorized to transact business in this state, an insurance or indemnity policy or policies of insurance, and pay the cost of obtaining the same from any funds received from the sale of bonds issued under the provisions of sections 23-320.01 to 23-320.07.

Source: Laws 1947, c. 77, § 4, p. 243; Laws 1961, c. 89, § 3, p. 311.

23-320.05 Flood control; maintenance and operation; coordinated program; tax levy; special fund; establish; use.

For the purpose of maintaining and operating such flood control works or other similar projects as provided in sections 23-320.01 to 23-320.07 when the works or projects have been completed and turned over to the county and also for the purpose of developing and carrying out a coordinated soil and water resource program and program of flood control for the county, the county board of such county shall be empowered to make an annual tax levy of not to exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such county. Pending approval of an authorized flood control plan, the county involved may establish a special flood and erosion control reserve fund. Such fund may be used for obtaining land, easements, and rights-of-way and relocating utilities in connection with water and erosion improvements that have authorization and construction approval. To aid in the growth of such fund, it may be invested in short-term securities authorized by section 77-2315. Money remaining in the fund at the completion of construction or the discontinuance of an authorized project may revert to the general fund. It shall be the duty of the county board and the county engineer to keep all such flood control works or other similar projects in serviceable condition and to make such repairs as may, from time to time, be necessary.

Source: Laws 1947, c. 77, § 5, p. 243; Laws 1953, c. 287, § 42, p. 955; Laws 1955, c. 67, § 2, p. 219; Laws 1961, c. 89, § 4, p. 312; Laws 1965, c. 100, § 1, p. 420; Laws 1979, LB 187, § 98; Laws 1989, LB 5, § 1; Laws 1992, LB 719A, § 98; Laws 1996, LB 1114, § 42.

23-320.06 Flood control; agreements with other governmental agencies; construction, maintenance, repair, and operation; coordinated program; employment of nonprofit corporation.

For the purpose of carrying out any of the provisions of sections 23-320.01 to 23-320.06, the county board is hereby authorized to enter into agreements with (1) the United States of America or any department or agency thereof, (2) any city, (3) any drainage district, (4) any other county, (5) any natural resources district, (6) any irrigation district, (7) any reclamation district, (8) any body politic, (9) any person, (10) any firm, or (11) any individual, whenever it shall be necessary as a condition to the construction of flood control works or other similar projects hereunder, and for the maintenance, repair, or operation thereof. To aid and assist in carrying out a coordinated soil and water resource program or program of flood control for any county, the county board may also employ the services of any nonprofit corporation or organization that has as one of its principal objectives or purposes the promotion and development of soil and water resource projects and flood control and to receive gifts and contributions from public and private sources to be expended in providing

funds for construction costs and expenses in excess of funds to be provided by the federal government and the tax levy.

Source: Laws 1947, c. 77, § 6, p. 244; Laws 1955, c. 67, § 3, p. 219; Laws 1961, c. 89, § 5, p. 312; Laws 1969, c. 154, § 3, p. 724; Laws 1979, LB 187, § 99.

23-320.07 Flood control; cities; powers; eminent domain; bonds; tax levy; funds, how used.

Except as herein otherwise expressly provided, all of the rights, powers, authority, and jurisdiction conferred on counties and county boards by sections 23-320.01 to 23-320.06 are hereby also conferred upon and vested in any city of the first or second class or village located in any county such as described in section 23-320.01 and the governing body thereof. The governing body of any such city or village, in the name of the city or village, shall have the power to enter into undertakings and contracts and make agreements in like manner and for like purposes as provided in sections 23-320.01 to 23-320.06 for county boards. Such governing body may provide funds for construction costs and expenses in excess of amounts contributed by the federal government, may acquire lands, rights-of-way, and easements either within or without the limits of the city or village in like manner and for like purposes as provided in section 23-320.02 for county boards, and without further authorization may issue general obligation bonds of the city or village to pay the costs thereof and expenses connected therewith in the manner now provided by law, but the aggregate of any such bonds so issued shall not be in excess of one and eight-tenths percent of the taxable value of the taxable property of the city or village. Such bonds shall not be subject to nor included in any restrictions or limitations upon the amount of bonded indebtedness of the city or village contained in any other law. Funds received from the sale of bonds by any such city or village may be used to pay any loss, damage, or expense for which the city or village or the governing body thereof may be liable in like manner as counties are authorized to pay such loss, damage, or expense under section 23-320.04. For the purposes of maintaining and operating flood control works constructed by the United States Army Corps of Engineers or other agencies of the United States Government, when the flood control works have been completed and turned over to the city or village, the governing body of such city or village shall be empowered to make an annual tax levy of not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city or village. It shall be the duty of the governing body of the city or village to keep all such flood control works in serviceable condition and to make such repairs as may from time to time be necessary.

Source: Laws 1947, c. 77, § 7, p. 244; Laws 1953, c. 287, § 43, p. 956; Laws 1963, c. 108, § 1, p. 435; Laws 1965, c. 99, § 2, p. 421; Laws 1969, c. 154, § 4, p. 724; Laws 1979, LB 187, § 100; Laws 1992, LB 1063, § 18; Laws 1992, Second Spec. Sess., LB 1, § 18; Laws 1996, LB 1114, § 43.

City is required to keep flood control works in serviceable condition and to make necessary repairs. Gruntorad v. Hughes Bros., 161 Neb. 358, 73 N.W.2d 700 (1955).

23-320.08 Flood control; cooperation with federal government; additional powers; agreements authorized.

In any county or counties of the State of Nebraska in which the United States, or any of its departments or agencies shall be authorized by Congress to construct works for flood control, watershed protection and flood prevention and drainage programs of the State of Nebraska or any of its agencies or in cooperation with the program of natural resources districts or similar public districts the county or counties, if in its or their opinion the construction is necessary for the public welfare, may: (1) Enter into an undertaking, in the name of the county, to hold the United States of America free from any damage to persons or property resulting during the construction or after the completion thereof; (2) contract with the federal government, in the name of the county, that when such work is completed the county will maintain, keep in repair, and operate such works of improvement; (3) furnish all necessary lands, rights-of-way, and easements as provided in section 23-320.10; (4) enter into agreements with other county governments on provisions for cooperative programs of resource development; (5) establish watershed boundary lines for taxation purposes so that property within the perimeter of the defined drainage-way will be assessed for the financing of the program for improvement; and (6) appropriate such funds as may be needed to carry out and finance the program as outlined in sections 23-320.08 to 23-320.12.

Source: Laws 1963, c. 106, § 1, p. 431; Laws 1977, LB 510, § 5.

23-320.09 Repealed. Laws 1977, LB 510, § 10.

23-320.10 Flood control; construction of works; acquisition of rights-of-way and easements; eminent domain; procedure.

In any county or counties described in section 23-320.08, where it is necessary as a condition to the construction of any flood control works or other similar works of improvement as provided in sections 23-320.08 to 23-320.12, that the county furnish the necessary lands, rights-of-way, or easements therefor, the county board may acquire such lands, rights-of-way, or easements as may be necessary, and the board may acquire the same by purchase or by gift or by the exercise of the right of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1963, c. 106, § 3, p. 433.

23-320.11 Flood control; acquisition and operation of flood control works; tax levy authorized; repairs.

For the purpose of obtaining lands, easements, and rights-of-way and maintaining and operating such flood control works or other similar projects as provided in sections 23-320.08 to 23-320.12 when the same have been completed and turned over to the county and also for the purpose of developing and carrying out a coordinated soil and water resource program and program of flood control for the county, the county board of such county shall be empowered to make an annual tax levy of not to exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in a designated watershed area. It shall be the duty of the county board and the county engineer to keep all such flood control works or other similar projects in serviceable condition and to make such repairs as may, from time to time, be necessary.

Source: Laws 1963, c. 106, § 4, p. 433; Laws 1979, LB 187, § 101; Laws 1992, LB 719A, § 99; Laws 1996, LB 1114, § 44.

23-320.12 Flood control; execution of program; parties to agreement; employment of services of nonprofit corporation.

For the purpose of carrying out any of the provisions of sections 23-320.08 to 23-320.12, the county board may enter into agreements with (1) the United States of America or any department or agency thereof, (2) any city, (3) any drainage district, (4) any other county, (5) any natural resources district, (6) any irrigation district, (7) any reclamation district, (8) any body politic, (9) any person, or (10) any firm, whenever it shall be necessary as a condition to the construction of flood control works or other similar projects under the provisions of sections 23-320.08 to 23-320.12, and for the maintenance, repair, or operation thereof. To aid and assist in carrying out a coordinated soil and water resource program or program of flood control for any county, the county board may also employ the services of any nonprofit corporation or organization that has as one of its principal objectives or purposes the promotion and development of soil and water resource projects and flood control.

Source: Laws 1963, c. 106, § 5, p. 433.

23-320.13 Flood control; cities of the first class; project outside city limits; powers; authority.

All rights, powers, authority, and jurisdiction conferred on cities of the first class by sections 23-320.07 to 23-320.12, may be exercised by such city, in the absence of federal participation or sponsorship, whenever any project of flood control outside the limits of such city directly affects the welfare of such city and involves a cost of not to exceed five hundred thousand dollars.

Source: Laws 1965, c. 93, § 1, p. 401.

(d) COUNTY SUPPLIES

23-321 Repealed. Laws 1985, LB 393, § 18.

23-322 Transferred to section 23-346.01.

23-323 Repealed. Laws 1985, LB 393, § 18.

23-324 Repealed. Laws 1985, LB 393, § 18.

23-324.01 Transferred to section 23-3105.

23-324.02 Transferred to section 23-3106.

23-324.03 Transferred to section 23-3104.

23-324.04 Transferred to section 23-3107.

23-324.05 Repealed. Laws 1985, LB 393, § 18.

23-324.06 Transferred to section 23-3112.

23-324.07 Transferred to section 23-3113.

23-324.08 Transferred to section 23-3114.

(e) REAL ESTATE FOR PUBLIC USE

23-325 Real estate; appropriation; power of county board; procedure.

The county board shall have power to acquire, take, hold, appropriate, and condemn such real estate as may be necessary for convenience from time to time for the public use of the county; *Provided*, no appropriation of private property for the use of the county as aforesaid shall be made until full and just compensation therefor shall have been first made to the owner thereof. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1927, c. 56, § 1, p. 211; C.S.1929, § 26-709; R.S.1943, § 23-325; Laws 1951, c. 101, § 69, p. 478.

In condemnation proceedings Department of Roads and Irrigation follows procedural requirements set out herein. Hoesly v. Department of Roads & Irrigation, 142 Neb. 383, 6 N.W.2d 365 (1942).

Word ''owner'' in statute includes mortgagee and mortgagee is necessary party in action to condemn realty for public use under right of eminent domain. Northwestern Mutual Life Ins. Co. v. Nordhues, 129 Neb. 379, 261 N.W. 687 (1935).

Former act declared unconstitutional for failure to provide notice to landowners of steps on appraisement of damages. Sheridan County v. Hand, 114 Neb. 813, 210 N.W. 273 (1926).

Trial in condemnation proceedings may be had in name of person as plaintiff who owned land condemned at time proceedings were commenced. In such case, court should order payment of judgment to party entitled to damages. Sternberger v. Sanitary District No. 1 of Lancaster County, 100 Neb. 449, 160 N.W. 740 (1916).

Right of eminent domain is exercised only for public benefit. State v. Boone County, 78 Neb. 271, 110 N.W. 629 (1907).

County authorities will be discharged from liability upon making compensation to person, apparently sole owner. Cedar County v. Lammers, 73 Neb. 744, 103 N.W. 433 (1905).

County cannot be enjoined from acts necessary to improve road. Churchill v. Bethe, 48 Neb. 87, 66 N.W. 992 (1896).

23-326 Repealed. Laws 1951, c. 101, § 127.

23-327 Repealed. Laws 1951, c. 101, § 127.

23-328 Repealed. Laws 1951, c. 101, § 127.

23-329 Repealed. Laws 1951, c. 101, § 127.

23-330 Repealed. Laws 1955, c. 68, § 1.

23-331 Repealed. Laws 1951, c. 101, § 127.

23-332 Repealed. Laws 1951, c. 101, § 127.

(f) TRANSFER OF SURPLUS FUNDS

23-333 County surplus funds; how transferred; exceptions.

The county board of the several counties of the state may appropriate to the county general fund any county sinking fund in the county treasury not levied for the payment of any bonded indebtedness; also any county money from whatever source, excepting the money levied for school purposes, that remain on hand in the county treasury and are no longer required for the purposes for which same were levied; *Provided*, the county commissioners of the several counties of the state, not under township organization, may appropriate any unexpended balance remaining in the county treasury to the credit of any such precinct (such balance having accrued by reason of taxes collected from a precinct levy for the payment of bonds, after such bonds are paid), to the school districts within such precinct, apportioning such unexpended balance to the several school districts in the said precinct according to the property valuation of the several school districts, as found by the assessor for the year next preceding such appropriation. Where such unexpended balance accrued by

reason of taxes collected from a precinct levy for the payment of bridge or irrigation bonds, the county boards of the several counties of the state, not under township organization, may appropriate such unexpended balance remaining in the county treasury to the credit of the road fund of the commissioner district of which such precinct forms a part, to be expended for the improvement of roads, within the limits of such original precinct wherein such taxes were collected.

Source: Laws 1877, § 1, p. 214; Laws 1903, c. 34, § 1, p. 283; Laws 1913, c. 30, § 1, p. 106; R.S.1913, § 1097; C.S.1922, § 1022; C.S.1929, § 26-716; R.S.1943, § 23-333.

Taxes must be collected before they can be transferred to general fund. Bacon v. Dawes County, 66 Neb. 191, 92 N.W. 313 (1902).

Only surplus, after paying debt for which created, can be transferred. Union P. R. R. Co. v. Dawson County, 12 Neb. 254, 11 N.W. 307 (1882).

23-334 Repealed. Laws 1949, c. 36, § 1.

(g) EXPLOSIVES

23-335 Repealed. Laws 1988, LB 893, § 18.

(h) AWARDING CONTRACTS

23-336 County contracts; when invalid.

All contracts, either express or implied, entered into with any county board, for or on behalf of any county, and all orders given by any such board or any of the members thereof, for any article, service, public improvement, material or labor in contravention of any statutory limitation, or when there are or were no funds legally available therefor, or in the absence of a statute expressly authorizing such contract to be entered into, or such order to be given, are hereby declared unlawful and shall be wholly void as an obligation against any such county.

Source: Laws 1905, c. 55, § 1, p. 301; R.S.1913, § 1104; C.S.1922, § 1038; C.S.1929, § 26-732; R.S.1943, § 23-336.

Employment of administrative assistant did not violate this section in absence of showing that funds were not legally available. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

Intention was to declare contracts unlawful where no statutory authority therefor exists. Capital Bridge Co. v. County of Saunders, 164 Neb. 304, 83 N.W.2d 18 (1957).

Contract for employment of expert to make an appraisal and comparative valuation on real estate in county did not violate this section. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

County, which has contracted to expend all funds raised by emergency legislation for poor relief and has exhausted the general fund, cannot be compelled by mandamus to contract further and issue warrants for payment. State ex rel. Boxberger v. Burns, 132 Neb. 31, 270 N.W. 656 (1937).

Right of county board to employ physician in an emergency upheld. Bartlett v. Dahlsten, 104 Neb. 738, 178 N.W. 636 (1920).

Section does not apply to payment to precinct assessors for official services. Hiatt v. Tomlinson, 102 Neb. 730, 169 N.W. 270 (1918).

Legislature by special act could authorize payment for articles purchased and retained by county in violation of this section. Gibson v. Sherman County, 97 Neb. 79, 149 N.W. 107 (1914).

23-337 Illegal contracts; liability of county officers.

Any public official or officials who shall audit, allow or pay out, or cause to be paid out, any funds of any county for any article, public improvement, material, service or labor, contrary to the provisions of section 23-336, shall be liable for the full amount so expended, and the same may be recovered from

any such official or the surety upon his official bond by any such county, or any taxpayer thereof.

Source: Laws 1905, c. 55, § 2, p. 301; R.S.1913, § 1105; C.S.1922, § 1039; C.S.1929, § 26-733; R.S.1943, § 23-337.

County officers were not liable in taxpayer's suit for payment of tax appraisal expert. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

County board cannot be compelled by mandamus to contract and issue warrants for poor relief after all funds raised by emergency legislation for that purpose have been exhausted, as well as the general fund. State ex rel. Boxberger v. Burns, 132 Neb. 31, 270 N.W. 656 (1937).

Prohibition of section does not extend to money paid to precinct assessors for official services. Hiatt v. Tomlinson, 102 Neb. 730, 169 N.W. 270 (1918).

23-338 Illegal contracts; county exempt from liability.

No judgment shall hereafter be rendered by any court against any such county in any action brought to recover for any article, public improvement, material, service or labor contracted for or ordered in contravention of any statutory limitation, or when there are or were no funds legally available at the time, with which to pay for the same, or in the absence of a statute expressly authorizing such contract; *Provided*, that this section and sections 23-336 and 23-337 may not prevent the repairing of any bridge damaged by sudden casualty, when the county board shall first declare that an emergency exists, and give notice of its intention to repair such damage by at least one publication in some newspaper of general circulation in the county.

Source: Laws 1905, c. 55, § 3, p. 302; R.S.1913, § 1106; C.S.1922, § 1040; C.S.1929, § 26-734; R.S.1943, § 23-338.

This section has no application where county has general authority to contract but the power has been irregularly exercised. Capital Bridge Co. v. County of Saunders, 164 Neb. 304, 83 N.W.2d 18 (1957).

Contract of county for purchase of road equipment sustained as legal and valid, and judgment thereon was not in contravention of this section. Omaha Road Equipment Co. v. Thurston County, 122 Neb. 35, 238 N.W. 919 (1931).

Prohibition of this section does not extend to money paid to precinct assessors for official services. Hiatt v. Tomlinson, 102 Neb. 730, 169 N.W. 270 (1918).

Contracts, by which attorney undertakes collection of dormant judgment for county on contingent basis, is not void because it is for contingent fee. Miles v. Cheyenne County, 96 Neb. 703, 148 N.W. 959 (1914).

Where question of failure to give notice by publication of intention to repair was raised for first time on appeal, it will not be considered. Standard Bridge Co. v. Kearney County, 95 Neb. 744, 146 N.W. 943 (1914).

(i) STREET IMPROVEMENT

23-339 Street improvement; county aid; when authorized.

The county board of any county in which any city or cities having over twenty-five thousand and less than one hundred thousand inhabitants is situated is hereby authorized and empowered, whenever the road fund or funds of said county will warrant it, to aid in the grading, paving or otherwise improving of any street, avenue or boulevard leading into said city and within the corporate limits thereof, by providing for the payment of not exceeding one-half of the cost of such grading, and not exceeding the cost of the paving of intersections. It shall also be authorized and empowered to grade, pave or otherwise improve any street, avenue, boulevard or road, or any portion thereof leading into or adjacent to any such city outside, or partly inside and partly outside the corporate limits thereof, including any portion thereof leading into or across any village or town, and for such improvements outside of the corporate limits of any such city as herein authorized and directed.

Source: Laws 1911, c. 25, § 1, p. 171; R.S.1913, § 1111; C.S.1922, § 1045; C.S.1929, § 26-739; R.S.1943, § 23-339.

23-340 Streets outside corporate limits; improvement; notice to landowners; county aid.

Whenever the board shall contemplate the making of such improvements outside the corporate limits of any such city, it shall notify the county surveyor, whose duty it shall be to make an examination of the proposed improvement and report an estimate of the cost thereof to the board. If upon the consideration of such report, the county board determines to make the improvement, it shall cause personal notice to be served on the owners of property abutting on said road outside the corporate limits of such city of its intention to make such improvements, and if the owner is a nonresident, then by personal service upon the agent of such nonresident, if he has one residing in the county, and in case he has no such agent, by publishing such notice in a newspaper published in and of general circulation in such county. Upon the proof of service or publication of said notice, and after giving such owner an opportunity to be heard, the board shall decide upon the material to be used in such improvement and enter an order upon its records for the construction thereof; *Provided, however*, whenever the street, avenue, boulevard or road upon which improvements are contemplated, lies adjacent to and outside, or partly inside and partly outside, the corporate limits of any such city, the examination of the proposed improvement, report and estimate of the cost thereof, shall be made jointly by the county surveyor and the city engineer of such city, and after the county board shall determine to make such improvement and decide upon the material to be used therein, nothing further shall be done toward the completion of such improvement until such city by and through its proper officers shall agree in writing, a copy of which shall be filed with the board, to construct the one-half of said improvement lying next to or within the corporate limits of the city and pay the cost of said one-half. After such agreement shall have been filed with the county board, the board shall proceed to construct the other one-half of such improvement in the manner provided herein. The county shall pay two-thirds of the cost of the other one-half of such improvement, and the other one-third shall be paid by special assessment of all the real estate abutting on or adjacent to said one-half as provided in section 23-341; *and provided further*, wherever any such city shall have improved any portion, equal to one-half or more, of any such street, avenue, boulevard or road lying adjacent to and wholly outside, or partly outside and partly inside the corporate limits of any such city, and either paid or provided for the payment of the cost of the same, the county board may proceed to improve in like manner the remaining portion of said street, avenue, boulevard or road, and of the cost thereof the county shall pay two-thirds and the other one-third shall be paid by special assessment of all the real estate abutting on or adjacent to said portion as provided for in section 23-341.

Source: Laws 1911, c. 25, § 2, p. 172; R.S.1913, § 1112; C.S.1922, § 1046; C.S.1929, § 26-740; R.S.1943, § 23-340.

23-341 Streets outside corporate limits; improvement; cost; payment; assessments; determination; how levied.

Two-thirds of the cost of any such improvement authorized by sections 23-339 and 23-340 outside the corporate limits of such city and not adjacent thereto, as mentioned in section 23-339, shall be paid by said county board out of the road funds of the county, and one-third by special assessment of all real estate abutting on or adjacent to such improvement to a depth not exceeding

five hundred feet on each side thereof, in proportion to the special benefits to such real estate by reason of such improvements. The benefits to such real estate shall be determined by the board, after publication in a newspaper of general circulation in the county, of notice to the owners of said real estate at least ten days prior to such determination. Such assessment may be made according to the foot frontage of real estate along the line of such improvement or according to such other rule or method as the board may adopt for the distribution and equalization of said one-third of the cost. The amount so assessed shall be placed upon the tax list for the ensuing year and collected in the same manner at the same time as the taxes of other property, and, when collected, shall be held in a special fund and used only in the payment of the cost of that particular improvement, as specified herein.

Source: Laws 1911, c. 25, § 3, p. 173; R.S.1913, § 1113; C.S.1922, § 1047; C.S.1929, § 26-741; R.S.1943, § 23-341; Laws 1963, c. 113, § 2, p. 442.

23-342 Streets outside corporate limits; improvement; contracts; conditions.

(1) All contracts for the construction of such improvements outside the corporate limits of any such city shall be let to the lowest responsible bidder who, except as provided in subsection (2) of this section, shall enter into a good and sufficient bond for the faithful performance of such contract in such amount and with such sureties as the county board may determine. All payments of such contracts shall be made by warrants drawn on the road fund of the county.

(2) If a contract, the provisions of which are limited to the purchase of supplies or materials, is entered into pursuant to this section and if the amount of the contract is fifty thousand dollars or less, an irrevocable letter of credit, a certified check upon a solvent bank, or a performance bond in a guaranty company qualified to do business in Nebraska, as prescribed by and in an amount determined by the county board of supervisors or commissioners, conditioned for the faithful performance of the contract and executed by the bidder to the county and to all parties interested in the amount of the bid, shall accompany the bid.

Source: Laws 1911, c. 25, § 4, p. 174; R.S.1913, § 1114; C.S.1922, § 1048; C.S.1929, § 26-742; R.S.1943, § 23-342; Laws 1987, LB 211, § 2.

(j) MEDICAL FACILITIES

23-343 Transferred to section 23-3501.

23-343.01 Transferred to section 23-3502.

23-343.02 Transferred to section 23-3503.

23-343.03 Transferred to section 23-3504.

23-343.04 Transferred to section 23-3505.

23-343.05 Transferred to section 23-3506.

23-343.06 Transferred to section 23-3507.

23-343.07 Transferred to section 23-3508.

23-343.08 Transferred to section 23-3509.

23-343.09 Repealed. Laws 1987, LB 134, § 9.

23-343.10 Transferred to section 23-3510.

23-343.11 Transferred to section 23-3511.

23-343.12 Transferred to section 23-3512.

23-343.13 Transferred to section 23-3513.

23-343.14 Transferred to section 23-3514.

23-343.15 Transferred to section 23-3515.

23-343.16 Transferred to section 23-3516.

23-343.17 Transferred to section 23-3517.

23-343.18 Transferred to section 23-3518.

23-343.19 Transferred to section 23-3519.

23-343.20 Transferred to section 23-3529.

23-343.21 Transferred to section 23-3530.

23-343.22 Transferred to section 23-3531.

23-343.23 Transferred to section 23-3532.

23-343.24 Transferred to section 23-3533.

23-343.25 Transferred to section 23-3534.

23-343.26 Transferred to section 23-3535.

23-343.27 Transferred to section 23-3536.

23-343.28 Transferred to section 23-3537.

23-343.29 Transferred to section 23-3538.

23-343.30 Transferred to section 23-3539.

23-343.31 Transferred to section 23-3540.

23-343.32 Transferred to section 23-3541.

23-343.33 Transferred to section 23-3542.

23-343.34 Transferred to section 23-3543.

23-343.35 Transferred to section 23-3544.

23-343.36 Transferred to section 23-3545.

23-343.37 Transferred to section 23-3546.

23-343.38 Transferred to section 23-3547.

23-343.39 Transferred to section 23-3548.

23-343.40 Transferred to section 23-3549.

23-343.41 Repealed. Laws 1987, LB 134, § 9.

23-343.42 Transferred to section 23-3550.

23-343.43 Transferred to section 23-3551.

23-343.44 Repealed. Laws 1969, c. 145, § 52.

23-343.45 Repealed. Laws 1987, LB 134, § 9.

23-343.46 Transferred to section 23-3552.

23-343.47 Transferred to section 23-3528.

23-343.48 Transferred to section 23-3553.

23-343.49 Transferred to section 23-3554.

23-343.50 Transferred to section 23-3555.

23-343.51 Transferred to section 23-3556.

23-343.52 Transferred to section 23-3557.

23-343.53 Transferred to section 23-3558.

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23-343.57 Transferred to section 23-3562.

23-343.58 Transferred to section 23-3563.

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23-343.60 Transferred to section 23-3565.

23-343.61 Transferred to section 23-3566.

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23-343.71 Transferred to section 23-3523.

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23-343.73 Transferred to section 23-3525.

23-343.74 Transferred to section 23-3579.

23-343.75 Transferred to section 23-3580.

23-343.76 Transferred to section 23-3581.

23-343.77 Transferred to section 23-3582.

23-343.78 Transferred to section 23-3583.

23-343.79 Transferred to section 23-3584.

23-343.80 Transferred to section 23-3585.

23-343.81 Repealed. Laws 1985, LB 421, § 6.

23-343.82 Repealed. Laws 1979, LB 412, § 32.

23-343.83 Repealed. Laws 1986, LB 733, § 5.

23-343.84 Transferred to section 23-3586.

23-343.85 Transferred to section 23-3587.

23-343.86 Transferred to section 23-3588.

23-343.87 Transferred to section 23-3589.

23-343.88 Transferred to section 23-3590.

23-343.89 Transferred to section 23-3591.

23-343.90 Transferred to section 23-3592.

23-343.91 Transferred to section 23-3593.

23-343.92 Transferred to section 23-3594.

23-343.93 Transferred to section 23-3595.

23-343.94 Transferred to section 23-3596.

23-343.95 Transferred to section 23-3597.

23-343.96 Repealed. Laws 1979, LB 412, § 32.

23-343.97 Transferred to section 23-3598.

23-343.98 Repealed. Laws 1986, LB 733, § 5.

23-343.99 Transferred to section 23-3599.

23-343.100 Transferred to section 23-35,100.

23-343.101 Transferred to section 23-35,101.

23-343.102 Transferred to section 23-35,102.

23-343.103 Transferred to section 23-35,103.

23-343.104 Transferred to section 23-35,104.

23-343.105 Transferred to section 23-35,105.

23-343.106 Transferred to section 23-35,106.

23-343.107 Transferred to section 23-35,107.

23-343.108 Transferred to section 23-35,108.

23-343.109 Transferred to section 23-35,109.

23-343.110 Transferred to section 23-35,110.

23-343.111 Transferred to section 23-35,111.

23-343.112 Transferred to section 23-35,112.

23-343.113 Transferred to section 23-35,113.

23-343.114 Transferred to section 23-35,114.

23-343.115 Transferred to section 23-35,115.

23-343.116 Transferred to section 23-35,116.

23-343.117 Transferred to section 23-35,117.

23-343.118 Transferred to section 23-35,118.

23-343.119 Transferred to section 23-35,119.

23-343.120 Transferred to section 23-35,120.

23-343.121 Transferred to section 23-3526.

23-343.122 Transferred to section 23-3527.

23-343.123 Transferred to section 23-3573.

23-343.124 Transferred to section 23-3574.

23-343.125 Transferred to section 23-3575.

23-343.126 Transferred to section 23-3576.

23-343.127 Transferred to section 23-3577.

23-343.128 Transferred to section 23-3578.

(k) REPAIR OF PUBLIC BUILDINGS

23-344 Repealed. Laws 1996, LB 1114, § 75.

(l) RENTING MACHINERY TO FARMERS

23-345 County machinery; rental to farmers; conditions.

The board of county commissioners or the board of county supervisors of the counties of the State of Nebraska is hereby authorized and empowered to permit farmers and landowners in their respective counties to use county machinery and equipment in constructing and maintaining terraces and ditches in said respective counties; *Provided,* that said farmers or landowners shall first enter into a written agreement with said county commissioners or county supervisors whereby said farmers or landowners agree to pay a reasonable sum of money as rental for said equipment and machinery, which sum shall be fixed by the county commissioners or county supervisors, and to comply with any and all of the conditions and requirements in regard to said rental as made by said county commissioners or county supervisors; *Provided,* one of the conditions and requirements in regard to said rental shall always be that the county shall furnish an operator for said equipment and machinery, who shall operate the same, and the compensation of said operator shall be considered in determining the amount of rental in each case.

Source: Laws 1935, c. 54, § 1, p. 184; C.S.Supp.,1941, § 26-757; R.S. 1943, § 23-345.

(m) INVENTORIES

23-346 Uniform inventory statements required.

The Auditor of Public Accounts shall establish a uniform system of inventory statements for all county officers and such system, when established, shall be installed and used by all county officers.

Source: Laws 1939, c. 28, § 1, p. 139; C.S.Supp.,1941, § 26-758; R.S. 1943, § 23-346.

23-346.01 County supplies in certain counties; annual estimate; perpetual inventory.

It shall be the duty of the county clerk, in all counties having a population of one hundred fifty thousand or more inhabitants, on or before December 1, annually, to prepare separate estimates of the supplies, materials, equipment and machinery required for the use of the county officers during the coming year, which by law are not required to be furnished by the state, and, in order to properly estimate the amounts of supplies, materials, equipment and machinery to be needed by the county government, the county clerk shall keep a perpetual inventory of all personal property of the county.

Source: Laws 1879, § 150, p. 392; R.S.1913, § 1089; C.S.1922, § 1014; C.S.1929, § 26-706; Laws 1943, c. 57, § 2, p. 227; R.S.1943, § 23-322; Laws 1974, LB 1007, § 1; R.S.1943, (1987), § 23-322.

Failure to carry out provisions of section will not justify removal of officer in absence of evil intent. Hiatt v. Tomlinson, 100 Neb. 51, 158 N.W. 383 (1916).

23-347 Inventory statement; duty of county officers to make; filing.

Within two calendar months after the close of each fiscal year, each county officer shall make, acknowledge under oath, and file with the county board of

his or her county an inventory statement of all county personal property in the custody and possession of said county officer. The county board in each county shall examine into each inventory statement so filed, and, if said statement is correct and proper in every particular, the county board shall deliver each of said inventory statements to the clerk of the county for filing as a public record in said county clerk's office in a manner convenient for reference.

Source: Laws 1939, c. 28, § 2, p. 140; C.S.Supp.,1941, § 26-759; R.S. 1943, § 23-347; Laws 1981, LB 41, § 1.

23-348 Repealed. Laws 1972, LB 1382, § 9.

23-348.01 Inventory of real property; filing; contents.

Within two calendar months after the close of each fiscal year, each county board shall make, or cause to be made, acknowledged under oath, and filed with the county clerk of such county, an inventory statement of all real estate and real property in which such county has any interest of any kind. Such inventory shall include all real estate owned by the county or in which the county has an interest or lien of any kind including liens acquired by operation of law for any purpose except real estate tax liens which have not been established by judicial decree and except those parcels of land owned by the county for road rights-of-way and other utility rights-of-way. Such inventory shall set forth a description of such properties with sufficient details that the property may be identified in the records of the register of deeds, and shall set forth, if within an area in which the property abuts upon a street, the street and street number of such property and shall set forth the use being made of such property. The county clerk shall retain such inventory for filing as a public record in his or her office in a manner convenient for reference.

Source: Laws 1972, LB 1382, § 8; Laws 1981, LB 41, § 2.

23-349 Inventory statements; public record.

All inventory statements required in sections 23-346 and 23-347 shall be filed with the county clerk as a public record, and shall be open to the inspection of the public.

Source: Laws 1939, c. 28, § 2, p. 141; C.S.Supp.,1941, § 26-759; R.S. 1943, § 23-349.

23-350 Inventory statements; failure to file; false statements; penalty.

Any county officer, including any member of any county board, who shall fail to file such inventory statements or who shall willfully make any false or incorrect statement therein, or who shall aid, abet, or connive in the making of any false or incorrect statement therein shall be guilty of a Class III misdemeanor. As part of the judgment of conviction, the court may decree such officer guilty of malfeasance in office for a palpable omission of duty and subject to removal under section 28-924.

Source: Laws 1939, c. 28, § 3, p. 141; C.S.Supp.,1941, § 26-760; R.S. 1943, § 23-350; Laws 1977, LB 40, § 89; Laws 2001, LB 8, § 1.

Cross References

For duties of county attorney upon notification of violation of section, see section 23-1201.

(n) MONUMENTS FOR HISTORIC SITES

23-351 Historic sites; monuments and markers; erection; expenditures authorized.

The county commissioners or county supervisors of any county in this state shall have authority to expend from the general fund of the county during any one year the proceeds of a tax of three-tenths of one cent on each one hundred dollars upon the taxable value of all taxable property in the county for the purchase and erection of suitable monuments or markers and the purchase of historic sites on which the monuments or markers are located within the county. In any county having a nonprofit historical association or society organized under the corporation laws of this state, the county commissioners or supervisors may grant to such association or society the amount authorized for expenditure by this section upon application by the association or society. Such funds may then be expended, at the direction of the board of directors of such association or society, for the following purposes: (1) Establishment, construction, and reconstruction of historical buildings; (2) purchase of exhibits, equipment, and real and personal property of historical significance and the maintenance thereof; and (3) lease, rental, purchase or construction, and maintenance of buildings other than those of historical nature for the display and storage of exhibits.

Source: Laws 1927, c. 52, § 1, p. 207; C.S.1929, § 26-801; R.S.1943, § 23-351; Laws 1969, c. 159, § 1, p. 732; Laws 1979, LB 187, § 115; Laws 1992, LB 719A, § 101.

Cross References

For Highway Historical Markers purchased by the Nebraska State Historical Society, see section 82-120.

23-352 Monuments; markers; inscription.

Said monuments or markers shall have thereon a suitable inscription indicating the purpose for which the monument or marker is erected.

Source: Laws 1927, c. 52, § 2, p. 207; C.S.1929, § 26-802; R.S.1943, § 23-352.

23-353 Monuments; markers; record of location.

The county board in each county where money is expended under sections 23-351 to 23-355 shall cause to be kept by the county clerk a record of each monument or marker erected, together with a full account of the location or event which said monument or marker shall commemorate, and a duplicate of said record signed by the members of the county board and attested by the signature and seal of the county clerk shall be sent to the Nebraska State Historical Society.

Source: Laws 1927, c. 52, § 3, p. 207; C.S.1929, § 26-803; R.S.1943, § 23-353.

23-354 Monuments; markers; eminent domain.

The county board shall have the right of eminent domain for the purpose of carrying out the provisions of sections 23-351 to 23-355.

Source: Laws 1927, c. 52, § 4, p. 207; C.S.1929, § 26-804; R.S.1943, § 23-354.

23-355 Monuments; markers; plans; contracts; advisory committee; duties.

All work done under the provisions of sections 23-351 to 23-355 shall be done according to plans and specifications provided by the county board, and said board shall have authority to employ such persons as it deems necessary to prepare said plans and specifications. All work done under the provisions of said sections shall be by contract and said work shall be let to the lowest and best bidder after notice shall have been duly published for three successive weeks in a legal newspaper having general circulation in the county; *Provided*, where the estimate for labor and material is less than fifty dollars the county board may expend same without advertising. For the purpose of carrying out the provisions of said sections the county board may designate a committee of three residents of the county who shall serve without pay to assist in the location of said monuments or markers, the selection of sites, and the preparation of the record pertaining thereto. Said committee shall act in an advisory capacity to the county board.

Source: Laws 1927, c. 52, § 5, p. 207; C.S.1929, § 26-805; R.S.1943, § 23-355.

23-355.01 Nonprofit county historical association or society; tax levy; requirements; funding request.

(1) Whenever there is organized within any county in this state a nonprofit county historical association or society organized under the corporation laws of this state, a tax of not more than three-tenths of one cent on each one hundred dollars upon the taxable value of all the taxable property in such county may be levied for the purpose of establishing a fund to be used for the establishment, management, and purchase of exhibits, equipment, and other personal property and real property and maintenance of such nonprofit county historical association or society, including the construction and improvement of necessary buildings therefor. The levy shall be part of the levy of the county subject to section 77-3442. Such fund shall be paid by the county treasurer to the treasurer of such nonprofit county historical association or society and shall be disbursed under the direction and supervision of the board of directors and officers of such nonprofit county historical association or society. No initial levy shall be made for such purpose unless the proposition to make such levy is first submitted to a vote of the people of the county at a general election and the same is ordered by a majority of the legal voters voting thereon. The proposition to make such levy shall be placed on the ballot by the county board of such county at the next general election following the receipt of a request from the board of directors of such nonprofit county historical association or society to submit such proposition to the voters of the county. After the proposition has been sanctioned by a vote of the people, such levy shall be made to carry out the purposes for which the fund was established. A nonprofit county historical association or society for which a tax is levied under this subsection is subject to the Nebraska Budget Act. The electors of the county may discontinue such levy by a vote of the people in the same manner that the initial levy was authorized. The proposition to discontinue such levy shall be placed on the ballot by the county board of such county at a general election only when requested so to do by a petition signed by at least twenty percent of the legal voters of such county based on the total vote cast for Governor at the last general election in the county.

(2) A nonprofit county historical association or society that is not receiving funds from a levy under subsection (1) of this section may request funding from the county. Approval of part or the entire funding request by the county board shall result in inclusion of the funding request in the county budget and an obligation to provide the funding set out in the county budget. The failure by the county to provide the funding for an approved request may be enforced by making a claim against the county. The funding shall be paid to the treasurer of the nonprofit county historical association or society. A nonprofit county historical association or society that is receiving funding under this subsection shall not be subject to the Nebraska Budget Act unless the approved request is more than five thousand dollars. If the approved request is more than five thousand dollars, the county shall include the budget and audit of the nonprofit county historical association or society with the county budget and audit.

Source: Laws 1957, c. 67, § 1, p. 291; Laws 1979, LB 187, § 116; Laws 1992, LB 719A, § 102; Laws 1996, LB 1114, § 45; Laws 2000, LB 968, § 13.

Cross References

Nebraska Budget Act, see section 13-501.

(o) DESTRUCTION OF FILES AND RECORDS

23-356 Repealed. Laws 1969, c. 105, § 11.

23-357 Repealed. Laws 1969, c. 105, § 11.

(p) ANIMAL DAMAGE CONTROL

23-358 Control program; county board; powers; requirements.

For the purpose of carrying on an organized animal damage control program within their respective counties, the county boards may cooperate with the Animal and Plant Health Inspection Service of the United States Department of Agriculture, state agencies, private associations, and individuals in the control of coyotes, bobcats, foxes, badgers, opossums, raccoons, skunks, and other predatory animals in this state that are injurious to livestock, poultry, and game animals and the public health. The county boards may also undertake the control of commensal and field rodents, nuisance birds, and other nuisance wildlife if such rodents, birds, or wildlife are causing or are about to cause property damage or represent a human health threat. All control efforts shall be in accordance with the organized and systematic plans of the United States Department of Agriculture and state agencies covering the management and control of animals, birds, and wildlife.

Source: Laws 1945, c. 53, § 1, p. 237; Laws 1959, c. 148, § 1, p. 563; Laws 1987, LB 102, § 1.

23-358.01 Control service; availability; payment.

It is the intent of sections 23-358 to 23-361 and 81-2,236 that animal damage control service shall be available to every individual citizen or group of citizens of the state and that employment of such service shall be initiated by the individual or individuals desiring the control of the animals, birds, or wildlife

listed in section 23-358 which are causing a problem for such individual or individuals.

In order to support the cost of managing and controlling the animals, birds, or wildlife listed in section 23-358, each county shall match funds supplied by any resident individual or group of individuals either living within the county or owning property therein, up to a maximum of one thousand dollars annually for any specific animal damage control program, and may furnish such additional money as the county board shall deem necessary for the funding of such programs. The county board of each county is authorized to make necessary expenditures from the general fund of the county, except that the portion supplied by each county shall not exceed fifty percent of the total animal damage control program cost, unless such county elects to bear the entire program cost under sections 23-358 to 23-361. The total animal damage control program portion paid by the individual user or users may include, but shall not be limited to, any funds levied under section 23-361 by each county board, but nothing in this section shall be construed to exempt any user from a general levy made by the county board under section 23-360.

A county desiring to cooperate with another county or counties for the establishment of animal damage control services as are set forth in sections 23-358 to 23-361 may enter into agreements and match funds for the establishment of an area program with the state or federal government pursuant to the terms and limitations set forth in section 81-2,236.

Source: Laws 1967, c. 124, § 1, p. 398; Laws 1969, c. 160, § 1, p. 733; Laws 1987, LB 102, § 2.

23-359 County board; expenditures authorized.

In order to perform animal damage control, the county board of each county may make necessary expenditures from any funds of the county as are available for such purpose.

Source: Laws 1945, c. 53, § 2, p. 238; Laws 1987, LB 102, § 3.

23-360 Program; tax levy; use.

The county board of each county in this state may levy upon every dollar of the taxable value of all the taxable property in such county, for the use of the county board in carrying out the animal damage control program, such amount as may be determined to be necessary therefor. The entire fund derived from such levy shall be set apart in a separate fund and expended only for animal damage control as defined by sections 23-358 to 23-360.

Source: Laws 1945, c. 53, § 3, p. 238; Laws 1953, c. 287, § 46, p. 958; Laws 1979, LB 187, § 117; Laws 1987, LB 102, § 4; Laws 1992, LB 719A, § 103; Laws 1996, LB 1114, § 46.

23-361 Additional tax on sheep and cattle; conditions.

In order to provide additional means for carrying on an animal damage control program for the management and control of coyotes, bobcats, foxes, and other predatory animals destructive of sheep and cattle, county boards may levy in any year a tax of not to exceed twenty cents per head on sheep and cattle on the following conditions:

(1) That a petition to the county board requesting such levy, signed by sixty-seven percent of the owners of the sheep, the cattle, or the sheep and cattle in the county as of January 1 of each year, be filed with the board on or before July 1; and

(2) That a planned program for the management and control of such predatory animals be approved by the county board each year in which such levy is to be made. Such planned program may include entry in the animal damage control program authorized by section 23-358 or any other program approved by the board and designed to manage and control such predatory animals. The proceeds of such levy shall be placed in a separate fund and shall be applied exclusively to carrying out the program adopted. For each year in which such a levy is deemed necessary, a petition shall be presented to the county board for approval as provided in this section.

Source: Laws 1957, c. 68, § 1, p. 292; Laws 1972, LB 1048, § 2; Laws 1987, LB 102, § 5.

(q) SUPPORT OF INDIANS

23-362 Indians; support; state aid to counties; purpose; conditions; audit; certificate of county assessor; alcohol-related programs; participation by county board.

In order to equitably distribute the added burden of law enforcement imposed upon certain counties of this state by reason of the passage of Public Law 280 of the Eighty-third Congress dealing with state jurisdiction and the resulting withdrawal of federal law enforcement in such counties, there shall each fiscal year be paid out of the state treasury, on the warrant of the Director of Administrative Services as directed by the chairperson of the Nebraska Commission on Law Enforcement and Criminal Justice, not to exceed one hundred one thousand dollars for the benefit of Indians in any county which has land held in trust by the United States Government for the benefit of Indians to be used for purposes of law enforcement and jail operations. Such funds shall be divided as equally as possible between the areas of law enforcement and jail operations. The Auditor of Public Accounts or his or her designee shall conduct, at such time as he or she determines necessary, an audit of the funds distributed pursuant to this section. A detailed report shall be submitted on December 31 of each year, including discussion of the operation and expenditures of the office of the county sheriff and, when completed, a copy of the audit, to the Executive Board of the Legislative Council and the Governor. The report submitted to the executive board shall be submitted electronically. Such payment shall be made to any county of this state meeting the following conditions:

(1) Such county shall have on file in the office of the Nebraska Commission on Law Enforcement and Criminal Justice a certificate of the county assessor that there are within such county over twenty-five hundred acres of land held in trust by the United States or subject to restriction against alienation imposed by the United States; and

(2) The county board of each such county may participate in alcohol-related programs with nonprofit corporations.

Source: Laws 1957, c. 69, § 1, p. 293; Laws 1961, c. 91, § 1, p. 315; Laws 1967, c. 123, § 1, p. 397; Laws 1969, c. 161, § 1, p. 735; Laws 1974, LB 131, § 1; Laws 1976, LB 871, § 1; Laws 1979, LB 584,

§ 1; Laws 1983, LB 607, § 1; Laws 1985, LB 263, § 1; Laws 1994, LB 1001, § 1; Laws 2011, LB337, § 1; Laws 2012, LB782, § 22.
Operative date July 19, 2012.

23-362.01 Indian reservation; county share of funds.

Each qualifying county in which an Indian reservation is located shall receive an equal share of the funds paid out in accordance with section 23-362 for each reservation within the county.

Source: Laws 1976, LB 871, § 3; Laws 1989, LB 5, § 3.

23-362.02 Repealed. Laws 1979, LB 584, § 4.

23-362.03 Repealed. Laws 1983, LB 607, § 8.

23-362.04 Transferred to section 81-1217.01.

23-363 Repealed. Laws 1971, LB 92, § 1.

23-364 Repealed. Laws 1974, LB 131, § 2.

(r) CONSTRUCTION OR REPAIR OF SIDEWALKS

23-365 Sidewalks; outside corporate limits of city or village; construct or repair; tax; levy; notice; construction by owner, when; appropriation.

A county having a population of more than thirty thousand inhabitants which has adopted county zoning regulations as provided in sections 23-161 to 23-174.09 may construct or repair sidewalks on any street of a plot of ground outside the corporate limits of a city or village which has been platted into lots and streets, and levy a special tax on lots or parcels of land within the platted area fronting on such sidewalk to pay the expense of such improvements, to be assessed as a special assessment after having given notice of its intention to do so (1) by publication in one issue of a legal newspaper having a general circulation in such county, and (2) by causing a written notice to be served upon the owner of such property involved and allowing the owner six months within which to complete such construction or repair. The estimated cost of any such construction or repair to be undertaken by the county shall annually be included in an appropriation.

Source: Laws 1961, c. 92, § 1, p. 318; Laws 1963, c. 117, § 1, p. 462.

23-366 Bids; special assessments; notice; levy.

The county board of such county may receive bids for constructing or repairing any or all such walks and may let contracts to the lowest responsible bidder for constructing or repairing the same.

The contractor or contractors shall be paid therefor from special assessments against the abutting property. The cost of constructing such sidewalks shall be assessed at a regular meeting of such county board by resolution, fixing the cost along abutting property as a special assessment against such property and the amount charged for the cost thereof with the vote by yeas and nays shall be spread upon the minutes. Notice of the time of such meeting of the county board and its purpose shall be published once in a newspaper published and of

general circulation in such county at least five days before the meeting of the county board is to be held, or in place thereof, personal notice may be given such abutting property owners. Such special assessment shall be known as special sidewalk assessment and together with the cost of notice and necessary engineering services, shall be levied and collected as special taxes and shall draw interest at nine percent per annum from the date of levy thereof until satisfied.

Source: Laws 1961, c. 92, § 2, p. 318.

23-367 Special assessments; collection.

Special sidewalk assessments may be collected in the manner usual for the collection or foreclosure of county or state taxes against real estate.

Source: Laws 1961, c. 92, § 3, p. 319.

(s) STREET IMPROVEMENT DISTRICTS

23-368 Street improvements; limitation.

When the real property is located outside the corporate limits of a city or village the county is authorized to pave, repave, surface, resurface, and relay paving; to widen, to improve the horizontal and vertical alignment, to insert traffic medians, channels, overpasses, and underpasses; to apply temporary surfacing; and to curb; but the county may not be required to make any such street improvement if for good reason it deems the same should not be made; *Provided,* that none of the powers herein granted shall be exercised within the boundaries of any existing sanitary and improvement district, or road improvement district; *and provided further,* that the powers delegated in this section shall never be exercised in the area within three miles of the corporate limits of a metropolitan city in such county or a primary city; within one mile of the corporate limits of a city of the first class; or within one-half mile of the corporate limits of a city of the second class or village.

Source: Laws 1961, c. 93, § 1, p. 319.

23-369 Street improvement districts; delineate; purpose.

To accomplish any of the purposes stated in section 23-368, the county is authorized in all such proceedings to delineate proposed street improvement districts which shall embrace therein the street or streets or part or parts thereof to be improved as well as the abutting, adjacent, and benefited property proposed to be assessed to cover in whole or in part the cost, including land acquisition expenses if any, of the proposed improvement outside of the corporate limits of any city or village.

Source: Laws 1961, c. 93, § 2, p. 320.

23-370 Resolution of county board; notice; objections; effect.

The county may set up an improvement district as provided in section 23-369 by resolution of the county board and after the passage, approval, and publication of such resolution shall publish notice of the creation of such street improvement district or districts for two consecutive weeks in a legal newspaper published in and of general circulation in such county or, if none is published in the county, in a legal newspaper of general circulation in such

county. If a majority of the owners of record title of the property directly abutting on the street or streets improved shall file with the county clerk within twenty days after the first publication of such notice written objections to the creation of such district or districts, the improvements shall not be made, as provided in such resolution, but such resolution shall be repealed.

Source: Laws 1961, c. 93, § 3, p. 320; Laws 1986, LB 960, § 20.

23-371 Board of trustees; appointment; procedure.

If said objections are not filed against the district in the time and manner provided in section 23-370, the county board shall forthwith appoint a temporary board of three trustees and all further proceedings shall be in conformity with the provisions of Chapter 39, article 16.

Source: Laws 1961, c. 93, § 4, p. 321.

(t) SUBURBAN DEVELOPMENT

23-372 Subdivision of land, defined.

For purposes of sections 23-372 to 23-377, subdivision shall mean the division of a lot, tract, or parcel of land into two or more sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel of land created is more than ten acres in area.

Source: Laws 1961, c. 94, § 1, p. 321; Laws 1975, LB 410, § 30.

23-373 Subdivisions; platting; approval of county board; exceptions.

Before an owner of real property located in an unincorporated area may subdivide, plat, or lay out the real property in building lots, streets, or other portions or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, the approval of the county board is required, except that:

(1) If the property is within the Niobrara scenic river corridor as defined in section 72-2006, the approval of the Niobrara Council is required; and

(2) If the property is located in an area where a municipality exercises zoning control and does not require approval of the Niobrara Council, the approval of the municipality is required.

Source: Laws 1961, c. 94, § 2, p. 321; Laws 1967, c. 117, § 17, p. 377; Laws 2000, LB 1234, § 11.

23-374 Subdivisions; platting; requirements.

No plat of real property, described in section 23-373, shall be recorded or have any force and effect unless the same be approved by the county board of such county. The county board of such county shall have power, by resolution, to provide the manner, plan, or method by which real property in any such area may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same including the hard surfacing thereof.

Source: Laws 1961, c. 94, § 3, p. 322.

23-375 Subdivisions; dedication of avenues, streets, alleys; hard surfacing.

The county board shall have power to compel the owner of any real property in such area in subdividing, platting, or laying out the same to conform to the requirements of the resolution and to lay out and dedicate the avenues, streets, and alleys and hard surfacing thereof in accordance therewith.

Source: Laws 1961, c. 94, § 4, p. 322.

23-376 Applicability of sections.

The provisions of sections 23-373 to 23-377 shall not apply in any county unless the county board of such county shall have first adopted a comprehensive development plan as defined in section 23-114.02, nor until the county board of such county has duly adopted comprehensive and uniform platting and subdivision regulations governing the alignment of streets, maximum grade of streets and minimum area of lots.

Source: Laws 1961, c. 94, § 5, p. 322; Laws 1967, c. 117, § 18, p. 378.

Approval by county board of transfer of land from one school district to another was not required by sections 23-373 to 23-377, R.R.S.1943, where there was no evidence that the county board had adopted ''comprehensive and uniform platting and subdivision regulations''. Schilke v. School Dist. No. 107 of Saunders County, 207 Neb. 448, 299 N.W.2d 527 (1980).

23-377 Subdivisions; comprehensive plan; standards; county board prescribe.

The county board shall also have authority to provide for a comprehensive plan for the area within the zoning and subdivision jurisdiction of the county, to be the general plan for the improvement and development of such area, and to prescribe standards for laying out subdivisions in harmony with such comprehensive plan.

Source: Laws 1961, c. 94, § 6, p. 322.

(u) AMBULANCES

23-378 Transferred to section 13-303.

(v) GARBAGE DISPOSAL

23-379 Garbage disposal plants; systems or solid waste disposal areas; purchase, construct, maintain.

Each county may purchase, construct, maintain, and improve garbage disposal plants, systems or solid waste disposal areas, and purchase equipment for the operation thereof, for the use of its inhabitants and incorporated municipalities located in such county, and may lease or take land in fee by donation, gift, devise, purchase or appropriation for rights-of-way, for the construction and operation of such a disposal plant, system or solid waste disposal areas. Each county may also make and enter into a contract or contracts with any person, firm, or corporation for the construction, maintenance, or operation of a garbage disposal plant, system or solid waste disposal area.

Source: Laws 1967, c. 112, § 1, p. 360; Laws 1969, c. 163, § 1, p. 737; Laws 1979, LB 22, § 1.

Cross References

For joint management of solid waste, see the Integrated Solid Waste Management Act, section 13-2001.

23-380 Garbage disposal plant; system or solid waste disposal areas; cities and villages; agreement.

Any governing body of any incorporated city or village situated within the county may enter into agreement with the county as provided by the provisions of Chapter 13, article 8, to operate and maintain any garbage disposal plant, system or solid waste disposal areas located outside the corporate limits of the city or village. The garbage disposal plant, system or solid waste disposal areas shall be open to the public. The county board and the governing body of the city or village shall agree upon the operation and the appropriation of funds to such cooperative undertaking.

Source: Laws 1967, c. 112, § 2, p. 360; Laws 1969, c. 163, § 2, p. 738.

23-381 Garbage disposal; levy; tax.

The county board may levy a tax sufficient to cover the contributions required to be made. The levy shall be included in determining the maximum levy that a county is authorized to impose.

Source: Laws 1967, c. 112, § 3, p. 360; Laws 1999, LB 141, § 4.

(w) PUBLIC GATHERINGS

23-382 Public gatherings; protest; enjoin; grounds.

Whenever fifty or more residents of a county file a written protest with the county board of such county in which they contend that a proposed public exhibition, public entertainment, or public gathering will adversely affect the public health or welfare, or may adversely affect the health and welfare of those in attendance at such public exhibition, public entertainment, or public gathering the county board may set such protest for hearing, and if the board thereafter determines that such exhibition, entertainment, or gathering will apparently have an adverse effect on the public health and welfare or the health and welfare of those in attendance, it shall forthwith cause an action to be brought in the appropriate court to restrain and enjoin such public exhibition, entertainment, or gathering. The court may restrain and permanently enjoin, where the facts indicate the necessity for such action on the basis of the public health and welfare, or, in the alternative, may impose such conditions on the holding of such exhibition, entertainment, or gathering, including the giving of a bond, as will adequately protect the public health and welfare or the health and welfare of those in attendance. The county board shall give such advance notice of the protest and of its hearing thereon as may be reasonable under the circumstances of the particular case, and the notice shall be given by the posting thereof at or immediately adjacent to the premises where such exhibition, entertainment, or gathering is to be held, and it may give such additional notice by publication, or by personal service or service by registered or certified mail on the owner, lessee, or occupant of the premises, or the promoter of such gathering or his agent, as the county board in its judgment may deem feasible.

Source: Laws 1971, LB 63, § 1.

(x) COMMUNITY ANTENNA TELEVISION SERVICE

23-383 Regulation by county; authorized.

All counties in Nebraska are hereby authorized and empowered by resolution to regulate the construction, installation, operation, and maintenance within their county limits and outside the limits of any incorporated city or village of

all persons or entities furnishing community antenna television service. All counties, acting through their county boards, shall have power to require every individual or entity offering such service, subject to reasonable rules and regulations, to furnish any person applying therefor along the lines of its wires, cables or other conduits, with community antenna television service. The county board shall have power to prescribe reasonable quality standards for such service and to regulate and fix reasonable and compensatory rents or rates for such service including installation charges.

Source: Laws 1971, LB 257, § 1.

23-384 Construction, installation, operation, maintenance; permit required.

It shall be unlawful for any person, firm, or corporation to construct, install, operate, or maintain in or along the streets, alleys and public ways, or elsewhere within the limits of any county, and outside of the limits of any incorporated city or village a community antenna television service without first obtaining, from such county, a permit which permit shall authorize the grantee to provide community antenna television service on a nonexclusive basis within the limits of the county.

Source: Laws 1971, LB 257, § 2.

23-385 Underground cables and equipment; map; filing.

Counties may require the filing with the county clerk by the person, firm, or corporation constructing, installing, operating, or maintaining such community antenna television service of a proper map showing the exact location of all underground cables and equipment, together with a statement showing the exact nature of the same.

Source: Laws 1971, LB 257, § 3.

23-386 Occupation tax; levy; due date.

Counties may levy an annual occupation tax against any person, firm, or corporation now maintaining and operating any community antenna television service within its boundaries; and may levy an annual occupation tax against any persons, firms, or corporations hereafter constructing, installing, operating, or maintaining such community antenna television service. Any such occupation tax so levied shall be due and payable on May 1 of each year to the treasurer of such county.

Source: Laws 1971, LB 257, § 4.

23-387 Violations; penalty.

In the event of violation of any provision of sections 23-383 to 23-388 by any person or entity furnishing community antenna television service, the county having granted such permit shall immediately serve notice of such violation upon the permitholder with directions to correct such violation within ninety days or show cause why such violation should not be corrected at a public hearing held in conjunction with the next regularly scheduled meeting of the board. Continued violation of sections 23-383 to 23-388 may be enjoined by the district court. Any person who willfully violates any provision of sections 23-383 to 23-388 shall be guilty of a Class IV misdemeanor for each offense.

Source: Laws 1971, LB 257, § 5; Laws 1977, LB 40, § 90.

23-388 Franchise granted by municipality; exempt from sections.

No community television franchise heretofore or hereafter granted by any municipality under the provisions of Chapter 18, article 22, shall be affected by the provisions of sections 23-383 to 23-388.

Source: Laws 1971, LB 257, § 6.

(y) COUNTY HORSERACING FACILITIES

23-389 County; provide for horseracing facilities; paid for by revenue bonds; bond anticipation notes; procedure.

Any county of the State of Nebraska may acquire a site or sites and construct, purchase, or otherwise acquire, remodel, repair, furnish, and equip grandstands, pavilions, exhibition halls, barns, racetracks, and other horseracing facilities by issuing revenue bonds payable solely from the revenue therefrom. The bonds shall not constitute a debt of the county or the State of Nebraska but shall be payable solely out of the revenue. Such bonds shall mature in not to exceed thirty years and bear interest at such rates and have such other terms and conditions as the county board shall determine. A county undertaking construction and acquisition of such facilities shall have the power from time to time to issue bond anticipation notes to mature not less than thirty months from the date thereof in an amount not exceeding the aggregate at any time outstanding of the amount of bonds then or theretofore authorized. Payment of such notes shall be made from any money or revenue which the county may have available for such purposes or from the proceeds of the sale of the revenue bonds authorized in this section. The county may pledge any revenue derived from the operation, management, or sale of the property constructed or acquired with the proceeds of the bonds for the payment of such notes and revenue bonds. Such bonds shall be registered with the county clerk.

Source: Laws 1976, LB 519, § 1; Laws 2001, LB 420, § 20.

23-390 Horseracing facilities; operation and maintenance; nonprofit corporation; use of revenue.

Any county constructing or acquiring any of the facilities authorized in section 23-389 that include racetrack and horseracing facilities shall be authorized to lease to or enter into an agreement for operation and maintenance of such facilities by a Nebraska nonprofit corporation organized exclusively for civic purposes or which conducts a livestock exposition for the promotion of the livestock or horse-breeding industry of the state and which does not permit its members to derive personal profit from its activities by way of dividends or otherwise. Any such lease or operating agreement shall provide that all revenue derived therefrom shall be used for expenses of operation and maintenance of the facilities, improvements, or additions to such facilities and public works projects within the county.

Source: Laws 1976, LB 519, § 2.

23-391 Horseracing facilities; taxes or assessments; exemption; exceptions.

Counties acquiring and owning any facilities described in section 23-389 shall not be required to pay taxes or assessments upon any such facilities or

upon any charges, fees, revenue, or other income received from such facilities except motor vehicle fuel taxes and the tax and fees imposed by section 2-1208.

Source: Laws 1976, LB 519, § 3.

23-392 Act, how cited.

Sections 23-389 to 23-392 shall be known and may be cited as the County Horseracing Facility Bond Act.

Source: Laws 1976, LB 519, § 4.

(z) IDENTIFICATION CARDS

23-393 Repealed. Laws 1989, LB 284, § 12.

23-394 Repealed. Laws 1989, LB 284, § 12.

23-395 Repealed. Laws 1989, LB 284, § 12.

23-396 Repealed. Laws 1989, LB 284, § 12.

(aa) BRIDGE CONSTRUCTION AND REPAIR

23-397 Bridge construction and repair; bonds; issuance; election; procedure.

The county board of any county may issue and sell the general obligation bonds of such county in such amount as the county board may deem advisable for paying the costs of constructing, improving, reconstructing, and repairing bridges and bridge related roadway improvements upon public roads within or adjacent to such county. Such bonds shall bear interest at a rate or rates set by the county board and shall mature at such time or times as shall be set by the county board. No such bonds shall be issued until a proposition for their issuance shall have been submitted to the voters of such county at a general or special election called for such purpose and approved by a majority of the voters voting at such election. Such election may be called either by resolution of the county board or upon a petition submitted to the county board calling for an election. Such petition shall be signed by the legal voters of the county equal in number to ten percent of the number of votes cast in the county for the office of Governor at the most recent election at which the Governor was elected. Notice of any such election shall be given in the manner required for county election notices in section 23-126.

Source: Laws 1982, LB 492, § 1.

23-398 Bonds; levy of tax.

In any county which has issued bonds pursuant to section 23-397, the county board shall levy annually upon all the taxable property in such county a tax sufficient to pay the interest and principal of such bonds as the same fall due.

Source: Laws 1982, LB 492, § 2.

ARTICLE 4

COUNTY WORKHOUSES AND HOUSES OF CORRECTION

Section
23-401. Repealed. Laws 1980, LB 741, § 1.

Section

23-401 Repealed. Laws 1980, LB 741, § 1.

23-402 Repealed. Laws 1980, LB 741, § 1.

23-403 Repealed. Laws 1980, LB 741, § 1.

23-404 Repealed. Laws 1980, LB 741, § 1.

23-405 Repealed. Laws 1980, LB 741, § 1.

23-406 Repealed. Laws 1980, LB 741, § 1.

23-407 Repealed. Laws 1980, LB 741, § 1.

23-408 Repealed. Laws 1980, LB 741, § 1.

23-409 Repealed. Laws 1980, LB 741, § 1.

23-410 Repealed. Laws 1980, LB 741, § 1.

23-411 Repealed. Laws 1980, LB 741, § 1.

23-412 Repealed. Laws 1980, LB 741, § 1.

23-413 Repealed. Laws 1980, LB 741, § 1.

23-414 Repealed. Laws 1980, LB 741, § 1.

23-415 Repealed. Laws 1980, LB 741, § 1.

23-416 Repealed. Laws 1980, LB 741, § 1.

23-417 Repealed. Laws 1980, LB 741, § 1.

23-418 Repealed. Laws 1980, LB 741, § 1.

23-419 Repealed. Laws 1980, LB 741, § 1.

23-420 Repealed. Laws 1955, c. 69, § 1.

23-421 Repealed. Laws 1955, c. 69, § 1.

23-422 Repealed. Laws 1955, c. 69, § 1.

23-423 Repealed. Laws 1955, c. 69, § 1.

ARTICLE 5
PUBLIC BUILDING TAX

Section

23-501 County buildings; erection; petition.

Whenever it is deemed necessary to erect a courthouse, jail, or other public county buildings in any county in this state, the county board may and, upon petition of not less than one-fourth of the registered voters of the county as shown by the list of registered voters of the last previous general election, shall submit to the people of the county to be voted upon at a general election or at a special election called by the county board for that purpose a proposition to vote a special annual tax for that purpose of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such county for a term of not to exceed five years. The special annual tax is excluded from the limitation in section 77-3442 as provided by section 77-3444.

Source: Laws 1895, c. 27, § 1, p. 129; Laws 1897, c. 22, § 1, p. 187; Laws 1909, c. 31, § 1, p. 213; R.S.1913, § 436; C.S.1922, § 353; C.S.1929, § 11-701; R.S.1943, § 23-501; Laws 1953, c. 287, § 47, p. 958; Laws 1979, LB 187, § 120; Laws 1992, LB 719A, § 104; Laws 1997, LB 764, § 7; Laws 1999, LB 141, § 5.

Authority to borrow money for the purpose of building a courthouse must be conferred by a vote of the electors. Lewis v. Board of County Commissioners of Sherman County, 5 F. 269 (Cir. Ct., D. Neb. 1881).

23-502 Election; proposition; submission.

The manner of submitting such proposition shall be governed by section 23-126.

Source: Laws 1895, c. 27, § 2, p. 129; R.S.1913, § 437; C.S.1922, § 354; C.S.1929, § 11-702; R.S.1943, § 23-502.

23-503 Election; tax; how collected; resubmission of proposal.

The county board, upon being satisfied that all the foregoing requirements have been substantially complied with, and that sixty percent of all the votes cast at said election are in favor of such tax, shall cause such proposition and all the proceedings had thereon to be entered upon the records of said county board, and shall make an order that said levy be carried on the tax lists in a

column for that purpose, and collected as other taxes; *Provided,* that the question of levying such taxes, when defeated, shall not be resubmitted in substance for a period of one year from and after the date of said election.

Source: Laws 1895, c. 27, § 3, p. 129; R.S.1913, § 438; C.S.1922, § 355; Laws 1923, c. 186, § 1, p. 429; C.S.1929, § 11-703; R.S.1943, § 23-503.

Inclusion of an airport authority budget in general city budget hearing did not meet requirement of public budget hearing, after notice, by airport authority. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

23-504 Tax; when levied.

If the time such election is held and such tax voted is before the tax lists for that year have been delivered to the county treasurer, then such levy shall be entered upon such tax lists for that year; but if such election is not held until after the tax lists for that year have been delivered to the county treasurer, then such tax shall not be levied or carried on such tax lists until the next annual levy of taxes, when the same shall be levied and collected annually for the time voted at such election.

Source: Laws 1895, c. 27, § 4, p. 130; R.S.1913, § 439; C.S.1922, § 356; C.S.1929, § 11-704; R.S.1943, § 23-504.

23-505 Sinking fund.

Such sum so levied and collected shall constitute a special fund for the purposes for which the same was voted and shall not be used for any other purpose, and shall be kept by the county treasurer separate and apart from the other county funds.

Source: Laws 1895, c. 27, § 5, p. 130; R.S.1913, § 440; C.S.1922, § 357; C.S.1929, § 11-705; R.S.1943, § 23-505.

23-506 Public buildings; contracts; warrants; when authorized.

No contract shall be entered into by the county board for the erection of buildings to be paid for out of such fund until at least seventy percent of such levy has been collected and paid into the county treasury. After the completion of said building, if sufficient funds are not in the county treasury to finish paying for same, warrants may be issued to an amount not exceeding eighty-five percent of the levy yet uncollected.

Source: Laws 1895, c. 27, § 6, p. 130; R.S.1913, § 441; C.S.1922, § 358; Laws 1923, c. 38, § 1, p. 152; C.S.1929, § 11-706; R.S.1943, § 23-506.

23-507 Surplus building fund; disposition.

In case the amount so produced by the rate of tax so proposed and levied shall exceed the amount expended for the specific object for which the same was voted, it shall not therefor be held invalid, but such excess, after said buildings and furnishings are paid for, shall go into the county general fund.

Source: Laws 1895, c. 27, § 7, p. 130; R.S.1913, § 442; C.S.1922, § 359; C.S.1929, § 11-707; R.S.1943, § 23-507.

ARTICLE 6
BOUNTIES

Section
23-601. Repealed. Laws 1965, c. 96, § 5.
23-602. Repealed. Laws 1965, c. 96, § 5.
23-603. Repealed. Laws 1965, c. 96, § 5.
23-604. Repealed. Laws 1965, c. 96, § 5.
23-605. Repealed. Laws 1965, c. 96, § 5.
23-606. Repealed. Laws 1965, c. 96, § 5.
23-607. Repealed. Laws 1965, c. 96, § 5.
23-608. Repealed. Laws 1965, c. 96, § 5.
23-609. Transferred to section 81-2,236.
23-610. Repealed. Laws 1967, c. 124, § 3.
23-611. Repealed. Laws 1967, c. 124, § 3.
23-612. Repealed. Laws 1967, c. 124, § 3.

23-601 Repealed. Laws 1965, c. 96, § 5.

23-602 Repealed. Laws 1965, c. 96, § 5.

23-603 Repealed. Laws 1965, c. 96, § 5.

23-604 Repealed. Laws 1965, c. 96, § 5.

23-605 Repealed. Laws 1965, c. 96, § 5.

23-606 Repealed. Laws 1965, c. 96, § 5.

23-607 Repealed. Laws 1965, c. 96, § 5.

23-608 Repealed. Laws 1965, c. 96, § 5.

23-609 Transferred to section 81-2,236.

23-610 Repealed. Laws 1967, c. 124, § 3.

23-611 Repealed. Laws 1967, c. 124, § 3.

23-612 Repealed. Laws 1967, c. 124, § 3.

ARTICLE 7
COUNTY PUBLIC WELFARE WORK

Section
23-701. Repealed. Laws 1955, c. 71, § 1.
23-702. Repealed. Laws 1955, c. 71, § 1.
23-703. Repealed. Laws 1955, c. 71, § 1.
23-704. Repealed. Laws 1955, c. 71, § 1.
23-705. Repealed. Laws 1955, c. 71, § 1.
23-706. Repealed. Laws 1955, c. 71, § 1.
23-707. Repealed. Laws 1955, c. 71, § 1.
23-708. Repealed. Laws 1955, c. 71, § 1.
23-709. Repealed. Laws 1955, c. 71, § 1.

23-701 Repealed. Laws 1955, c. 71, § 1.

23-702 Repealed. Laws 1955, c. 71, § 1.

23-703 Repealed. Laws 1955, c. 71, § 1.

23-704 Repealed. Laws 1955, c. 71, § 1.

23-705 Repealed. Laws 1955, c. 71, § 1.

23-706 Repealed. Laws 1955, c. 71, § 1.

23-707 Repealed. Laws 1955, c. 71, § 1.

23-708 Repealed. Laws 1955, c. 71, § 1.

23-709 Repealed. Laws 1955, c. 71, § 1.

ARTICLE 8

RECREATION, ENTERTAINMENT, AMUSEMENTS; REGULATION

(a) TOWNSHIP BAND

Section

(b) POOL HALLS AND BOWLING ALLEYS

(c) DANCE HALLS, ROADHOUSES, CARNIVALS, SHOWS, AND AMUSEMENT PARKS

(d) PUBLIC GROUNDS AND PARKS

(a) TOWNSHIP BAND

23-801 Repealed. Laws 1996, LB 1114, § 75.

23-802 Repealed. Laws 1996, LB 1114, § 75.

23-803 Repealed. Laws 1996, LB 1114, § 75.

23-804 Repealed. Laws 1996, LB 1114, § 75.

23-805 Repealed. Laws 1996, LB 1114, § 75.

23-806 Repealed. Laws 1996, LB 1114, § 75.

23-807 Repealed. Laws 1996, LB 1114, § 75.

(b) POOL HALLS AND BOWLING ALLEYS

23-808 Pool hall; bowling alley; operation without license; penalty.

No person hereafter shall conduct or operate any pool or billiard hall or bowling alley outside the limits of any incorporated city or village without having first obtained a license from the county board of the county in which the same is to be operated. Any person, corporation or association violating the provisions of this section shall be guilty of a Class V misdemeanor. Every day in which the pool or billiard hall or bowling alley shall be operated without said license shall constitute a new offense.

Source: Laws 1913, c. 55, § 1, p. 163; R.S.1913, § 1115; Laws 1917, c. 21, § 1, p. 86; C.S.1922, § 1049; C.S.1929, § 26-743; R.S.1943, § 23-808; Laws 1977, LB 40, § 91.

23-809 Pool hall; bowling alley; petition for license.

Before any such license shall be originally granted by the county board, the applicant therefor shall file a petition in the office of the county clerk of said county praying that said license be granted. The petition must be signed by at least thirty of the resident freeholders of the precinct in which said pool or billiard hall or bowling alley is located and operated.

Source: Laws 1913, c. 55, § 2, p. 163; R.S.1913, § 1116; C.S.1922, § 1050; C.S.1929, § 26-744; R.S.1943, § 23-809; Laws 1965, c. 105, § 1, p. 429.

23-810 Pool hall; bowling alley; license; hearing; renewal.

Notice of the application for original license shall be published at the expense of the applicant for two consecutive weeks in some newspaper of general circulation in such county and precinct giving the time and place at which the application will be considered by the county board. If the applicant is an individual, the application shall include the applicant's social security number. After full consideration, and the hearing of remonstrants, if there be any, the county board may, in its discretion, grant or withhold such license. Any such license may be renewed from year to year upon application and payment of the fee provided in section 23-811, without petition or publication of notice.

Source: Laws 1913, c. 55, § 3, p. 163; R.S.1913, § 1117; C.S.1922, § 1051; C.S.1929, § 26-745; R.S.1943, § 23-810; Laws 1965, c. 105, § 2, p. 429; Laws 1997, LB 752, § 79.

23-811 Pool hall; bowling alley; license fee; closing hour; determination by county board.

Before the issuance of such license by the county board, the applicant therefor shall pay into the county treasury the sum of ten dollars per table for the first three tables and five dollars for each additional table and ten dollars

per alley for the first three alleys and five dollars for each additional alley as license fee for the period of one year from the date of issuance of said license. Said pool or billiard hall or bowling alley shall be required to close as determined by resolution of the county board.

Source: Laws 1913, c. 55, § 4, p. 164; R.S.1913, § 1118; C.S.1922, § 1052; C.S.1929, § 26-746; R.S.1943, § 23-811; Laws 1961, c. 95, § 1, p. 323; Laws 1963, c. 113, § 5, p. 445.

23-812 Pool hall; bowling alley; licensee; violations; forfeiture of license.

Any licensee under sections 23-808 to 23-812 who shall be convicted of violation of any law regulating such places of amusement during the life of his license shall forfeit said license upon order of the county board. Such order shall be entered by the county board upon hearing and proof which shall include the filing of a transcript from any court showing such conviction.

Source: Laws 1913, c. 55, § 5, p. 164; R.S.1913, § 1119; C.S.1922, § 1053; C.S.1929, § 26-747; R.S.1943, § 23-812.

(c) DANCE HALLS, ROADHOUSES, CARNIVALS, SHOWS, AND AMUSEMENT PARKS

23-813 Roadhouses; dance halls; carnivals; shows; amusement parks; license required.

No person, association, firm, or corporation shall conduct or operate any roadhouse, dance hall, carnival, show, amusement park, or other place of public amusement, outside the limits of any incorporated city or village in the State of Nebraska, without first having obtained a license from the county board of the county in which the same is to be operated. If the applicant is an individual, the application shall include the applicant's social security number. Any person, corporation, or association violating the provisions of this section shall be guilty of a Class V misdemeanor. No license shall be required for a dance in an inhabited private home to which no admission or other fee is charged.

Source: Laws 1931, c. 38, § 1, p. 131; C.S.Supp.,1941, § 26-751; R.S. 1943, § 23-813; Laws 1947, c. 68, § 1, p. 219; Laws 1977, LB 40, § 92; Laws 1997, LB 752, § 80.

23-814 Roadhouses; dance halls; carnivals; shows; amusement parks; petition for license.

Before any such license shall be granted by the county board, the applicant therefor shall file a petition in the office of the county clerk of said county praying that said license be granted.

Source: Laws 1931, c. 38, § 2, p. 131; C.S.Supp.,1941, § 26-752; R.S. 1943, § 23-814.

23-815 Roadhouses; dance halls; carnivals; shows; amusement parks; petition for license; notice; hearing.

Notice of said application shall be published at the expense of the applicant for two consecutive weeks in a legal newspaper of general circulation in said county and precinct, giving the time and place at which said application will be

considered by the county board. After full consideration, and the hearing of remonstrants, if there be any, the county board may, in its discretion, grant or withhold said license. A renewal of such license may be granted upon application and without complying with the provisions of this section.

Source: Laws 1931, c. 38, § 3, p. 131; C.S.Supp.,1941, § 26-753; R.S. 1943, § 23-815.

23-816 Roadhouses; dance halls; carnivals; shows; amusement parks; license fee.

Before any such license shall be issued by any county board, the applicant therefor shall pay into the county treasury an annual license fee of ten dollars.

Source: Laws 1931, c. 38, § 4, p. 131; C.S.Supp.,1941, § 26-754; R.S. 1943, § 23-816; Laws 1953, c. 54, § 1, p. 187.

23-817 Roadhouses; dance halls; carnivals; shows; amusement parks; license; revocation; violations by licensee; penalty.

Any person, association, firm or corporation licensed under the provisions of sections 23-813 to 23-816, who shall be convicted of the violation of any law regulating such places of amusement shall have his license revoked upon order of the county board after notice of such proposed action has been given by said board and the licensee has been afforded a reasonable opportunity to appear and show cause why such action should not be had. Any person, association, firm, or corporation violating any of the provisions of said sections shall be guilty of a Class V misdemeanor, and every day upon which this violation shall continue shall be deemed a separate and distinct offense.

Source: Laws 1931, c. 38, § 5, p. 132; C.S.Supp.,1941, § 26-755; R.S. 1943, § 23-817; Laws 1977, LB 40, § 93.

23-818 Roadhouse, defined.

For the purpose of sections 23-813 to 23-817, a roadhouse shall mean an inn or any other place where the public is invited to eat, drink, dance, or participate in any combination of any two or more of these activities.

Source: Laws 1949, c. 34, § 1, p. 127.

(d) PUBLIC GROUNDS AND PARKS

23-819 Public grounds and parks; improvement; statues, memorials, and works of art; erection and construction; gifts and bequests.

Any county shall have power to purchase, hold, and improve public grounds and parks within the limits of the county, to provide for the protection and preservation of the same, to provide for the planting and protection of shade or ornamental trees, to erect and construct or aid in the erection and construction of statues, memorials, and works of art upon any public grounds, and to receive donations and bequests of money or property for the above purposes in trust or otherwise.

Source: Laws 1963, c. 107, § 1, p. 434.

Counties are empowered to acquire real estate by gift. Bowley v. City of Omaha, 181 Neb. 515, 149 N.W.2d 417 (1967).

23-820 Transferred to section 13-304.

23-821 Transferred to section 13-305.

23-822 Transferred to section 13-306.

23-823 Transferred to section 13-307.

ARTICLE 9

BUDGET

Cross References

For practices and procedures applicable to all political subdivisions, see the Nebraska Budget Act, section 13-501.

(a) APPLICABLE ONLY TO COUNTIES

Section
23-901. Act, how cited.
23-902. Sections; applicability; fiscal year.
23-903. County budget; scope and contents.
23-904. County budget document; three parts.
23-905. County budget; budget document; forms; preparation; Auditor of Public Accounts; duties; expenses.
23-906. Budget-making authority, how constituted; budget, when prepared; contents; notice of hearing.
23-907. Hearing; duty of county board.
23-908. Budget revision; power of county board; hearing.
23-909. Budget; when adopted; duty of county board.
23-910. Budget; income from taxation; how determined; estimated revenue; deduction.
23-911. Budget; income from taxation; limitation.
23-912. Budget; income from taxation; deemed appropriated.
23-913. Budget summary; contents; filing.
23-914. Unexpended balances; expenditure; limitation.
23-915. Budget; failure of county board to adopt; effect.
23-916. Contracts or liabilities in excess of budget prohibited.
23-917. Contracts or liabilities in excess of budget; county not liable.
23-918. Emergencies; additional appropriations; loans; tax authorized.
23-919. Violations; penalty; liability to county.
23-920. Counties having 200,000 population or more; county hospitals; fiscal year; change of fiscal year.

(b) APPLICABLE TO ALL POLITICAL SUBDIVISIONS

23-921. Transferred to section 13-502.
23-922. Transferred to section 13-503.
23-923. Transferred to section 13-504.
23-924. Transferred to section 13-505.
23-925. Transferred to section 13-506.
23-926. Transferred to section 13-507.
23-927. Transferred to section 13-508.
23-927.01. Transferred to section 13-509.
23-928. Transferred to section 13-510.
23-929. Transferred to section 13-511.
23-930. Transferred to section 13-512.
23-931. Transferred to section 13-513.
23-932. Transferred to section 13-514.
23-933. Transferred to section 13-501.
23-934. Transferred to section 13-606.

(a) APPLICABLE ONLY TO COUNTIES

23-901 Act, how cited.

Sections 23-901 to 23-920 shall be known and may be cited as the County Budget Act of 1937.

Source: Laws 1937, c. 56, § 1, p. 224; C.S.Supp.,1941, § 26-2101; R.S. 1943, § 23-901; Laws 1945, c. 45, § 1, p. 212.

Preparation of general county budget is outlined in this and following sections. State ex rel. Agricultural Extension Service v. Miller, 182 Neb. 285, 154 N.W.2d 469 (1967).

23-902 Sections; applicability; fiscal year.

Sections 23-901 to 23-919 shall apply to all the counties of this state, except counties having a population of two hundred thousand or more inhabitants, and shall apply to counties of the latter class to the extent and under the conditions presented in section 23-920. The fiscal year of all counties, except as is provided for in section 23-920, shall begin July 1 and end June 30, and shall be the budget year.

Source: Laws 1937, c. 56, § 2, p. 224; C.S.Supp.,1941, § 26-2102; R.S. 1943, § 23-902; Laws 1945, c. 45, § 2, p. 212.

23-903 County budget; scope and contents.

The budget of the county shall present a complete financial plan for the period for which said budget is drawn, as hereinafter provided. It shall set forth (1) all proposed expenditures for the administration, operation and maintenance of all offices, departments, activities, funds and institutions of the county, (2) the actual or estimated operating deficits from prior years, (3) all interest and debt redemption charges during the period covered by said budget, (4) all expenditures for capital projects to be undertaken or executed during the period covered by said budget, including expenditures for local improvements which may be paid for in whole or in part by special assessments and operating reserves, and (5) the anticipated income, including all fees, license taxes, taxes to be levied and all other means of financing the proposed expenditures for the period covered by said budget; *Provided, however,* in counties having a population of two hundred thousand or more inhabitants, sections 23-901 to 23-919 shall not apply to any matters connected with the foreclosure of taxes and the county board can at any time appropriate, from the unexpended balances out of the general fund, the sums of money necessary to carry through such a tax foreclosure action or actions.

Source: Laws 1937, c. 56, § 3, p. 225; Laws 1939, c. 24, § 1, p. 124; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-903; Laws 1945, c. 46, § 1, p. 220; Laws 1947, c. 69, § 1, p. 220.

County Budget Act has no application to a claim filed to recover invalid special assessments paid to county. McClary v. County of Dodge, 176 Neb. 627, 126 N.W.2d 849 (1964).

Act contemplates that allowance of valid claims may result in deficits. Becker v. County of Platte, 155 Neb. 180, 50 N.W.2d 814 (1952).

23-904 County budget document; three parts.

The budget document, setting forth the financial plan of the county for the period covered by said budget, shall embrace three parts, the nature and contents of which shall be as hereinafter set out.

Part I shall consist of a budget message prepared by the budget-making authority, as provided for hereinafter, which shall outline the fiscal policy of the county for the period covered by said budget, describing in connection there-

with the important features of the budget plan. It shall also embrace a general budget summary, setting forth the aggregate figures of the budget in such a manner as to show the balanced relations between the total proposed expenditures and operating reserves and the total anticipated income, including all fees, license taxes, taxes to be levied, and all other sources of revenue, contrasted with the corresponding figures for the last two completed fiscal years. The general budget summary shall be supported by explanatory schedules or statements classifying the expenditures contained therein by offices, departments, activities and funds and the income by offices, departments, activities and funds.

Part II shall embrace the detailed budget estimates, both of expenditures and revenue, as provided for in section 13-504. It shall also include statements of the bonded indebtedness of the county, if any, showing the debt redemption requirements, the debt authorized and unissued, the condition of the sinking funds, the borrowing capacity, and a summary, to be furnished by the county treasurer to the budget-making authority, of the uncollected taxes arising from the last three annual levies. In addition thereto it shall contain any statements relative to the financial plan which the budget-making authority may deem advisable or which may be required by the county boards.

Part III shall embrace complete drafts of the resolutions or motions required to give legal sanction to the financial plan when adopted by the county board. These resolutions or motions shall include an appropriation resolution or motion authorizing, by spending agencies and by funds, all expenditures of the local government for the period covered by said budget and such other resolutions or motions as may be required to provide the income necessary to finance the budget.

Source: Laws 1937, c. 56, § 4, p. 225; Laws 1939, c. 24, § 2, p. 125; C.S.Supp.,1941, § 26-2104; R.S.1943, § 23-904; Laws 1945, c. 45, § 4, p. 213; Laws 1969, c. 145, § 30, p. 690.

23-905 County budget; budget document; forms; preparation; Auditor of Public Accounts; duties; expenses.

The form of the county budget and the form of the budget document, as required by the County Budget Act of 1937, shall be formulated by the Auditor of Public Accounts and the Attorney General. The Auditor of Public Accounts shall draft the forms and act in an advisory capacity in the preparation of the budget and may authorize the use of computer equipment and processing in the preparation of the budget. He or she shall transmit copies of the forms to the county clerk of each county in the state on or before July 15 of each year. Any hospital established pursuant to section 23-3501 may file its budget on an accrual basis. The budget document form shall include such estimate blanks for the various offices and departments of the county and such other additional forms as the Auditor of Public Accounts or the Attorney General deems necessary in the computation and preparation of the county budget. The expense of printing and transmitting the required copies to the counties by the Auditor of Public Accounts shall be borne by the state and included in the proper appropriation.

Source: Laws 1939, c. 24, § 2, p. 126; C.S.Supp.,1941, § 26-2104; R.S.1943, § 23-905; Laws 1945, c. 45, § 5, p. 214; Laws 1987, LB 183, § 2; Laws 1995, LB 366, § 1; Laws 2000, LB 692, § 5.

23-906 Budget-making authority, how constituted; budget, when prepared; contents; notice of hearing.

In each county the finance committee of the county board shall constitute the budget-making authority unless the board, in its discretion, designates or appoints one of its own members or the county comptroller, the county manager, or other qualified person as the budget-making authority. If he or she will accept the appointment, another county official may be appointed as the budget-making authority. For the performance of this additional responsibility, the county official accepting the appointment may receive such additional salary as fixed by the county board.

On or before August 1, the budget-making authority shall prepare a county budget document, in the form required by sections 23-904 and 23-905, for the fiscal year and transmit the document to the county board.

A summary of the budget, in the form required by section 23-905, showing for each fund (1) the requirements, (2) the outstanding warrants, (3) the operating reserve to be maintained, (4) the cash on hand at the close of the preceding fiscal year, (5) the revenue from sources other than taxation, (6) the amount to be raised by taxation, and (7) the amount raised by taxation in the preceding fiscal year, together with a notice of a public hearing to be had with respect to the budget before the county board, shall be published once at least five days before the date of hearing in some legal newspaper published and of general circulation in the county or, if no such legal newspaper is published, in some legal newspaper of general circulation in the county.

Source: Laws 1937, c. 56, § 5, p. 226; Laws 1939, c. 24, § 3, p. 126; C.S.Supp.,1941, § 26-2105; R.S.1943, § 23-906; Laws 1945, c. 45, § 6, p. 215; Laws 1990, LB 874, § 1; Laws 1991, LB 178, § 1; Laws 2002, LB 1018, § 1.

23-907 Hearing; duty of county board.

Final action shall not be taken on the proposed budget by the county board until after at least one public hearing has been held thereon by the board, as provided in sections 23-904 to 23-906. It shall be the duty of the county board to arrange for and hold such hearing. A copy of said budget document shall be available at the office of the clerk for public inspection from and after its transmission to the county board by the budget-making authority as provided in section 23-906.

Source: Laws 1937, c. 56, § 6, p. 226; Laws 1939, c. 24, § 4, p. 127; C.S.Supp.,1941, § 26-2106; R.S.1943, § 23-907.

23-908 Budget revision; power of county board; hearing.

The county board shall consider the budget document, as submitted to it by the budget-making authority, of the county, and may, in its discretion, revise, alter, increase or decrease the items contained in the budget, but not without first having a hearing with the office or department affected; *Provided, however,* that when it shall increase the total proposed expenditures of the budget it shall also increase the total anticipated income so that the total means of financing

the budget shall at least equal in amount the aggregate proposed expenditures, including the operating reserve.

Source: Laws 1937, c. 56, § 7, p. 227; Laws 1939, c. 24, § 5, p. 128; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-908; Laws 1945, c. 45, § 7, p. 216.

A county board can use its general budgetary authority to reasonably reduce an officer's overall budget as long as it does not budget the office out of existence or unduly hinder the officer in performing his or her duties. Wetovick v. County of Nance, 279 Neb. 773, 782 N.W.2d 298 (2010).

This section does not control a budget dispute when a more specific statute applies. The controlling statute for a budget dispute over salary and working conditions for an elected county official's employees is section 23-1111. Wetovick v. County of Nance, 279 Neb. 773, 782 N.W.2d 298 (2010).

The power of a county board to reduce requests submitted by various offices does not give the county board the authority to budget a particular office out of existence or to unduly hinder an officer in the conduct of his or her duties. State ex rel. Garvey v. County Bd. of Comm. of Sarpy County, 253 Neb. 694, 573 N.W.2d 747 (1998).

This section does not give a county board the authority to budget a particular office out of existence or to unduly hinder the officer in the conduct of his duties. Meyer v. Colin, 204 Neb. 96, 281 N.W.2d 737 (1979).

This section confers authority to revise, alter, increase, or decrease general county budget documents. State ex rel. Agricultural Extension Service v. Miller, 182 Neb. 285, 154 N.W.2d 469 (1967).

Under facts recited, county was liable for reasonable value of services of auditor making investigation. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

23-909 Budget; when adopted; duty of county board.

On or before September 20 of each year, the county board shall adopt the budget and appropriate the several amounts specified in the budget for the several departments, offices, activities, and funds of the county for the period to which the budget applies as provided hereinbefore.

Source: Laws 1937, c. 56, § 7, p. 227; Laws 1939, c. 24, § 5, p. 128; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-909; Laws 1945, c. 45, § 8, p. 216; Laws 1993, LB 734, § 30; Laws 1995, LB 452, § 6.

23-910 Budget; income from taxation; how determined; estimated revenue; deduction.

The total amount provided in the budget to be raised by taxation shall in no instance exceed the amount of taxes authorized by law to be levied during that year, including the amounts necessary to meet outstanding indebtedness, as evidenced by bonds, coupons, or warrants regularly issued. No changes shall be made in the budget after its adoption, except as provided by sections 13-511 and 23-918. In arriving at the amounts required to be raised by taxation for each fund, the total requirements, the outstanding warrants, and the operating reserve shall be added and from such total shall be deducted the revenue from sources other than taxation and the cash on hand on June 30. The operating reserve in no event shall be more than fifty percent of the total expenditures for the fund during the last completed fiscal year. The income of the county, as estimated in the budget, shall be and become applicable in the amounts and according to the funds specified in the budget for the purpose of meeting the expenditures as contemplated and set forth in the budget.

Source: Laws 1937, c. 56, § 7, p. 227; Laws 1939, c. 24, § 5, p. 128; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-910; Laws 1945, c. 45, § 9, p. 216; Laws 1999, LB 86, § 12.

23-911 Budget; income from taxation; limitation.

The amounts required to be raised by taxation for the various offices, departments, activities, and funds of the county, as provided in said budget as adopted, shall not exceed the existing statutory or constitutional limitations

relating thereto, and shall be the amount levied by the county board for the purposes designated in said budget.

Source: Laws 1937, c. 56, § 7, p. 227; Laws 1939, c. 24, § 5, p. 130; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-911.

23-912 Budget; income from taxation; deemed appropriated.

The funds to be raised by taxation or otherwise, as provided and allowed in said budget, for the various offices, departments, activities, and funds of the county shall, upon the adoption of the budget, be deemed to be and be appropriated to the various offices, departments, activities, and funds as provided in said budget, and shall be used for no other purpose.

Source: Laws 1937, c. 56, § 7, p. 228; Laws 1939, c. 24, § 5, p. 130; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-912.

23-913 Budget summary; contents; filing.

The county board shall file with the county clerk the complete budget document, which shall be in the form provided for in sections 23-904 and 23-905. A copy thereof shall also be filed with the Auditor of Public Accounts within thirty days after its adoption. The budget document shall show, in addition to the figures set forth in the general budget summary, the changes made by the county board in the course of its review, revision, and adoption of the budget. It shall also show the tax rate necessary to finance the budget as adopted.

Source: Laws 1937, c. 56, § 7, p. 228; Laws 1939, c. 24, § 5, p. 130; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-913; Laws 1945, c. 45, § 10, p. 217; Laws 1993, LB 734, § 31.

23-914 Unexpended balances; expenditure; limitation.

On and after July 1, and until the adoption of the budget by the county board in September, the county board may expend any balance of cash on hand in any fund for the current expenses of the county payable from such fund, but not to exceed such proportion of the total amount expended under the last budget for such fund in the equivalent period of the prior budget year to the total amount budgeted for such fund. Such expenditures shall be charged against the appropriation for such fund as provided in the budget when adopted.

Source: Laws 1939, c. 24, § 5, p. 130; C.S.Supp.,1941, § 26-2107; R.S.1943, § 23-914; Laws 1945, c. 45, § 11, p. 217; Laws 1993, LB 734, § 32.

23-915 Budget; failure of county board to adopt; effect.

If for any reason the county board fails or neglects in any year to make the appropriation for the support, operation and maintenance of the county government for the fiscal year, then ninety percent of the several amounts appropriated in the last budget for the objects and purposes therein specified, insofar as the same shall relate to the support, operation and maintenance of the county government and the administration thereof, shall be deemed to be appropriated

for the fiscal year for the several objects and purposes as specified in the said last budget.

Source: Laws 1937, c. 56, § 8, p. 228; Laws 1939, c. 24, § 6, p. 131; C.S.Supp.,1941, § 26-2108; R.S.1943, § 23-915; Laws 1945, c. 45, § 12, p. 218.

23-916 Contracts or liabilities in excess of budget prohibited.

After the adoption of the county budget, no officer, department or other expending agency shall expend or contract to be expended any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money not provided for in the budget, or which involves the expenditure of any money for any of the purposes for which provision is made in the budget in excess of the amounts provided in said budget for such office, department or other expending agency, or purpose, for such fiscal year. Any contract, verbal or written, made in violation of this section shall be null and void as to the county, and no money belonging thereto shall be paid thereon.

Source: Laws 1937, c. 56, § 9, p. 228; C.S.Supp.,1941, § 26-2109; R.S. 1943, § 23-916.

This section does not apply to contracts executed by a county board of commissioners. Thiles v. County Board of Sarpy County, 189 Neb. 1, 200 N.W.2d 13 (1972).

Prohibitions of this section relate to time contract is entered into or liability incurred. Becker v. County of Platte, 155 Neb. 180, 50 N.W.2d 814 (1952).

23-917 Contracts or liabilities in excess of budget; county not liable.

After the adoption of the county budget, no county shall be liable, either on any contract, implied contract or on any obligation arising by operation of law, for any merchandise, machinery, materials, supplies or other property delivered to or for any services rendered such county in pursuance of any contract entered into by or on behalf of such county in violation of the provisions of section 23-916.

Source: Laws 1937, c. 56, § 10, p. 229; C.S.Supp.,1941, § 26-2110; R.S.1943, § 23-917.

This section is applicable when contract is in violation of preceding section. Becker v. County of Platte, 155 Neb. 180, 50 N.W.2d 814 (1952).

23-918 Emergencies; additional appropriations; loans; tax authorized.

The county board may, during the fiscal year, make additional appropriations or increase existing appropriations to meet emergencies in case of such unanticipated requirements as are essential to the preservation and maintenance within the county of the administration of justice, the public safety, the public welfare, and the public health, the funds therefor to be provided from temporary loans. A resolution, setting forth the nature of such emergency, the amount of the additional or increased appropriations required, and the source of obtaining the funds to provide for such appropriations, shall be entered on the proceedings of the county board. Temporary loans, when made, shall be approved by a two-thirds vote of the county board. Such temporary loans shall be repaid from such sources as may be available or, if no other sources are available, by an annual levy of not to exceed seven cents on each one hundred dollars upon the taxable value of all the taxable property of such county. Such tax levy, together with the annual levy for any succeeding year, shall not exceed

the existing statutory or constitutional limitation applicable to levies for county purposes.

Source: Laws 1937, c. 56, § 11, p. 229; Laws 1939, c. 24, § 7, p. 131; C.S.Supp.,1941, § 26-2111; R.S.1943, § 23-918; Laws 1945, c. 45, § 13, p. 218; Laws 1953, c. 287, § 50, p. 959; Laws 1979, LB 187, § 124; Laws 1992, LB 719A, § 108.

23-919 Violations; penalty; liability to county.

Any official, employee or member of the county board violating the provisions of sections 23-901 to 23-918, shall be guilty of a Class IV misdemeanor. As part of the judgment of conviction, the court shall forfeit the term and tenure of the office or the employment of the person so convicted and shall order his removal from his said office or employment. Any vacancy arising by reason of said forfeiture and removal shall be filled as provided by law in the case of a vacancy in said office for any other cause. Any member of the county board or any other official whose duty it is to allow claims and issue warrants therefor, or to make purchases, incur indebtedness, enter into contracts for or on behalf of the county, who issues warrants or evidences of indebtedness, or makes any purchase, incurs any indebtedness or enters into any contract for or on behalf of the county contrary to the provisions of said sections, shall be liable to the county for such violations in the full amount of such expenditures, and for the full amount which the county may be required to pay by reason of any purchase made, indebtedness incurred or contract made contrary to the provisions of said sections, whether the liability of the county to pay for such supplies, materials, merchandise, equipment or services is based upon said contract or upon quasi-contract, or upon an obligation arising by operation of law, and recovery may be had against the bondsman of such official for said amounts. Any county treasurer or other official whose duty it is to pay warrants and evidences of indebtedness, who shall pay such warrants and evidences of indebtedness contrary to the provisions of said sections, shall likewise be liable to the county for such violations in the full amount of such expenditures, and recovery may be had against his bondsman for said amount. Suit may be brought either by the county or by any taxpayer thereof for the benefit of the county for any amount for which any official, employee or member of the county board may be liable, as provided in this section.

Source: Laws 1937, c. 56, § 12, p. 229; C.S.Supp.,1941, § 26-2112; R.S.1943, § 23-919; Laws 1977, LB 40, § 94.

County is protected against deficits resulting from claims for which county was not liable. Becker v. County of Platte, 155 Neb. 180, 50 N.W.2d 814 (1952).

23-920 Counties having 200,000 population or more; county hospitals; fiscal year; change of fiscal year.

In counties having two hundred thousand or more inhabitants, the fiscal year shall begin January 1 and end December 31. Any such county may by an affirmative vote of a majority of all the members of the county board elect to change its fiscal year from a period of twelve months commencing January 1 to a period commencing July 1, and to become subject to all the terms of sections 23-901 to 23-919. Any county hospital operating under sections 23-3501 to 23-3527 may, by an affirmative vote of a majority of the members of the board

of trustees of such facility, elect to change its fiscal year to any period of twelve months for determining and carrying on its financial affairs.

Source: Laws 1945, c. 45, § 14, p. 219; Laws 1969, c. 145, § 31, p. 691; Laws 1993, LB 734, § 33.

(b) APPLICABLE TO ALL POLITICAL SUBDIVISIONS

23-921 Transferred to section 13-502.

23-922 Transferred to section 13-503.

23-923 Transferred to section 13-504.

23-924 Transferred to section 13-505.

23-925 Transferred to section 13-506.

23-926 Transferred to section 13-507.

23-927 Transferred to section 13-508.

23-927.01 Transferred to section 13-509.

23-928 Transferred to section 13-510.

23-929 Transferred to section 13-511.

23-930 Transferred to section 13-512.

23-931 Transferred to section 13-513.

23-932 Transferred to section 13-514.

23-933 Transferred to section 13-501.

23-934 Transferred to section 13-606.

ARTICLE 10

LIABILITY OF COUNTIES FOR MOB VIOLENCE

Section
23-1001. Repealed. Laws 1969, c. 138, § 28.
23-1002. Repealed. Laws 1969, c. 138, § 28.
23-1003. Repealed. Laws 1969, c. 138, § 28.
23-1004. Repealed. Laws 1969, c. 138, § 28.
23-1005. Repealed. Laws 1969, c. 138, § 28.
23-1006. Repealed. Laws 1969, c. 138, § 28.
23-1007. Repealed. Laws 1969, c. 138, § 28.
23-1008. Repealed. Laws 1969, c. 138, § 28.
23-1009. Repealed. Laws 1969, c. 138, § 28.

23-1001 Repealed. Laws 1969, c. 138, § 28.

23-1002 Repealed. Laws 1969, c. 138, § 28.

23-1003 Repealed. Laws 1969, c. 138, § 28.

23-1004 Repealed. Laws 1969, c. 138, § 28.

23-1005 Repealed. Laws 1969, c. 138, § 28.

23-1006 Repealed. Laws 1969, c. 138, § 28.

23-1007 Repealed. Laws 1969, c. 138, § 28.

23-1008 Repealed. Laws 1969, c. 138, § 28.

23-1009 Repealed. Laws 1969, c. 138, § 28.

ARTICLE 11
SALARIES OF COUNTY OFFICERS

Cross References

For salaries of other officers paid by counties:

Bailiffs, see section 24-350.
County board of mental health, members and physician, see section 71-915.
County clerk, additional salary, see section 23-1405.
County comptroller, see section 23-1405.
County visiting nurse or home health nurse, see section 71-1637.
Deputies, see section 23-1704.04.
Election commissioners and deputies, see section 32-217.
Elevator operator in counties over 200,000 inhabitants where jail is situated above the ground floor, see section 47-112.
Highway superintendent, see sections 39-1501 and 39-1502.
Matron of county jail, see section 47-111.
Physician to the jail, see section 47-110.

Section

Section
23-1114.10. Repealed. Laws 1963, c. 341, § 1.
23-1114.11. Repealed. Laws 1971, LB 33, § 1.
23-1114.12. Repealed. Laws 1971, LB 33, § 1.
23-1114.13. Repealed. Laws 1971, LB 33, § 1.
23-1114.14. Interpretation of sections.
23-1114.15. Interpretation of sections.
23-1114.16. Repealed. Laws 1988, LB 806, § 1.
23-1115. County officers; deputies; compensation.
23-1115.01. Repealed. Laws 1959, c. 266, § 1.
23-1115.02. Repealed. Laws 1959, c. 266, § 1.
23-1115.03. Repealed. Laws 1961, c. 286, § 1.
23-1115.04. Repealed. Laws 1967, c. 126, § 6.
23-1115.05. Repealed. Laws 1971, LB 33, § 1.
23-1116. Repealed. Laws 1963, c. 339, § 1.
23-1117. Repealed. Laws 1959, c. 266, § 1.
23-1118. Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

23-1101 Repealed. Laws 1953, c. 63, § 6.

23-1102 Repealed. Laws 1953, c. 63, § 6.

23-1103 Repealed. Laws 1953, c. 63, § 6.

23-1104 Repealed. Laws 1953, c. 63, § 6.

23-1105 Repealed. Laws 1953, c. 63, § 6.

23-1106 Repealed. Laws 1953, c. 63, § 6.

23-1107 Repealed. Laws 1953, c. 63, § 6.

23-1108 Repealed. Laws 1953, c. 63, § 6.

23-1108.01 Repealed. Laws 1953, c. 63, § 6.

23-1108.02 Repealed. Laws 1953, c. 63, § 6.

23-1108.03 Repealed. Laws 1953, c. 63, § 6.

23-1109 Repealed. Laws 1953, c. 63, § 6.

23-1110 Repealed. Laws 1953, c. 63, § 6.

23-1110.01 Repealed. Laws 1953, c. 63, § 6.

23-1110.02 Repealed. Laws 1953, c. 63, § 6.

23-1111 County officers; clerks and assistants; county board; budgetary approval.

(1) The county officers in all counties shall have the necessary clerks and assistants for such periods and at such salaries as the county officers may determine, subject to budgetary approval by the county board.

(2) In carrying out its budget-making duties, a county board shall not eliminate an office or unduly hinder a county officer in the conduct of his or her statutory duties. If a county officer challenges the county board's decision

in court, the county officer shall have the burden to prove such elimination or hindrance by clear and convincing evidence.

Source: Laws 1943, c. 90, § 11, p. 302; R.S.1943, § 23-1111; Laws 2011, LB62, § 1.

Section 23-908 does not control a budget dispute when a more specific statute applies. The controlling statute for a budget dispute over salary and working conditions for an elected county official's employees is this section. Wetovick v. County of Nance, 279 Neb. 773, 782 N.W.2d 298 (2010).

Under this section, unless a county board shows by a preponderance of the evidence that an elected officer's employment determination is arbitrary, capricious, or unreasonable, it lacks authority to disapprove it. Wetovick v. County of Nance, 279 Neb. 773, 782 N.W.2d 298 (2010).

This section does not allow a county board to arbitrarily reduce salaries recommended by an elected officer. State ex rel. Garvey v. County Bd. of Comm. of Sarpy County, 253 Neb. 694, 573 N.W.2d 747 (1998).

Absent the existence of a labor organization as defined by section 48-801, in most instances elected officials are authorized in the first instance to hire their own employees, set their salaries, and prescribe their terms and conditions of employment. Sarpy Co. Pub. Emp. Assn. v. County of Sarpy, 220 Neb. 431, 370 N.W.2d 495 (1985).

This section requiring the approval of salaries by the County Board does not allow the Board to arbitrarily reduce the salaries recommended by the elected officers in their budget. Meyer v. Colin, 204 Neb. 96, 281 N.W.2d 737 (1979).

County judge is authorized to fix the salary of the clerk of the county court. Bass v. County of Saline, 171 Neb. 538, 106 N.W.2d 860 (1960).

23-1112 County officers; mileage; rate; amount; allowance.

When it is necessary for any county officer or his or her deputy or assistants, except any county sheriff or his or her deputy, to travel on business of the county, he or she shall be allowed mileage at the rate per mile allowed by section 81-1176 for each mile actually and necessarily traveled by the most direct route if the trip or trips are made by automobile. If travel by rail or bus is economical and practical, he or she shall be allowed only the actual cost of rail or bus transportation upon the presentation of his or her bill for the same accompanied by a proper voucher to the county board of his or her county in like manner as is provided for as to all other claims against the county.

Source: Laws 1943, c. 90, § 12, p. 302; R.S.1943, § 23-1112; Laws 1947, c. 71, § 1, p. 228; Laws 1953, c. 58, § 1, p. 196; Laws 1957, c. 70, § 1, p. 294; Laws 1959, c. 84, § 1, p. 384; Laws 1967, c. 125, § 1, p. 400; Laws 1973, LB 338, § 1; Laws 1974, LB 625, § 1; Laws 1978, LB 691, § 1; Laws 1980, LB 615, § 1; Laws 1981, LB 204, § 25; Laws 1985, LB 393, § 16; Laws 1990, LB 893, § 1; Laws 1993, LB 697, § 1; Laws 1996, LB 1011, § 8.

23-1112.01 County officers; employees; use of automobile; allowance.

If a trip or trips included in an expense claim filed by any county officer or employee for mileage are made by personal automobile or otherwise, only one mileage claim shall be allowed at the rate established in section 81-1176, for each mile actually and necessarily traveled by the most direct route, regardless of the fact that one or more persons are transported in the motor vehicle. No charge for mileage shall be allowed when such mileage accrues while using any motor vehicle owned by the State of Nebraska or by a county.

Source: Laws 1957, c. 70, § 12, p. 304; Laws 1961, c. 88, § 4, p. 309; Laws 1967, c. 125, § 2, p. 401; Laws 1973, LB 338, § 2; Laws 1974, LB 615, § 2; Laws 1978, LB 691, § 2; Laws 1980, LB 615, § 2; Laws 1981, LB 204, § 26; Laws 1996, LB 1011, § 9.

23-1113 Repealed. Laws 1949, c. 40, § 9.

23-1113.01 Repealed. Laws 1949, c. 40, § 9.

23-1113.02 Repealed. Laws 1953, c. 63, § 6.

23-1113.03 Repealed. Laws 1953, c. 63, § 6.

23-1113.04 Repealed. Laws 1953, c. 63, § 6.

23-1114 County officers and deputies; salaries; fixed by county board; when; method of payment.

(1) The salaries of all elected officers of the county shall be fixed by the county board prior to January 15 of the year in which a general election will be held for the respective offices.

(2) The salaries of all deputies in the offices of the elected officers and appointive veterans service officers of the county shall be fixed by the county board at such times as necessity may require.

(3) The county board may make payments that include, but are not limited to, salaries described in this section or reimbursable expenses by electronic funds transfer or a similar means of direct deposit.

Source: Laws 1953, c. 63, § 1, p. 204; Laws 1955, c. 72, § 1, p. 224; Laws 1959, c. 85, § 2, p. 391; Laws 1963, c. 118, § 1, p. 463; Laws 1971, LB 574, § 1; Laws 1973, LB 220, § 1; Laws 1975, LB 90, § 1; Laws 1986, LB 1056, § 1; Laws 1996, LB 1085, § 29; Laws 2011, LB278, § 1.

Sheriff must pay all commissions to county treasurer for credit to the general fund. Muinch v. Hull, 181 Neb. 571, 149 N.W.2d 527 (1967).

Clerk of the county court is not a deputy within the meaning of this section. Bass v. County of Saline, 171 Neb. 538, 106 N.W.2d 860 (1960).

23-1114.01 County officers; salaries; classification of counties.

For the purpose of fixing the salaries of certain officers and their deputies, counties shall be classified as follows: Counties having a population of less than three thousand inhabitants, Class 1; three thousand and less than nine thousand inhabitants, Class 2; nine thousand and less than fourteen thousand inhabitants, Class 3; fourteen thousand and less than twenty thousand inhabitants, Class 4; twenty thousand and less than sixty thousand inhabitants, Class 5; sixty thousand and less than two hundred thousand inhabitants, Class 6; and counties of two hundred thousand inhabitants or more, Class 7.

Source: Laws 1961, c. 96, § 1, p. 324; Laws 1971, LB 856, § 1.

23-1114.02 County officers; salaries; Class 1 counties.

In counties of Class 1, the county clerk, treasurer, sheriff, attorney, and appointive full-time veterans service officer shall each receive a minimum annual salary of five thousand five hundred dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 2, p. 324; Laws 1967, c. 128, § 2, p. 410; Laws 1967, c. 126, § 1, p. 404; Laws 1967, c. 127, § 1, p. 406; Laws 1969, c. 164, § 1, p. 739; Laws 1971, LB 574, § 2; Laws 1972, LB 1157, § 1; Laws 1973, LB 220, § 2; Laws 1999, LB 272, § 6.

23-1114.03 County officers; salaries; Class 2 counties.

In counties of Class 2, the county clerk, assessor, treasurer, sheriff, attorney, and appointive full-time veterans service officer shall each receive a minimum annual salary of six thousand dollars, and in counties entitled by law to have a

clerk of the district court, the clerk of the district court shall receive a minimum annual salary of fifty-four hundred dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 3, p. 325; Laws 1963, c. 113, § 6, p. 445; Laws 1967, c. 128, § 3, p. 410; Laws 1967, c. 127, § 2, p. 407; Laws 1969, c. 164, § 2, p. 739; Laws 1971, LB 574, § 3; Laws 1972, LB 1157, § 2; Laws 1973, LB 220, § 3; Laws 1999, LB 272, § 7.

23-1114.04 County officers; salaries; Class 3 counties.

In counties of Class 3, the county clerk, assessor, treasurer, sheriff, attorney, appointive full-time veterans service officer, and the clerk of the district court shall each receive a minimum annual salary of six thousand five hundred dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 4, p. 325; Laws 1963, c. 113, § 7, p. 445; Laws 1967, c. 128, § 4, p. 410; Laws 1967, c. 127, § 3, p. 407; Laws 1969, c. 164, § 3, p. 739; Laws 1971, LB 574, § 4; Laws 1972, LB 1157, § 3; Laws 1973, LB 220, § 4; Laws 1999, LB 272, § 8.

23-1114.05 County officers; salaries; Class 4 counties.

In counties of Class 4, the county clerk, register of deeds, assessor, treasurer, sheriff, attorney, appointive full-time veterans service officer, and the clerk of the district court shall each receive a minimum annual salary of seventy-five hundred dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 5, p. 325; Laws 1967, c. 128, § 5, p. 411; Laws 1967, c. 127, § 4, p. 408; Laws 1969, c. 164, § 4, p. 740; Laws 1971, LB 574, § 5; Laws 1972, LB 1157, § 4; Laws 1973, LB 220, § 5; Laws 1999, LB 272, § 9.

23-1114.06 County officers; salaries; Class 5 counties.

In counties of Class 5, the county clerk, register of deeds, assessor, treasurer, sheriff, attorney, appointive full-time veterans service officer, and the clerk of the district court shall each receive a minimum annual salary of eight thousand dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 6, p. 325; Laws 1967, c. 128, § 6, p. 411; Laws 1967, c. 127, § 5, p. 408; Laws 1969, c. 164, § 5, p. 740; Laws 1971, LB 574, § 6; Laws 1972, LB 1157, § 5; Laws 1973, LB 220, § 6; Laws 1999, LB 272, § 10.

23-1114.07 County officers; salaries; Class 6 or 7 counties.

Members of the county board shall set their own annual salary to be paid out of the general fund. Salaries of other officers, including appointive full-time veterans service officers, in counties of Class 6 or 7 shall be established by the county board, except that the county assessor in counties of Class 7 shall

receive a minimum annual salary of twenty thousand dollars, to be paid periodically as other county employees out of the general fund.

Source: Laws 1961, c. 96, § 7, p. 325; Laws 1965, c. 106, § 1, p. 430; Laws 1967, c. 127, § 6, p. 408; Laws 1969, c. 164, § 6, p. 740; Laws 1971, LB 574, § 7; Laws 1972, LB 1157, § 6; Laws 1973, LB 220, § 7; Laws 2012, LB772, § 1.
Effective date July 19, 2012.

23-1114.08 County officers; minimum salaries; person occupying more than one office.

When the same person occupies more than one office in the same county, he shall receive only one minimum annual salary.

Source: Laws 1961, c. 96, § 8, p. 326.

23-1114.09 Deputies; one full-time; minimum salary.

The salary of one full-time deputy of the various county offices shall not be less than sixty-five percent of the county officer's salary. No full-time deputy shall, except for vacation and sick leave periods established by the county board, be entitled to such salary during any period of time that such deputy is not actually engaged in the performance of the official duties of a deputy.

Source: Laws 1961, c. 96, § 9, p. 326; Laws 1963, c. 119, § 1, p. 465; Laws 1969, c. 164, § 7, p. 740.

Salary of full-time deputy sheriff could not be fixed at less than minimum prescribed by law. Grace v. County of Douglas, 178 Neb. 690, 134 N.W.2d 818 (1965).

23-1114.10 Repealed. Laws 1963, c. 341, § 1.

23-1114.11 Repealed. Laws 1971, LB 33, § 1.

23-1114.12 Repealed. Laws 1971, LB 33, § 1.

23-1114.13 Repealed. Laws 1971, LB 33, § 1.

23-1114.14 Interpretation of sections.

Sections 23-1114.02 to 23-1114.07 and 23-1114.09 shall be so interpreted as to effectuate their general purpose, to provide, in the public interest, adequate compensation as therein provided for the county officers affected thereby and to give effect to such salaries as soon as same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1969, c. 164, § 8, p. 741.

23-1114.15 Interpretation of sections.

Sections 23-1114 and 23-1114.02 to 23-1114.07 shall be interpreted so as to effectuate their general purpose, to provide, in the public interest, adequate compensation as therein provided for the members of the county board, and to give effect to such salaries as soon as the same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1971, LB 574, § 8.

23-1114.16 Repealed. Laws 1988, LB 806, § 1.

23-1115 County officers; deputies; compensation.

When a county officer is compelled by the pressure of the business of the office to employ a deputy, the county commissioners may make a reasonable allowance to such a deputy.

Source: R.S.1866, c. 15, § 6, p. 128; R.S.1913, § 5742; C.S.1922, § 5071; C.S.1929, § 84-808; R.S.1943, (1987), § 84-808; Laws 1990, LB 821, § 2.

23-1115.01 Repealed. Laws 1959, c. 266, § 1.

23-1115.02 Repealed. Laws 1959, c. 266, § 1.

23-1115.03 Repealed. Laws 1961, c. 286, § 1.

23-1115.04 Repealed. Laws 1967, c. 126, § 6.

23-1115.05 Repealed. Laws 1971, LB 33, § 1.

23-1116 Repealed. Laws 1963, c. 339, § 1.

23-1117 Repealed. Laws 1959, c. 266, § 1.

23-1118 Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

(1)(a) Unless the county has adopted a retirement system pursuant to section 23-2329, the county board of any county having a population of one hundred fifty thousand inhabitants or more, as determined by the most recent federal decennial census, may, in its discretion and with the approval of the voters, provide retirement benefits for present and future employees of the county. The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary cost being treated in the county budget in the same way as any other operating expense.

(b) Except as provided in subdivision (c) of this subsection, each employee shall be required to contribute, or have contributed on his or her behalf, an amount at least equal to the county's contribution to the cost of any such retirement program as to service performed after the adoption of such retirement program, but the cost of any benefits based on prior service shall be borne solely by the county.

(c) In a county or municipal county having a population of two hundred thousand or more inhabitants but not more than three hundred thousand inhabitants, as determined by the most recent federal decennial census, the county or municipal county shall establish the employee and employer contribution rates to the retirement program for each year after July 15, 1992. The county or municipal county shall contribute one hundred fifty percent of each employee's mandatory contribution, and for an employee hired on or after July 1, 2012, the county or municipal county shall contribute at least one hundred percent of each such employee's mandatory contribution. The combined contributions of the county or municipal county and its employees to the cost of any such retirement program shall not exceed thirteen percent of the employees' salaries.

(2) Before the county board or council provides retirement benefits for the employees of the county or municipal county, such question shall be submitted at a regular general or primary election held within the county or municipal county, and in which election all persons eligible to vote for the officials of the county or municipal county shall be entitled to vote on such question, which shall be submitted in the following language: Shall the county board or council provide retirement benefits for present and future employees of the county or municipal county? If a majority of the votes cast upon such question are in favor of such question, then the county board or council shall be empowered to provide retirement benefits for present and future employees as provided in this section. If such retirement benefits for present and future county and municipal county employees are approved by the voters and authorized by the county board or council, then the funds of such retirement system, in excess of the amount required for current operations as determined by the county board or council, may be invested and reinvested in the class of securities and investments described in section 30-3209.

(3) As used in this section, employees shall mean all persons or officers devoting more than twenty hours per week to employment by the county or municipal county, all elected officers of the county or municipal county, and such other persons or officers as are classified from time to time as permanent employees by the county board or council.

(4) The county or municipal county may pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the county or municipal county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The county or municipal county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The county or municipal county shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date picked up.

(5)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the county board or council with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board a report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the county board of a county or council of the municipal county with a retirement plan established pursuant to this section shall cause to be prepared a report and the chairperson shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1961, c. 97, § 1, p. 327; Laws 1967, c. 257, § 3, p. 680; Laws 1967, c. 129, § 1, p. 412; Laws 1984, LB 216, § 1; Laws 1985, LB 353, § 2; Laws 1992, LB 672, § 30; Laws 1995, LB 369, § 1; Laws 1995, LB 574, § 30; Laws 1998, LB 1191, § 22; Laws 1999, LB 795, § 10; Laws 2001, LB 142, § 31; Laws 2011, LB474, § 10; Laws 2012, LB867, § 1.
Effective date April 7, 2012.

ARTICLE 12

COUNTY ATTORNEY

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Information by, authorized, see Article I, section 10, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Attorney General, has same powers in county, see section 84-204.
Dead human bodies, issuance of death certificate, when, see section 71-605.
Duties and powers of county attorney in particular matters:
Forfeited recognizance, action upon, see Chapter 29, article 11.
Grand jury, prosecution before, see Chapter 29, article 14.
Information, prosecution by, see Chapter 29, article 16.
Inheritance tax, action to collect, see section 77-2029.
Monopolies, prosecution of, see section 59-828.
Quo warranto, see section 25-21,122.
Elected, when, see section 32-522.
Vacancy:
How filled, see section 32-567.

Possession and control of office by deputy, see section 32-563.

Section

23-1201 County attorney; duties; services performed at request of Attorney General; additional compensation; reports.

(1) Except as provided in subdivision (2) of section 84-205 or if a person is participating in a pretrial diversion program established pursuant to sections 29-3601 to 29-3604 or a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07, it shall be the duty of the county attorney, when in possession of sufficient evidence to warrant the belief that a

person is guilty and can be convicted of a felony or misdemeanor, to prepare, sign, verify, and file the proper complaint against such person and to appear in the several courts of the county and prosecute the appropriate criminal proceeding on behalf of the state and county. Prior to reaching a plea agreement with defense counsel, the county attorney shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement. The county attorney shall record such consultation or effort in his or her office file.

(2) It shall be the duty of the county attorney to prosecute or defend, on behalf of the state and county, all suits, applications, or motions, civil or criminal, arising under the laws of the state in which the state or the county is a party or interested. The county attorney may be directed by the Attorney General to represent the state in any action or matter in which the state is interested or a party. When such services require the performance of duties which are in addition to the ordinary duties of the county attorney, he or she shall receive such fee for his or her services, in addition to the salary as county attorney, as (a) the court shall order in any action involving court appearance or (b) the Attorney General shall authorize in other matters, with the amount of such additional fee to be paid by the state. It shall also be the duty of the county attorney to appear and prosecute or defend on behalf of the state and county all such suits, applications, or motions which may have been transferred by change of venue from his or her county to any other county in the state. Any counsel who may have been assisting the county attorney in any such suits, applications, or motions in his or her county may be allowed to assist in any other county to which such cause has been removed. The county attorney shall file the annual inventory statement with the county board of county personal property in his or her possession as provided in sections 23-346 to 23-350. It shall be the further duty of the county attorney of each county, within three days from the calling to his or her attention of any violation of the requirements of the law concerning annual inventory statements from county officers, to institute proceedings against such offending officer and in addition thereto to prosecute the appropriate action to remove such county officer from office. When it is the county attorney who is charged with failure to comply with this section, the Attorney General of Nebraska may bring the action. It shall be the duty of the county attorney to make a report on the tenth day of each quarter to the county board which shall show final disposition of all criminal cases the previous quarter, criminal cases pending on the last day of the previous quarter, and criminal cases appealed during the past quarter. The county board in counties having less than two hundred thousand population may waive the duty to make such report.

Source: Laws 1885, c. 40, § 2, p. 216; Laws 1899, c. 6, § 1, p. 56; Laws 1905, c. 7, § 1, p. 59; Laws 1911, c. 6, § 1, p. 73; R.S.1913, § 5596; C.S.1922, § 4913; C.S.1929, § 26-901; Laws 1939, c. 28, § 6, p. 146; C.S.Supp.,1941, § 26-901; R.S.1943, § 23-1201; Laws 1957, c. 71, § 1, p. 305; Laws 1959, c. 87, § 1, p. 396; Laws 1959, c. 82, § 2, p. 373; Laws 1961, c. 98, § 1, p. 328; Laws 1979, LB 573, § 1; Laws 1983, LB 78, § 2; Laws 1990, LB 87, § 1; Laws 1997, LB 758, § 1; Laws 2003, LB 43, § 7.

Cross References

Definition of terms, see section 29-119.

1. Powers and duties
2. Expenses
3. Assistance
4. Miscellaneous

1. Powers and duties

Although the county attorney has a duty to represent the state in all matters arising under the laws of the state in which the state is a party or is interested, this duty is not an ordinary duty of the county attorney. A district court is authorized to award fees to a county attorney under subsection (2) of this section. Winter v. Department of Motor Vehicles, 257 Neb. 28, 594 N.W.2d 642 (1999).

It is the function of the county attorney under this section to enforce the penal provisions of the Nebraska statutes. State v. Houtwed, 211 Neb. 681, 320 N.W.2d 97 (1982).

A county attorney has no authority to prosecute city ordinance violations, nor to bring error proceedings in such cases. State v. Linn, 192 Neb. 798, 224 N.W.2d 539 (1974).

County attorney of county where crime was committed has duty to prosecute upon change of venue. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

County attorney's duties include all matters involving determination of inheritance tax. State ex rel. Nebraska State Bar Assn. v. Richards, 165 Neb. 80, 84 N.W.2d 136 (1957).

County attorney could receive money due county under court decree. State ex rel. Heintze v. County of Adams, 162 Neb. 127, 75 N.W.2d 539 (1956).

County attorney has choice of procedure in prosecuting juvenile offenders. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

County attorney is not limited by the Juvenile Court Act in any way in his duty to file proper complaints against wrongdoers and prosecute the same. State v. McCoy, 145 Neb. 750, 18 N.W.2d 101 (1945).

Duties of county attorney and Attorney General are compared to show lack of authority of Attorney General to enter voluntary appearance in behalf of state. Anstine v. State, 137 Neb. 148, 288 N.W. 525 (1939).

Action brought by taxpayer against the individual members of a county board for dereliction of duty cannot be dismissed on motion by county attorney. Holt County v. Tomlinson, 98 Neb. 777, 154 N.W. 537 (1915).

County attorney may, if he has tried case, waive summons in error. Dakota County v. Bartlett, 67 Neb. 62, 93 N.W. 192 (1903).

County attorney cannot enter voluntary appearance and confess judgment against county. Resolution of board is insufficient authority. Custer County v. Chicago, B. & Q. R. R. Co., 62 Neb. 657, 87 N.W. 341 (1901).

County attorney must file informations for crime and prosecute all criminal cases in county. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

County attorney may institute proceedings against a juvenile either in the juvenile or district courts. Kennedy v. Sigler, 397 F.2d 556 (8th Cir. 1968).

The county attorney may prosecute civil commitments of mentally ill persons. Doremus v. Farrell, 407 F.Supp. 509 (D. Neb. 1975).

2. Expenses

County board, in sound discretion, may allow actual necessary expenses of county attorney in investigating and prosecuting actions. Berryman v. Schalander, 85 Neb. 281, 122 N.W. 990 (1909).

County attorney may bind county for reasonable and necessary expenses incident to suit. Christner v. Hayes County, 79 Neb. 157, 112 N.W. 347 (1907).

3. Assistance

An assistant may be a nonresident, but must qualify. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Private counsel may assist only in felony cases, when procured by county attorney under direction of court. McKay v. State, 90 Neb. 63, 132 N.W. 741 (1911).

4. Miscellaneous

A county is ''interested'' in criminal action against a county official within the meaning of subsection (2) of this section when a conviction could expose the county to liability or substantially impair the performance of an essential governmental function. Guenzel-Handlos v. County of Lancaster, 265 Neb. 125, 655 N.W.2d 384 (2003).

Where state and local purposes are commingled, the crucial issue turns upon a determination of whether the controlling purposes are state or local. Counties may be required to pay attorney's fees for one appointed to defend an indigent defendant. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

A public prosecutor, acting in good faith within the general scope of his authority in making a determination whether to file a criminal prosecution, is immune from suit for erroneous or negligent determination. Koch v. Grimminger, 192 Neb. 706, 223 N.W.2d 833 (1974).

A person employed and holding himself out as county attorney is such officer de facto, where not qualified. Gragg v. State, 112 Neb. 732, 201 N.W. 338 (1924).

''Prosecuting'' and ''county'' attorney are the same throughout the code. Bush v. State, 62 Neb. 128, 86 N.W. 1062 (1901).

23-1201.01 County attorney; residency; appointment of nonresident attorney, when; contract.

(1) Except as provided in subsection (2) of this section, a qualified person need not be a resident of the county when he or she files for election as county attorney, but if elected as county attorney, such person shall reside in a county for which he or she holds office, except that a county attorney serving in a county which does not have a city of the metropolitan, primary, or first class may reside in an adjoining Nebraska county.

(2) If there is no county attorney elected pursuant to section 32-522 or if a vacancy occurs for any other reason, the county board of such county may appoint a qualified attorney from any Nebraska county to the office of county attorney. In making such appointment, the county board shall negotiate a

contract with the attorney, such contract to specify the terms and conditions of the appointment, including the compensation of the attorney, which compensation shall not be subject to sections 23-1114.02 to 23-1114.06.

Source: Laws 1943, c. 60, § 1, p. 234; R.S.1943, § 23-1201.01; Laws 1971, LB 109, § 1; Laws 1986, LB 812, § 2; Laws 1993, LB 468, § 1; Laws 1994, LB 76, § 541; Laws 1995, LB 669, § 1; Laws 1996, LB 1085, § 30; Laws 2003, LB 84, § 1.

Failure by a county attorney to reside in the county he or she holds office is not official misconduct. Residing in the county where one holds office as county attorney is not an official duty. Hynes v. Hogan, 251 Neb. 404, 558 N.W.2d 35 (1997).

23-1201.02 County attorney; qualifications; exception.

(1) No person shall seek nomination or appointment for the office of county attorney in counties of Class 4, 5, 6, or 7, nor serve in that capacity, unless he or she has been admitted to the practice of law in this state for at least two years next preceding the date such person would take office and has practiced law actively in this state during such two-year period, except that if no person who meets the requirements of this subsection has filed for or sought such office by the filing deadline for nomination or by the deadline for applications for appointment, the provisions of this subsection shall not apply to any person seeking such office.

(2) No person shall seek nomination or appointment for the office of county attorney, nor serve in that capacity, unless he or she has been admitted to the practice of law in this state.

(3) The classification of counties in section 23-1114.01 applies for purposes of this section.

Source: Laws 1969, c. 142, § 1, p. 664; Laws 1993, LB 468, § 2; Laws 2009, LB55, § 1.

Cross References

Classification of counties, see section 23-1114.01.

23-1202 County attorney; actions before magistrate; duties.

Each county attorney shall appear on behalf of the state before any magistrate, and prosecute all complaints made in behalf of the state of which any magistrate shall have jurisdiction, and he shall appear before any magistrate and conduct any criminal examination which may be had before such magistrate, and shall also prosecute all civil suits before such magistrate in which the state or county is a party or interested.

Source: Laws 1885, c. 40, § 3, p. 216; R.S.1913, § 5597; C.S.1922, § 4914; C.S.1929, § 26-902; R.S.1943, § 23-1202.

It is not the duty of the county attorney to appear and prosecute violator of village ordinance, where prosecution is not based upon violation of state law. State ex rel. Vannatter v. McDonald, 100 Neb. 332, 160 N.W. 95 (1916).

County attorney has full control of action. Rickley v. State, 65 Neb. 841, 91 N.W. 867 (1902).

23-1203 Opinions; civil cases; additional counsel; compensation.

The county attorney shall without fee or reward give opinions and advice to the board of county commissioners and other civil officers of their respective counties, when requested so to do by such board or officers, upon all matters in which the state or county is interested, or relating to the duty of the board or officers in which the state or county may have an interest; *Provided,* in all

counties of this state the county board may employ such additional counsel in civil matters as it may deem necessary. Such attorney or attorneys shall counsel the board or county officers on such civil matters as the board may lay before him or them, and shall prosecute or defend, on behalf of the county or any of its officers, such civil actions or proceedings as the interests of the county may in their judgment require, and shall receive such reasonable compensation in each case as the board and such counsel may agree upon.

Source: Laws 1885, c. 40, § 4, p. 217; Laws 1895, c. 7, § 1, p. 73; R.S.1913, § 5598; C.S.1922, § 4915; C.S.1929, § 26-903; R.S. 1943, § 23-1203; Laws 1959, c. 88, § 1, p. 397.

Special attorneys to conduct tax foreclosure cases were employed pursuant to this section. Strawn v. County of Sarpy, 146 Neb. 783, 21 N.W.2d 597 (1946).

When petitioned by ten freeholders, the county board may employ such additional counsel in civil matters as it may deem necessary. County of Pierce v. Goff, 141 Neb. 514, 4 N.W.2d 222 (1942); Whedon v. Lancaster County, 80 Neb. 682, 114 N.W. 1102 (1908).

County board may hire attorney to collect judgment on contingent fee basis. Miles v. Cheyenne County, 96 Neb. 703, 148 N.W. 959 (1914).

County is not liable for services rendered on request of county attorney unless authorized or ratified by board. Card v. Dawes County, 71 Neb. 788, 99 N.W. 662 (1904).

23-1204 Deputies; appointment and compensation.

The county attorney may, with the approval and consent of the county board, appoint one or more deputies, who shall receive such compensation as shall be fixed by the county board, to assist him in the discharge of his duties.

Source: Laws 1885, c. 40, § 6, p. 217; Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1, p. 278; Laws 1919, c. 62, § 1, p. 169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927, c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(1), p. 144; Laws 1961, c. 99, § 1, p. 330.

Cross References

For minimum salary of deputies, see section 23-1114.09.

County attorney of Douglas County is authorized to appoint deputies to assist him in the discharge of his duties, and a deputy so appointed and qualified may sign a criminal information. Thompson v. O'Grady, 137 Neb. 641, 290 N.W. 716 (1940).

When appointed by county attorney, a duly qualified deputy may sign criminal information. Holland v. State, 100 Neb. 444, 160 N.W. 893 (1916).

In action for compensation as assistant, allegation in petition that attorney assisted county attorney under appointment of court is sufficient to show that services were procured by county attorney. Lear v. Brown County, 77 Neb. 230, 109 N.W. 174 (1906).

23-1204.01 Deputies; special; when; compensation.

The county attorney of any county may, under the direction of the district court, procure such assistance in any investigation or appearance or the trial of any person charged with a crime which is a felony, as he may deem necessary for the trial thereof, and such assistant or assistants shall be allowed such compensation for said services as the court shall determine, to be paid by order of the county treasurer, upon presenting to said board the certificate of the district judge before whom said cause was tried certifying to services rendered by such assistant or assistants and the amount of compensation.

Source: Laws 1885, c. 40, § 6, p. 217; Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1, p. 278; Laws 1919, c. 62, § 1, p. 169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927,

c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(2), p. 144; Laws 1969, c. 165, § 1, p. 741.

1. Appointment of special counsel
2. Effect of change of venue
3. Miscellaneous

1. Appointment of special counsel

In the prosecution of a felony case, the question of appointment of assistant counsel to aid the prosecution is addressed to the sound discretion of the court. Jackson v. State, 133 Neb. 786, 277 N.W. 92 (1938).

Application for appointment of counsel to assist in prosecution of criminal case is addressed to the sound discretion of the trial court and error cannot be predicated thereon in absence of showing of abuse of discretion. Dobry v. State, 130 Neb. 51, 263 N.W. 681 (1935).

Attorney may be appointed to assist in prosecution of felony, within discretion of court, on application of county attorney, and is not error in absence of showing abuse of discretion. Barr v. State, 114 Neb. 853, 211 N.W. 188 (1926); Baker v. State, 112 Neb. 654, 200 N.W. 876 (1924); Smith v. State, 109 Neb. 579, 191 N.W. 687 (1922).

Assistant attorney need not qualify and give bond nor take oath as deputy county attorney. Gragg v. State, 112 Neb. 732, 201 N.W. 338 (1924); Bush v. State, 62 Neb. 128, 86 N.W. 1062 (1901).

Court may appoint attorney in prosecution of misdemeanor. Goemann v. State, 100 Neb. 772, 161 N.W. 421 (1917).

It is the duty of the court to select impartial prosecutor to assist county attorney. Rogers v. State, 97 Neb. 180, 149 N.W. 318 (1914).

Attorney appointed to assist in prosecution may be nonresident but must qualify. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Order permitting assistance of one employed privately should not be entered. McKay v. State, 90 Neb. 63, 132 N.W. 741 (1911).

Appointment after jury is passed for cause but before any peremptory challenges are used is valid. Johns v. State, 88 Neb. 145, 129 N.W. 247 (1910).

Appointment of counsel to assist in prosecution should be made before commencement of trial. Knights v. State, 58 Neb. 225, 78 N.W. 508 (1899).

An objection to the appearance of counsel appointed pursuant to this section must be supported by at least some showing that the county attorney did not request or require any assistance and that the court did not appoint the counsel for such purpose. State v. Rivera, 14 Neb. App. 590, 711 N.W.2d 573 (2006).

2. Effect of change of venue

Attorney employed by county attorney to assist in prosecution is required to follow case on change of venue. Sands v. Frontier County, 42 Neb. 837, 60 N.W. 1017 (1894).

County from which venue is changed is liable for compensation of counsel appointed to assist in prosecution. Fuller v. Madison County, 33 Neb. 422, 50 N.W. 255 (1891).

3. Miscellaneous

An application for attorney fees and expenses must be granted where the record demonstrates that the amount requested was reasonable and there is no evidence or indication otherwise that the amount is unreasonable. This section does not create a presumption of validity regarding attorney fees and expenses. Schirber v. State, in re Patrick Thomas, 254 Neb. 1002, 581 N.W.2d 873 (1998).

23-1204.02 Repealed. Laws 1961, c. 99, § 2.

23-1204.03 Deputies; counties having a population of between 30,000 and 200,000 inhabitants; additional deputy; salary.

In counties having a population of more than thirty thousand inhabitants and not more than two hundred thousand inhabitants, there is hereby created the office of deputy county attorneys, and the county attorney of such county may at his discretion appoint additional deputy county attorneys for such county upon receiving the approval thereof by the county board. The salary of the additional deputy county attorneys, referred to in this section, shall be fixed by the county board.

Source: Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1, p. 278; Laws 1919, c. 62, § 1, p. 169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927, c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(4), p. 144; Laws 1953, c. 56, § 2, p. 194.

23-1204.04 Deputies; bond.

The deputy county attorney in all counties, except as otherwise provided in section 23-1204.05, shall file a bond in the same manner and for the same amount required of the county attorney and be removable at the pleasure of the county attorney.

Source: Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1, p. 278; Laws 1919, c. 62, § 1, p. 169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927, c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(5), p. 144.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-1204.05 Deputies; counties having a population of more than 200,000 inhabitants.

In counties whose population is more than two hundred thousand inhabitants, the county attorney may appoint a chief deputy county attorney and one or more deputy county attorneys. Before entering upon the duties of their offices, each of said deputies shall be required to give a bond for the faithful performance of the duties of such office in an amount to be fixed and approved by the judges of the district court.

Source: Laws 1893, c. 2, § 1, p. 64; Laws 1901, c. 8, § 1, p. 57; R.S.1913, § 5599; Laws 1917, c. 108, § 1, p. 278; Laws 1919, c. 62, § 1, p. 169; Laws 1921, c. 232, § 1, p. 830; C.S.1922, § 4916; Laws 1923, c. 41, § 1, p. 156; Laws 1927, c. 116, § 2, p. 326; C.S.1929, § 26-904; Laws 1943, c. 90, § 14, p. 302; R.S.1943, § 23-1204; Laws 1947, c. 73, § 2, p. 233; Laws 1947, c. 72, § 2, p. 230; Laws 1947, c. 62, § 5, p. 200; Laws 1949, c. 42, § 1(6), p. 144; Laws 1953, c. 59, § 1, p. 197; Laws 1967, c. 130, § 1, p. 414.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-1204.06 Deputies; grant program for termination of parental rights actions.

A grant program is established to reimburse counties for the personal service costs of deputy county attorneys associated with termination of parental rights actions resulting from Laws 1998, LB 1041. Counties in which a city of the metropolitan class or a city of the primary class is located are eligible for grants under this program. The Department of Health and Human Services shall administer the program. Counties receiving grants shall submit quarterly expenditure reports to the department.

Source: Laws 1998, LB 1041, § 47; Laws 2007, LB296, § 24.

23-1205 Acting county attorney; appointment; when authorized; compensation.

Due to the absence, sickness, disability, or conflict of interest of the county attorney and his or her deputies, or upon request of the county attorney for good cause, the Supreme Court, the Court of Appeals, or any district court,

separate juvenile court, or county court before which the cause may be heard may appoint an attorney to act as county attorney in any investigation, appearance, or trial by an order entered upon the minutes of the court. Such attorney shall be allowed compensation for such services as the court determines, to be paid by order of the county treasurer upon presenting to the county board the certificate of the judge before whom the cause was tried certifying to services rendered by such attorney and the amount of compensation.

Source: Laws 1885, c. 40, § 7, p. 218; R.S.1913, § 5600; C.S.1922, § 4917; C.S.1929, § 26-905; R.S.1943, § 23-1205; Laws 1969, c. 165, § 2, p. 742; Laws 2007, LB214, § 1; Laws 2009, LB35, § 3.

District court is given authority to appoint an acting county attorney in the event of absence, sickness, or disability of county attorney. Stewart v. McCauley, 178 Neb. 412, 133 N.W.2d 921 (1965).

It is within the discretion of the court to appoint any attorney in lieu of disqualified county attorney, and ruling will not be disturbed unless discretion is abused. Quinton v. State, 112 Neb. 684, 200 N.W. 881 (1924).

Appointment where attorney refused to prosecute is proper. Spaulding v. State, 61 Neb. 289, 85 N.W. 80 (1901).

Information may be filed by substitute county attorney without infringing constitutional rights of accused. Korth v. State, 46 Neb. 631, 65 N.W. 792 (1896).

Appointment of another attorney is proper where county attorney had appeared for accused. Gandy v. State, 27 Neb. 707, 43 N.W. 747 (1889), 44 N.W. 108 (1889).

23-1206 Fees; prohibited; civil cases; when disqualified.

No prosecuting attorney shall receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business which it shall be his official duty to attend; nor shall he act or be concerned, as an attorney or counsel for either party, other than for the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution, commenced or prosecuted, shall depend, or depending upon the same state of facts, investigated by him, while acting as county coroner.

Source: Laws 1885, c. 40, § 8, p. 218; R.S.1913, § 5601; C.S.1922, § 4918; C.S.1929, § 26-906; Laws 1943, c. 56, § 1, p. 223; R.S.1943, § 23-1206.

Purpose of this section was to make certain that a county attorney should not be influenced by private interests. Stewart v. McCauley, 178 Neb. 412, 133 N.W.2d 921 (1965).

Purpose of the statute is to protect the public by making certain that the duties of county attorney are not influenced by private interest. Roach v. Roach, 174 Neb. 266, 117 N.W.2d 549 (1962).

County attorney is not entitled to attorney's fee taxed as costs in tax foreclosure action. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

Attorney's fee could not be allowed for services performed under Uniform Reciprocal Enforcement of Support Act. Rice v. Rice, 165 Neb. 778, 87 N.W.2d 408 (1958).

In civil action, disqualification of county attorney is waived unless objection thereto is made. Thompson v. Thompson, 151 Neb. 110, 36 N.W.2d 648 (1949).

Where attorney prepared petition for probate of deceased but withdrew his appearance, and appointment to assist in prosecution was made solely through county attorney, there was no disqualification. Jordan v. State, 101 Neb. 430, 163 N.W. 801 (1917).

County attorney cannot recover fee for services in civil action where criminal action was possible. Ress v. Shepherd, 84 Neb. 268, 120 N.W. 1132 (1909).

County attorney, who brought civil action, is not disqualified to prosecute criminal action based on same facts. Fitzgerald v. State, 78 Neb. 1, 110 N.W. 676 (1907).

23-1206.01 County attorney, deputies, and employees; employment restrictions; salary.

(1)(a) In counties having a population of two hundred thousand inhabitants or more, the county attorney and all deputy county attorneys shall devote their full time to the legal work of such county and shall not engage in the private practice of law directly or indirectly, nor shall any county attorney, deputy county attorney, or employee of the county attorney of any such county directly or indirectly refer any legal matter or civil or criminal litigation to any lawyer or either directly or indirectly recommend or suggest to any person the employment of any particular lawyer or lawyers to counsel in, conduct, defend,

or prosecute any action, case, claim, demand, or legal proceeding, whether in litigation or otherwise. In counties having a population of two hundred thousand inhabitants or more, the county attorney may appoint deputy county attorneys to serve without pay and when so appointed shall not be subject to the provisions of this section.

(b) In counties with sixty thousand or more but less than one hundred thousand inhabitants, the county attorney shall receive a salary of not less than twenty-seven thousand five hundred dollars per annum.

(c) In counties with one hundred thousand or more but less than two hundred thousand inhabitants, the county attorney shall receive a salary of not less than thirty-two thousand five hundred dollars per annum. The county attorneys of such counties shall not engage in private practice. The deputy county attorneys in such counties may engage in private practice.

(2) In any county not specifically provided for under subsection (1) of this section, the county board may adopt a resolution not less than sixty days prior to the deadline for filing for the office of county attorney providing that the county attorney shall devote his or her full time to the legal work of the county and shall not engage in the private practice of law directly or indirectly and shall not directly or indirectly refer any legal matter or civil or criminal litigation to any lawyer nor directly or indirectly recommend or suggest to any person the employment of any particular lawyer or lawyers to counsel in, conduct, defend, or prosecute any action, case, claim, demand, or legal proceeding, whether in litigation or otherwise. The full-time county attorney shall receive an annual salary, to be set by the county board, to be paid periodically out of the general fund the same as the salaries of other employees, except that in a county having a population of twenty thousand inhabitants or more or when two or more contiguous counties jointly employ one county attorney and have a combined population of twenty thousand inhabitants or more, the county attorney for the county or counties shall receive an annual salary of not less than twenty thousand dollars.

Source: Laws 1957, c. 72, § 1, p. 307; Laws 1959, c. 89, § 1, p. 398; Laws 1974, LB 774, § 1; Laws 1981, LB 21, § 1; Laws 1995, LB 285, § 1.

23-1206.02 County attorney, deputies, and employees; counties having a population of more than 200,000 inhabitants; private practice; illegal reference; malfeasance; penalty.

Any county attorney, deputy county attorney, or any employee of the county attorney in any county having a population of more than two hundred thousand inhabitants violating the provisions of section 23-1206.01 shall be guilty of malfeasance in office and shall, upon conviction thereof, be fined not more than five hundred dollars or imprisoned in the county jail not more than six months, or both such a fine and imprisonment, and in addition shall vacate his office.

Source: Laws 1957, c. 72, § 2, p. 307.

23-1207 Money or property received; county attorney; duties.

(1) It shall be the duty of the county attorney, whenever he or she shall receive any money or other property in his or her official capacity, to give to the person paying or depositing such money or other property duplicate receipts, one of which shall be filed by such person with the county clerk.

(2) Whenever any such money is received by the county attorney, he or she shall carefully manage it and may, when the money cannot immediately be paid out to its rightful owner, deposit the money in interest-bearing accounts in insured banking or savings institutions. Any interest accrued from such deposit shall be paid over to the county treasurer to be credited to the county general fund, except that when the funds so deposited belonged to a deceased person whose personal representative has not yet been appointed by a court of competent jurisdiction, then the interest accruing on such money shall be paid to the estate of such person after the appointment of a personal representative and upon order of the court.

(3) Any property other than money which is received by the county attorney shall be held by him or her in safekeeping until claimed by the rightful owner or, if there is a dispute as to the ownership of such property, until ordered by a court of competent jurisdiction to give possession of the property to some person.

Source: Laws 1885, c. 40, § 9, p. 219; R.S.1913, § 5602; C.S.1922, § 4919; C.S.1929, § 26-907; R.S.1943, § 23-1207; Laws 1979, LB 179, § 1.

23-1208 Grand jury and court sittings; attendance and duties.

Whenever the county attorney is required by the grand jury of any court sitting in his county, it shall be his duty to attend for the purpose of examining witnesses in their presence, or of giving them advice in any legal matter, and to issue subpoenas and other writs of process; to bring in witnesses and to draw up bills of indictment; but he shall not be present with the grand jury when an indictment is being considered and found by said grand jury.

Source: Laws 1885, c. 40, § 10, p. 219; R.S.1913, § 5603; C.S.1922, § 4920; C.S.1929, § 26-908; R.S.1943, § 23-1208.

23-1209 Detectives; employment; when authorized; compensation.

In counties having a population exceeding sixty thousand inhabitants, and not more than two hundred thousand inhabitants, there may be spent under the direction and control of the county attorney of said county a sum of money not exceeding five hundred dollars in any one year, to be paid out of the general fund of the county, for the employment of a detective or detectives, the same to be appointed by the county attorney at such rates of compensation per day as may be fixed by said officer, and said appointment may be revoked by him at any time. In counties having a population exceeding two hundred thousand inhabitants, there may be spent under the direction and control of the county attorney of said county a sum of money not exceeding fifteen hundred dollars in any one year, to be paid out of the general fund of the county, for the employment of a detective or detectives, the same to be appointed by the county attorney at such rates of compensation per day as may be fixed by said officer, and said appointment may be revoked by him at any time.

Source: Laws 1909, c. 8, § 1, p. 64; R.S.1913, § 5604; Laws 1919, c. 64, § 1, p. 172; C.S.1922, § 4921; C.S.1929, § 26-909; R.S.1943, § 23-1209; Laws 1969, c. 146, § 2, p. 703.

23-1210 Coroner; duties; county attorney shall perform; expenses; delegation of duties.

(1) The county attorney shall perform all of the duties enjoined by law upon the county coroner and the county attorney shall be the ex officio county coroner. The county attorney shall receive no additional fees for the performance of duties prescribed by statutes for county coroner but shall be reimbursed for all actual necessary expenses incurred by him or her in the performance of such duties with reimbursement for mileage to be made at the rate provided in section 81-1176.

(2) The county attorney may delegate to the county sheriff, deputy county sheriff, or any other peace officer that part of the coroner's duties as now prescribed by statute which relates to viewing dead bodies and serving papers, except that in cases when there may be occasion to serve papers upon the sheriff, the county attorney may delegate such duty to the county clerk.

Source: Laws 1915, c. 224, § 1, p. 493; C.S.1922, § 4922; C.S.1929, § 26-910; Laws 1933, c. 96, § 3, p. 384; C.S.Supp.,1941, § 26-910; R.S.1943, § 23-1210; Laws 1957, c. 70, § 2, p. 295; Laws 1981, LB 204, § 27; Laws 1987, LB 313, § 1; Laws 1996, LB 1011, § 10.

Section is constitutional. Effect is to incorporate in new law the existing laws defining the duties of coroner. State ex rel. Crosby v. Moorhead, 100 Neb. 298, 159 N.W. 412 (1916).

23-1211 Repealed. Laws 1969, c. 411, § 1.

23-1212 Terms, defined.

For purposes of sections 23-1212 to 23-1222, unless the context otherwise requires:

(1) County attorney shall mean the county attorney of a county in this state whether such position is elective or appointive and regardless of whether such position is full time or part time;

(2) Deputy county attorney shall mean an attorney employed by a county in this state for the purpose of assisting the county attorney in carrying out his or her responsibilities regardless of whether such position is full time or part time;

(3) Council shall mean the Nebraska County Attorney Standards Advisory Council;

(4) Attorney General shall mean the Nebraska Attorney General;

(5) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice; and

(6) Continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall mean that type of legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, which has application to and seeks to maintain and improve the skills of the county attorney and deputy county attorney in carrying out the responsibilities of his or her office or position.

Source: Laws 1980, LB 790, § 1; Laws 1990, LB 1246, § 1; Laws 2009, LB671, § 1.

23-1213 Nebraska County Attorney Standards Advisory Council; created; members; qualifications; appointment; terms; vacancy.

(1)(a) There is hereby created the Nebraska County Attorney Standards Advisory Council which, except as provided in subdivision (b) of this subsection, shall consist of seven members, four of whom shall be either a county attorney or deputy county attorney, one member being a professor of law or professor of forensic science, and two members being county commissioners or supervisors. The members of such council shall be appointed by the Governor. Of the county attorneys or deputy county attorneys appointed to such council, one shall be from Douglas County, one shall be from Lancaster County, and the remaining two shall be appointed from the remainder of the state. Members of the council shall serve a term of four years, except that of the members first appointed one member shall serve a term of one year, two members shall serve a term of two years, two members shall serve a term of three years, and two members shall each serve a term of four years.

(b) On and after August 30, 2009, the council shall consist of eleven members with the addition of the following four new members: (i) Two members who shall be either county attorneys or deputy county attorneys from counties other than Douglas County or Lancaster County; (ii) one member who is a county sheriff or a chief of police; and (iii) one member who is a certified forensic pathologist. The new members shall serve terms of four years, except that of the new members first appointed two members shall serve terms of two years and two members shall serve terms of three years.

(2) A member may be reappointed at the expiration of his or her term. Any vacancy occurring other than by expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appointment. The council shall select one of its members as chairperson. The Governor shall make the appointments under this section within ninety days of July 19, 1980.

(3) Members of the council shall have such membership terminated if they cease to hold the office of county attorney, deputy county attorney, county commissioner or supervisor, or county sheriff or chief of police. A member of the council may be removed from the council for good cause upon written notice and upon an opportunity to be heard before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges and the findings and disposition together with a complete record of the proceedings.

Source: Laws 1980, LB 790, § 2; Laws 2009, LB671, § 2.

23-1213.01 Guidelines to promote uniform and quality death investigations for county coroners; contents.

The council shall, with respect to ensuring quality and uniform death investigation processes throughout the state, develop guidelines to promote uniform and quality death investigations for county coroners. Such guidelines may include guidance to the county coroner in:

(1) Determining the need for autopsies involving:

(a) Deaths of individuals nineteen years of age or older;

(b) Deaths of individuals under nineteen years of age;

(c) Sudden, unexplained infant deaths;

(d) Deaths while in custody;

(e) Deaths caused by motor vehicle collisions;

(f) Deaths by burning; and

(g) Suspicious deaths;

(2) The utilization of investigative tools and equipment;

(3) Entering the death scene;

(4) Documenting and evaluating the death scene;

(5) Documenting and evaluating the body;

(6) Establishing and recording decedent profile information; and

(7) Completing the death scene investigation.

Persons investigating infant deaths and young child deaths may also refer to the recommendations adopted by the Attorney General with respect to such investigations.

Source: Laws 2009, LB671, § 3.

23-1213.02 Network of regional officials for death investigation support services.

The council shall also:

(1) Help establish a voluntary network of regional officials including, but not limited to, law enforcement, county coroners, and medical personnel to provide death investigation support services for any location in Nebraska;

(2) Help determine the membership of such networks; and

(3) Develop, design, and provide standardized forms in both hard copy and electronic copy for use in death investigations.

Source: Laws 2009, LB671, § 4.

23-1213.03 Coroner or deputy coroner; training; continuing education.

Every person who is elected or appointed as a coroner or deputy coroner in or for the State of Nebraska shall satisfactorily complete initial death investigation training within one year after the date of election or appointment and thereafter annually complete continuing education as determined by the council.

Source: Laws 2009, LB671, § 5.

23-1214 Council; membership; holding other office or position; effect.

Notwithstanding any other provision of law, membership on the council shall not disqualify any member from holding his or her office or position or cause the forfeiture thereof.

Source: Laws 1980, LB 790, § 3.

23-1215 Council; members; expenses.

Members of the council shall serve without compensation, but they shall be entitled to reimbursement for actual and necessary expenses incident to such service on the council as provided in section 81-1174, for state employees.

Source: Laws 1980, LB 790, § 4.

23-1216 Council; continuing legal education; duties.

The council shall be responsible for establishing the annual number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children. The council shall periodically review the required number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children. The council shall develop educational criteria, formats, and program objectives to be used in the delivery of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys, except that the annual number of hours spent in continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall not exceed thirty-six contact hours.

Source: Laws 1980, LB 790, § 5; Laws 1990, LB 1246, § 2.

23-1217 County attorney; deputy county attorney; continuing legal education required; failure to complete; effect.

Every county attorney and deputy county attorney in this state shall annually undertake and complete the required hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as prescribed by the council under section 23-1216. Failure on the part of any county attorney or deputy county attorney to complete the required number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, may subject such county attorney or deputy county attorney to removal from office under section 23-1220.

Source: Laws 1980, LB 790, § 6; Laws 1990, LB 1246, § 3.

23-1218 Nebraska Commission on Law Enforcement and Criminal Justice; continuing legal education; duties; enumerated.

The Nebraska Commission on Law Enforcement and Criminal Justice, after consultation with the council, shall:

(1) Establish curricula for the implementation of a mandatory continuing legal education program, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys;

(2) Administer all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys required under sections 23-1212 to 23-1222;

(3) Evaluate the effectiveness of programs of continuing legal education, including instruction providing a working knowledge of electronic speed meas-

urement principles and instruction on the investigation and prosecution of crimes against children, required under sections 23-1212 to 23-1222;

(4) Certify the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, completed by a county attorney and deputy county attorney as required under sections 23-1212 to 23-1222 and maintain all records relating thereto;

(5) Report to the Attorney General the names of all county attorneys and deputy county attorneys who have failed to complete the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under section 23-1217;

(6) Establish tuition and fees for all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under sections 23-1212 to 23-1222;

(7) Adopt and promulgate necessary rules and regulations for the effective delivery of all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys as required under sections 23-1212 to 23-1222;

(8) Do all things necessary to carry out the purpose of training county attorneys and deputy county attorneys as required by sections 23-1212 to 23-1222; and

(9) Receive and distribute appropriated funds to the Nebraska County Attorneys Association to develop, administer, and conduct continuing legal education seminars, prepare and publish trial manuals and other publications, and take any other measure that will enhance the investigation and prosecution of crime in this state.

Source: Laws 1980, LB 790, § 7; Laws 1990, LB 1246, § 4; Laws 2009, LB671, § 6.

23-1219 County attorney; deputy county attorney; failure to fulfill continuing legal education requirements; commission; investigate; duties.

When it comes to the attention of the commission that a county attorney or deputy county attorney has not fulfilled the required number of hours of annual mandatory continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, required by section 23-1217, it shall investigate such failure to comply in order to determine whether or not such failure was willful or negligent. If the commission determines that the failure to comply was willful or negligent, it shall refer the matter to the Attorney General for action under section 23-1220. If the commission determines that the failure to comply was not willful or negligent, it shall permit the county attorney or deputy county attorney to make up all outstanding hours of continuing legal education, including instruction providing a

working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children. In doing so, the commission shall establish a deadline by which such hours must be undertaken and completed. In making up any outstanding hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children under this section, such hours shall be in addition to those hours which are annually required under section 23-1217.

Source: Laws 1980, LB 790, § 8; Laws 1990, LB 1246, § 5.

23-1220 County attorney; deputy county attorney; failure to complete continuing legal education; Attorney General; commence civil action.

Upon being advised by the commission of a failure on the part of a county attorney or deputy county attorney to complete the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, required by section 23-1217, the Attorney General shall commence a civil action in the district court of the county in which the county attorney holds office, or in the case of a deputy county attorney in the district court of the county in which he or she is employed, seeking his or her removal from office or employment. Such action shall be brought in the name of the county. Such action shall be tried in the same manner as other civil actions under Chapter 25, except that such action shall be tried exclusively to the court without a jury.

Source: Laws 1980, LB 790, § 9; Laws 1990, LB 1246, § 6.

23-1221 County attorney; deputy county attorney; removal from office; vacancy; how filled.

If a county attorney is removed from office as a result of the action authorized under section 23-1220, such office shall be declared vacant and the county board shall fill the vacancy by appointment with a qualified candidate. If a deputy county attorney is removed from office as a result of the action authorized under section 23-1220, the vacancy may be filled pursuant to section 23-1204.

Source: Laws 1980, LB 790, § 10.

23-1222 Continuing education; tuition, fees, expenses; how paid.

Tuition, fees, and other expenses incurred by a county attorney or deputy county attorney in fulfilling the requirements of section 23-1217 shall be paid by the county. Tuition, fees, and other expenses incurred by all other persons who may attend such programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall be the responsibility of the person attending.

Source: Laws 1980, LB 790, § 11; Laws 1990, LB 1246, § 7.

23-1223 Traveling expenses; mileage.

(1) In all cases when the county attorney has engaged in the courts of another county in any suit, application, or motion, either civil or criminal, in which the

state or county is a party interested, which has been transferred by change of venue from his or her county to another county, he or she shall be allowed his or her reasonable and necessary traveling and hotel expenses while so engaged, in addition to his or her regular salary.

(2) The expenses referred to in subsection (1) of this section shall be paid to him or her upon the presentation of a bill for the same, accompanied by proper vouchers, to the county board of his or her county, in like manner as provided in all other cases of claims against the county. In computing reasonable and necessary traveling expenses, the county attorney shall be allowed mileage at the rate allowed by section 81-1176, but if travel by rail or bus is economical and practical and if mileage expense may be reduced thereby, he or she shall be allowed only the actual cost of rail or bus transportation.

Source: Laws 1885, c. 40, § 5, p. 217; Laws 1899, c. 6, § 2, p. 57; Laws 1903, c. 7, § 2, p. 58; Laws 1909, c. 7, § 1, p. 63; Laws 1911, c. 7, § 1, p. 74; Laws 1913, c. 255, § 1, p. 788; R.S.1913, § 2432; Laws 1919, c. 65, § 1, p. 173; C.S.1922, § 2372; Laws 1927, c. 116, § 1, p. 325; C.S.1929, § 33-111; Laws 1933, c. 96, § 6, p. 385; C.S.Supp.,1941, § 33-111; Laws 1943, c. 90, § 18, p. 305; R.S. 1943, § 33-108; Laws 1957, c. 70, § 3, p. 295; Laws 1981, LB 204, § 49; R.S.1943, (1988), § 33-108; Laws 1989, LB 4, § 5; Laws 1996, LB 1011, § 11.

Counties are obligated to pay costs and expenses of prosecutions, including fees and expenses of attorneys appointed to represent indigent defendants in criminal cases, and there is no requirement that a property tax be levied therefor. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

ARTICLE 13

COUNTY CLERK

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Abstracting, cannot engage in, when, see section 76-504.
Act as clerk of district court, see section 32-524.
Act as county assessor, see sections 23-3201 to 23-3203.
Act as county comptroller, see section 23-1401.
Act as election commissioner, see section 32-218.
Act as register of deeds, see section 23-1502.
Act as sheriff, see sections 23-1713 and 23-1714.
Attorney, practice prohibited, when, see section 7-111.
Bond, see section 11-119.
Deputy county clerk for elections, see section 32-218.
Duties of county clerk in particular matters:
Bonds of indebtedness, see Chapter 10.
Clerk of district court, perform duties of, when, see section 32-524.
Corporations, see Chapter 21.
County fair, see Chapter 2, article 2.
Elections, see Chapter 32.
Motor vehicle titles, see Chapter 60, article 1.
Session laws and journals, distribution, see sections 49-502 to 49-505.
Taxation, see Chapter 77.
Elected, when, see section 32-517.
Fees for recording instruments, see Chapter 33.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

23-1301 County clerk; office; duties; residency.

The county clerk shall keep his or her office at the county seat; shall attend the sessions of the county board; shall keep the seal, records, and papers of the board; and shall sign the record of the proceedings of the board and attest the same with the county seal. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the county clerk may transfer such record of the proceedings of the board to the State Archives of the Nebraska State Historical Society for permanent preservation.

A county clerk elected after November 1986 need not be a resident of the county when he or she files for election as county clerk, but a county clerk shall reside in a county for which he or she holds office.

Source: Laws 1879, § 73, p. 374; R.S.1913, § 5605; C.S.1922, § 4924; C.S.1929, § 26-1001; R.S.1943, § 23-1301; Laws 1973, LB 224, § 5; Laws 1986, LB 812, § 3; Laws 1996, LB 1085, § 31.

Cross References

Records Management Act, see section 84-1220.

Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. State ex rel. Schuler v. Dunbar, 208 Neb. 69, 302 N.W.2d 674 (1981).

23-1301.01 County clerk; deputy; appointment; oath; duties.

The county clerk may appoint a deputy for whose acts he or she will be responsible. The clerk may not appoint the county treasurer, sheriff, register of deeds, or surveyor as deputy.

The appointment shall be in writing and revocable in writing by the clerk. Both the appointment and revocation shall be filed and kept in the office of the clerk.

The deputy shall take the same oath as the clerk which shall be endorsed upon and filed with the certificate of appointment. The clerk may require a bond of the deputy.

In the absence or disability of the clerk, the deputy shall perform the duties of the clerk pertaining to the office, but when the clerk is required to act in conjunction with or in place of another officer, the deputy cannot act in the clerk's place.

Source: Laws 1990, LB 821, § 3.

23-1302 County clerk; duties.

It shall be the general duty of the county clerk:

(1) To record in a book provided for that purpose all proceedings of the board. If the county clerk or his or her deputy is unable to be present for any proceeding of the board, the county clerk may appoint a designee to record such proceedings;

(2) To make regular entries of its resolutions and decisions in all questions concerning the raising of money;

(3) To countersign all warrants issued by the board and signed by its chairperson;

(4) To preserve and file all accounts acted upon by the board, with its action thereon, and perform such special duties as are required by law. Such special duties do not include budget-making duties performed under section 23-906. In a county having a county comptroller, all accounts acted upon by the board shall remain on file in the office of such comptroller; and the county clerk shall certify to the county treasurer as of June 15 and December 15 of each year the total amount of unpaid claims of the county; and

(5) To prepare and file with the county board the annual inventory statement of county personal property in his or her custody and possession, and to perform the duties enjoined upon him or her by sections 23-346 to 23-350.

Source: Laws 1879, § 74, p. 374; Laws 1907, c. 33, § 1, p. 166; R.S.1913, § 5606; C.S.1922, § 4925; C.S.1929, § 26-1002; Laws 1935, c. 53, § 1, p. 183; Laws 1939, c. 28, § 7, p. 147; C.S.Supp.,1941, § 26-1002; R.S.1943, § 23-1302; Laws 2002, LB 1018, § 2; Laws 2005, LB 762, § 1.

Cross References

Distribute political accountability and disclosure forms, see section 49-14,139.

Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. State ex rel. Schuler v. Dunbar, 208 Neb. 69, 302 N.W.2d 674 (1981).

County clerk may be required by law to perform special duties, such as issuance of certificates of title in connection with motor vehicle registration, and the fees earned belong to the county. Hoctor v. State, 141 Neb. 329, 3 N.W.2d 558 (1942).

23-1303 Warrants; funds transfer systems; procedure.

(1) The county clerk shall not issue any county warrants except upon claims approved by the county board. Every warrant issued shall be numbered consecutively as allowed from July 1 to June 30, corresponding with the fiscal year of the county. The county clerk shall maintain records including the date, amount, and number of each warrant, the name of the person to whom a warrant is issued, and the date a warrant is returned as canceled. The records shall be made accessible to the public for viewing, in either an electronic or printed format.

(2)(a) The county clerk shall develop and implement a system of warrant preparation and issuance by electronic or mechanical means which is compatible with the funds transfer system established by the county treasurer pursuant to subsection (6) of this section.

(b) Warrant includes an order issued by the chairperson of the county board and countersigned by the county clerk directing that the county treasurer make

payment in a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (3) and (4) of this section, an electronic funds transfer system, a telephonic funds transfer system, funds transfers as provided in article 4A, Uniform Commercial Code, a mechanical funds transfer system, or any other funds transfer system established by the county treasurer.

(3) The chairperson of the county board shall sign each warrant or shall cause each warrant to be signed in his or her behalf either personally, by delegation of authority, or by facsimile or electronic signature. The signature of the chairperson of the county board shall signify that the payment intended by a warrant bearing such signature is proper under the appropriate laws of the state and resolutions of the county.

(4) The county clerk shall countersign all warrants issued by the chairperson of the county board either personally, by delegation of authority, or by facsimile or electronic signature.

(5) The county treasurer shall, if requested by the county clerk or the county board, establish procedures and processes for facsimile or electronic signature of warrants.

(6) The county treasurer may establish and operate an electronic funds transfer system, a telephonic funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, a mechanical funds transfer system, or any other funds transfer system for the payment of funds from and the deposit of receipts into the county treasury. Such system as established by the county treasurer shall employ internal control safeguards and after meeting such safeguards shall be deemed to satisfy any signature requirements. The use of an electronic funds transfer system, a telephonic funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, a mechanical funds transfer system, or any other funds transfer system established by the county treasurer shall not create any rights that would not have been created had an order, drawn by the chairperson of the county board upon the county treasurer directing the latter to pay a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (3) and (4) of this section, been used as the payment medium.

Source: Laws 1879, § 75, p. 374; R.S.1913, § 5607; C.S.1922, § 4926; C.S.1929, § 26-1003; R.S.1943, § 23-1303; Laws 1947, c. 74, § 1, p. 235; Laws 1999, LB 86, § 13.

Clerk cannot draw warrants except as ordered. State ex rel. Conger v. Maccuaig, 8 Neb. 215 (1879).

23-1304 Official bonds; record; duty to keep.

The county clerk shall keep a book in which shall be entered in alphabetical order, by name of the principal, a minute of all official bonds filed in his office, giving the name of the office, amount and date of bond, names of sureties, and date of filing, with proper reference to the book and page where the same is recorded.

Source: Laws 1879, § 76, p. 375; R.S.1913, § 5608; C.S.1922, § 4927; C.S.1929, § 26-1004; R.S.1943, § 23-1304.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-1305 Road record; duty to keep.

It shall be the duty of the county clerk to record in a proper book, to be called the Road Record, a record of the proceedings in regard to laying out and establishing, changing or discontinuing roads in the county.

Source: Laws 1879, § 77, p. 375; R.S.1913, § 5609; C.S.1922, § 4928; C.S.1929, § 26-1005; R.S.1943, § 23-1305.

23-1306 County officers; signatures and seals; duty to report to Secretary of State.

It shall be the duty of the county clerk to report to the Secretary of State, on or before the first day of February of each year, the names of all the county officers with their official signatures and seals of their respective offices. When any change is made in the incumbent of any county office, the change shall be forthwith reported by the county clerk to the Secretary of State, who shall preserve and record such lists with changes subsequently made therein.

Source: Laws 1879, § 90, p. 379; R.S.1913, § 5610; C.S.1922, § 4929; C.S.1929, § 26-1006; R.S.1943, § 23-1306; Laws 1955, c. 76, § 1, p. 230.

23-1307 County clerks; election commissioners; deputies; oaths; acknowledgments.

All county clerks and election commissioners and their deputies shall have authority to administer oaths and affirmations in all cases where oaths and affirmations are required and to take acknowledgments of deeds, mortgages, and all other instruments in writing, attesting to such with the county seal.

Source: Laws 1883, c. 19, § 1, p. 181; R.S.1913, § 5611; C.S.1922, § 4930; C.S.1929, § 26-1007; R.S.1943, § 23-1307; Laws 2012, LB398, § 1.
Effective date July 19, 2012.

Clerk must report fees for such services, though performed as notary public. State ex rel. Frontier County v. Kelly, 30 Neb. 574, 46 N.W. 714 (1890).

Clerk or deputy may administer oaths and affirmations. Merriam v. Coffee, 16 Neb. 450, 20 N.W. 389 (1884).

23-1308 Repealed. Laws 1963, c. 339, § 1.

23-1309 Veterans discharge record; duty to keep; information; confidential.

It shall be the duty of the county clerk in each county to keep in a separate book or books, entitled Discharge Record, a copy of all discharges or records of separation from active duty from the armed forces of the United States. Information contained in the Discharge Record shall be confidential and made available only to the veteran, county veterans service officer, or post service officer of a recognized veterans organization.

Source: Laws 1921, c. 123, § 1, p. 533; C.S.1922, § 4935; C.S.1929, § 26-1012; R.S.1943, § 23-1309; Laws 1945, c. 50, § 1, p. 234; Laws 1953, c. 60, § 1, p. 198; Laws 1969, c. 166, § 1, p. 742; Laws 2005, LB 54, § 4.

23-1310 Veterans discharge or record of separation; registration upon application.

Any person residing in Nebraska or who entered the service from Nebraska and who served in any branch of the armed forces of the United States may apply for registration of his or her discharge or record of separation in the office of the county clerk where such person resides. No fee shall be charged for recording such discharge or record of separation.

Source: Laws 1921, c. 123, § 2, p. 533; C.S.1922, § 4936; C.S.1929, § 26-1013; R.S.1943, § 23-1310; Laws 1953, c. 60, § 2, p. 199; Laws 2005, LB 54, § 5.

23-1311 Instruments; signatures; illegible; refusal to file.

The name or names of each signer of an instrument presented for filing or recording in the office of the county clerk or register of deeds, including the name of any notary or official taking the acknowledgment, shall be typewritten or legibly printed beneath such signature, and the county clerk or register of deeds may refuse to accept and file any instrument failing to meet the requirements of this section; *Provided,* that if the county clerk or register of deeds determines that all signatures on the instrument are legible, he shall not refuse to file the instrument.

Source: Laws 1959, c. 90, § 1, p. 400.

23-1312 Repealed. Laws 1994, LB 76, § 615.

23-1313 Name of farm, ranch, or home; registration.

The owner of any farm, ranch, or home may, upon the payment of one dollar to the county clerk of the county in which such farm, ranch, or home is located, have the name of the farm, ranch, or home duly recorded in a register to be kept by the county clerk for that purpose and may receive a certificate, under the seal of such office, setting forth the name of the farm, ranch, or home, its description by the United States survey, and the name of the owner. When any name of a farm, ranch, or home has been so recorded, such name shall not be recorded as the name of any other farm, ranch, or home in the same county unless plain designating words are prefixed, affixed, or both prefixed and affixed to the name. Upon the recording of a certified transfer of a name by the owner of the farm, ranch, or home, the certified transfer shall be made an additional part of the records so kept.

Source: Laws 1911, c. 84, § 1, p. 338; R.S.1913, § 3093; C.S.1922, § 2833; C.S.1929, § 40-118; R.S.1943, § 40-118; R.S.1943, (1988), § 40-118; Laws 1989, LB 12, § 1; R.S.1943, (1996), § 61-105.

ARTICLE 14

COUNTY COMPTROLLER IN CERTAIN COUNTIES

Section

23-1401 County comptroller; qualifications; duties.

In any county in which a city of the metropolitan class is located, there is hereby created the office of county comptroller for such county, and the county clerk of such county shall be the ex officio county comptroller for the county. The county comptroller shall act as the general accountant and fiscal agent of the county and shall exercise a general supervision over all officers of the county charged in any manner with the receipt, collection, or disbursement of the county revenue. The county comptroller shall be a competent bookkeeper and accountant, and it shall be his or her duty to keep a complete set of books in which, among other things, the amount of the appropriation that has been made on the fund that has been expended on account of such appropriation fund shall be stated. It shall be the duty of the county comptroller to audit all claims filed against the county and prepare a report thereon to the county board of such county. The county comptroller shall also keep accurate and separate accounts between the county and officers of the county, and between the county and all contractors or other persons doing work or furnishing material for the county. The county comptroller shall also examine and check the reports of all officers of the county. The county comptroller shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

Source: Laws 1915, c. 181, § 1, p. 369; C.S.1922, § 4937; C.S.1929, § 26-1101; Laws 1939, c. 28, § 12, p. 152; C.S.Supp.,1941, § 26-1101; R.S.1943, § 23-1401; Laws 1947, c. 62, § 7, p. 201; Laws 1991, LB 798, § 6; Laws 2010, LB475, § 1.

Special investigation of certain county records as requested by grand jury was not service required to be performed by county comptroller. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

23-1402 Treasurer's account; how kept.

The county comptroller shall keep a distinct account with the treasurer of the county for each several term for which the treasurer may be elected, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified, and continuing until the same or other person is qualified as treasurer. In this account he shall charge the treasurer with the amount of taxes levied and assessed in each year, as the same appears on each tax list, delivered to him during his term of office; with the amount of money and with the amount of state, county and general fund warrants, road orders or other evidences of indebtedness, which the county treasurer may have been authorized to receive from his predecessors in office; with the amount of any additional assessments made after the delivery of any tax list, with the amount of any additional penalty added to the taxes, after the same became delinquent according to law; with the amount due the county for advertising lands for sale for delinquent taxes; with the amount received from the sale of any property, belonging to the county; with the amount received as fines and forfeitures; with the amount received from dram shop, tavern, grocery and other licenses; with the amount of money received from any other source authorized by law. Upon presentation of proper vouchers he shall credit the county treasurer with the amount of all county tax which has been paid over to the proper authority and receipted for; with the amount of county warrants received by the county treasurer, and returned to the county board and canceled; with the amount of delinquent taxes and any additional penalty due thereon; with the amount due

on lands and lots for advertising the same for sale; with the amount of double and erroneous assessments of property; with the amount of percentage fees allowed by law to the county treasurer for collecting taxes; with the amount of money and the amount of warrants or orders or other evidences of indebtedness which the county treasurer is allowed by law to receive for taxes, which he pays over to his successor in office; with the amount of taxes uncollected on the tax lists delivered over to his successor in office.

Source: Laws 1915, c. 181, § 2, p. 369; C.S.1922, § 4938; C.S.1929, § 26-1102; R.S.1943, § 23-1402.

23-1403 Record of claims; assistants; appointment; absence or disability; power of deputy.

The county comptroller shall perform such other duties as may be required by law. The comptroller shall keep a record of all claims filed against the county, and the claims themselves he shall keep on file in his office. The county comptroller is hereby authorized and empowered to appoint the necessary help to be paid by the county, but for whose acts and doings said comptroller shall be responsible. During his absence or disability to act as said comptroller, his deputy is hereby authorized to do and perform any and all acts that might by such comptroller himself be done and performed if present.

Source: Laws 1915, c. 181, § 3, p. 370; C.S.1922, § 4939; C.S.1929, § 26-1103; R.S.1943, § 23-1403.

23-1404 Powers; limitation.

All duties given and delegated to the county comptroller, which are performed or exercised by other county officials of such county, are hereby expressly taken from such county officials and made the special duty and obligation of the county comptroller; *Provided,* that no duty required to be performed or power exercised shall be taken from any county official which shall be necessary for the proper performance of any duty required by law of such official which is not hereby made the special duty of the county comptroller.

Source: Laws 1915, c. 181, § 4, p. 370; C.S.1922, § 4940; C.S.1929, § 26-1104; R.S.1943, § 23-1404.

23-1405 Salary; determination.

In counties having a county comptroller, as provided for in section 23-1401, such comptroller may receive a salary as determined by the county board.

Source: Laws 1917, c. 167, § 1, p. 376; C.S.1922, § 4941; C.S.1929, § 26-1105; R.S.1943, § 23-1405; Laws 1991, LB 798, § 7; Laws 1995, LB 729, § 1.

23-1406 Repealed. Laws 1951, c. 52, § 1.

23-1407 County comptroller; office; equipment.

In all counties having a county comptroller, the county board shall provide suitable office room, fireproof vaults of sufficient capacity, necessary books,

blanks, stationery, clerks, and office furniture for the use of said county comptroller.

Source: Laws 1907, c. 38, § 1, p. 174; R.S.1913, § 1107; C.S.1922, § 1041; C.S.1929, § 26-735; R.S.1943, § 23-1407.

ARTICLE 15

REGISTER OF DEEDS

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Abstracting, cannot engage in, when, see section 76-504.
Elected, when, see section 32-518.
Fees, see Chapter 33.
Instrument without legible name, refusal to file, see section 23-1311.
Recording of particular matters:
Corporations, appointments of agents for service of summons, see section 25-528.
Deeds and other instruments affecting real estate, see Chapter 76, article 2.
Lis pendens notices, see section 25-531.
Oil, gas, and mineral leases, see Chapter 57, article 2.
Wills, when, see section 76-248.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

23-1501 Register of deeds; office, equipment, and supplies; residency.

In each county that has a register of deeds, the county board shall provide suitable office room, fireproof vaults of sufficient capacity, and necessary books, blanks, stationery, and office furniture for the use of the register of deeds.

A register of deeds elected after November 1986 need not be a resident of the county when he or she files for election as register of deeds, but a register of deeds shall reside in a county for which he or she holds office.

Source: Laws 1887, c. 30, § 2, p. 364; R.S.1913, § 5616; C.S.1922, § 4943; C.S.1929, § 26-1201; R.S.1943, § 23-1501; Laws 1986, LB 812, § 4; Laws 1989, LB 24, § 1; Laws 1996, LB 1085, § 32.

23-1501.01 Register of deeds; deputy; appointment; oath; duties.

When authorized by the county board, the register of deeds may appoint one or more deputies for whose acts he or she will be responsible. The register of deeds may not appoint the county treasurer, sheriff, clerk, or surveyor as deputy.

The appointment shall be in writing and revocable in writing by the register of deeds. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the register of deeds which shall be endorsed upon and filed with the certificate of appointment. The register of deeds may require a bond of the deputy.

In the absence or disability of the register of deeds, the deputy shall perform the duties of the register of deeds pertaining to the office, but when the register of deeds is required to act in conjunction with or in place of another officer, the deputy cannot act in the place of the register of deeds.

Source: Laws 1990, LB 821, § 5.

23-1502 County clerk ex officio register of deeds, when.

Unless a register of deeds is elected pursuant to section 32-518, the county clerk shall perform all the duties imposed by law upon the register of deeds and shall be ex officio register of deeds.

Source: Laws 1887, c. 30, § 3, p. 364; R.S.1913, § 5617; C.S.1922, § 4944; C.S.1929, § 26-1202; R.S.1943, § 23-1502; Laws 1989, LB 24, § 2; Laws 1994, LB 76, § 542.

23-1503 Record of instruments; form.

The register of deeds shall keep a book or computerized system, as provided by section 23-1517.02, in which every instrument filed for record in his or her office shall be entered at the time of filing the same. Such books or computerized systems shall show the final disposition of such instrument and, if in book form, be as nearly as practicable in the following form:

Grantor Grantee	Character of Instrument		Where Recorded		Date of Delivery			The Party to Whom Delivered
			Book	Page	Month	Day	Year	

Source: Laws 1887, c. 30, § 4, p. 365; R.S.1913, § 5618; C.S.1922, § 4945; C.S.1929, § 26-1203; R.S.1943, § 23-1503; Laws 1984, LB 679, § 3.

23-1503.01 Instrument submitted for recording; requirements.

(1) Any instrument submitted for recording in the office of the register of deeds shall contain a blank space at the top of the first page which is at least three inches by eight and one-half inches in size for recording information required by section 23-1510 by the register of deeds. If this space or the information required by such section is not provided, the register of deeds may add a page or use the back side of an existing page and charge for the page a fee established by section 33-109 for the recording of an instrument. No attachment or affirmation shall be used in any way to cover any information or printed material on the instrument.

(2) Printed forms primarily intended to be used for recordation purposes shall have a one-inch margin on the two vertical sides and a one-inch margin on the bottom of the page. Nonessential information such as page numbers or customer notations may be placed within the side and bottom margins.

(3) All instruments submitted for recording shall be on paper measuring at least eight and one-half inches by eleven inches and not larger than eight and one-half inches by fourteen inches. The instrument shall be printed, typewritten, or computer-generated in black ink on white paper of not less than twenty-pound weight without watermarks or other visible inclusions. The instrument shall be sufficiently legible to allow for a readable copy to be reproduced using the method of reproduction used by the register of deeds. A font size of at least eight points shall be presumed to be sufficiently legible. Each signature on an instrument shall be in black or dark blue ink and of sufficient color and clarity to ensure that the signature is readable when the instrument is reproduced. The name of each party to the instrument shall be typed, printed, or stamped beneath the original signature. An embossed or inked stamp shall not cover or otherwise materially interfere with any part of the instrument.

(4) This section does not apply to:

(a) Instruments signed before August 27, 2011;

(b) Instruments executed outside of the United States;

(c) Certified copies of instruments issued by governmental agencies, including vital records;

(d) Instruments signed by an original party who is incapacitated or deceased at the time the instruments are presented for recording;

(e) Instruments formatted to meet court requirements;

(f) Federal and state tax liens;

(g) Forms prescribed by the Uniform Commercial Code; and

(h) Plats, surveys, or drawings related to plats or surveys.

(5) The changes made to this section by Laws 2011, LB254, do not affect the duty of a register of deeds to file an instrument presented for recordation as set forth in sections 23-1506 and 76-237.

Source: Laws 1990, LB 1153, § 52; Laws 1995, LB 288, § 1; Laws 2011, LB254, § 1.

23-1504 Seal; when required; certified copies.

The register of deeds shall have and keep an official seal, which may be either an engraved or ink stamp seal, and which shall have included thereon the name of the county, register of deeds, and the word Nebraska, and he shall attach an impression or representation of said seal to every certificate made by him except such as are required to be endorsed upon instruments filed in his office for record. Copies of any record in his office, certified under his hand and said official seal, shall be receivable in evidence in all respects in the same manner as the original records.

Source: Laws 1887, c. 30, § 31, p. 377; R.S.1913, § 5619; C.S.1922, § 4946; C.S.1929, § 26-1204; R.S.1943, § 23-1504; Laws 1971, LB 653, § 3.

23-1505 Acknowledgments; oaths; power to administer.

The register of deeds shall have power to take acknowledgments and administer oaths and to certify the same under his or her hand and official seal.

Source: Laws 1887, c. 30, § 32, p. 377; R.S.1913, § 5620; C.S.1922, § 4947; C.S.1929, § 26-1205; R.S.1943, § 23-1505; Laws 1990, LB 821, § 4.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-1506 Documents; deeds and conveyances; recording; errors; inventory statement; duty to file; exceptions.

The register of deeds shall have the custody of and safely keep and preserve all books, records, maps, and papers kept or deposited in his or her office. He or she shall also record or cause to be recorded all deeds, mortgages, instruments, and writings presented to him or her for recording and left with him or her for that purpose. Plats and subdivisions are not authorized to be recorded if such plat or subdivision has not been approved by the city council, the village board of trustees, the agent of a city of the first or second class or of a village designated pursuant to section 19-916, or the governing body of the county, whichever is appropriate. When such deeds, mortgages, instruments, and writings are so recorded, it shall be the duty of the register of deeds to proofread or cause to be proofread such records. If an error should occur in recording any of the writings mentioned in this section thereby necessitating the rerecording of same, the expense thus incurred shall be paid out of the general fund of the county in the same way as any other claim, and the amount so paid shall be collected from the official responsible for the error or from his or her official bond. The register of deeds shall prepare and file the required

annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

Source: Laws 1885, c. 41, § 3, p. 221; Laws 1887, c. 30, § 5, p. 365; Laws 1893, c. 14, § 1, p. 147; R.S.1913, § 5621; C.S.1922, § 4948; C.S.1929, § 26-1206; Laws 1939, c. 28, § 13, p. 153; C.S.Supp.,1941, § 26-1206; R.S.1943, § 23-1506; Laws 1973, LB 241, § 1; Laws 1982, LB 418, § 1; Laws 1983, LB 71, § 13; Laws 1984, LB 679, § 4.

23-1507 Violations; penalty.

Any register of deeds who shall neglect to perform any of the duties described in section 23-1506 shall be guilty of a Class IV misdemeanor.

Source: Laws 1893, c. 14, § 2, p. 147; R.S.1913, § 5622; C.S.1922, § 4949; C.S.1929, § 26-1207; R.S.1943, § 23-1507; Laws 1977, LB 40, § 96.

23-1508 Grantor and grantee index.

The register of deeds shall keep a grantor and a grantee index of deeds in his or her office. If such index is in book form, the pages shall be divided into eight columns as follows:

GRANTOR INDEX

Grantors	Grantees	Date of Filing	Date of Instrument	Character of Instrument	Book	Page	Description of Tract

GRANTEE INDEX

Grantees	Grantors	Date of Filing	Date of Instrument	Character of Instrument	Book	Page	Description of Tract

Source: Laws 1885, c. 41, § 4, p. 221; Laws 1887, c. 30, § 6, p. 365; R.S.1913, § 5623; C.S.1922, § 4950; C.S.1929, § 26-1208; R.S. 1943, § 23-1508; Laws 1984, LB 679, § 5.

This statute is a check on numerical index statute to insure accuracy in ascertaining state of records as to titles to real estate. Crook v. Chilvers, 99 Neb. 684, 157 N.W. 617 (1916).

23-1509 Grantor and grantee index; entries; form.

The entries in such index shall be double, the one showing the names of the respective grantors arranged in alphabetical order, and the other those of the grantees in like order. When there are two or more grantors having different

surnames there must be as many distinct entries among the grantors as there are names, being alphabetically arranged in regard to each of such names. The same rule shall be followed in case of several grantees.

Source: Laws 1879, § 80, p. 376; R.S.1913, § 5624; C.S.1922, § 4951; C.S.1929, § 26-1209; R.S.1943, § 23-1509.

Purpose of statute in requiring both general index and numerical index is to guard against blunders in recording. Crook v. Chilvers, 99 Neb. 684, 157 N.W. 617 (1916).

23-1510 Instruments; endorsement, recording, and indexing; required information.

(1) The register of deeds shall endorse upon every instrument properly filed in his or her office for recording the minute, hour, day, month, and year when it was so filed and shall forthwith enter the same in the proper indices provided for in sections 23-1508 to 23-1517.02.

(2) Every instrument presented for recording shall have, on the first page below the three-inch margin prescribed in section 23-1503.01, the following information:

(a) A return address; and

(b) The title of the instrument.

(3) After the instrument has been recorded, the book and page or computer system reference where it may be found shall be endorsed thereon.

Source: Laws 1885, c. 41, § 5, p. 222; Laws 1887, c. 30, § 7, p. 366; R.S.1913, § 5625; C.S.1922, § 4952; C.S.1929, § 26-1210; R.S.1943, § 23-1510; Laws 1984, LB 679, § 6; Laws 2011, LB254, § 3.

Certificate of filing of instrument for record is sufficient prima facie proof that document was so filed. Smith Bros. v. Woodward, 94 Neb. 298, 143 N.W. 196 (1913).

23-1511 Deed record; mortgage record; duty to keep.

In counties where the book form of recording instruments is used, different sets of books shall be provided for the recording of deeds and mortgages. In one of the sets all conveyances absolute in their terms and not intended as mortgages or as securities in the nature of mortgages shall be recorded, and in the other set such mortgages and securities shall be recorded.

Source: Laws 1879, § 81, p. 376; R.S.1913, § 5626; C.S.1922, § 4953; C.S.1929, § 26-1211; R.S.1943, § 23-1511; Laws 1984, LB 679, § 7.

Assignment for creditors, containing only personal property, need not be recorded with register of deeds, but should be filed within twenty-four hours. Lancaster County Bank v. Horn, 34 Neb. 742, 52 N.W. 562 (1892).

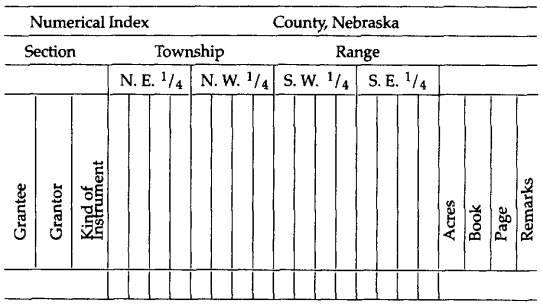
23-1512 Construction Lien Record.

In counties where the book form of recording instruments is used, the register of deeds shall also keep a separate book to be called the Construction Lien Record in which all instruments provided by law for securing construction liens shall be recorded.

Source: Laws 1885, c. 41, § 6, p. 222; Laws 1887, c. 30, § 8, p. 366; R.S.1913, § 5627; C.S.1922, § 4954; C.S.1929, § 26-1212; R.S.1943, § 23-1512; Laws 1984, LB 679, § 8.

23-1513 Numerical index.

The register of deeds shall keep a numerical index. If the book form of recording is used, such index shall be as nearly as practicable in the following form:



Source: Laws 1885, c. 41, § 7, p. 222; Laws 1887, c. 30, § 9, p. 366; R.S.1913, § 5628; C.S.1922, § 4955; C.S.1929, § 26-1213; R.S. 1943, § 23-1513; Laws 1984, LB 679, § 9.

Abstracter must consult numerical index as well as general index. Crook v. Chilvers, 99 Neb. 684, 157 N.W. 617 (1916).

Index is a public record, and register of deeds must report fees received for certified copy of same. State ex rel. Miller v. Sovereign, 17 Neb. 173, 22 N.W. 353 (1885).

23-1514 Numerical index; entries.

It shall be the duty of the register of deeds on receiving any conveyance or instrument affecting realty, including construction liens, to cause such conveyance or instrument to be entered upon the numerical index immediately after filing if such conveyance or instrument contains or has an exhibit attached containing the full legal description of the realty affected. Instruments purporting to release, assign, or amend a conveyance or instrument previously recorded shall contain the book and page number or microfilm or computer reference of the previously recorded instrument and a full legal description of the realty affected.

Source: Laws 1885, c. 41, § 8, p. 223; Laws 1887, c. 30, § 10, p. 367; R.S.1913, p. 5629; C.S.1922, § 4956; C.S.1929, § 26-1214; R.S. 1943, § 23-1514; Laws 1990, LB 1153, § 53.

Numerical index and general index should both be checked by abstracter. Crook v. Chilvers, 99 Neb. 684, 157 N.W. 617 (1916).

Failure to enter mechanic's lien on numerical index does not defeat the lien if the claim for lien has in all other respects been properly recorded. Drexel v. Richards, 50 Neb. 509, 70 N.W. 23 (1897).

If deed is taken to office and fees paid therefor, it is valid as against world. Deming v. Miles, 35 Neb. 739, 53 N.W. 665 (1892); Perkins v. Strong, 22 Neb. 725, 36 N.W. 292 (1888).

Fees for certified copies of numerical index must be reported. State ex rel. Frontier County v. Kelly, 30 Neb. 574, 46 N.W. 714 (1890).

Error in entering on numerical index, where otherwise properly indexed and recorded, cannot be urged by subsequent purchasers. Lincoln B. & S. Assn. v. Hass, 10 Neb. 581, 7 N.W. 327 (1880).

23-1515 Numerical index; instrument; certificate of entry.

After such instrument has been so indexed the register of deeds shall endorse on said instrument a certificate showing that the same has been indexed as herein required, and shall thereafter record said instrument as provided by law.

Source: Laws 1885, c. 41, § 9, p. 223; Laws 1887, c. 30, § 11, p. 367; R.S.1913, § 5630; C.S.1922, § 4957; C.S.1929, § 26-1215; R.S. 1943, § 23-1515.

Certificate of filing signed by one purporting to be register of deeds or deputy is prima facie proof that document is filed. Smith Bros. v. Woodward, 94 Neb. 298, 143 N.W. 196 (1913).

23-1516 Miscellaneous Record.

The register of deeds, if using the book form of recording, shall keep a separate book to be called the Miscellaneous Record in which all instruments and writings not entitled to be recorded in any of the books herein provided for shall be recorded.

Source: Laws 1885, c. 41, § 10, p. 224; Laws 1887, c. 30, § 12, p. 367; R.S.1913, § 5631; C.S.1922, § 4958; C.S.1929, § 26-1216; R.S. 1943, § 23-1516; Laws 1984, LB 679, § 10.

23-1517 Records; other indices.

The register of deeds shall keep indices showing all mortgages, including documents provided for in subdivision (a)(1) of section 9-501, Uniform Commercial Code, and discharges thereof left for record, and entitled to be recorded, in the same form as is required for deeds. He or she shall also keep a separate index to the volumes of construction lien records and to the volumes of miscellaneous records.

Source: Laws 1885, c. 41, § 11, p. 224; Laws 1887, c. 30, § 13, p. 368; R.S.1913, § 5632; C.S.1922, § 4959; C.S.1929, § 26-1217; R.S. 1943, § 23-1517; Laws 1969, c. 167, § 1, p. 743; Laws 1999, LB 550, § 1.

23-1517.01 Records; microfilm; requirements.

The recording of all instruments by the roll form of microfilm may be substituted for the method of recording instruments in books, and the filing of all documents by the roll form of microfilm may be substituted for the method of filing original documents. If this method of recording instruments on microfilm or filing documents on microfilm is used, the original instruments so recorded and the original documents so filed need not be retained after the microfilm has been verified for accuracy and quality, and a security copy on silver negative microfilm in roll form must be maintained and filed off premises under safe conditions to insure the protection of the records and shall meet the microfilm standards as prescribed by the State Records Administrator as provided in sections 84-1201 to 84-1220. The fee books shall provide the proper index information as to the microfilm roll and numerical sequence of all such recorded instruments and of all such filed documents. The internal reference copies or work copies of the instruments recorded on microfilm and of documents filed on microfilm may be in any photographic form to provide the necessary information as may be determined by the official in charge.

Source: Laws 1969, c. 167, § 2, p. 743; Laws 1973, LB 224, § 7.

23-1517.02 Records; computerized system of indexing; authorized.

(1) The register of deeds may use a computerized system of indexing for deeds and conveyances, mortgages, the Construction Lien Record index, the Miscellaneous Record index, the federal lien index, the fee book, and all other supplemental indices that may be contained in such office and may combine such indices into one Land Record index. If a computerized system of indexing

is used, the register of deeds may maintain a printout of all records stored in the computer system and shall have a security backup system for data and other programs in an electronic medium which shall be stored in a secure location. If maintained, the printout shall consist of a record of fees, a numerical tract index, and an alphabetical general index.

(2) In counties which do not use the computerized system provided in subsection (1) of this section, the register of deeds shall use the separate book or microfilm form of recording instruments as required prior to July 10, 1984.

Source: Laws 1984, LB 679, § 1; Laws 1988, LB 933, § 1; Laws 1998, LB 33, § 1.

23-1518 Repealed. Laws 1965, c. 107, § 1.

23-1519 Repealed. Laws 1965, c. 107, § 1.

23-1520 Repealed. Laws 1965, c. 107, § 1.

23-1521 Repealed. Laws 1965, c. 107, § 1.

23-1522 Repealed. Laws 1969, c. 433, § 10.

23-1523 Repealed. Laws 1969, c. 433, § 10.

23-1524 Repealed. Laws 1969, c. 433, § 10.

23-1525 Repealed. Laws 1969, c. 433, § 10.

23-1526 Repealed. Laws 1989, LB 5, § 7.

23-1527 Bankruptcy proceedings; recording; fee.

A certified copy of a petition, with schedules omitted, commencing a proceeding under the laws of the United States relating to bankruptcy or a certified copy of the decree of adjudication or a certified copy of an order approving the bond of the trustee appointed in such proceedings shall be filed, indexed, and recorded in the office of the register of deeds of the county in which is located real property in which the bankrupt has an interest in the same manner as federal liens are filed, indexed, and recorded pursuant to the Uniform Federal Lien Registration Act. The filing fee for such recording shall be the same as the fee for filing and recording as set forth in section 9-525, Uniform Commercial Code. The register of deeds shall file the notices in a file kept for such purpose and designated Notice of Bankruptcy Proceedings, except that in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained.

Source: Laws 1965, c. 450, § 1, p. 1422; Laws 1969, c. 433, § 8, p. 1459; Laws 1973, LB 224, § 8; Laws 1988, LB 933, § 2; Laws 1999, LB 550, § 2.

Cross References

For fees for filing and recording federal tax liens, see section 52-1004.
Uniform Federal Lien Registration Act, see section 52-1007.

23-1528 Printed form; noncompliance; effect.

Any printed form accepted for recordation that does not comply with sections 23-1503 to 23-1527 shall not affect the validity of or the notice otherwise given by the recording.

Source: Laws 2011, LB254, § 2.

ARTICLE 16
COUNTY TREASURER

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Abstracting, cannot engage in, when, see section 76-504.
Deposit of county funds, see Chapter 77, article 23.
Duties respecting particular matters:
Bonds of indebtedness, see Chapter 10.
Deposit of county funds, see Chapter 77, article 23.
Drainage districts, see Chapter 31.
Fiscal agent for county, see section 10-101.
Irrigation districts, see Chapter 46.
Motor vehicles, see Chapter 60.
School funds, collection, see Chapter 79.
Taxes, generally, see Chapter 77.
Warrants, investment of sinking funds, see section 77-2334.
Elected, when, see section 32-521.
Fees:
Failure to keep correct records, penalty, see section 33-132.
Generally, see Chapter 33.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.
Warrants, payment of, receipts, see section 77-2208.

Section

23-1601 County treasurer; general duties.

(1) It is the duty of the county treasurer to receive all money belonging to the county, from whatsoever source derived and by any method of payment provided by section 77-1702, and all other money which is by law directed to be paid to him or her. All money received by the county treasurer for the use of the county shall be paid out by him or her only on warrants issued by the county

board according to law, except when special provision for payment of county money is otherwise made by law.

(2) The county treasurer shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(3) The county treasurer, at the direction of the city or village, shall invest the bond fund money collected for each city or village located within each county. The bond fund money shall be invested by the county treasurer and any investment income shall accrue to the bond fund. The county treasurer shall notify the city or village when the bonds have been retired.

(4)(a) On or before the fifteenth day of each month, the county treasurer (i) shall pay to each city, village, school district, educational service unit, county agricultural society, and rural or suburban fire protection district located within the county the amount of all funds collected or received for the city, village, school district, educational service unit, county agricultural society, and rural or suburban fire protection district the previous calendar month, including bond fund money when requested by any city of the first class under section 16-731, and (ii) on forms provided by the Auditor of Public Accounts, shall include with the payment a statement indicating the source of all such funds received or collected and an accounting of any expense incurred in the collection of ad valorem taxes, except that the Auditor of Public Accounts shall, upon request of a county, approve the use and reproduction of a county's general ledger or other existing forms if such ledger or other forms clearly indicate the sources of all funds received or collected and an accounting of any expenses incurred in the collection of ad valorem taxes.

(b) If all such funds received or collected are less than twenty-five dollars, the county treasurer may hold such funds until such time as they are equal to or exceed twenty-five dollars. In no case shall such funds be held by the county treasurer longer than six months.

(c) If a school district treasurer has not filed an official bond pursuant to section 11-107 or evidence of equivalent insurance coverage, the county treasurer may hold funds collected or received for the school district until such time as the bond or evidence of equivalent insurance coverage has been filed.

(5) Notwithstanding subsection (4) of this section, the county treasurer of any county in which a city of the metropolitan class or a Class V school district is located shall pay to the city of the metropolitan class and to the Class V school district on a weekly basis the amount of all current year funds as they become available for the city or the school district.

Source: Laws 1879, § 91, p. 379; R.S.1913, § 5637; C.S.1922, § 4964; C.S.1929, § 26-1301; Laws 1939, c. 28, § 14, p. 153; C.S.Supp.,1941, § 26-1301; R.S.1943, § 23-1601; Laws 1978, LB 847, § 1; Laws 1983, LB 391, § 1; Laws 1995, LB 122, § 1; Laws 1996, LB 604, § 2; Laws 1997, LB 70, § 1; Laws 1997, LB 85, § 1; Laws 1999, LB 287, § 1; Laws 2007, LB334, § 3; Laws 2012, LB823, § 2.
Effective date July 19, 2012.

Subsection (4) of this section and section 77-1759 can be read so as to give effect to the plain language of each. State ex rel. City of Elkhorn v. Haney, 252 Neb. 788, 566 N.W.2d 771 (1997).

County treasurer, where claims are not audited and allowed by county board or warrant drawn, is not authorized to liquidate claims from special sinking fund in his possession. Such

payments are illegal. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

With reference to public funds, the duties of a county treasurer are prescribed by statute and usage will not excuse their discharge in a different manner. Shambaugh v. City Bank of Elm Creek, 118 Neb. 817, 226 N.W. 460 (1929).

Treasurer must refuse payment of judgment until board orders payment. State ex rel. Clark & Leonard Inv. Co. v. Scotts Bluff County, 64 Neb. 419, 89 N.W. 1063 (1902).

County treasurer is insurer of money coming into his hands by virtue of his office. Thomssen v. Hall County, 63 Neb. 777, 89 N.W. 389 (1902).

Propriety or validity of depositing funds in banks cannot be questioned collaterally. Western Wheeled Scraper Co. v. Sadilek, 50 Neb. 105, 69 N.W. 765 (1897).

23-1601.01 Residency requirement.

A county treasurer elected after November 1986 need not be a resident of the county when he or she files for election as county treasurer, but a county treasurer shall reside in a county for which he or she holds office.

Source: Laws 1986, LB 812, § 5; Laws 1996, LB 1085, § 33.

23-1601.02 County treasurer; deputy; appointment; oath; duties.

The county treasurer may appoint a deputy for whose acts he or she will be responsible. The treasurer may not appoint the county clerk, sheriff, register of deeds, or surveyor as deputy.

The appointment shall be in writing and revocable in writing by the treasurer. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the treasurer which shall be endorsed upon and filed with the certificate of appointment. The treasurer may require a bond of the deputy.

In the absence or disability of the treasurer, the deputy shall perform the duties of the treasurer pertaining to the office, but when the treasurer is required to act in conjunction with or in place of another officer, the deputy cannot act in the treasurer's place.

Source: Laws 1990, LB 821, § 6.

23-1602 Warrants; nonpayment for want of funds; endorsement; interest.

All warrants issued by the county board shall, upon being presented for payment, if there are not sufficient funds in the treasury to pay the same, be endorsed by the treasurer not paid for want of funds, and the treasurer shall also endorse thereon the date of such presentation and sign his name thereto. Warrants so endorsed shall draw interest from the date of such endorsement, at the rate to be fixed by the county board at the time of issuance and inserted in the warrant. No account or claim whatsoever against a county, which has been allowed by the board, shall draw interest until a warrant shall have been drawn in payment thereof and endorsed as herein provided.

Source: Laws 1879, § 92, p. 379; R.S.1913, § 5638; C.S.1922, § 4965; C.S.1929, § 26-1302; R.S.1943, § 23-1602; Laws 1947, c. 171, § 1, p. 518; Laws 1969, c. 51, § 87, p. 329.

County is not liable for interest prior to judgment on claim to recover invalid special assessment. McClary v. County of Dodge, 176 Neb. 627, 126 N.W.2d 849 (1964).

County treasurer undertaking to pay unallowed salary claims against county from sinking fund without warrant cannot take assignments of claims and thereafter recover thereon as valid obligation of county unless sinking funds are reimbursed prior thereto. Woods v. Brown County, 125 Neb. 256, 249 N.W. 601 (1933).

Interest cannot be allowed against county unless so provided by statute or by a contract therefor lawfully made. Central Bridge & Construction Co. v. Saunders County, 106 Neb. 484, 184 N.W. 220 (1921).

Interest may be allowed against county in favor of state for money wrongfully withheld by county. State v. Stanton County, 100 Neb. 747, 161 N.W. 264 (1917).

23-1603 Violations; penalty.

If any county treasurer shall neglect or refuse to render any account or settlement required by law, or shall fail or neglect to account for any balance due the state, county, township, school district, or any other municipal subdivision, or is guilty of any other misconduct in office, the county board may forthwith remove him from office, and appoint some suitable person to perform the duties of treasurer until his successor is elected or appointed and qualified.

Source: Laws 1879, § 94, p. 380; R.S.1913, § 5640; C.S.1922, § 4967; C.S.1929, § 26-1304; R.S.1943, § 23-1603.

Turning over to successor certificates of deposit is not payment over of money. Cedar County v. Jenal, 14 Neb. 254, 15 N.W. 369 (1883).

In removal of county treasurer, county board must follow statutory provisions for removal of county officers, and judgment of ouster is necessary. State ex rel. Craig v. Sheldon, 10 Neb. 452, 6 N.W. 757 (1880).

23-1604 Repealed. Laws 1978, LB 650, § 40.

23-1605 Semiannual statement; publication.

The county treasurer of each county shall, during the months of July and January of each year, cause to be published in a legal newspaper, and in counties having more than two hundred fifty thousand inhabitants in a daily legal newspaper printed in the county, or if there is no legal newspaper published in the county, in a legal newspaper of general circulation within the county, a tabulated statement of the affairs of his office, showing the receipts and disbursements of his office for the last preceding six months ending June 30 and December 31.

Source: Laws 1883, c. 21, § 1, p. 182; Laws 1901, c. 23, § 1, p. 329; R.S.1913, § 5642; C.S.1922, § 4969; C.S.1929, § 26-1306; R.S. 1943, § 23-1605; Laws 1967, c. 131, § 1, p. 415; Laws 1974, LB 937, § 1.

23-1606 Semiannual statement; contents.

Such statements shall show (1) the amount of money received and for what fund; (2) the amount of warrants or orders presented and registered, and upon what fund; (3) the amount of warrants or orders paid and from what fund; (4) the amount of money on hand in each fund; (5) the amount of outstanding warrants or orders registered and unpaid; (6) the total amount of money on hand; and (7) the total amount of unpaid claims of the county as of June 15 and December 15 of each year, as certified to the county treasurer by the county clerk.

Source: Laws 1883, c. 21, § 2, p. 182; R.S.1913, § 5643; C.S.1922, § 4970; C.S.1929, § 26-1307; Laws 1935, c. 53, § 2, p. 183; C.S.Supp.,1941, § 26-1307; R.S.1943, § 23-1606.

23-1607 Semiannual statement; cost of publication; payment.

The county shall pay to the printer a reasonable compensation for the publication of such statement.

Source: Laws 1883, c. 21, § 3, p. 182; R.S.1913, § 5644; C.S.1922, § 4971; C.S.1929, § 26-1308; R.S.1943, § 23-1607.

23-1608 County officers; audit required; cost; audit report; irregularities; how treated.

(1) Each county board shall cause an examination and a complete and comprehensive annual audit to be made of the books, accounts, records, and affairs of all county officers in the county. The audits shall be conducted annually, except that the Auditor of Public Accounts may determine an audit of less frequency to be appropriate but not less than once in any three-year period. Each county board may contract with the Auditor of Public Accounts or select a licensed public accountant or certified public accountant or firm of such accountants to conduct the examination and audit and shall be responsible for the cost of the audit pursuant to the contract. An original copy of the audit report shall be filed in the office of the county clerk and in the office of the Auditor of Public Accounts within twelve months after the end of each fiscal year.

(2) The county board shall cause to be published in the same manner as the proceedings of the county board a brief statement disclosing the conclusion of the examination and audit and that such audit report is on file with the county clerk.

(3) At the same time a copy of the audit report is filed in the office of the county clerk, the auditor conducting the examination shall send written notice to the county board and the county attorney of the county concerned, the Auditor of Public Accounts, and the Attorney General of any irregularity or violation of any law disclosed by the audit report. It shall be the duty of the county attorney, within thirty days of the receipt of such notice, to institute appropriate proceedings against the offending officer or officers.

(4) If the county attorney fails to comply with the provisions of this section, it shall be the duty of the Attorney General to institute such proceedings against the offending officer or officers and he or she shall also institute proceedings for the removal of the county attorney from office. When notice is received of any irregularity or violation of any law in the office of the county attorney, it shall be the duty of the Attorney General to institute appropriate proceedings against the county attorney within thirty days after the giving of such notice if the county attorney has failed to institute such proceedings.

Source: Laws 1893, c. 15, § 1, p. 148; R.S.1913, § 5645; Laws 1919, c. 73, § 1, p. 190; Laws 1919, c. 76, § 1, p. 196; C.S.1922, § 4972; C.S.1929, § 26-1309; Laws 1937, c. 57, § 1, p. 231; C.S.Supp.,1941, § 26-1309; R.S.1943, § 23-1608; Laws 1945, c. 52, § 1, p. 236; Laws 1974, LB 280, § 1; Laws 1985, Second Spec. Sess., LB 29, § 2; Laws 1987, LB 183, § 4; Laws 2000, LB 692, § 6.

The state Auditor of Public Accounts has authority to conduct an audit of a county's records and, on behalf of the state, charge for the services rendered. County of York v. Johnson, 230 Neb. 403, 432 N.W.2d 215 (1988).

Under former law power of examination of county records was not exclusive in the Auditor of Public Accounts. Campbell v. Douglas County, 142 Neb. 773, 7 N.W.2d 764 (1943).

23-1609 Audit; requirements.

Such examination and audit shall be conducted in conformity with generally accepted auditing standards applied on a consistent basis and shall develop the county's financial condition, the condition of each county fund, and the disposition of all money collected or received. Such examination and audit shall be a full and complete audit of the cash receipts and disbursements and shall reflect

in supplementary schedules the state of each county fund from which the respective claims are payable.

Source: Laws 1893, c. 15, § 2, p. 148; R.S.1913, § 5646; C.S.1922, § 4973; C.S.1929, § 26-1310; Laws 1937, c. 57, § 2, p. 232; C.S.Supp.,1941, § 26-1310; R.S.1943, § 23-1609; Laws 1979, LB 414, § 2; Laws 2000, LB 692, § 7.

23-1610 Repealed. Laws 2000, LB 692, § 13.

23-1611 County officers; uniform system of accounting; duty of Auditor of Public Accounts; individual ledger sheets; approval.

The Auditor of Public Accounts shall establish a uniform system of accounting for all county officers. The system, when established, shall be installed and used by all county officers, except that any county with a population of one hundred thousand or more inhabitants may use an accounting system that utilizes generally accepted accounting principles. With the prior approval of the Tax Commissioner, the county board of any county may direct that for all purposes of assessment of property, and for the levy and collection of all taxes and special assessments, there shall be used only individual ledger sheets or other tax records suitable for use in connection with electronic data processing equipment or other mechanical office equipment, to be used in accordance with procedures to be approved by the Tax Commissioner. To the extent practicable, the accounting system established for county officers shall be the same system established for state agencies.

Source: Laws 1893, c. 15, § 4, p. 149; R.S.1913, § 5648; Laws 1919, c. 73, § 3, p. 191; Laws 1919, c. 76, § 3, p. 197; C.S.1922, § 4975; C.S.1929, § 26-1312; Laws 1937, c. 57, § 4, p. 233; C.S.Supp.,1941, § 26-1312; R.S.1943, § 23-1611; Laws 1967, c. 132, § 1, p. 415; Laws 1969, c. 168, § 1, p. 744; Laws 1995, LB 154, § 1; Laws 1995, LB 490, § 24; Laws 2007, LB334, § 4.

Auditor of Public Accounts represents the state in settlements between the State Treasurer and the various county treasurers. State v. Ure, 102 Neb. 648, 168 N.W. 644 (1918).

23-1612 County offices; audit; refusal to exhibit records; penalty.

Every county officer, his deputy and assistants, shall, on demand, exhibit to any examiner all books, papers, records, and accounts pertaining to his office and shall truthfully answer all questions that may be put to him by such examiner touching the affairs of his office. Any person who shall fail or refuse to comply with the provisions of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1893, c. 15, § 5, p. 149; R.S.1913, § 5649; Laws 1919, c. 73, § 4, p. 191; Laws 1919, c. 76, § 4, p. 197; C.S.1922, § 4976; C.S.1929, § 26-1313; R.S.1943, § 23-1612; Laws 1977, LB 40, § 97.

23-1613 Repealed. Laws 2000, LB 692, § 13.

23-1613.01 Repealed. Laws 1959, c. 266, § 1.

23-1614 Repealed. Laws 2000, LB 692, § 13.

23-1615 Repealed. Laws 1967, c. 36, § 10.

23-1616 Cashier's bonds; amount.

In all counties in the State of Nebraska having a population of two hundred thousand or more, where clerks are employed as cashiers and as such handle public funds, said clerks shall give bond in like manner as provided for county treasurers and deputy county treasurers in said counties. The bonds shall be in such sum as the county boards of said counties may determine, and the premium of the bonds shall be paid for as is now provided for said county treasurers and deputy county treasurers.

Source: Laws 1931, c. 37, § 1, p. 130; C.S.Supp.,1941, § 26-1317; R.S. 1943, § 23-1616.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

ARTICLE 17
SHERIFF

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Amercement for neglect of duty, see section 25-1545.
Attorney, practice prohibited, when, see section 7-111.
Coroner, duties performed by, when, see section 23-1817.
Deputies:
Jailer, see section 47-115.
Salary, see Chapter 23, article 11.
Duties respecting particular matters:
Civil actions, see Chapter 25.
Commissioner to convey real estate in court actions, see section 25-1327.
Criminal matters, see Chapters 28 and 29.
Jails, see Chapter 47.
Mental health commitments, see the Nebraska Mental Health Commitment Act, section 71-901.
Elected, when, see section 32-520.
Fees, see Chapter 33.
Ticket quota requirements, prohibited, see section 48-235.
Unclaimed property, sheriff duties, see sections 69-1330 to 69-1332.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

(a) GENERAL PROVISIONS

Section

(a) GENERAL PROVISIONS

23-1701 Sheriff; general duties; residency.

It is the duty of the sheriff to serve or otherwise execute, according to law, and return writs or other legal process issued by lawful authority and directed or committed to the sheriff and to perform such other duties as may be required by law. The county sheriff shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

A sheriff elected after November 1986 need not be a resident of the county when he or she files for election as sheriff, but a sheriff shall reside in a county for which he or she holds office.

Source: Laws 1879, § 116, p. 384; R.S.1913, § 5653; C.S.1922, § 4980; C.S.1929, § 26-1401; Laws 1939, c. 28, § 15, p. 154; C.S.Supp.,1941, § 26-1401; R.S.1943, § 23-1701; Laws 1986, LB 812, § 6; Laws 1996, LB 1085, § 34.

Cross References

Designate persons for vehicle identification inspections, see section 60-182 et seq.

In the absence of instructions from owner of judgment or his attorney not to do so, it is the duty of sheriff to levy and make return to execution placed in his hands. Ehlers v. Gallagher, 147 Neb. 97, 22 N.W.2d 396 (1946).

Where one charged with felony is out on bail, and he is charged in court of another county with another separate and distinct felony, he is not immune to arrest on second charge, and it is duty of any sheriff in whose hands is placed warrant for his arrest on the second charge to take him into custody. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

Venue of summons, laid in county where suit started and directed to sheriff of county where defendant resided, is proper. Alden Mercantile Co. v. Randall, 102 Neb. 738, 169 N.W. 433 (1918).

Return includes certification of service and delivery of writ to office from which it issued. Graves v. Macfarland, 58 Neb. 802, 79 N.W. 707 (1899).

23-1701.01 Candidate for sheriff; requirements; sheriff; attend Sheriff's Certification Course; exception; continuing education; violation; penalty.

(1) Any candidate for the office of sheriff who does not have a law enforcement officer certificate or diploma issued by the Nebraska Commission on Law Enforcement and Criminal Justice shall submit with the candidate filing form required by section 32-607 a standardized letter issued by the director of the Nebraska Law Enforcement Training Center certifying that the candidate has:

(a) Within one calendar year prior to the deadline for filing the candidate filing form, passed a background investigation performed by the Nebraska Law Enforcement Training Center based on a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. The candidate who has not passed a background investigation shall apply for the background investigation at least thirty days prior to the filing deadline for the candidate filing form; and

(b) Received a minimum combined score on the reading comprehension and English language portions of an adult basic education examination designated by the Nebraska Law Enforcement Training Center.

(2) Each sheriff shall attend the Nebraska Law Enforcement Training Center and receive a certificate attesting to satisfactory completion of the Sheriff's Certification Course within eight months after taking office unless such sheriff has already been awarded a certificate by the Nebraska Commission on Law Enforcement and Criminal Justice attesting to satisfactory completion of such course or unless such sheriff can demonstrate to the Nebraska Police Standards Advisory Council that his or her previous training and education is such that he or she will professionally discharge the duties of the office. Any sheriff in office prior to July 19, 1980, shall not be required to obtain a certificate attesting to satisfactory completion of the Sheriff's Certification Course but shall otherwise be subject to this section. Notwithstanding sections 81-1401 to 81-1414.10, each sheriff shall attend twenty hours of continuing education in criminal justice and law enforcement courses approved by the council each year following the first year of such sheriff's term of office. Such continuing education shall be offered through seminars, advanced education which may include college or university classes, conferences, instruction conducted within the sheriff's office, or instruction conducted over the Internet, except that instruction conducted over the Internet shall be limited to ten hours annually, and shall be of a type which has application to and seeks to maintain and improve the skills of the sheriffs in carrying out the responsibilities of their office.

(3) Notwithstanding section 81-1403, unless a sheriff is able to show good cause for not complying with subsection (2) of this section or obtains a waiver of the training requirements from the council, any sheriff who violates subsection (2) of this section shall be punished by a fine equal to such sheriff's

monthly salary. Each month in which such violation occurs shall constitute a separate offense.

Source: Laws 1980, LB 628, § 1; Laws 1994, LB 971, § 2; Laws 2004, LB 75, § 1; Laws 2012, LB817, § 1.
Operative date January 1, 2014.

23-1701.02 Arrests; keeping the peace; duties.

It shall be the duty of every sheriff to apprehend, on view or warrant, and bring to the court all felons and disturbers and violators of the criminal laws of this state, to suppress all riots, affrays, and unlawful assemblies which may come to his or her knowledge, and generally to keep the peace in his or her proper city.

Source: Laws 1929, c. 82, art. XV, § 176, p. 324; C.S.1929, § 22-1506; R.S.1943, (1979), § 26-1,177; R.S.1943, (1985), § 24-5,100; Laws 1988, LB 1030, § 13.

23-1701.03 Sheriff; general powers and duties.

The sheriff shall exercise the powers and perform the duties conferred and imposed upon him or her by other statutes and by the common law.

Source: R.S.1867, Code § 892, p. 548; R.S.1913, § 8566; C.S.1922, § 9517; C.S.1929, § 20-2218; R.S.1943, (1989), § 25-2217; Laws 1990, LB 821, § 13.

23-1701.04 Process; duty of sheriff to execute.

It shall be the duty of the sheriffs of the several counties to execute or serve all writs and process issued by any county court and to them directed and to return the same. For any neglect or refusal so to do, they may be proceeded against in the county court in the same manner as for neglect or refusal to execute or serve process issued out of the district court.

Source: G.S.1873, c. 14, § 24, p. 268; R.S.1913, § 1227; C.S.1922, § 1150; C.S.1929, § 27-519; R.S.1943, § 24-520; Laws 1972, LB 1032, § 34; R.S.1943, (1989), § 24-534; Laws 1990, LB 821, § 10.

23-1701.05 Writs and orders; endorsement.

The sheriff shall endorse upon every summons, order of arrest, order for the delivery of property, order of attachment, or injunction the day and the hour it was received by him or her.

Source: R.S.1867, Code § 890, p. 548; R.S.1913, § 8564; C.S.1922, § 9515; C.S.1929, § 20-2216; R.S.1943, (1989), § 25-2215; Laws 1990, LB 821, § 11.

Cross References

Fees, see section 33-117.

23-1701.06 Failure or neglect to execute process; amercement; civil liability.

The sheriff shall execute every summons, order, or other process and return the same as required by law. If the sheriff fails to do so, unless he or she makes it appear to the satisfaction of the court that he or she was prevented by inevitable accident from so doing, he or she shall be amerced by the court in a

sum not exceeding one thousand dollars and shall be liable to the action of any person aggrieved by such failure.

Source: R.S.1867, Code § 891, p. 548; R.S.1913, § 8565; C.S.1922, § 9516; C.S.1929, § 20-2217; R.S.1943, (1989), § 25-2216; Laws 1990, LB 821, § 12.

Where judgment creditor fails to show any damage resulting from failure to make levy or return of execution, recovery against officer cannot be had. Ehlers v. Gallagher, 147 Neb. 97, 22 N.W.2d 396 (1946).

Where code is silent, common law and equity remedies, not inconsistent therewith, are applicable to prevent failure of justice. Cross-petition is maintainable. Armstrong v. Mayer, 69 Neb. 187, 95 N.W. 51 (1903).

"Return" includes certificates and delivery of writ to office from whence issued. Graves v. Macfarland, 58 Neb. 802, 79 N.W. 707 (1899).

23-1702 Violations; penalty.

The disobedience by the sheriff of the command of any such process is a contempt of the court from which it was issued, and may be punished by the same accordingly, and he is further liable to the action of any person injured thereby.

Source: Laws 1879, § 117, p. 385; R.S.1913, § 5654; C.S.1922, § 4981; C.S.1929, § 26-1402; R.S.1943, § 23-1702.

Officer is liable in damages for failure to make return to execution. Ehlers v. Gallagher, 147 Neb. 97, 2 N.W.2d 396 (1946).

Court will mandamus sheriff to make arrest when proper warrant from another county is placed in his hands and he refuses to act. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

Sheriff is not liable for negligence in levy of writ where plaintiff or his attorney contributed to negligence. Parrott v. McDonald, 72 Neb. 97, 100 N.W. 132 (1904).

23-1703 Jailer; duty of sheriff; certain counties.

Except in counties where a county board of corrections exists and has assumed responsibility over the jail pursuant to sections 23-2801 to 23-2806, the sheriff shall have charge and custody of the jail, and the prisoners of the same, and is required to receive those lawfully committed and to keep them himself or herself, or by his or her deputy jailer, until discharged by law.

Source: Laws 1879, § 118, p. 385; R.S.1913, § 5655; C.S.1922, § 4982; C.S.1929, § 26-1403; R.S.1943, § 23-1703; Laws 1979, LB 396, § 1; Laws 1984, LB 394, § 1.

Jury was properly instructed as to the duties of the sheriff as jailer under this section. O'Dell v. Goodsell, 152 Neb. 290, 41 N.W.2d 123 (1950).

It is duty of sheriff to receive and keep until discharged all prisoners lawfully committed to county jail. O'Dell v. Goodsell, 149 Neb. 261, 30 N.W.2d 906 (1948).

Sheriff has charge of county jail and is the custodian thereof. Flint v. Mitchell, 148 Neb. 244, 26 N.W.2d 816 (1947).

Judgment in criminal action, imposing jail sentence and fine and remanding defendant to custody of sheriff to carry out sentence and judgment, is equivalent to judgment requiring defendant to be confined to jail until the fine is paid. State ex rel. Marasco v. Mundell, 127 Neb. 673, 256 N.W. 519 (1934).

Sheriff must keep prisoners who are sentenced for violating city ordinances, but he collects from county, not city. Douglas County v. Coburn, 34 Neb. 351, 51 N.W. 965 (1892).

23-1704 Assistants; power to summon.

The sheriff and his deputies are conservators of the peace, and to keep the same, to prevent crime, to arrest any person liable thereto, or to execute process of law, they may call any person to their aid; and, when necessary, the sheriff may summon the power of the county.

Source: Laws 1879, § 119, p. 385; R.S.1913, § 5656; C.S.1922, § 4983; C.S.1929, § 26-1404; R.S.1943, § 23-1704.

City police officers may not make warrantless misdemeanor arrests outside their jurisdiction. State v. Tingle, 239 Neb. 558, 477 N.W.2d 544 (1991).

A sheriff has the power to summon to his assistance in the arrest of felons police officers of the cities of the second class under this section. Henning v. City of Hebron, 186 Neb. 381, 183 N.W.2d 756 (1971).

Sheriff has authority to call a private citizen into service to help capture prisoner. Anderson v. Bituminous Casualty Co., 155 Neb. 590, 52 N.W.2d 814 (1952).

Persons summoned as posse are not strictly deputies and sheriff is not liable to them for compensation, if entitled to any. Power v. Douglas County, 75 Neb. 734, 106 N.W. 782 (1906).

Duties of sheriff as conservator of peace are applicable to chief of police in metropolitan city. Moores v. State ex rel. Dunn, 71 Neb. 522, 99 N.W. 249 (1904), 115 Am. S.R. 605 (1904).

This section authorizes a deputy sheriff to summon a State Patrol trooper and a city police officer to assist in arresting a suspected intoxicated driver. Once summoned, those persons become de facto deputies. State v. Rodgers, 2 Neb. App. 360, 509 N.W.2d 668 (1993).

23-1704.01 Sheriff; deputies; appointment; oath; duties.

The sheriff may appoint such number of deputies as he or she sees fit for whose acts he or she will be responsible. The sheriff may not appoint the county treasurer, clerk, register of deeds, or surveyor as deputy.

The appointment shall be in writing and revocable in writing by the sheriff. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the sheriff which shall be endorsed upon and filed with the certificate of appointment. The sheriff may require a bond of the deputy.

In the absence or disability of the sheriff, the deputy shall perform the duties of the sheriff pertaining to the office, but when the sheriff is required to act in conjunction with or in place of another officer, the deputy cannot act in the sheriff's place. No deputy shall act as constable while deputy sheriff.

Source: R.S.1866, c. 15, § 4, p. 127; R.S.1913, § 5738; C.S.1922, § 5067; Laws 1923, c. 43, § 1, p. 158; C.S.1929, § 84-804; R.S.1943, (1981), § 84-804; Laws 1990, LB 821, § 7.

Deputy sheriff, acting as jailer is public officer, and county board cannot contract with him for different compensation than fixed by law. Scott v. Scotts Bluff County, 106 Neb. 355, 183 N.W. 573 (1921).

County board must fix number and compensation of sheriff's deputies, under act requiring board to furnish sheriff with such deputies as they deem necessary, but sheriff has power to appoint. State ex rel. Rohrs v. Harris, 100 Neb. 745, 161 N.W. 253 (1917).

When office of sheriff was a fee office, a deputy sheriff was required to look to fees for his salary. Power v. Douglas County, 75 Neb. 734, 106 N.W. 782 (1906).

23-1704.02 Sheriff; appoint employee.

Except when otherwise provided specifically by law for substitute service by a deputy, a sheriff may appoint an employee of his or her department to serve any summons or writ, by endorsement thereon substantially as follows: ''I hereby appoint . . . . . to serve the within writ;'' which shall be dated and signed by the sheriff.

Source: Laws 1879, § 125, p. 386; R.S.1913, § 5739; C.S.1922, § 5068; C.S.1929, § 84-805; R.S.1943, (1981), § 84-805; Laws 1987, LB 223, § 2.

Authority is conferred upon a sheriff to depute a person to serve any summons. Forbes v. Bringe, 32 Neb. 757, 49 N.W. 720 (1891).

Constables cannot appoint deputies. Gilbert and Artist v. Brown & Brother, 9 Neb. 90, 2 N.W. 376 (1879).

23-1704.03 Sheriff; employee; false return of writ; penalty.

The employee referred to in section 23-1704.02 shall make return of the time and manner of serving such writ under his or her oath. For making a false return he or she shall be guilty of perjury and shall be punished accordingly.

Source: Laws 1879, § 126, p. 386; R.S.1913, § 5740; C.S.1922, § 5069; C.S.1929, § 84-806; R.S.1943, (1981), § 84-806; Laws 1987, LB 223, § 3.

23-1704.04 Sheriff; deputies; compensation.

The county board shall furnish the sheriff with such deputies as it shall deem necessary and fix the compensation of such deputies who shall be paid by warrant drawn on the general fund.

Source: Laws 1907, c. 54, § 2, p. 228; Laws 1911, c. 50, § 1, p. 233; R.S.1913, § 2443; Laws 1917, c. 44, § 1, p. 124; Laws 1919, c. 81, § 1, p. 203; Laws 1921, c. 114, § 1, p. 396; C.S.1922, § 2383; Laws 1923, c. 83, § 1, p. 224; Laws 1927, c. 121, § 1, p. 334; C.S.1929, § 32-122; Laws 1943, c. 90, § 20, p. 306; R.S.1943, (1988), § 33-118; Laws 1990, LB 821, § 8.

County board is given the right to determine number of deputies a sheriff may employ. Grace v. County of Douglas, 178 Neb. 690, 134 N.W.2d 818 (1965).

The county board has the authority to determine the number of deputies to be appointed by the sheriff and to fix their compensation but the sheriff retains the power to appoint his deputies. State ex rel. Rohrs v. Harris, 100 Neb. 745, 161 N.W. 253 (1917).

A sheriff who does not elect to act as jailer in person, but who deputizes the persons who perform the duties of jailer, such persons being compensated in the manner provided by this section, is not entitled to the compensation provided for a sheriff acting as jailer. Dunkel v. Hall County, 89 Neb. 585, 131 N.W. 973 (1911).

23-1705 Court attendance; when required.

The sheriff shall attend upon the district court at its session in his or her county, shall be allowed the assistance of two deputies and of such further number as the court may direct, and shall attend the sessions of the county court when required by the judge.

Source: Laws 1879, § 120, p. 385; R.S.1913, § 5657; C.S.1922, § 4984; C.S.1929, § 26-1405; R.S.1943, § 23-1705; Laws 1988, LB 1030, § 6.

23-1706 Court; appearance as counsel prohibited.

No sheriff or his deputy or constable shall appear in any court as attorney or counselor for any party, nor make any writing or process to commence or to be in any manner used in the same, and such writing or process made by any of them shall be rejected.

Source: Laws 1879, § 121, p. 385; R.S.1913, § 5658; C.S.1922, § 4985; C.S.1929, § 26-1406; R.S.1943, § 23-1706.

Cross References

For provisions prohibiting sheriff to practice as attorney, see section 7-111.

23-1707 Sheriff's sales; purchases prohibited.

No sheriff or his deputy or constable shall become the purchaser, either directly or indirectly, of any property by him exposed to sale under any process of law or equity; and every such purchase is absolutely void.

Source: Laws 1879, § 122, p. 385; R.S.1913, § 5659; C.S.1922, § 4986; C.S.1929, § 26-1407; R.S.1943, § 23-1707.

23-1708 Vacancy; legal process; deputy; duty.

In case of a vacancy occurring in the office of sheriff from any cause the deputy or deputies shall be under obligation to execute legal process until the vacancy is filled.

Source: Laws 1879, § 123, p. 385; R.S.1913, § 5660; C.S.1922, § 4987; C.S.1929, § 26-1408; R.S.1943, § 23-1708; Laws 1990, LB 872, § 1.

Sheriff may complete execution of order of sale regularly issued to him during his term, after expiration of his term. National Black River Bank v. Wall, 3 Neb. Unof. 316, 91 N.W. 525 (1902).

23-1709 Term of office; expiration; transfers to successor.

When a sheriff goes out of office he or she shall deliver to his or her successor all books and papers pertaining to the office, all property attached or levied upon, and all prisoners in jail and shall take a receipt specifying the same. The receipt shall be sufficient indemnity to the person taking it.

Source: Laws 1879, § 124, p. 386; R.S.1913, § 5661; C.S.1922, § 4988; C.S.1929, § 26-1409; R.S.1943, § 23-1709; Laws 1990, LB 872, § 2.

23-1710 Crimes; prevention; arrest; powers and duties.

It shall be the duty of the sheriff by himself or deputy to preserve the peace in his county, to ferret out crime, to apprehend and arrest all criminals, and insofar as it is within his power, to secure evidence of all crimes committed in his county, and present the same to the county attorney and the grand jury; to file informations against all persons who he knows, or has reason to believe, have violated the laws of the state, and to perform all other duties pertaining to the office of sheriff.

Source: Laws 1917, c. 231, § 1, p. 567; C.S.1922, § 4989; C.S.1929, § 26-1410; R.S.1943, § 23-1710.

Where sheriff had reliable information about existence of incendiary device action in going upon property and inspecting for existence of fire without actual entry or search of building was proper. State v. Howard, 184 Neb. 274, 167 N.W.2d 80 (1969).

Sheriff has duty to apprehend and arrest all criminals and must, if necessary, follow them into any county to do so. State ex rel. Johnson v. Goble, 136 Neb. 242, 285 N.W. 569 (1939).

Sheriff is not disqualified because of interest when testimony as witness is merely corroborative. Noonan v. State, 117 Neb. 520, 221 N.W. 434 (1928).

23-1711 Special investigations; when authorized; report; expenses.

The sheriff shall, whenever directed so to do in writing by the county attorney, make special investigation of any alleged infraction of the law within his county, and report with reference thereto within a reasonable time to such county attorney. When such investigation is made the sheriff shall file with the county clerk a detailed, sworn statement of his expenses, accompanied by the written order of the county attorney, and the board shall audit and allow only so much thereof as it shall find reasonable and necessary.

Source: Laws 1917, c. 231, § 2, p. 567; C.S.1922, § 4990; C.S.1929, § 26-1411; R.S.1943, § 23-1711.

23-1712 Repealed. Laws 1991, LB 153, § 1.

23-1713 Sheriff; party to judicial proceedings; duties; county clerk shall perform.

Every county clerk shall serve and execute process of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to the case, or whenever affidavits shall be made and filed as provided in section 23-1714; and in all such cases he shall exercise the same powers and proceed in

the same manner as prescribed for the sheriff in the performance of similar duties.

Source: Laws 1881, c. 42, § 1, p. 222; R.S.1913, § 5683; Laws 1915, c. 101, § 1, p. 244; C.S.1922, § 5013; C.S.1929, § 26-1522; R.S. 1943, § 23-1713.

Sheriff is disqualified from serving process in murder case, where affidavit of disqualification was filed, and it became duty of clerk of district court to issue writ for summoning jurors to county clerk. Trobough v. State, 120 Neb. 453, 233 N.W. 452 (1930).

Sheriff is disqualified to select and summon a special panel of jurors to serve in criminal case in which he is a prosecuting witness. Policky v. State, 113 Neb. 858, 205 N.W. 560 (1925).

Processes issued out of county court may be directed to and be served by coroner, when sheriff is party. Barlass v. May, 16 Neb. 647, 21 N.W. 436 (1884).

Coroner may serve writ of replevin whenever sheriff is party to the action. Keith Brothers v. Heffelfinger, 12 Neb. 497, 11 N.W. 749 (1882).

23-1714 Sheriff; disqualification; duties; county clerk shall perform.

Whenever any party, his agent or attorney shall make and file with the clerk of the proper court an affidavit stating that he believes the sheriff of such county will not, by reason of partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced, or about to be commenced, in said court, the clerk shall direct the original or other process in such suit to the county clerk who shall execute the same in like manner as the sheriff might or ought to have done, and if like objections shall be made to the county clerk by either party, the court shall appoint some suitable person to whom such objection does not apply.

Source: Laws 1881, c. 42, § 2, p. 222; R.S.1913, § 5684; Laws 1915, c. 101, § 1, p. 244; C.S.1922, § 5014; C.S.1929, § 26-1523; R.S. 1943, § 23-1714.

Affidavit being filed hereunder, sheriff is ipso facto disqualified from summoning jurors, but not from participating with court clerk in drawing panel from box containing jurors' names selected by county commissioners. Trobough v. State, 120 Neb. 453, 233 N.W. 452 (1930).

When showing is made conforming to above provisions, it is mandatory that clerk direct county clerk to perform the duties of the sheriff. Policky v. State, 113 Neb. 858, 205 N.W. 560 (1925).

A party must make his objection to sheriff's acting before trial or he will be held to have waived it. Coil v. State, 62 Neb. 15, 86 N.W. 925 (1901).

23-1715 Sheriff; specialized equipment; damages to privately owned motor vehicle, reimbursement.

The county board shall purchase a base radio station and shortwave radio equipment for installation on a motor vehicle owned by the sheriff. The county board may purchase shortwave radio equipment for installation on motor vehicles owned by the sheriff's deputies and also may purchase specialized equipment such as, but not limited to, flashing lights or spotlights for installation on motor vehicles owned by the sheriff or his or her deputies whenever such equipment is necessary for law enforcement work. Any equipment so purchased and installed shall remain the property of the county and shall be removed and returned to the county upon termination of the term of office of such sheriff or deputy. The county board may also reimburse any such sheriff or deputy for any damage to any such privately owned motor vehicle peculiarly incident to and actually arising out of the use of such motor vehicle for law enforcement work, such as, but not limited to, bullet holes, blood stains, or damage to the interior caused by unruly prisoners, but not including collision or upset. Reimbursement for such damage shall be paid as other claims against the county.

Source: Laws 1959, c. 84, § 7, p. 390; Laws 1969, c. 169, § 1, p. 745; Laws 1975, LB 427, § 1; Laws 2000, LB 893, § 1.

23-1716 Repealed. Laws 1972, LB 1278, § 3.

23-1717 Sheriff; deputy; uniform; badge, display; exceptions.

County sheriffs and their deputies, when on duty, shall be dressed in a distinctive uniform, as described in section 23-1719, and display a badge of office as described in section 23-1719; *Provided,* the wearing of such uniform and badge shall be discretionary at the option of the sheriff when he or she or his or her deputies are engaged in special investigations or mental patient assignments; *and provided further,* that special deputies appointed by the sheriff shall be excluded from the requirements of this section.

Source: Laws 1967, c. 113, § 1, p. 361; Laws 1981, LB 186, § 1.

23-1718 Sheriff; deputy; uniform; allowance in counties of less than 200,000 population.

County sheriffs and their deputies in counties of less than two hundred thousand population shall each receive an allowance for uniform expense of not less than ten dollars per month, to be paid by the county which such officers serve.

Source: Laws 1967, c. 113, § 2, p. 361.

23-1719 Sheriff; deputy; uniform; specifications.

(1) The uniform required by section 23-1717 shall be readily distinguishable from the uniform of other law enforcement agencies in the State of Nebraska and shall consist of:

(a) Brown felt hat, center crease in sheriff or western style;

(b) Brown straw hat, center crease in sheriff or western style;

(c) Chocolate brown color shirt with either long or short sleeves depending on season;

(d) Pink tan color trousers in appropriate seasonal weights;

(e) Pink tan color skirts in appropriate seasonal weights;

(f) Pink tan color necktie;

(g) Shoes or boots in the same color as the leather worn;

(h) Chocolate brown color service jacket, zipper front with badge holder;

(i) Hip-length year-round outer jacket, dark brown in color;

(j) Badge bearing state or state seal, rank, and county:

(i) Gold in color for sheriff and deputies of the rank of sergeant or above;

(ii) Silver in color for deputies under the rank of sergeant; and

(iii) Consisting of seven-point star;

(k) Collar ornaments:

(i) Gold for sheriff and deputies of the rank of sergeant or above; and

(ii) Silver for deputies under the rank of sergeant;

(l) Shoulder emblem to be worn on upper sleeve and include sheriff's department and county name - design optional;

(m) Leather to be either brown or black at the individual department's choice; and

(n) Brown winter cap with flap.

(2) Uniforms shall be purchased directly from the supplier or suppliers with whom the Department of Administrative Services has contracted.

(3) A committee from the Nebraska Sheriffs' and Peace Officers' Association shall assist the Department of Administrative Services in developing specifications and selecting material for the uniforms.

Source: Laws 1967, c. 113, § 3, p. 361; Laws 1981, LB 186, § 2.

23-1720 Sheriff; deputies; indemnification; legal counsel.

Any sheriff, deputy state sheriff, deputy sheriff, or special deputy sheriff required to be bonded under section 11-119 or 23-1704.01 shall be indemnified by the county employing such sheriff, deputy state sheriff, deputy sheriff, or special deputy sheriff should such person become liable to any surety on a bond written under either such section. Any sheriff, deputy state sheriff, deputy sheriff, or special deputy sheriff may, with the approval of the county board, retain his or her own legal counsel to represent him or her in such proceedings at county expense.

Source: Laws 1969, c. 143, § 1, p. 664; Laws 1990, LB 821, § 9.

(b) MERIT SYSTEM

23-1721 Sections; purposes.

The purposes of sections 23-1721 to 23-1736 are to guarantee to all citizens a fair and equal opportunity for public service in the office of the county sheriff in counties having a population of twenty-five thousand inhabitants or more, to establish and review conditions of service which will attract officers and employees of character and capacity, and to increase the efficiency of the county sheriff's office by the establishment of a merit system.

Source: Laws 1969, c. 140, § 1, p. 642; Laws 1972, LB 1093, § 1; Laws 1975, LB 315, § 1; Laws 1977, LB 122, § 1; Laws 1982, LB 782, § 1; Laws 2003, LB 222, § 1.

The purpose of this act is not to remove from the sheriff the right to discipline his personnel but, rather, to insulate deputy sheriffs from the political hazards which they might encounter upon the election of a new sheriff. Freese and Johnson v. County of Douglas, 210 Neb. 521, 315 N.W.2d 638 (1982).

23-1722 Sheriff's office merit commission; created; county having 25,000 inhabitants or more.

In any county having a population of twenty-five thousand inhabitants or more, there shall be a sheriff's office merit commission.

Source: Laws 1969, c. 140, § 2, p. 642; Laws 1972, LB 1093, § 2; Laws 1975, LB 315, § 2; Laws 1977, LB 122, § 2; Laws 1982, LB 782, § 2.

23-1723 Sheriff's office merit commission; county having 300,000 or more population; members; number; appointment; term; vacancy.

The sheriff's office merit commission in counties having a population of three hundred thousand inhabitants or more shall consist of five members. One member shall be a duly elected county official, appointed by the county board. One member shall be a deputy sheriff, elected by the deputy sheriffs. Three members shall be selected by the presiding judge of the judicial district encompassing such county and shall be public representatives who are resi-

dents of the county. The terms of office of members initially appointed or elected shall expire on January 1 of the first, second, and third years following their appointment or election, as designated by the county board. As the terms of initial members expire, their successors shall be appointed or elected for three-year terms in the same manner as the initial members. The additional public representative provided for in this section shall serve until January 1, 1984, and thereafter his or her successors shall be appointed or elected for three-year terms. Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare vacant the position of any member who no longer meets the qualifications for election or appointment set out in this section.

Source: Laws 1969, c. 140, § 3, p. 643; Laws 1972, LB 1093, § 3; Laws 1974, LB 782, § 6; Laws 1977, LB 304, § 1; Laws 1983, LB 81, § 1; Laws 2003, LB 222, § 2.

23-1723.01 Sheriff's office merit commission; county having 25,000 to 300,000 population; members; number; appointment; term; vacancy.

(1) In counties having a population of not less than twenty-five thousand inhabitants and less than three hundred thousand inhabitants, the sheriff's office merit commission shall consist of three members, except that the membership of the commission may be increased to five members by unanimous vote of the three-member commission.

(2) If the commission consists of three members, one member shall be a duly elected county official, appointed by the county board, one member shall be a deputy sheriff, elected by the deputy sheriffs, and one member shall be selected by the presiding judge of the judicial district encompassing such county and shall be a public representative who is a resident of the county and neither an official nor employee of the county. If the commission consists of five members, one member shall be a duly elected county official, appointed by the board of county commissioners, two members shall be deputy sheriffs, elected by the deputy sheriffs, and two members shall be selected by the presiding judge of the judicial district encompassing such county and shall be public representatives who are residents of the county and neither officials nor employees of the county.

(3) The terms of office of members initially appointed or elected after March 20, 1982, shall expire on January 1 of the years 1983, 1984, and 1985, as designated by the county board. Thereafter, the terms of the members of the commission shall be three years, except that in a county with a five-member commission, (a) the initial term of the additional deputy sheriff member shall be staggered so that his or her term shall coincide with the term of such county's deputy sheriff elected before August 31, 2003, and (b) the initial term of the additional public representative member shall be staggered so that his or her term shall coincide with the term of such county's public representative member appointed before August 31, 2003. As the terms of initial members expire, their successors shall be appointed or elected in the same manner as the initial members. Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare vacant the position of any member who no

longer meets the qualifications for election or appointment set out in this section.

Source: Laws 1977, LB 304, § 2; Laws 1982, LB 782, § 3; Laws 2003, LB 40, § 1; Laws 2003, LB 222, § 3.

23-1724 Sheriff's office merit commission; members; salary; expenses.

The members of the commission shall not receive a salary for their services but shall be reimbursed for such necessary expenses and mileage as may be incurred in the actual performance of their duties with reimbursement for mileage to be made at the rate provided in section 81-1176.

Source: Laws 1969, c. 140, § 4, p. 643; Laws 1981, LB 204, § 29; Laws 1996, LB 1011, § 12.

23-1725 Commission; meetings; public; rules of procedure; adopt.

The sheriff's office merit commission shall hold meetings regularly, at least once every three months, and shall designate the time and place thereof. It shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings and records of the commission shall be public except as otherwise provided in sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 5, p. 643; Laws 2003, LB 222, § 4.

23-1726 Classified service, defined.

For purposes of sections 23-1721 to 23-1736, classified service includes all deputy sheriffs including the jailer and matrons but does not include the civilian employees of the office. The deputy sheriff designated by the sheriff as chief deputy is specifically excluded from sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 6, p. 643; Laws 2003, LB 222, § 5.

23-1727 Commission; powers; duties.

The powers and duties of the sheriff's office merit commission shall be as follows:

(1) To adopt rules not inconsistent with sections 23-1721 to 23-1736 for the examination and selection of persons to fill the offices and positions in the classified service which are required to be filled by appointment and for the selection of such persons to be employed in the classified service of the office of the sheriff;

(2) To supervise the administration of the merit system rules, hold examinations from time to time after giving notice thereof, prepare and keep an eligibility list of persons passing such examinations, and certify the names of persons thereon to the sheriff;

(3) To investigate, by itself or otherwise, the enforcement of sections 23-1721 to 23-1736 and of its own rules and the action of appointees in the classified service. In the course of such investigation, the commission, or its authorized representative, shall have the power to administer oaths, and the commission shall have power, by subpoena, to secure both the attendance and testimony of witnesses and the production of books and papers relevant to such investigation;

(4) To provide, through the purchasing department of the county, all needed supplies for the use of the commission;

(5) To classify deputy sheriffs and subdivide them into groups according to rank and grade based upon the duties and responsibilities of such positions. The commission shall recommend to the county board salaries which are uniform for each group of the classified service and comparable to those of comparable counties in this section of the United States; and

(6) To perform such other duties as may be necessary to carry out sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 7, p. 643; Laws 2003, LB 222, § 6.

The powers enumerated in this section are intended to provide a form of civil service to deputy sheriffs employed by the various counties. Freese and Johnson v. County of Douglas, 210 Neb. 521, 315 N.W.2d 638 (1982).

23-1728 Commission; competitive examinations; records of service; keep; subject to inspection by commission.

(1) The commission shall prepare and hold open competitive examinations in order to test the relative fitness of all applicants for appointment to the classified service. At least two weeks' notice shall be given of all such examinations by publication at least once in a legal newspaper published and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county.

(2) The commission shall cause to be kept records of the service of each employee, in the classified service, known as service records. These records shall contain facts and statements on all matters relating to the character and quality of the work done and the attitude of the individual toward his or her work. All such service records and employee records shall be subject only to the inspection of the commission.

Source: Laws 1969, c. 140, § 8, p. 644; Laws 1986, LB 960, § 21.

23-1729 Sheriff; personnel director; duties.

The sheriff of each county under sections 23-1721 to 23-1736 shall be the personnel director of the merit system. The personnel director shall act as secretary of the sheriff's office merit commission and shall advise the commission in all matters pertaining to the merit system established by sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 9, p. 645; Laws 2003, LB 222, § 7.

23-1730 Deputy sheriffs; classified service; chief deputy sheriff.

For purposes of sections 23-1721 to 23-1736, all deputy sheriffs actually serving as such shall comprise the classified service. The chief deputy sheriff shall not be within the classified service, but a deputy sheriff serving with permanent rank under sections 23-1721 to 23-1736 may be designated chief deputy sheriff and retain such rank during the period of his or her service as chief deputy sheriff and shall upon termination of his or her duties as chief deputy sheriff revert to his or her permanent rank.

Source: Laws 1969, c. 140, § 10, p. 645; Laws 2003, LB 222, § 8.

23-1731 Classified service; vacancy; how filled.

Whenever a position in the classified service is to be filled, the sheriff shall notify the sheriff's office merit commission of that fact, and the commission shall certify the names and addresses of the three candidates standing highest on the eligibility list for the class or grade for the position to be filled, and the sheriff shall forthwith appoint to such position one of the three persons so certified. Such appointment shall be for a probationary period to be fixed by the rules, but not to exceed one year. On or before the expiration of the probationary period, the sheriff may, by presenting specific reasons for such action in writing, discharge a probationary appointee, or, with the approval of the commission, transfer him or her to another department within the sheriff's office. If not discharged prior to the expiration of the period of probation and if no complaint has been made about the service rendered, the appointment shall be deemed permanent. To prevent the stoppage of business or to meet extraordinary conditions or emergencies, the sheriff may, with the approval of the commission, make a temporary appointment to remain in force for not to exceed sixty days and only until regular appointment can be made under sections 23-1721 to 23-1736.

Source: Laws 1969, c. 140, § 11, p. 645; Laws 1982, LB 729, § 1; Laws 2003, LB 222, § 9.

23-1732 Deputy sheriffs in active employment; examinations; when required.

(1) All deputy sheriffs in active employment on January 1, 1970, in counties of three hundred thousand inhabitants or more and on January 1, 1973, in counties having a population of more than one hundred fifty thousand but less than three hundred thousand inhabitants, and who have been such for more than two years immediately prior thereto, shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(2) All deputy sheriffs in active employment on January 1, 1975, in counties having a population of more than sixty thousand but not more than one hundred fifty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(3) All deputy sheriffs in active employment on January 1, 1977, in counties having a population of more than forty thousand but not more than sixty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center and who have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(4) All deputy sheriffs in active employment on January 1, 1982, in counties having a population of twenty-five thousand or more but not more than forty thousand inhabitants, and who have been deputy sheriffs for more than two years immediately prior thereto, or who have been certified by the Nebraska Law Enforcement Training Center, and who have received a certificate of completion shall hold their positions without examinations until discharged,

reduced, promoted, or transferred in accordance with sections 23-1721 to 23-1736.

(5) All deputy sheriffs who have been so employed for more than six months and less than two years on such date shall be required to take qualifying examinations, and all such deputy sheriffs who have been so employed for less than six months on such date shall be required to take competitive examinations.

Source: Laws 1969, c. 140, § 12, p. 646; Laws 1972, LB 1093, § 4; Laws 1975, LB 315, § 3; Laws 1977, LB 122, § 3; Laws 1982, LB 782, § 4; Laws 2003, LB 222, § 10.

23-1733 Promotions; procedure.

Whenever possible, vacancies shall be filled by promotion. Promotion shall be made from among deputy sheriffs qualified by training and experience to fill the vacancies and whose length of service entitles them to consideration. The commission shall, for the purpose of certifying to the sheriff the list of deputy sheriffs eligible for promotion, rate such deputy sheriffs so qualified on the basis of their service record, experience in the work involved in the vacant position, training and qualifications for such work, seniority, and military service ratings. Seniority shall be controlling only when other factors are equal. Only the names of the three highest on the list of ratings shall be certified. The sheriff shall forthwith appoint one of the three persons so qualified.

Source: Laws 1969, c. 140, § 13, p. 646.

23-1734 Deputy sheriff; removal, suspension, reduced in rank or grade; procedure; grievance; procedure.

(1)(a) Any deputy sheriff may be removed, suspended with or without pay, or reduced in either rank or grade or both rank and grade by the sheriff, after appointment or promotion is complete, by an order in writing, stating specifically the reasons therefor. Such order shall be filed with the sheriff's office merit commission, and a copy thereof shall be furnished to the person so removed, suspended, or reduced. Any person so removed, suspended with or without pay, or reduced in either rank or grade or both rank and grade may, within ten days after presentation to him or her of the order of removal, suspension with or without pay, or reduction, appeal to the commission from such order. The commission shall, within two weeks after the filing of such appeal, hold a hearing thereon, and thereupon fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellant shall be entitled to appear personally, produce evidence, and have counsel or other representation and a public hearing. The finding and decision of the commission shall be certified to the sheriff and shall forthwith be enforced and followed, but under no condition shall the employee who has appealed to the commission be permanently removed, suspended with or without pay, or reduced in rank until such finding and decision of the commission is so certified to the sheriff.

(b) This subsection does not apply to a deputy sheriff during his or her probationary period.

(2) Any deputy sheriff may grieve a violation of an employment contract, a personnel rule, a state or local law, or a written departmental policy or procedure to the commission. The commission shall hear the grievance at the

next regularly scheduled meeting, or the commission may, at its discretion, set a special meeting to hear the grievance. If the deputy sheriff is subject to a labor agreement, all applicable procedures in the agreement shall be followed prior to the matter being heard by the commission. In all other cases, the matter shall be grieved, in writing, to the commission within fifteen calendar days after the date the deputy sheriff became aware of the occurrence giving rise to the grievance. After hearing or reviewing the grievance, the commission shall issue a written order either affirming or denying the grievance. Such order shall be delivered to the parties to the grievance or their counsel or other representative within seven calendar days after the date of the hearing or the submission of the written grievance.

Source: Laws 1969, c. 140, § 14, p. 646; Laws 2003, LB 222, § 11; Laws 2009, LB158, § 3.

This section does not become operative until a deputy sheriff has been reduced in either rank or grade or both by the sheriff; it does not become operative until the sheriff acts. The commissioner's authority, under this section, to modify the action of the sheriff does not permit him to increase the punishment imposed by the sheriff. Freese and Johnson v. County of Douglas, 210 Neb. 521, 315 N.W.2d 638 (1982).

23-1735 Classified service; discrimination; prohibited.

No person in the classified service or seeking admission thereto shall be appointed, reduced, or removed, or in any way favored or discriminated against because of his political, racial, or religious opinions or affiliations, except for membership in any organization which has advocated or does advocate the overthrow of the government of the United States or this state by force or violence.

Source: Laws 1969, c. 140, § 15, p. 647.

23-1736 Classified service; political activity; prohibited.

No person serving in the classified service under sections 23-1721 to 23-1736 shall actively participate in any campaign conducted by any candidate for public office while on duty or while in uniform.

Source: Laws 1969, c. 140, § 16, p. 647; Laws 2003, LB 222, § 12.

23-1737 Repealed. Laws 2003, LB 222, § 14.

ARTICLE 18
CORONER

Cross References

County attorney, ex officio coroner, see section 23-1210.
Execution, return by mail, when, see section 25-1548.
Eye tissue removal authorized, when, see section 71-4813.
Process, authority to serve, see section 25-2202.
Sheriff, perform duties as coroner, see section 23-1817.
Ticket quota requirements, prohibited, see section 48-235.

Section

Section

23-1801 Inquest; when authorized; coroner's jury; compensation.

(1) The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When the coroner has notice of the presence in the county of the body of a person supposed to have died by unlawful means, the coroner may, at his or her discretion, issue a warrant to a sheriff of the county requiring the sheriff to summon six residents of the county to appear before the coroner at a time and place named in the warrant.

(2) Each juror shall receive for each day employed in the discharge of his or her duty the sum of twenty dollars to be paid by certificate drawn by the coroner on the general funds of the county.

(3) A juror may voluntarily waive payment under this section for his or her service as a juror.

Source: Laws 1879, § 97, p. 380; R.S.1913, § 5663; Laws 1915, c. 101, § 1, p. 244; C.S.1922, § 4993; Laws 1923, c. 109, § 1, p. 267; C.S.1929, § 26-1502; R.S.1943, § 23-1801; Laws 1979, LB 80, § 69; Laws 1987, LB 313, § 2; Laws 1988, LB 1030, § 7; Laws 2012, LB865, § 2.
Effective date July 19, 2012.

This article is incorporated into law which requires the county attorney to perform the duties of coroner. State ex rel. Crosby v. Moorhead, 100 Neb. 298, 159 N.W. 412 (1916).

Coroner has jurisdiction, though person may have been injured or died in another county. Moore v. Box Butte County, 78 Neb. 561, 111 N.W. 469 (1907).

Coroner can lawfully hold inquest upon bodies of persons supposed to have died by unlawful means. He is not entitled to fees unless a jury is summoned. Lancaster County v. Holyoke, 37 Neb. 328, 55 N.W. 950 (1893).

23-1802 Inquest; warrant; form.

The warrant may be in substance as follows: The State of Nebraska, ... County. To any sheriff of such county:

In the name of the people of the State of Nebraska, you are hereby required to summon six residents of your county to appear before me at . . . . . , on the . . . . . day of . . . . . 20. . . . , then and there to hold an inquest upon the dead body of . . . . . , there lying, and by what means such person died. Witness my hand this . . . . . day of . . . . . A.D. 20. . . . . Coroner.

Source: Laws 1879, § 98, p. 381; R.S.1913, § 5664; C.S.1922, § 4994; C.S.1929, § 26-1503; R.S.1943, § 23-1802; Laws 1979, LB 80, § 70; Laws 1988, LB 1030, § 8; Laws 2004, LB 813, § 8.

Jurors must obey venire of coroner, and are entitled to fees though it was unnecessary to summon them. Moore v. Box Butte County, 78 Neb. 561, 111 N.W. 469 (1907).

23-1803 Inquest; warrant; execution.

The sheriff shall execute the warrant and make return thereof at the time and place therein named.

Source: Laws 1879, § 99, p. 381; R.S.1913, § 5665; C.S.1922, § 4995; C.S.1929, § 26-1504; R.S.1943, § 23-1803; Laws 1988, LB 1030, § 9.

23-1804 Inquest; coroner's jury; vacancies; oath.

If any juror fails to appear, the coroner shall cause the proper number to be summoned or returned from the bystanders immediately, and proceed to impanel them and administer the following oath in substance: You do solemnly swear that you will diligently inquire and true presentment make, when, how, and by what means the person whose body lies here dead came to his or her death, according to your knowledge and the evidence given you, so help you God.

Source: Laws 1879, § 100, p. 381; R.S.1913, § 5666; C.S.1922, § 4996; C.S.1929, § 26-1505; R.S.1943, § 23-1804; Laws 1979, LB 80, § 71.

23-1805 Inquest; juror; refusal to serve; penalty.

Whoever, being so summoned as a juror, fails or refuses, without good cause, to attend at the time and place required, or, appearing, refuses to act as such juror, or misbehaves while acting as such juror, shall, on complaint of the coroner before the county court, be fined not less than three nor more than twenty dollars.

Source: Laws 1879, § 101, p. 381; R.S.1913, § 5667; C.S.1922, § 4997; C.S.1929, § 26-1506; R.S.1943, § 23-1805; Laws 1972, LB 1032, § 113.

23-1806 Inquest; subpoenas; power to issue.

The coroner may issue subpoenas within the county for witnesses, returnable forthwith, or at such time and place as the coroner shall therein direct.

Source: Laws 1879, § 102, p. 382; R.S.1913, § 5668; C.S.1922, § 4998; C.S.1929, § 26-1507; R.S.1943, § 23-1806; Laws 1979, LB 80, § 72.

Witness must obey subpoena, and can draw fees though inquest was unnecessary. Moore v. Box Butte County, 78 Neb. 561, 111 N.W. 469 (1907).

23-1807 Inquest; witnesses; oath.

An oath shall be administered to the witnesses in substance as follows: You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth, so help you God.

Source: Laws 1879, § 103, p. 382; R.S.1913, § 5669; C.S.1922, § 4999; C.S.1929, § 26-1508; R.S.1943, § 23-1807.

23-1808 Inquest; witnesses; recognizance for appearance in district court.

If the evidence of any witness shall implicate any person as the unlawful slayer of the person over whom the said inquisition shall be held, the coroner shall recognize such witness, in such sum as the coroner may think proper, to be and appear at the next term of the district court for the said county, there to give evidence of the matter in question and not depart without leave. Such recognizance shall be in the same form, as nearly as practicable, and have the same effect as recognizances taken in county court in cases of felony.

Source: Laws 1879, § 104, p. 382; R.S.1913, § 5670; C.S.1922, § 5000; C.S.1929, § 26-1509; R.S.1943, § 23-1808; Laws 1972, LB 1032, § 114; Laws 1979, LB 80, § 73.

23-1809 Inquest; verdict; form.

The jurors, having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matter in the following form, as nearly as practicable:

State of Nebraska, ... County. At an inquisition held at . . . . . , in . . . . . County, on the . . . . . day of . . . . . A.D. 20. . . . , before me, ... , coroner of such county, upon the body of . . . . . , lying dead, by the jurors whose names are hereto subscribed, the jurors upon their oath do say . . . . . (Here state when, how, or by what person, means, weapon, or accident the person came to his or her death, and whether feloniously). In testimony whereof the jurors have hereunto set their hands the day and year aforesaid. Attest: . . . . . , Coroner.

Source: Laws 1879, § 105, p. 382; R.S.1913, § 5671; C.S.1922, § 5001; C.S.1929, § 26-1510; R.S.1943, § 23-1809; Laws 1979, LB 80, § 74; Laws 2004, LB 813, § 9.

23-1810 Inquest; verdict of murder or manslaughter; effect.

The verdict of the coroner's jury, charging any person with murder or manslaughter, shall have the same force and effect as the finding of a bill of indictment by the grand jury, until the case shall have been investigated by a grand jury, and they shall have made their return thereon.

Source: Laws 1879, § 115, p. 384; R.S.1913, § 5672; C.S.1922, § 5002; C.S.1929, § 26-1511; R.S.1943, § 23-1810.

23-1811 Inquest; arrest; when authorized.

If the person charged is present, the coroner may order his or her arrest by an officer or any other person present and shall then make a warrant requiring the officer or other person to take him or her before the county court for examination, or if the person charged is not present and the coroner believes the person can be taken, the coroner may issue a warrant to the sheriff requiring him or her to arrest the person and take the person charged before the county court for examination.

Source: Laws 1879, § 106, p. 383; R.S.1913, § 5673; C.S.1922, § 5003; C.S.1929, § 26-1512; R.S.1943, § 23-1811; Laws 1972, LB 1032, § 115; Laws 1979, LB 80, § 75; Laws 1988, LB 1030, § 10.

23-1812 Inquest; warrant of arrest; effect.

The warrant of a coroner in the above-stated cases shall be of equal authority with that of the county court; and when the person charged is brought before the court, the person charged shall be dealt with as a person held under a complaint in the usual form.

Source: Laws 1879, § 107, p. 383; R.S.1913, § 5674; C.S.1922, § 5004; C.S.1929, § 26-1513; R.S.1943, § 23-1812; Laws 1972, LB 1032, § 116; Laws 1979, LB 80, § 76.

23-1813 Inquest; warrant of arrest; contents.

The warrant of the coroner shall recite substantially the verdict of the jury of inquest, and such warrant shall be a sufficient foundation for the proceedings of the justice instead of a complaint.

Source: Laws 1879, § 108, p. 383; R.S.1913, § 5675; C.S.1922, § 5005; C.S.1929, § 26-1514; R.S.1943, § 23-1813.

23-1814 Inquest; return to district court; contents; duty.

The coroner shall return to the district court the inquisition, the papers connected with the same, and a list of the names of witnesses who testified in the matter.

Source: Laws 1879, § 109, p. 383; R.S.1913, § 5676; C.S.1922, § 5006; C.S.1929, § 26-1515; R.S.1943, § 23-1814.

23-1815 Inquest; personal property; discovery on or near body; disposition.

When any valuable personal property, money or papers are found upon or near the body upon which an inquest is held, the coroner shall take charge of the same and deliver the same to those entitled to its care or possession. If not claimed, or, if the same shall be necessary to defray expenses of the burial, the coroner shall, after giving ten days' notice of the time and place of sale, sell such property. After deducting funeral expenses, the coroner shall deposit the proceeds thereof, and the money and papers so found, with the county treasurer, taking receipt therefor, there to remain subject to the order of the legal representatives of the deceased, if claimed within five years thereafter, or if not claimed within that time, to vest in the school fund of the county.

Source: Laws 1879, § 110, p. 383; R.S.1913, § 5677; Laws 1915, c. 38, § 1, p. 109; C.S.1922, § 5007; C.S.1929, § 26-1516; R.S.1943, § 23-1815; Laws 1979, LB 80, § 77.

Where coroner was sued by administrator of deceased person for value of personal property of deceased sold by coroner, he could set off amount paid for necessary funeral expenses of deceased. Lenderink v. Sawyer, 92 Neb. 587, 138 N.W. 744 (1912), L.R.A. 1915D 948 (1912), Ann. Cas. 1914A 261 (1912).

23-1816 Inquest; body of deceased; disposition.

The coroner shall cause the body of each deceased person which the coroner is caused to view, to be delivered to the friends of the deceased, if there be any, but if there be none, the coroner shall cause the body to be decently buried and the expenses shall be paid from any property belonging to the deceased, or if there be none, from the county treasury, by warrant drawn thereon.

Source: Laws 1879, § 111, p. 384; R.S.1913, § 5678; C.S.1922, § 5008; C.S.1929, § 26-1517; R.S.1943, § 23-1816; Laws 1979, LB 80, § 78.

An undertaker who inters a dead body at request of coroner will be allowed compensation therefor, though inquest was unnecessary. Darling v. Box Butte County, 78 Neb. 564, 111 N.W. 470 (1907).

23-1817 Coroner; duties; performance by sheriff.

When there is no coroner, and in case of the coroner's absence or inability to act, the sheriff of the county is authorized to discharge the duties of coroner in relation to dead bodies.

Source: Laws 1879, § 112, p. 384; R.S.1913, § 5679; C.S.1922, § 5009; C.S.1929, § 26-1518; R.S.1943, § 23-1817; Laws 1979, LB 80, § 79.

23-1818 Inquest; surgeons; subpoena; when authorized.

If the coroner or jury deem it necessary, for the purposes of an inquisition, to summon any surgeons, the coroner shall issue a subpoena for those preferred, the same as for any other witness.

Source: Laws 1879, § 113, p. 384; R.S.1913, § 5680; C.S.1922, § 5010; C.S.1929, § 26-1519; R.S.1943, § 23-1818.

23-1819 Murder; warrant for arrest of suspect; when required.

The coroner is hereby authorized and required, on a request of a majority of the coroner's jury, to issue a warrant for any person suspected of having committed the crime of murder, and hold such person on said warrant until the inquest over the body is closed.

Source: Laws 1879, § 114, p. 384; R.S.1913, § 5681; C.S.1922, § 5011; C.S.1929, § 26-1520; R.S.1943, § 23-1819; Laws 1979, LB 80, § 80.

23-1820 Coroner's physician; appointment; when authorized; duties; compensation; mileage.

In each county there is hereby created the office of coroner's physician, who shall be appointed by the coroner of the county and be removable by the coroner, at a salary or schedule of fees or both to be set by the county board and to be paid by the county. Such physician shall certify the cause of death in every case of death in such county not certified by an attending physician and shall perform or cause to be performed an autopsy when requested by the coroner or as provided in section 23-1824. Such physician shall perform such other services in aid of the coroner as shall be requested by the coroner and

shall be reimbursed for mileage at the rate provided in section 81-1176 for each mile actually and necessarily traveled by the most direct route while in the performance of such physician's duties.

Source: Laws 1907, c. 35, § 1, p. 169; R.S.1913, § 5682; C.S.1922, § 5012; Laws 1925, c. 97, § 1, p. 283; Laws 1929, c. 109, § 1, p. 403; C.S.1929, § 26-1521; Laws 1933, c. 96, § 5, p. 385; C.S.Supp.,1941, § 26-1521; R.S.1943, § 23-1820; Laws 1949, c. 44, § 1, p. 147; Laws 1963, c. 121, § 1, p. 467; Laws 1967, c. 125, § 3, p. 401; Laws 1979, LB 80, § 81; Laws 1981, LB 204, § 30; Laws 1996, LB 1011, § 13; Laws 1999, LB 46, § 2.

23-1821 Death during apprehension or custody; notice required; penalty.

(1) Every hospital, emergency care facility, physician, nurse, out-of-hospital emergency care provider, or law enforcement officer shall immediately notify the county coroner in all cases when it appears that an individual has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel.

(2) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1988, LB 676, § 1; Laws 1992, LB 1138, § 19; Laws 1997, LB 138, § 33.

23-1822 Death during apprehension or custody; county coroner; duties.

In each instance when the county coroner is given notice in accordance with section 23-1821, the coroner or coroner's physician shall perform an examination, a test, or an autopsy as he or she may deem necessary to establish, by a reasonable degree of medical certainty, the cause or causes of death and shall thereafter certify the cause or causes of death to the presiding judge of the district court.

Source: Laws 1988, LB 676, § 2.

23-1823 Death during apprehension or custody; powers.

In the performance of his or her duties under section 23-1822, the county coroner may, when applicable, invoke any or all of the provisions of sections 23-1815, 23-1816, and 23-1820.

Source: Laws 1988, LB 676, § 3.

23-1824 Minor; autopsy required; when; guidelines; reimbursement.

(1) The county coroner or coroner's physician shall perform, at county expense, an autopsy on any person less than nineteen years of age who dies a sudden death, except that no autopsy needs to be performed if (a) the death was caused by a readily recognizable disease or the death occurred due to trauma resulting from an accident and (b) the death did not occur under suspicious circumstances. The Attorney General shall create, by July 1, 2007, guidelines for county coroners or coroner's physicians regarding autopsies on persons less than nineteen years of age.

(2) The county coroner or coroner's physician shall attempt to establish, by a reasonable degree of medical certainty, the cause or causes of the death, and shall thereafter certify the cause or causes of death to the county attorney. No

cause of death shall be certified as sudden infant death syndrome unless an autopsy, a death scene investigation, and a review of the child's medical history reveal no other possible cause.

(3) A county may request reimbursement of up to fifty percent of the cost of an autopsy from the Attorney General. Reimbursement requests may include, but not be limited to, costs for expert witnesses and complete autopsies, including toxicology screens and tissue sample tests. The Attorney General shall place an emphasis on autopsies of children five years of age and younger.

Source: Laws 1999, LB 46, § 1; Laws 2006, LB 1113, § 20.

23-1825 Organ and tissue donations; legislative findings.

The Legislature finds and declares that it is in the public interest to facilitate organ and tissue donations pursuant to the Revised Uniform Anatomical Gift Act and thereby to increase the availability of organs and tissues for medical transplantation. To accomplish these purposes, the following constitutes the procedure to facilitate the recovery of organs and tissues from donors under the jurisdiction of a coroner within a time period compatible with the preservation of such organ or tissue for the purpose of transplantation.

Source: Laws 2008, LB246, § 1; Laws 2010, LB1036, § 23.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

23-1826 Organ and tissue donations; terms, defined.

For purposes of sections 23-1825 to 23-1832:

(1) Coroner means a coroner or his or her designated representative;

(2) Decedent means an individual with respect to whom a determination of death has been made pursuant to section 71-7202;

(3) Donor has the definition found in section 71-4825; and

(4) Preliminary investigation means an inquiry into whether any organs or tissues are necessary to determine the proximate cause or means of death.

Source: Laws 2008, LB246, § 2; Laws 2010, LB1036, § 24.

23-1827 Organ and tissue donations; preliminary investigation; access to information; release of organs or tissues; exception; presence for removal procedure.

(1) A coroner shall conduct a preliminary investigation of a decedent within the coroner's jurisdiction as soon as possible after notification by the hospital in which such decedent is located or the hospital to which such decedent is being transported. The coroner may designate the coroner's physician or another physician to conduct the preliminary investigation.

(2) The preliminary investigation shall be completed within a time period that is compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.

(3) The coroner may request and shall have access to all necessary information including copies of medical records, laboratory test results, X-rays, and other diagnostic results. The information shall be provided as expeditiously as possible, through reasonable means, to permit the preliminary investigation to

be completed within a time period compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.

(4) Upon completion of the preliminary investigation, the coroner shall release all organs or tissues which have been donated or may yet be donated pursuant to the Revised Uniform Anatomical Gift Act except those that the coroner reasonably believes contain evidence of the proximate cause or means of death. If the coroner reasonably believes that a specific organ or tissue contains evidence of the proximate cause or means of death and the organ or tissue is otherwise subject to recovery as a donated organ or tissue pursuant to the Revised Uniform Anatomical Gift Act, the coroner or his or her designee shall be present for the removal procedure (a) to make a final determination that allows the recovery of the organs and tissues to proceed, (b) to request a biopsy, or (c) to deny removal of such organ or tissue if the coroner determines such organ or tissue contains evidence of the proximate cause or means of death. After a preliminary investigation is completed under this section, all organs or tissues compatible for transplantation, except any organs or tissues for which the coroner has denied recovery, may be recovered pursuant to the Revised Uniform Anatomical Gift Act.

Source: Laws 2008, LB246, § 3; Laws 2010, LB1036, § 25.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

23-1828 Organ and tissue donations; failure to complete preliminary investigation; effect.

If the coroner, coroner's physician, or other physician designated by the coroner fails to complete the preliminary investigation required under section 23-1827, or if the coroner fails to designate the coroner's physician or another physician to conduct and complete the preliminary investigation, within a time period compatible with the preservation of the organs and tissues for the purpose of transplantation, or if the coroner declines to conduct the preliminary investigation, any organ or tissue that is compatible for transplantation may be recovered pursuant to the Revised Uniform Anatomical Gift Act as though the donor was not within the coroner's jurisdiction.

Source: Laws 2008, LB246, § 4; Laws 2010, LB1036, § 26.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

23-1829 Organ and tissue donations; denial of recovery; written report required.

If the coroner denies recovery of an organ or tissue, the coroner shall include in a written report the reasons such recovery was denied and provide the report within ten days to the federally designated organ procurement organization for Nebraska.

Source: Laws 2008, LB246, § 5; Laws 2010, LB1036, § 27.

23-1830 Organ and tissue donations; coroner's access to medical information, medical records, pathology reports, and the donor's body.

(1) If the coroner releases any organ or tissue for recovery, the coroner may request that a blood sample, a sample of catheterized urine, a sample of bile if

the liver is recovered for the purpose of transplantation, a biopsy specimen in fixative of the organ or tissue procured, and copies of any photographs, pictures, or other diagrams of the organ or tissue made at the time of recovery be delivered to the coroner.

(2) A coroner shall have access to medical records, pathology reports, and the body of the donor following the recovery of any organ or tissue allowed under section 23-1827 or 23-1828.

Source: Laws 2008, LB246, § 6; Laws 2010, LB1036, § 28.

23-1831 Organ and tissue donations; report provided to coroner; contents.

Any physician or designated recovery personnel authorized by the federally designated organ procurement organization for Nebraska to recover any organ or tissue pursuant to section 23-1827 or 23-1828 shall provide to the coroner a report detailing the recovery of such organ or tissue and any known relationship to the proximate cause or means of death. If appropriate, such report shall include a biopsy or medically approved sample from the recovered organ or tissue and the results of any diagnostic testing performed upon the recovered organ or tissue. Such report shall become part of the coroner's report or coroner's physician's report.

Source: Laws 2008, LB246, § 7; Laws 2010, LB1036, § 29.

23-1832 Organ and tissue donations; immunity from criminal liability.

A coroner, a coroner's designee, a coroner's physician or his or her designee, a facility at which an organ or tissue recovery took place pursuant to sections 23-1825 to 23-1832, any authorized recovery personnel, or any other person who acts in good faith in compliance with sections 23-1825 to 23-1832 shall be immune from criminal liability for recovery of any organ or tissue.

Source: Laws 2008, LB246, § 8; Laws 2010, LB1036, § 30.

ARTICLE 19

COUNTY SURVEYOR AND ENGINEER

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Corners, government:
Destruction of, notify, see section 39-1708.
Protection, perpetuation, see Chapter 34, article 2, and section 39-1410.
Elected, when, see sections 32-525 and 32-526.
Fees, see section 33-116.
Field notes:
Evidence as, see section 25-1278.
State to file with, when, see sections 81-8,122 and 84-408.
Special, appointed when, see section 77-1306.01.
State surveyor, duties, see sections 84-407 to 84-414.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

Section
23-1904. Surveyor's certificate; use as evidence; effect.
23-1905. Surveyor; interest; disqualification; who may act.
23-1906. Trespass; exemption from liability.
23-1907. Original corners; perpetuation.
23-1908. Corners; establishment and restoration; rules governing.
23-1909. Subdivisions; petition for survey; expense.
23-1910. Field books; contents.
23-1911. Surveys; records; contents; available to public.
23-1912. Repealed. Laws 1982, LB 127, § 19.
23-1913. Records; transfer to successor; violation; penalty.

23-1901 County surveyor; county engineer; qualifications; powers and duties.

(1) It shall be the duty of the county surveyor to make or cause to be made all surveys within his or her county that the county surveyor may be called upon to make and record the same.

(2) In all counties having a population of at least fifty thousand inhabitants but less than one hundred fifty thousand inhabitants, the county surveyor shall be ex officio county engineer and shall be either a professional engineer as provided in the Engineers and Architects Regulation Act or a registered land surveyor as provided in sections 81-8,108 to 81-8,127 or both. In such counties, the office of surveyor shall be full time.

In counties having a population of one hundred fifty thousand inhabitants or more, a county engineer shall be a professional engineer as provided in the act and shall be elected as provided in section 32-526.

(3) The county engineer or ex officio county engineer shall:

(a) Prepare all plans, specifications, and detail drawings for the use of the county in advertising and letting all contracts for the building and repair of bridges, culverts, and all public improvements upon the roads;

(b) Make estimates of the cost of all such contemplated public improvements, make estimates of all material required for such public improvements, inspect the material and have the same measured and ascertained, and report to the county board whether the same is in accordance with its requirements;

(c) Superintend the construction of all such public improvements and inspect and require that the same shall be done according to contract;

(d) Make estimates of the cost of all labor and material which shall be necessary for the construction of all bridges and improvements upon public highways, inspect all of the work and materials placed in any such public improvements, and make a report in writing to the county board with a statement in regard to whether the same comply with the plans, specifications, and detail drawings of the county board prepared for such work or improvements and under which the contract was let; and

(e) Have charge and general supervision of work or improvements authorized by the county board, inspect all materials, direct the work, and make a report of each piece of work to the county board.

The county engineer or surveyor shall also have such other and further powers as are necessarily incident to the general powers granted.

(4) The county surveyor shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(5) In counties having a population of one hundred fifty thousand inhabitants or more, the county engineer shall appoint a full-time county surveyor. The county surveyor shall perform all the duties prescribed in sections 23-1901 to 23-1913 and any other duties assigned to him or her by the county engineer. The county surveyor shall be a registered land surveyor as provided in sections 81-8,108 to 81-8,127.

Source: Laws 1879, § 127, p. 386; Laws 1905, c. 50, § 1, p. 295; R.S.1913, § 5685; Laws 1921, c. 141, § 1, p. 606; C.S.1922, § 5015; C.S.1929, § 26-1601; Laws 1939, c. 28, § 16, p. 154; C.S.Supp.,1941, § 26-1601; R.S.1943, § 23-1901; Laws 1969, c. 170, § 1, p. 747; Laws 1982, LB 127, § 2; Laws 1986, LB 512, § 1; Laws 1990, LB 821, § 14; Laws 1994, LB 76, § 543; Laws 1997, LB 622, § 58.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

23-1901.01 County surveyor; residency; employed from another county; when; term.

(1) Except as provided in subsection (2) of this section, a county surveyor elected after November 1986 need not be a resident of the county when he or she files for election as county surveyor, but a county surveyor shall reside in a county for which he or she holds office.

(2) When there is no qualified surveyor within a county who will accept the office of county surveyor, the county board of such county may employ a competent surveyor either on a full-time or part-time basis from any other county of the State of Nebraska to such office. In making such employment, the county board shall negotiate a contract with the surveyor, such contract to specify the terms and conditions of the appointment or employment, including the compensation of the surveyor, which compensation shall not be subject to section 33-116. A surveyor employed under this subsection shall serve the same term as that of an elected surveyor and shall not be required to reside in the county of employment.

Source: Laws 1951, c. 45, § 1, p. 162; Laws 1979, LB 115, § 1; Laws 1982, LB 127, § 3; Laws 1986, LB 812, § 7; Laws 1996, LB 1085, § 35.

23-1901.02 County surveyor; deputy; appointment; oath; duties.

The county surveyor may appoint a deputy for whose acts he or she will be responsible. The surveyor may not appoint the county treasurer, sheriff, register of deeds, or clerk as deputy.

In counties having a population of fifty thousand but less than one hundred fifty thousand, if the county surveyor is a professional engineer, he or she shall appoint as deputy a registered land surveyor or, if the county surveyor is a registered land surveyor, he or she shall appoint as deputy a professional engineer. This requirement shall not apply if the county surveyor is both a professional engineer and a registered land surveyor.

The appointment shall be in writing and revocable in writing by the surveyor. Both the appointment and revocation shall be filed and kept in the office of the county clerk.

The deputy shall take the same oath as the surveyor which shall be endorsed upon and filed with the certificate of appointment. The surveyor may require a bond of the deputy.

In the absence or disability of the surveyor, the deputy shall perform the duties of the surveyor pertaining to the office, but when the surveyor is required to act in conjunction with or in place of another officer, the deputy cannot act in the surveyor's place.

Source: Laws 1990, LB 821, § 15.

23-1902 Repealed. Laws 1982, LB 127, § 19.

23-1903 Witnesses; attendance and testimony; power to compel; fees.

The county surveyor or his deputy, in the performance of his official duties, shall have the power to summon and compel the attendance of witnesses before him, to testify respecting the location and identification of any line or corner. When any such witness testifies to any material fact, his testimony must be reduced to writing and subscribed by him and made a matter of record. The county surveyor and his deputy are hereby authorized and empowered to administer oaths and affirmations to any person appearing as a witness before them. But the testimony as provided for herein shall never be used as evidence in any action involving corners or boundary lines, except for the purpose of impeachment. Each witness shall be entitled to the same fees allowed in county court.

Source: Laws 1913, c. 43, § 1, p. 142; R.S.1913, § 5687; Laws 1921, c. 138, § 1, p. 604; C.S.1922, § 5017; C.S.1929, § 26-1603; R.S. 1943, § 23-1903; Laws 1972, LB 1032, § 117.

23-1904 Surveyor's certificate; use as evidence; effect.

The certificate of the county surveyor of any survey made by him of any lands in the county shall be presumptive evidence of the facts stated therein, unless such surveyor shall be interested in the same.

Source: Laws 1913, c. 43, § 2, p. 142; R.S.1913, § 5688; C.S.1922, § 5018; C.S.1929, § 26-1604; R.S.1943, § 23-1904.

23-1905 Surveyor; interest; disqualification; who may act.

Whenever a survey of any lands or lots is required, in which the county surveyor is interested, such survey may be made by the surveyor of another county in like manner and to the same effect as though such survey had been made by the surveyor of the county where the land is situated. The surveyor doing the work shall record the field notes of said survey in the official record of surveys of the county wherein the land is situated.

Source: Laws 1913, c. 43, § 3, p. 142; R.S.1913, § 5689; C.S.1922, § 5019; C.S.1929, § 26-1605; R.S.1943, § 23-1905.

23-1906 Trespass; exemption from liability.

The county surveyor in the performance of his official duties, shall not be liable to prosecution for trespass.

Source: Laws 1913, c. 43, § 4, p. 143; R.S.1913, § 5690; C.S.1922, § 5020; C.S.1929, § 26-1606; R.S.1943, § 23-1906.

County surveyor, when in performance of his official duties, is not liable to prosecution for trespass. Kissinger v. State, 123 Neb. 856, 244 N.W. 794 (1932).

23-1907 Original corners; perpetuation.

It shall be the duty of the county surveyor in surveys made by him or her to perpetuate all original corners not at the time well marked, and all corners or angles that he or she may establish or reestablish, in a permanent manner by setting monuments containing ferromagnetic material, according to the instructions of the State Surveyor.

Source: Laws 1913, c. 43, § 5, p. 143; R.S.1913, § 5691; C.S.1922, § 5021; C.S.1929, § 26-1607; R.S.1943, § 23-1907; Laws 1982, LB 127, § 4.

23-1908 Corners; establishment and restoration; rules governing.

The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of said surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the United States Department of the Interior, Bureau of Land Management, on the restoration of lost and obliterated section corners and quarter corners, and the circular of instructions to the county surveyors by the State Surveyor under authority of the Board of Educational Lands and Funds. The county surveyor is hereby authorized to restore lost and obliterated corners of original surveys and to establish the subdivisional corners of sections in accordance with the provisions of this section and section 23-1907. Any registered land surveyor registered under the provisions of sections 81-8,108 to 81-8,127 is hereby authorized to establish any corner not monumented in the original government surveys in accordance with the provisions of this section and section 23-1907. Subdivision shall be executed according to the plan indicated by the original field notes and plats of surveys and governed by the original and legally restored corners. The survey of the subdivisional lines of sections in violation of this section shall be absolutely void.

Source: Laws 1913, c. 43, § 6, p. 143; R.S.1913, § 5692; Laws 1915, c. 102, § 1, p. 245; Laws 1917, c. 109, § 1, p. 280; Laws 1921, c. 161, § 1, p. 654; C.S.1922, § 5022; C.S.1929, § 26-1608; R.S. 1943, § 23-1908; Laws 1969, c. 171, § 1, p. 748; Laws 1982, LB 127, § 5.

This section provides that the restoration of lines and corners of original government surveys shall be in accordance with the laws of the United States and the circular of instructions of the U.S. Department of the Interior, Bureau of Land Management. The circular of instructions of the U.S. Department of the Interior provides that in restoring lines of a survey the purpose is not to correct the original survey, but to determine where the corner was established in the beginning; that an existent corner is one whose position can be located by an acceptable survey record, including testimony of witnesses who have a dependable knowledge of the original location; and that an obliterated corner's location may be recovered if proved beyond a reasonable doubt by unquestionable testimony. State v. Jarchow, 219 Neb. 88, 362 N.W.2d 19 (1985).

Government monuments, if found, will control as to location of section corners and subsequent surveys. Runkle v. Welty, 86 Neb. 680, 126 N.W. 139 (1910).

Government monuments or corners will control course and distance and government plats and field notes are competent evidence. Peterson v. Skjelver, 43 Neb. 663, 62 N.W. 43 (1895).

23-1909 Subdivisions; petition for survey; expense.

Whenever a majority of the owners of any section or quarter section of land, which has not been subdivided into its legal subdivisions, or owners of a major

portion thereof, desire to have said land subdivided, they may petition the county surveyor to make such survey, who, after giving at least ten days' notice to all such owners residing within the county, shall proceed to make the survey. The expense thereof shall be borne by all the owners in proportion to the work done for each, to be apportioned by the surveyor.

Source: Laws 1913, c. 43, § 7, p. 144; R.S.1913, § 5693; C.S.1922, § 5023; C.S.1929, § 26-1609; R.S.1943, § 23-1909.

23-1910 Field books; contents.

Each county surveyor shall procure, at the expense of the county, suitable memorandum field books for his or her use in the field. He or she shall enter in such field books, as the work progresses, all the details necessary to make up a complete record of each survey. The field books are to be properly indexed and kept on file as a part of the records of his or her office.

Source: Laws 1913, c. 43, § 8, p. 144; R.S.1913, § 5694; C.S.1922, § 5024; C.S.1929, § 26-1910; R.S.1943, § 23-1910; Laws 1982, LB 127, § 6.

23-1911 Surveys; records; contents; available to public.

The county surveyor shall record all surveys, for permanent purposes, made by him or her, as required by sections 81-8,121 to 81-8,122.02. Such record shall set forth the names of the persons making the application for the survey, for whom the work was done, and a statement showing it to be an official county survey or resurvey. The official records, other plats, and field notes of the county surveyor's office shall be deemed and considered public records. Any agent or authority of the United States, the State Surveyor or any deputy state surveyor of Nebraska, or any surveyor registered pursuant to sections 81-8,108 to 81-8,127, shall at all times, within reasonable office or business hours, have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 23-1901 to 23-1913. In all counties, where no regular office is maintained in the county courthouse for the county surveyor of that county, the county clerk shall be custodian of the official record of surveys and all other permanent records pertaining to the office of county surveyor.

Source: Laws 1913, c. 43, § 9, p. 144; R.S.1913, § 5695; C.S.1922; § 5025; C.S.1929, § 26-1611; Laws 1941, c. 44, § 1, p. 227; C.S.Supp.,1941, § 26-1611; R.S.1943, § 23-1911; Laws 1982, LB 127, § 7.

An agreement as to boundary line is binding upon all parties having notice, though it may not be true line. Lynch v. Egan, 67 Neb. 541, 93 N.W. 775 (1903); Egan v. Light, 4 Neb. Unof. 127, 93 N.W. 859 (1903).

Where, on a line of the same survey and between remote corners, there is a variance between the measurement of the length of the whole line and the length of the line called for, excess or deficiency should be distributed equally unless one of the quarter sections is fractional, in which latter case excess is distributed proportionately. Brooks v. Stanley, 66 Neb. 826, 92 N.W. 1013 (1902).

In determining lines, testimony of party who located the line from government monuments then in existence is preferable to surveyor's testimony, who subsequently located a different line. Baty v. Elrod, 66 Neb. 735, 92 N.W. 1032 (1903), affirmed on rehearing 66 Neb. 744, 97 N.W. 343 (1903).

Government corners, if ascertained, will control all other surveys; if lost, they may be established by witnesses; if no witnesses, government field notes will control. Clark v. Thornburg, 66 Neb. 717, 92 N.W. 1056 (1902).

Government corners control field notes at time of survey and also field notes, courses, and distances of subsequent survey; as to lost corners, field notes will control. Knoll v. Randolph, 3 Neb. Unof. 599, 92 N.W. 195 (1902).

Surveyor need not follow original order of survey and his location of section corner will not be rejected in absence of proof of mistake or error. Shrake v. Laflin, 3 Neb. Unof. 489, 92 N.W. 184 (1902).

23-1912 Repealed. Laws 1982, LB 127, § 19.

23-1913 Records; transfer to successor; violation; penalty.

When the term of any county surveyor shall expire or he shall resign or be removed, he shall deliver to his successor all books, maps, plats, diagrams, and papers pertaining to his office, and all correspondence with the Department of the Interior at Washington, D.C., and state officials pertaining to surveys in his county. Any county surveyor who, on the expiration of his term of office, or on his resignation or removal, shall neglect, for the period of thirty days after his successor shall be elected or appointed, and qualified, to deliver all such books, maps, plats, diagrams, papers, and correspondence aforesaid, or any executor or administrator of any deceased county surveyor, who shall neglect for the space of thirty days to deliver to such successor all such books, maps, plats, diagrams, papers, and correspondence aforesaid, which shall come into his hands, shall forfeit and pay into the county treasury a sum not less than ten and not more than fifty dollars, and a similar sum for each thirty days thereafter during which he shall so neglect to deliver the same as aforesaid. If no successor has been elected or appointed and qualified, then they shall be delivered to the county clerk.

Source: Laws 1913, c. 43, § 11, p. 146; R.S.1913, § 5697; C.S.1922, § 5027; C.S.1929, § 26-1613; R.S.1943, § 23-1913.

ARTICLE 20

REMOVAL OF COUNTY OFFICERS

Cross References

Recall provisions, see Chapter 32, article 13.

(a) REMOVAL BY JUDICIAL PROCEEDINGS

Section
23-2001. County officers; removal by judicial proceedings; grounds.
23-2002. County officers; removal by judicial proceedings; jurisdiction of district court.
23-2003. County officers; removal by judicial proceedings; procedure.
23-2004. County officers; removal by judicial proceedings; complaint; verification.
23-2005. County officers; removal by judicial proceedings; complaint; summons and service.
23-2006. County officers; removal by judicial proceedings; defensive pleadings.
23-2007. County officers; removal by judicial proceedings; judgment.
23-2008. County officers; removal by judicial proceedings; costs of action.
23-2009. County officers; suspension pending trial; vacancy; how filled.

(b) REMOVAL BY RECALL

23-2010. Repealed. Laws 1984, LB 975, § 14.
23-2010.01. Repealed. Laws 1984, LB 975, § 14.
23-2010.02. Repealed. Laws 1984, LB 975, § 14.
23-2010.03. Repealed. Laws 1984, LB 975, § 14.
23-2010.04. Repealed. Laws 1984, LB 975, § 14.
23-2010.05. Repealed. Laws 1984, LB 975, § 14.
23-2010.06. Repealed. Laws 1984, LB 975, § 14.
23-2010.07. Repealed. Laws 1984, LB 975, § 14.
23-2010.08. Repealed. Laws 1984, LB 975, § 14.
23-2010.09. Repealed. Laws 1984, LB 975, § 14.
23-2010.10. Repealed. Laws 1984, LB 975, § 14.
23-2011. Repealed. Laws 1980, LB 601, § 13.

(c) REMOVAL OF DISABLED OFFICERS

23-2012. Removal of disabled officers; procedure.

(d) TEMPORARY REMOVAL

23-2013. Incarcerated county officer; forfeiture of office; replacement.

(a) REMOVAL BY JUDICIAL PROCEEDINGS

23-2001 County officers; removal by judicial proceedings; grounds.

All county officers may be charged, tried, and removed from office, in the manner hereinafter provided, for (1) habitual or willful neglect of duty, (2) extortion, (3) corruption, (4) willful maladministration in office, (5) conviction of a felony, (6) habitual drunkenness, or (7) official misconduct as defined in section 28-924.

Source: R.S.1866, c. 45, § 1, p. 297; R.S.1913, § 5698; C.S.1922, § 5028; C.S.1929, § 26-1701; Laws 1937, c. 55, § 1, p. 222; C.S.Supp.,1941, § 26-1701; R.S.1943, § 23-2001; Laws 1972, LB 1032, § 118; Laws 1985, LB 423, § 2.

Failure by a county attorney to reside in the county he or she holds office is not official misconduct. Hynes v. Hogan, 251 Neb. 404, 558 N.W.2d 35 (1997).

A constitutional officer may only be removed by impeachment as provided in Constitution of Nebraska, and the Legislature may not provide for suspension or removal of such officer. Laverty v. Cochran, 132 Neb. 118, 271 N.W. 354 (1936).

If, pending appeal, the term of defendant expires, appeal will be dismissed. McCarter v. Lavery, 101 Neb. 748, 164 N.W. 1054 (1917).

Actions hereunder are penal in nature and to justify removal under first and sixth subdivisions, it must be shown that acts were performed with evil intent or legal malice. Hiatt v. Tomlinson, 100 Neb. 51, 158 N.W. 383 (1916).

The only method of removing county judge from office is by impeachment, as provided in section 14, Article III, Constitution of Nebraska. Conroy v. Hallowell, 94 Neb. 794, 144 N.W. 895 (1913).

Where county treasurer is reelected, failure of county board to remove him from office for failure to account for funds does not preclude suit on bond. Thomssen v. Hall County, 63 Neb. 777, 89 N.W. 389 (1902), 57 L.R.A. 303 (1902).

23-2002 County officers; removal by judicial proceedings; jurisdiction of district court.

Any person may make such charge, and the district court shall have exclusive original jurisdiction thereof by summons.

Source: R.S.1866, c. 45, § 2, p. 298; Laws 1905, c. 51, § 1, p. 297; R.S.1913, § 5699; C.S.1922, § 5029; C.S.1929, § 26-1702; R.S.1943, § 23-2002.

23-2003 County officers; removal by judicial proceedings; procedure.

The proceedings shall be as nearly like those in other actions as the nature of the case admits, excepting where otherwise provided in sections 23-2001 to 23-2009.

Source: R.S.1866, c. 45, § 3, p. 298; R.S.1913, § 5700; C.S.1922, § 5030; C.S.1929, § 26-1703; R.S.1943, § 23-2003.

23-2004 County officers; removal by judicial proceedings; complaint; verification.

The complaint shall be by an accuser against the accused, and shall contain the charges with the necessary specifications under them, and be verified by the affidavit of any elector of the state that he believes the charges to be true.

Source: R.S.1866, c. 45, § 4, p. 298; R.S.1913, § 5701; C.S.1922, § 5031; C.S.1929, § 26-1704; R.S.1943, § 23-2004.

Complaint set out and held sufficient. Stewart v. Bole, 61 Neb. 193, 85 N.W. 33 (1901).

23-2005 County officers; removal by judicial proceedings; complaint; summons and service.

It will be sufficient that the summons require the accused to appear and answer to the complaint of ..... (naming the accuser) for official misdemeanor, but a copy of the complaint must be served with the summons.

Source: R.S.1866, c. 45, § 5, p. 298; R.S.1913, § 5702; C.S.1922, § 5032; C.S.1929, § 26-1705; R.S.1943, § 23-2005.

23-2006 County officers; removal by judicial proceedings; defensive pleadings.

No answer or other pleading after the complaint is necessary, but the defendant may move to reject the complaint upon any ground rendering such motion proper; and he may answer if he desires, and if he answers the accuser may reply or not. But if there be an answer and reply, the provisions of section 23-2003 relating to pleadings in the action shall apply.

Source: R.S.1866, c. 45, § 6, p. 298; R.S.1913, § 5703; C.S.1922, § 5033; C.S.1929, § 26-1706; R.S.1943, § 23-2006.

23-2007 County officers; removal by judicial proceedings; judgment.

The question of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office, and declaring the latter vacant, and the clerk shall enter a copy of the judgment in the election book.

Source: R.S.1866, c. 45, § 7, p. 298; R.S.1913, § 5704; C.S.1922, § 5034; C.S.1929, § 26-1707; R.S.1943, § 23-2007.

23-2008 County officers; removal by judicial proceedings; costs of action.

The accuser and the accused are liable to costs as in other actions.

Source: R.S.1866, c. 45, § 8, p. 298; R.S.1913, § 5705; C.S.1922, § 5035; C.S.1929, § 26-1708; R.S.1943, § 23-2008.

23-2009 County officers; suspension pending trial; vacancy; how filled.

When the accused is an officer of the court, and is suspended, the court may supply his place by appointment for the term.

Source: R.S.1866, c. 45, § 9, p. 298; R.S.1913, § 5706; C.S.1922, § 5036; C.S.1929, § 26-1709; R.S.1943, § 23-2009.

''Suspended'', as used in this section, is not synonymous with ''removed'', as used in first section of article. State ex rel. Dodson v. Meeker, 19 Neb. 444, 27 N.W. 427 (1886).

(b) REMOVAL BY RECALL

23-2010 Repealed. Laws 1984, LB 975, § 14.

23-2010.01 Repealed. Laws 1984, LB 975, § 14.

23-2010.02 Repealed. Laws 1984, LB 975, § 14.

23-2010.03 Repealed. Laws 1984, LB 975, § 14.

23-2010.04 Repealed. Laws 1984, LB 975, § 14.

23-2010.05 Repealed. Laws 1984, LB 975, § 14.

23-2010.06 Repealed. Laws 1984, LB 975, § 14.

23-2010.07 Repealed. Laws 1984, LB 975, § 14.

23-2010.08 Repealed. Laws 1984, LB 975, § 14.

23-2010.09 Repealed. Laws 1984, LB 975, § 14.

23-2010.10 Repealed. Laws 1984, LB 975, § 14.

23-2011 Repealed. Laws 1980, LB 601, § 13.

(c) REMOVAL OF DISABLED OFFICERS

23-2012 Removal of disabled officers; procedure.

Whenever the county board shall determine after hearing that any county officer or deputy is physically or mentally incapable of performing the duties of his office and cannot recover sufficiently to be able to perform such duties, the board shall declare such position vacant and appoint a successor. The county board shall appoint two physicians to examine the officer or deputy and shall receive the report of the physicians as evidence at the hearing. If the person so removed is an officer, the appointment shall be for the unexpired portion of the term. Such hearing shall be held only after ten days' notice in writing to the officer or deputy concerned. An appeal to district court may be taken from the action in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county. The provisions of this section shall not apply to the office of county judge.

Source: Laws 1967, c. 110, § 1, p. 358.

(d) TEMPORARY REMOVAL

23-2013 Incarcerated county officer; forfeiture of office; replacement.

Except as provided in section 23-2001, the county board may require a county officer incarcerated for the conviction of a crime to temporarily forfeit his or her powers and duties while so incarcerated. The county board may declare the office temporarily vacant and appoint a replacement for the period of time such officer is incarcerated. The temporary officer shall assume all the powers and duties of the office and be compensated accordingly. No compensation shall be given to the incarcerated officer. If no other action is taken, the county officer may resume all duties of his or her office after the completion of his or her period of incarceration.

Source: Laws 1985, LB 423, § 1.

The Legislature's provisions of denying compensation when an official is incarcerated do not show an intent to provide compensation in all other instances. Hogan v. Garden County, 268 Neb. 631, 686 N.W.2d 356 (2004).

This section is silent about compensation. Hogan v. Garden County, 268 Neb. 631, 686 N.W.2d 356 (2004).

ARTICLE 21

EMERGENCY SEAT OF LOCAL GOVERNMENT

Section
23-2101. Transferred to section 13-701.
23-2102. Transferred to section 13-702.

Section
23-2103. Transferred to section 13-703.
23-2104. Transferred to section 13-704.
23-2105. Transferred to section 13-705.
23-2106. Transferred to section 13-706.
23-2107. Repealed. Laws 1963, c. 340, § 1.

23-2101 Transferred to section 13-701.

23-2102 Transferred to section 13-702.

23-2103 Transferred to section 13-703.

23-2104 Transferred to section 13-704.

23-2105 Transferred to section 13-705.

23-2106 Transferred to section 13-706.

23-2107 Repealed. Laws 1963, c. 340, § 1.

ARTICLE 22
INTERLOCAL COOPERATION ACT

Section
23-2201. Transferred to section 13-802.
23-2202. Transferred to section 13-801.
23-2203. Transferred to section 13-803.
23-2204. Transferred to section 13-804.
23-2205. Transferred to section 13-805.
23-2206. Transferred to section 13-806.
23-2207. Transferred to section 13-807.

23-2201 Transferred to section 13-802.

23-2202 Transferred to section 13-801.

23-2203 Transferred to section 13-803.

23-2204 Transferred to section 13-804.

23-2205 Transferred to section 13-805.

23-2206 Transferred to section 13-806.

23-2207 Transferred to section 13-807.

ARTICLE 23
COUNTY EMPLOYEES RETIREMENT

Cross References

County with one hundred fifty thousand inhabitants or more, provisions applicable if retirement system not adopted, see section 23-1118.

Section
23-2301. Terms, defined.
23-2302. Retirement System for Nebraska Counties; establish; purpose; acceptance of contributions.
23-2303. Repealed. Laws 1973, LB 216, § 4.
23-2304. Repealed. Laws 1973, LB 216, § 4.

Section

23-2301 Terms, defined.

For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements,

cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of one hundred fifty thousand inhabitants, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service prior to the date of adoption of the retirement system;

(26) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(27) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(28) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(29) Retirement board or board means the Public Employees Retirement Board;

(30) Retirement system means the Retirement System for Nebraska Counties;

(31) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(32) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(33) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(34) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

Source: Laws 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847,

§ 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2; Laws 2006, LB 1019, § 1; Laws 2011, LB509, § 2; Laws 2012, LB916, § 4.
Effective date April 7, 2012.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2302 Retirement System for Nebraska Counties; establish; purpose; acceptance of contributions.

(1) A county employees retirement system shall be established for the purpose of providing a retirement annuity or other benefits for employees as provided by the County Employees Retirement Act. It shall be known as the Retirement System for Nebraska Counties, and by such name shall transact all business and hold all cash and other property as provided in the County Employees Retirement Act.

(2) The retirement system shall not accept as contributions any money from members or participating counties except the following:

(a) Mandatory contributions and fees established by sections 23-2307 and 23-2308;

(b) Payments on behalf of transferred employees made pursuant to section 23-2306.02 or 23-2306.03;

(c) Money that is a repayment of refunded contributions made pursuant to section 23-2320;

(d) Contributions for military service credit made pursuant to section 23-2323.01;

(e) Actuarially required contributions pursuant to subdivision (4)(b) of section 23-2317;

(f) Trustee-to-trustee transfers pursuant to section 23-2323.04; or

(g) Corrections ordered by the board pursuant to section 23-2305.01.

Source: Laws 1965, c. 94, § 2, p. 403; Laws 1985, LB 347, § 2; Laws 1985, LB 432, § 2; Laws 2003, LB 451, § 3; Laws 2011, LB509, § 3.

23-2303 Repealed. Laws 1973, LB 216, § 4.

23-2304 Repealed. Laws 1973, LB 216, § 4.

23-2305 Public Employees Retirement Board; duties; rules and regulations.

It shall be the duty of the board to administer the County Employees Retirement Act as provided in section 84-1503. The board shall adopt and promulgate rules and regulations to carry out the act.

Source: Laws 1965, c. 94, § 5, p. 404; Laws 1969, c. 172, § 2, p. 752; Laws 1979, LB 416, § 1; Laws 1985, LB 347, § 3; Laws 1991, LB 549, § 2; Laws 1995, LB 369, § 3; Laws 1996, LB 847, § 3.

23-2305.01 Board; power to adjust contributions and benefits.

(1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the County Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

Source: Laws 1996, LB 1076, § 5; Laws 2002, LB 687, § 4; Laws 2006, LB 1019, § 2.

23-2306 Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska

governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(5) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(6) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(7) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(8) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB1147, § 1; Laws 2009, LB188, § 1; Laws 2010, LB950, § 1; Laws 2011, LB509, § 4.

23-2306.01 Repealed. Laws 2006, LB 366, § 14.

23-2306.02 Retirement system; transferred employee; payment to system.

Under such rules and regulations as the retirement board adopts and promulgates, a full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services may pay to the retirement system an amount equal to the sum of all deductions which were made from the employee's compensation, plus earnings, during such period of employment with the city, village, or township. Payment shall be made within five years after the merger or prior to retirement, whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll authorization.

Source: Laws 1997, LB 250, § 6.

23-2306.03 Retirement system; municipal county employee; participation in another governmental plan; how treated.

Under such rules and regulations as the retirement board adopts and promulgates, a full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall transfer all of his or her funds in the retirement system of the city, village, fire protection district, or township by paying to the Retirement System for Nebraska Counties from funds held by the retirement system of the city, village, fire protection district, or township an amount equal to one of the following: (1) If the retirement system of the city, village, fire protection district, or township maintains a defined benefit plan, an amount not to exceed the initial benefit transfer value as provided in section 13-2401, leaving no funds attributable to the transferred employee within the retirement system of the city, village, fire protection district, or township; or (2) if the retirement system of the city, village, fire protection district, or township maintains a defined contribution plan, an amount not to exceed the employee and employer accounts of the transferring employee plus earnings during the period of employment with the city, village, fire protection district, or township. The employee shall receive vesting credit for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the city, village, fire protection district, or township. Payment shall be made within five years after employment begins with the receiving entity or prior to retirement, whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

Source: Laws 2001, LB 142, § 34; Laws 2006, LB 366, § 4.

23-2307 Retirement system; members; contribution; amount; county pay.

Each employee who is a member of the retirement system shall pay to the county or have picked up by the county a sum equal to four and one-half percent of his or her compensation for each pay period. The county shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The county shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The county shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the employee. Employee contributions picked up shall be treated for all purposes of the County Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

Source: Laws 1965, c. 94, § 7, p. 405; Laws 1981, LB 459, § 1; Laws 1984, LB 218, § 1; Laws 1985, LB 347, § 4; Laws 1991, LB 549, § 4; Laws 1992, LB 1057, § 1; Laws 1995, LB 574, § 31; Laws 2001, LB 186, § 1; Laws 2001, LB 408, § 1.

23-2308 County Employees Retirement Fund; created; investment; system; county clerk; payment; fees; accounting of funds.

(1) The County Employees Retirement Fund is created. The fund shall be administered by the board and shall consist of contributions and other such sums as provided in section 23-2302. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The county clerk shall pay to the board or an entity designated by the board an amount equal to two hundred fifty percent of the amounts deducted from the compensation of employees in accordance with the provisions of section 23-2307, which two hundred fifty percent equals the employees' contributions plus the county's contributions of one hundred fifty percent of the employees' contributions.

(3) The board may charge the county an administrative processing fee of twenty-five dollars if the reports of necessary information or payments made pursuant to this section are received later than the date on which the board requires that such information or money should be received. In addition, the board may charge the county a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received or in an amount equal to the amount of any costs incurred by the member due to the late receipt of contributions, whichever is greater. The late fee may be used to make a member's account whole for any costs that may have been incurred by the member due to the late receipt of contributions.

(4) The Department of Administrative Services may, for accounting purposes, create subfunds of the County Employees Retirement Fund to separately account for defined contribution plan assets and cash balance plan assets.

Source: Laws 1965, c. 94, § 8, p. 405; Laws 1981, LB 459, § 2; Laws 1991, LB 549, § 5; Laws 1992, LB 1057, § 2; Laws 1993, LB 417, § 2; Laws 1998, LB 1191, § 25; Laws 2002, LB 407, § 3; Laws 2005, LB 364, § 1; Laws 2011, LB509, § 5; Laws 2012, LB916, § 5.
Effective date April 7, 2012.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

23-2308.01 Cash balance benefit; election; effect; administrative services agreements; authorized.

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for county employees, a cash balance benefit shall be added to the County Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. An active member shall make a one-time election beginning September 1, 2012, through October 31, 2012, in order to participate in the cash balance benefit. If no such election is made, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided

in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit beginning September 1, 2012, through October 31, 2012, shall commence participation in the cash balance benefit on January 2, 2013. Any member who made the election prior to April 7, 2012, does not have to make another election of the cash balance benefit beginning September 1, 2012, through October 31, 2012.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to April 7, 2012, or beginning September 1, 2012, through October 31, 2012, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) Except as provided in subdivision (2)(b) of section 23-2319.01, the employee cash balance account within the County Employees Retirement Fund shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 23-2309; plus

(ii) Employee contribution credits deposited in accordance with section 23-2307; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 23-2310; plus

(ii) Employer contribution credits deposited in accordance with section 23-2308; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the counties and their participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board.

Source: Laws 2002, LB 687, § 6; Laws 2003, LB 451, § 4; Laws 2005, LB 364, § 2; Laws 2006, LB 366, § 5; Laws 2006, LB 1019, § 3; Laws 2007, LB328, § 1; Laws 2009, LB188, § 2; Laws 2010, LB950, § 2; Laws 2011, LB509, § 6; Laws 2012, LB916, § 6. Effective date April 7, 2012.

23-2309 Defined contribution benefit; employee account, defined; interest credited to account.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the compensation deductions made in accordance with section 23-2307 shall be known as his or her employee account. Each year, commencing January 1, 1975, and ending December 31, 1985, regular interest shall be credited to the employee account. As of January 1 of each such year, a member's employee account shall be equal to one hundred percent of his or her employee account as of the next preceding January 1, increased by any regular interest earned and any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307.

On and after January 1, 1986, the employee account shall be equal to the sum of the employee's stable return account, equities account, and any assets of additional accounts created pursuant to section 23-2309.01.

Source: Laws 1965, c. 94, § 9, p. 405; Laws 1974, LB 905, § 2; Laws 1983, LB 313, § 1; Laws 1985, LB 347, § 5; Laws 1991, LB 549, § 6; Laws 1994, LB 833, § 2; Laws 2002, LB 687, § 7.

23-2309.01 Defined contribution benefit; employee account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options. The investment options shall include, but not be limited to, the following:

(a) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(b) A stable return account which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's division of The McGraw-Hill Companies, Inc., 500 Index;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(h) Beginning July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board

shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (b) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the county and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

Source: Laws 1985, LB 347, § 11; Laws 1991, LB 549, § 7; Laws 1994, LB 833, § 3; Laws 1996, LB 847, § 4; Laws 1999, LB 703, § 2; Laws 2000, LB 1200, § 1; Laws 2001, LB 408, § 2; Laws 2002, LB 407, § 4; Laws 2002, LB 687, § 8; Laws 2005, LB 503, § 1; Laws 2008, LB1147, § 2; Laws 2010, LB950, § 3; Laws 2012, LB916, § 7.
Effective date April 7, 2012.

23-2310 Defined contribution benefit; employer account, defined; state investment officer; duties.

(1) For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the county contributions shall be known as his or her employer account. Prior to January 1, 1981, as of any January 1 a member's employer account shall be equal to his or her account as of the next preceding January 1, increased by one hundred percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307. As of January 1, 1982, a member's employer account shall be equal to the account as of January 1, 1981, increased by one hundred percent of the amounts deducted from the

member's compensation for the first nine months of the year and one hundred fifty percent for the final three months of the year in accordance with section 23-2307. As of January 1, 1983, and each year thereafter, the member's employer account shall be equal to the account as of the next preceding January 1 increased by one hundred fifty percent of the amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 23-2307. The member's employer account shall be increased by any interest allocated under the provisions of the guaranteed investment contract and any gains on investments and reduced by any losses on investments, any expense charges under the guaranteed investment contract or other investments, and any expense charges incurred in connection with administering the retirement system in excess of those provided for in section 23-2319.01, except that a member who ceased being an employee since the next preceding January 1 may have his or her employer account reduced in accordance with such section. On and after July 1, 1999, the employer account shall be equal to the sum of the assets of the accounts created by the board pursuant to section 23-2310.05.

(2) On and after January 1, 1997, and until July 1, 1999, the state investment officer shall invest the employer account, and, after July 1, 1999, upon maturity, the state investment officer shall invest the employer account funds which have been invested in guaranteed investment contracts prior to January 1, 1997. On and after July 1, 1999, the employer account shall be invested pursuant to section 23-2310.05. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

Source: Laws 1965, c. 94, § 10, p. 406; Laws 1981, LB 462, § 1; Laws 1983, LB 313, § 2; Laws 1985, LB 347, § 6; Laws 1986, LB 311, § 3; Laws 1991, LB 549, § 8; Laws 1992, LB 1057, § 3; Laws 1994, LB 833, § 4; Laws 1996, LB 847, § 5; Laws 1997, LB 624, § 3; Laws 1999, LB 687, § 2; Laws 2002, LB 687, § 9.

At no time did the Legislature intend that a county make contributions of 250 percent of the amounts deducted from the compensation paid to the members of its retirement system. Hoiengs v. County of Adams, 254 Neb. 64, 574 N.W.2d 498 (1998).

23-2310.01 Repealed. Laws 1998, LB 1191, § 85.

23-2310.02 Repealed. Laws 1998, LB 1191, § 85.

23-2310.03 State Treasurer; duties.

The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers signed by a person authorized by the retirement board. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the funds in his or her custody belonging to the retirement system.

Source: Laws 1997, LB 623, § 1.

23-2310.04 County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment.

(1) The County Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The County Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 623, § 2; Laws 2000, LB 1200, § 2; Laws 2001, LB 408, § 3; Laws 2003, LB 451, § 5; Laws 2005, LB 364, § 3; Laws 2007, LB328, § 2; Laws 2010, LB950, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

23-2310.05 Defined contribution benefit; employer account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 23-2309.01. If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(d) of section 23-2309.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

Source: Laws 1999, LB 687, § 1; Laws 2000, LB 1200, § 3; Laws 2001, LB 408, § 4; Laws 2002, LB 407, § 5; Laws 2002, LB 687, § 10; Laws 2004, LB 1097, § 4; Laws 2005, LB 364, § 4; Laws 2005, LB 503, § 2; Laws 2008, LB1147, § 3; Laws 2010, LB950, § 5; Laws 2012, LB916, § 8.
Effective date April 7, 2012.

23-2311 Transferred to section 23-2333.

23-2312 Retirement system; records; contents; employer education program.

(1) The director of the Nebraska Public Employees Retirement Systems shall keep a complete record of all members with respect to names, current addresses, ages, contributions, and any other facts as may be necessary in the administration of the County Employees Retirement Act. The information in the records shall be provided by the employer in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various counties and state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

Source: Laws 1965, c. 94, § 12, p. 406; Laws 1985, LB 347, § 7; Laws 1986, LB 311, § 4; Laws 1991, LB 549, § 9; Laws 1998, LB 1191, § 26; Laws 2000, LB 1192, § 3; Laws 2005, LB 503, § 3.

23-2313 Retirement system; Auditor of Public Accounts; audit; report.

It shall be the duty of the Auditor of Public Accounts to make an annual audit of the retirement system and an annual report to the retirement board and to the Clerk of the Legislature of the condition of the retirement system. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of the

report required by this section by making a request for such report to either the Auditor of Public Accounts or the retirement board.

Source: Laws 1965, c. 94, § 13, p. 407; Laws 1973, LB 214, § 2; Laws 1979, LB 322, § 5; Laws 1988, LB 1169, § 1; Laws 2012, LB782, § 23.
Operative date July 19, 2012.

23-2314 Retirement system; powers.

The retirement system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General.

Source: Laws 1965, c. 94, § 14, p. 407; Laws 1996, LB 847, § 6.

23-2315 Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties.

(1) Upon filing an application for benefits with the board, an employee may elect to retire at any time after attaining the age of fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the County Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the county, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

Source: Laws 1965, c. 94, § 15, p. 407; Laws 1975, LB 47, § 2; Laws 1979, LB 391, § 1; Laws 1982, LB 287, § 1; Laws 1986, LB 311, § 5; Laws 1987, LB 60, § 1; Laws 1987, LB 296, § 1; Laws 1994, LB 833, § 7; Laws 1996, LB 1076, § 3; Laws 2003, LB 451, § 6; Laws 2009, LB188, § 3.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

23-2315.01 Retirement for disability; application; when; medical examination.

(1) Any member, disregarding the length of service, may be retired as a result of disability either upon his or her own application or upon the application of

his or her employer or any person acting in his or her behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member should be retired because he or she suffers from an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which began while the member was a participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of fifty-five to undergo a medical examination at the expense of the board once each year. Should any disability beneficiary refuse to undergo such an examination, his or her disability retirement benefit may be discontinued by the board.

Source: Laws 1975, LB 47, § 3; Laws 1997, LB 623, § 5; Laws 2001, LB 408, § 5; Laws 2010, LB950, § 6.

23-2316 Retirement system; retirement value for employee.

The retirement value for any employee who retires under the provisions of section 23-2315 shall be (1) for participants in the defined contribution benefit, the sum of the employee's employee account and employer account as of the date of final account value and (2) for participants in the cash balance benefit, the benefit provided in section 23-2308.01 as of the date of final account value.

Source: Laws 1965, c. 94, § 16, p. 407; Laws 2002, LB 687, § 11; Laws 2003, LB 451, § 7.

23-2317 Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information.

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 23-2316 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 23-2316 except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 23-2308.01, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of

final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the retiring

member may be made at any time prior to the commencement of the lump-sum or annuity payments.

Source: Laws 1965, c. 94, § 17, p. 407; Laws 1979, LB 416, § 2; Laws 1981, LB 462, § 2; Laws 1983, LB 210, § 1; Laws 1985, LB 347, § 8; Laws 1986, LB 311, § 6; Laws 1987, LB 60, § 2; Laws 1992, LB 543, § 1; Laws 1993, LB 417, § 3; Laws 1996, LB 1273, § 15; Laws 2002, LB 687, § 12; Laws 2003, LB 451, § 8; Laws 2006, LB 1019, § 4; Laws 2007, LB328, § 3; Laws 2009, LB188, § 4; Laws 2012, LB916, § 9.
Effective date April 7, 2012.

23-2317.01 County Equal Retirement Benefit Fund; created; use.

There is hereby created the County Equal Retirement Benefit Fund to be administered by the board. Each county participating in the retirement system on January 1, 1984, pursuant to the County Employees Retirement Act shall make a contribution at least once a year to the fund, in addition to any other retirement contributions. Such contribution shall be in an amount determined by the board to provide all similarly situated male and female members of the retirement system with equal benefits pursuant to subsection (2) of section 23-2317 and to provide for direct expenses incurred in administering the fund. The board shall keep a record of the contributions made by each county.

Source: Laws 1983, LB 210, § 4; Laws 1991, LB 549, § 10; Laws 1998, LB 1191, § 27.

23-2318 Transferred to section 23-2334.

23-2319 Termination of employment; termination benefit; vesting.

(1) Except as provided in section 42-1107, upon termination of employment, except for retirement or disability, and after filing an application with the board, a member may receive:

(a) If not vested, a termination benefit equal to the amount of his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount of his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April

1 of the year following the year in which the member attains the age of seventy and one-half years. For purposes of subdivision (1)(b) of this section, for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the county and no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 23-2306, including vesting credit. If an employee retires pursuant to section 23-2315, such employee shall be fully vested in the retirement system.

Source: Laws 1965, c. 94, § 19, p. 408; Laws 1975, LB 32, § 3; Laws 1975, LB 47, § 4; Laws 1984, LB 216, § 4; Laws 1986, LB 311, § 7; Laws 1987, LB 60, § 3; Laws 1991, LB 549, § 11; Laws 1993, LB 417, § 4; Laws 1994, LB 1306, § 1; Laws 1996, LB 1076, § 4; Laws 1996, LB 1273, § 16; Laws 1997, LB 624, § 4; Laws 1998, LB 1191, § 28; Laws 2002, LB 687, § 13; Laws 2003, LB 451, § 9; Laws 2006, LB 366, § 6; Laws 2009, LB188, § 5.

23-2319.01 Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; use; investment.

(1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the County Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to restore employer accounts or employer cash balance accounts. Except as provided in subdivision (4)(c) of section 23-2317, no forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(2)(a) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account and, except as provided in subdivision (b) of

this subsection, transactions for payment of benefits under sections 23-2315 and 23-2319 shall be suspended pending the final outcome of the grievance or other appeal.

(b) If a member elects to receive benefits payable under sections 23-2315 and 23-2319 after a grievance or appeal is filed, the member may receive an amount up to the balance of his or her employee account or member cash balance account or twenty-five thousand dollars payable from the employee account or member cash balance account, whichever is less.

(3) The County Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. Prior to July 1, 2012, the County Employer Retirement Expense Fund shall be used to meet expenses of the retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or County Employees Cash Balance Retirement Expense Fund make such use reasonably necessary. The County Employer Retirement Expense Fund shall consist of any reduction in a county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. On July 1, 2012, or as soon as practicable thereafter, any money in the County Employer Retirement Expense Fund shall be transferred by the State Treasurer to the County Employees Retirement Fund and credited to the cash balance benefit established in section 23-2308.01.

(4) Prior to July 1, 2012, expenses incurred as a result of a county depositing amounts into the County Employer Retirement Expense Fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with subsection (3) of this section. Any money in the County Employer Retirement Expense Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 624, § 5; Laws 2000, LB 1200, § 4; Laws 2002, LB 687, § 14; Laws 2003, LB 451, § 10; Laws 2005, LB 364, § 5; Laws 2007, LB328, § 4; Laws 2011, LB509, § 7; Laws 2012, LB916, § 10.
Effective date April 7, 2012.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

23-2319.02 Repealed. Laws 2012, LB 916, § 47.

23-2320 Employee; reemployment; status; how treated; reinstatement; repay amount received.

(1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the County Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 23-2315 and again becomes a permanent full-time or

permanent part-time county employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions. For purposes of vesting employer contributions made prior to and after the reentry into the retirement system under subsection (3) of section 23-2319, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 23-2319, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 23-2319.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 23-2319. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 23-2319 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years of reemployment and shall be completed within five years of reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 23-2315 and becomes a permanent full-time employee or permanent part-time employee with a county under the County Employees Retirement Act more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending. Following reinstatement, the member shall repay the value of the amount received from his or her employee account or member cash balance account under subdivision (2)(b) of section 23-2319.01.

Source: Laws 1965, c. 94, § 20, p. 409; Laws 1985, LB 347, § 9; Laws 1991, LB 549, § 12; Laws 1993, LB 417, § 5; Laws 1997, LB 624, § 6; Laws 1999, LB 703, § 3; Laws 2002, LB 407, § 6; Laws 2002, LB 687, § 15; Laws 2003, LB 451, § 11; Laws 2004, LB 1097, § 5; Laws 2007, LB328, § 6; Laws 2008, LB1147, § 4; Laws 2011, LB509, § 8.

23-2321 Retirement system; employee; death before retirement; death benefit; death while performing qualified military service; additional death benefit.

(1) In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (a) for participants in the defined contribution benefit, the total of the employee account and the employer account and (b) for participants in the cash balance benefit, the benefit provided in section 23-2308.01. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred eighty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

(2) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(3) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with a participating county and such employment had terminated on the date of the member's death.

Source: Laws 1965, c. 94, § 21, p. 409; Laws 1975, LB 47, § 5; Laws 1985, LB 347, § 10; Laws 1994, LB 1306, § 2; Laws 1996, LB 1273, § 17; Laws 2002, LB 687, § 16; Laws 2003, LB 451, § 12; Laws 2004, LB 1097, § 6; Laws 2009, LB188, § 6; Laws 2012, LB916, § 11.
Effective date April 7, 2012.

23-2322 Retirement system; retirement benefits; exemption from legal process; exception; payment for civil damages; conditions.

(1) Except as provided in subsection (2) of this section, annuities or benefits which any person shall be entitled to receive under the County Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act. The payment of any annuities or benefits subject to such order shall take priority over any payment made pursuant to subsection (2) of this section.

(2) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuities or benefits from the retirement system, the court may order the payment of the member's annuities or benefits under the retirement system for such civil damages, except that the annuities or benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities or benefits shall not be stayed on the filing of any appeal of the conviction. If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section by Laws 2012, LB916, shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

Source: Laws 1965, c. 94, § 22, p. 409; Laws 1985, LB 347, § 12; Laws 1986, LB 311, § 8; Laws 1989, LB 506, § 1; Laws 1996, LB 1273, § 18; Laws 2012, LB916, § 12.
Effective date April 7, 2012.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2323 Transferred to section 23-2335.

23-2323.01 Reemployment; military service; contributions; effect.

(1) Any employee who, while an employee, entered into and served in the armed forces of the United States and who within ninety days after honorable discharge or honorable separation from active duty again became an employee shall be credited, for the purposes of section 23-2315, with all the time actually served in the armed forces as if such person had been an employee throughout such service in the armed forces pursuant to the terms and conditions of subsection (2) of this section.

(2) Under such rules and regulations as the retirement board adopts and promulgates, an employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (a) the employee shall be treated as not having incurred a break in service by reason of his or her period of military service, (b) the period of military service shall be credited for the purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan, and (c) the employer shall allocate the amount of employer contributions to the member's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of member and employer contributions under this section, the member's compensation during the period of military service shall be the rate the member would have received but for the military service or, if not reasonably determinable, the average rate the member received during the twelve-month period immediately preceding military service.

(3) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to this section, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under section 23-2307.

Source: Laws 1996, LB 847, § 7; Laws 1998, LB 1191, § 29; Laws 1999, LB 703, § 4.

23-2323.02 Direct rollover; terms, defined; distributee; powers; board; duties.

(1) For purposes of this section and section 23-2323.03:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 23-2323.03, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after January 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary

and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

Source: Laws 1996, LB 847, § 8; Laws 2002, LB 407, § 7; Laws 2012, LB916, § 13.
Effective date April 7, 2012.

23-2323.03 Retirement system; accept payments and rollovers; limitations; board; duties.

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01 if the contributions do not exceed the amount authorized to be paid by the member pursuant to section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01, and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments made under section 23-2306.02, 23-2306.03, 23-2320, or 23-2323.01.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

Source: Laws 1996, LB 847, § 9; Laws 1997, LB 250, § 7; Laws 1997, LB 624, § 7; Laws 2001, LB 142, § 35; Laws 2002, LB 407, § 8.

23-2323.04 Retirement system; accept transfers; limitations; how treated.

The retirement system may accept as payment for withdrawn amounts made pursuant to the County Employees Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such amounts. The amount transferred shall not exceed the amount withdrawn and such transferred amount shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

Source: Laws 2002, LB 407, § 9.

23-2324 Retirement system; membership status; not lost while employment continues.

Persons who have become members of the retirement system shall not thereafter lose their status as members while they remain employees.

Source: Laws 1965, c. 94, § 24, p. 409.

23-2325 Retirement system; false or fraudulent actions; prohibited acts; penalty; denial of benefits.

Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The retirement board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the member to recover any benefits already paid on the basis of such information.

Source: Laws 1965, c. 94, § 25, p. 410; Laws 1977, LB 40, § 98; Laws 1998, LB 1191, § 32.

23-2326 Retirement benefits; declared additional to benefits under federal Social Security Act.

The retirement allowances and benefits provided for by the County Employees Retirement Act shall be in addition to benefits and allowances payable under the provisions of the federal Social Security Act.

Source: Laws 1965, c. 94, § 26, p. 410; Laws 1985, LB 347, § 13.

23-2327 Repealed. Laws 2002, LB 687, § 34.

23-2328 Retirement system; elected officials and employees having regular term; when act operative.

The provisions of the County Employees Retirement Act pertaining to elected officials or other employees having a regular term of office shall be so interpreted as to effectuate its general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1965, c. 94, § 28, p. 410; Laws 1985, LB 347, § 15.

23-2329 Retirement system; when effective.

The County Employees Retirement Act shall become effective for each county upon its adoption by the county board or on January 1, 1987, whichever is earlier.

Source: Laws 1965, c. 94, § 29, p. 410; Laws 1975, LB 45, § 2; Laws 1985, LB 347, § 16; Laws 1985, LB 432, § 3.

Cross References

County with one hundred fifty thousand inhabitants or more, provisions applicable if retirement system not adopted, see section 23-1118.

23-2330 Retirement system; adoption; certification; list of eligible employees to retirement board.

Upon the adoption of the retirement system by the county board, the county clerk shall certify such action to the retirement board. Upon the adoption of the retirement system by the county board or by January 1, 1987, whichever is earlier, the county clerk shall submit to the board a list of all employees then eligible for participation in the plan, which list shall state the name and address of the employee and his or her gross monthly wage.

Source: Laws 1965, c. 94, § 30, p. 410; Laws 1967, c. 133, § 1, p. 418; Laws 1973, LB 216, § 2; Laws 1975, LB 45, § 3; Laws 1985, LB 347, § 17; Laws 1985, LB 432, § 4.

23-2330.01 Limitation of actions.

Every claim and demand under the County Employees Retirement Act and against the retirement system or the retirement board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

Source: Laws 1996, LB 1076, § 6.

23-2330.02 Retirement system contributions, property, and rights; how treated.

All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the County Employees Retirement Act.

Source: Laws 1998, LB 1191, § 30.

23-2330.03 Termination of system or contributions; effect.

Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to the amounts credited to the members' accounts shall be nonforfeitable.

Source: Laws 1998, LB 1191, § 31.

23-2330.04 Municipal county; duties.

The municipal county shall be responsible for making contributions and performing other duties and shall exercise the powers of a county under the County Employees Retirement Act with respect to the employees of the municipal county.

Source: Laws 2001, LB 142, § 36.

23-2331 Act, how cited.

Sections 23-2301 to 23-2332.01 shall be known and may be cited as the County Employees Retirement Act.

Source: Laws 1965, c. 94, § 31, p. 411; Laws 1985, LB 347, § 18; Laws 1991, LB 549, § 13; Laws 1994, LB 833, § 8; Laws 1995, LB 501, § 3; Laws 1996, LB 847, § 10; Laws 1996, LB 1076, § 7; Laws 1997, LB 250, § 8; Laws 1997, LB 623, § 6; Laws 1997, LB 624, § 8; Laws 1998, LB 1191, § 33; Laws 1999, LB 687, § 3; Laws 2001, LB 142, § 37; Laws 2001, LB 186, § 2; Laws 2002, LB 407, § 10; Laws 2002, LB 687, § 17.

23-2332 County in excess of 85,000; commissioned law enforcement personnel; supplemental retirement plan.

Any county with a population in excess of eighty-five thousand inhabitants which participates in the Retirement System for Nebraska Counties established by the County Employees Retirement Act shall establish and fund a supplemental retirement plan for the benefit of all present and future commissioned law enforcement personnel employed by such county. The auxiliary benefit plan shall be funded by additional contributions to the county employees retirement plan in excess of the amounts established by sections 23-2307 and 23-2308. The additional contributions made by employees shall be credited to the employee account, and contributions paid by the county shall be credited to the employer account, with each amount to be established at a rate of two percent of compensation. All contributions made pursuant to this section shall be invested and administered according to the County Employees Retirement Act.

Source: Laws 1985, LB 432, § 5; Laws 1991, LB 549, § 14.

23-2332.01 County of 85,000 or less; commissioned law enforcement personnel; supplemental retirement plan.

Any county with a population of eighty-five thousand inhabitants or less which participates in the Retirement System for Nebraska Counties established by the County Employees Retirement Act shall establish and fund a supplemental retirement plan for the benefit of all present and future commissioned law enforcement personnel employed by such county who possess a valid law enforcement officer certificate or diploma, as established by the Nebraska Police Standards Advisory Council. The auxiliary benefit plan shall be funded by additional contributions to the county employees retirement plan in excess of the amounts established by sections 23-2307 and 23-2308. The additional contributions made by employees shall be credited to the employee account, and contributions paid by the county shall be credited to the employer account, with each amount to be established at a rate of one percent of compensation. All contributions made pursuant to this section shall be invested and administered according to the County Employees Retirement Act.

Source: Laws 2001, LB 186, § 3.

23-2333 Retirement; prior service annuity; how computed.

For purposes of sections 23-2333 and 23-2334, the definitions found in section 23-2301 shall apply.

As of the date of adoption of the retirement system, a prior service annuity shall be computed for all employees who have been employees continuously for one year prior to the date of the adoption of the retirement system and who are at least twenty-five years of age. Such prior service annuity shall be equal to the number of years of creditable prior service multiplied by the prior service annuity factor.

The number of years of creditable prior service shall be the number of completed years of prior service less all years during which the employee was participating in or for which he or she received a benefit from a public retirement plan, but not more than twenty-five.

The prior service annuity factor shall be the smaller of (1) one dollar or (2) the employee's compensation for the last completed twelve months of prior service divided by two thousand four hundred.

Source: Laws 1965, c. 94, § 11, p. 406; Laws 1969, c. 172, § 3, p. 753; R.S.1943, (1991), § 23-2311; Laws 1994, LB 833, § 9; Laws 1998, LB 1191, § 34.

23-2334 Retirement; prior service retirement benefit; how determined.

The prior service retirement benefit shall be a straight life annuity, payable monthly with the first payment made as of the annuity start date, in an amount determined in accordance with section 23-2333, except that if the monthly payment would be less than ten dollars, payments shall be made annually in advance with each annual payment equal to 11.54 multiplied by the monthly payment that would have been made in the absence of this restriction on small monthly payments, and no prior service retirement benefit shall be paid to any person who terminates his or her employment unless such person has been continuously employed by the county for ten or more years immediately prior to termination. An employee meeting such requirement and who terminates his or her employment shall not receive a prior service benefit determined in accordance with section 23-2333 prior to attaining age sixty-five.

Prior service retirement benefits shall be paid directly by the county to the retired employee.

Source: Laws 1965, c. 94, § 18, p. 408; Laws 1973, LB 352, § 1; Laws 1975, LB 32, § 2; R.S.1943, (1991), § 23-2318; Laws 1994, LB 833, § 10; Laws 2003, LB 451, § 13.

23-2335 Repealed. Laws 1998, LB 1191, § 85.

ARTICLE 24

POLITICAL SUBDIVISIONS TORT CLAIMS ACT

Section
23-2401. Transferred to section 13-902.
23-2402. Transferred to section 13-903.
23-2403. Transferred to section 13-904.
23-2404. Transferred to section 13-905.
23-2405. Transferred to section 13-906.

Section
23-2406. Transferred to section 13-907.
23-2407. Transferred to section 13-908.
23-2408. Transferred to section 13-909.
23-2409. Transferred to section 13-910.
23-2410. Transferred to section 13-912.
23-2410.01. Transferred to section 13-911.
23-2411. Transferred to section 13-913.
23-2411.01. Transferred to section 13-914.
23-2412. Transferred to section 13-915.
23-2413. Transferred to section 13-916.
23-2414. Transferred to section 13-917.
23-2415. Transferred to section 13-918.
23-2416. Transferred to section 13-919.
23-2416.01. Transferred to section 13-920.
23-2416.02. Transferred to section 13-921.
23-2416.03. Transferred to section 13-922.
23-2417. Transferred to section 13-923.
23-2418. Transferred to section 13-924.
23-2419. Transferred to section 13-925.
23-2419.01. Transferred to section 13-926.
23-2420. Transferred to section 13-901.

23-2401 Transferred to section 13-902.

23-2402 Transferred to section 13-903.

23-2403 Transferred to section 13-904.

23-2404 Transferred to section 13-905.

23-2405 Transferred to section 13-906.

23-2406 Transferred to section 13-907.

23-2407 Transferred to section 13-908.

23-2408 Transferred to section 13-909.

23-2409 Transferred to section 13-910.

23-2410 Transferred to section 13-912.

23-2410.01 Transferred to section 13-911.

23-2411 Transferred to section 13-913.

23-2411.01 Transferred to section 13-914.

23-2412 Transferred to section 13-915.

23-2413 Transferred to section 13-916.

23-2414 Transferred to section 13-917.

23-2415 Transferred to section 13-918.

23-2416 Transferred to section 13-919.

23-2416.01 Transferred to section 13-920.

23-2416.02 Transferred to section 13-921.

23-2416.03 Transferred to section 13-922.

23-2417 Transferred to section 13-923.

23-2418 Transferred to section 13-924.

23-2419 Transferred to section 13-925.

23-2419.01 Transferred to section 13-926.

23-2420 Transferred to section 13-901.

ARTICLE 25

CIVIL SERVICE SYSTEM

(a) COUNTIES OF MORE THAN 300,000 INHABITANTS

Section
23-2501. Purpose of sections.
23-2502. Terms, defined.
23-2503. Civil Service Commission; formation.
23-2504. Commission; members; qualifications; number; election; vacancy; how filled.
23-2505. Commission; members; compensation; expenses.
23-2506. Commission; meetings; notice; rules of procedure, adopt; chairman.
23-2507. Commission; powers; duties.
23-2508. Commission; salary and pay plans for employees; recommend.
23-2509. Employees; status.
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(a) COUNTIES OF MORE THAN 300,000 INHABITANTS

23-2501 Purpose of sections.

The purpose of sections 23-2501 to 23-2516 is to guarantee to all citizens a fair and equal opportunity for employment in the county offices governed by sections 23-2501 to 23-2516, to establish conditions of employment and to promote economy and efficiency in such offices.

Source: Laws 1971, LB 921, § 1.

23-2502 Terms, defined.

As used in sections 23-2501 to 23-2516, unless the context otherwise requires:

(1) Employees shall mean all county employees of the county. The term employees shall not include part-time employees, employees subject to the state personnel service, court-appointed employees, employees of the county attorney's office, employees of the public defender's office, dentists, physicians, practicing attorneys, deputy sheriffs, officers appointed by the Governor, or elected officers or the chief deputy of each office or the deputy of each office if there is not more than one deputy in the office;

(2) Part-time employee shall mean any person whose position is seasonal or temporary as defined by the commission;

(3) Department head shall mean an officer holding an elected office, an officer holding office by appointment of the Governor, the chief deputy of any office or the deputy if there is not more than one deputy, and such other persons holding positions as are declared to be department heads by the county board; and

(4) Commission shall mean the Civil Service Commission.

Source: Laws 1971, LB 921, § 2; Laws 1977, LB 136, § 1; Laws 1989, LB 5, § 5.

23-2503 Civil Service Commission; formation.

In any county having a population of three hundred thousand inhabitants or more, there shall be a Civil Service Commission which shall be formed as provided in sections 23-2501 to 23-2516 within ninety days of May 21, 1971.

Source: Laws 1971, LB 921, § 3.

23-2504 Commission; members; qualifications; number; election; vacancy; how filled.

(1) The commission shall consist of five members who shall be in sympathy with the application of merit principles to public employment. No member of the commission shall be a member of any local, state or national committee of a political party or an officer or member of a committee in any partisan political club or organization.

(2) The members of the commission shall be as follows: (a) Two elected officers selected from the offices of and elected by the county commissioners, clerk, assessor, treasurer, public defender, register of deeds, clerk of the district court, surveyor and sheriff, being of opposite political parties if possible, and each party shall separately select its own member, (b) two full-time permanent county employees, and (c) one public member holding no public or political office. The initial two such employees shall be selected by the two elected officers referred to in subdivision (a) of this subdivision as follows: Any such employee who is at least twenty-one years of age may submit his name as a candidate to the elected officer of his own party who shall then select one commission member from such list of names. The four members of the commission shall then select the public member. The commission shall establish employee election procedures which shall provide that all county employees subject to sections 23-2501 to 23-2516 may vote and, if not less than twenty-one years of age, be candidates for a member of the commission. One employee member of the commission shall be a Democrat elected by the Democrat-registered employees subject to sections 23-2501 to 23-2516 and one employee member of the commission shall be a Republican elected by the Republican-registered employees subject to sections 23-2501 to 23-2516. An employee otherwise eligible to vote and be a candidate for the office of employee member of the commission, but who is not registered as either a Democrat or a Republican, may become eligible to vote, and become a candidate for the office of employee member of the commission by making a declaration that he desires to vote for such a member of the commission, or be a candidate for such office, and, in the same declaration, designating the party, Democrat or Republican, with which he desires to be affiliated for this purpose. After making such declaration, that employee shall have the same right to vote for a candidate, and be a candidate for the office of employee member of the commission as he would have had if he were a registered member of the party so designated in the declaration. The manner, form, and contents of such declaration shall be initially established by the two elected officials referred to in subdivision (2)(a) of this section, subject to modification by the commission after it has been fully formed.

(3) The initial term of office of (a) the two elected officers shall be three years from May 21, 1971; (b) the initial term of office of the county employees shall be two years from May 21, 1971; and (c) the initial term of the public member shall be three years from May 21, 1971.

At the expiration of the initial term of office, a successor member shall be elected or appointed as provided in sections 23-2501 to 23-2516 for a term of three years. Membership on the commission of any member shall terminate upon the resignation of any member or at such time as the member no longer complies with the qualifications for election or appointment to the commission. In the event a member's term terminates prior to the expiration of the term for which he was elected or appointed, the commission shall appoint a successor complying with the same qualifications for the unexpired term.

Source: Laws 1971, LB 921, § 4.

23-2505 Commission; members; compensation; expenses.

The members of the commission shall not receive compensation for their services but shall be reimbursed for such necessary expenses and mileage as may be incurred in the performance of their duties with reimbursement for mileage to be made at the rate provided in section 81-1176. The county board shall provide sufficient funds in order that such commission may function as set forth in sections 23-2501 to 23-2516.

Source: Laws 1971, LB 921, § 5; Laws 1981, LB 204, § 31; Laws 1996, LB 1011, § 14.

23-2506 Commission; meetings; notice; rules of procedure, adopt; chairman.

The commission shall hold regular meetings at least once every three months, and shall designate the time and place thereof by notice posted in the courthouse at least seven days prior to the meeting. The commission shall adopt rules of procedure and shall keep a record of its proceedings. The commission shall also make provision for special meetings and all meetings and records of the commission shall be open to the public except as otherwise provided in sections 23-2501 to 23-2516. The commission shall elect one of its members as chairman for a period of one year or until his successor has been duly elected and qualified.

Source: Laws 1971, LB 921, § 6.

23-2507 Commission; powers; duties.

(1) The commission may prescribe the following: (a) General employment policies and procedures; (b) regulations for recruiting, examination and certification of qualified applicants for employment and the maintenance of registers of qualified candidates for employment for all employees governed by sections 23-2501 to 23-2516; (c) a system of personnel records containing general data on all employees and standards for the development and maintenance of personnel records to be maintained within the offices governed by sections 23-2501 to 23-2516; (d) regulations governing such matters as hours of work, promotions, transfers, demotions, probation, terminations and reductions in force; (e) regulations for use by all offices governed by sections 23-2501 to 23-2516 relating to such matters as employee benefits, vacation, sick leave and holidays.

(2) The commission shall require department heads to provide sufficient criteria to enable the commission to properly conduct employment examinations.

(3) The commission shall require department heads to supply to the commission position classification plans, job descriptions and job specifications.

(4) Individual personnel records shall be available for inspection only by the employee involved, his department head and such other persons as the commission shall authorize.

(5) The commission shall have such other powers as are necessary to effectuate the purposes of sections 23-2501 to 23-2516.

(6) All acts of the commission pursuant to the authority conferred in this section shall be binding on all county department heads governed by sections 23-2501 to 23-2516.

Source: Laws 1971, LB 921, § 7.

The civil service commission is a statutorily created tribunal established by the Legislature. As a statutorily created entity, the commission has only such authority as has been conferred on it by statute. Douglas Cty. Bd. of Comrs. v. Civil Serv. Comm. of Douglas Cty., 263 Neb. 544, 641 N.W.2d 55 (2002).

The mandatory retirement at age sixty-five provision adopted by the Douglas County Civil Service Commission reflects a permissible means of accomplishing a rational and reasonable objective and it is not unconstitutional. Armstrong v. Howell, 371 F.Supp. 48 (D. Neb. 1974).

23-2508 Commission; salary and pay plans for employees; recommend.

The commission may recommend to the county board salary and pay plans for the employees.

Source: Laws 1971, LB 921, § 8.

23-2509 Employees; status.

All employees governed by sections 23-2501 to 23-2516 on May 21, 1971, shall retain their employment without the necessity of taking any qualifying examination.

Source: Laws 1971, LB 921, § 9.

23-2510 Employee; discharged, suspended, demoted; order filed with commission; copy to employee; appeal.

Any employee may be discharged, suspended, or demoted in rank or compensation by his department head by a written order which shall specifically state the reasons therefor. Such order shall be filed with the commission and a copy of such order shall be served upon the employee personally or by leaving it at his usual place of residence. Any employee so affected may, within ten days after service of the order, appeal such order to the commission. Notice of such appeal shall be in writing, signed by the employee appealing, and delivered to any member of the commission. The delivery of the notice of appeal shall be sufficient to perfect an appeal and no other act shall be deemed necessary to confer jurisdiction of the commission over the appeal. In the event any employee is discharged, suspended or demoted prior to the formation of the commission, such employee may appeal the order to the commission within ten days after the formation of the commission in the manner provided in this section.

Source: Laws 1971, LB 921, § 10.

Pursuant to this section, the civil service commission is authorized to hear employee appeals from decisions where an employee is discharged, suspended, or demoted in rank or compensation by the employee's department head by a written order. The Legislature has authorized the commission to hear only those appeals which meet the requirements of this section. Douglas Cty. Bd. of Comrs. v. Civil Serv. Comm. of Douglas Cty., 263 Neb. 544, 641 N.W.2d 55 (2002).

23-2511 Employee; discharged, suspended, demoted; appeal; hearing; order; effect.

The commission shall, within two weeks after receipt of the notice of appeal, hold a public hearing thereon at which the employee shall be entitled to appear personally, be represented by counsel, cross-examine witnesses and produce evidence. The commission shall have the authority to affirm, modify or revoke the order appealed from, and the finding and the decision of the commission shall be certified to the department head who issued the order, and the finding and decision of the commission shall be binding on all parties concerned. In the event of an appeal to the commission, no order affecting an employee shall become permanent until the finding and decision of the commission shall be certified as provided in this section. Notwithstanding any other provision of sections 23-2501 to 23-2516, an employee affected by an order may request transfer to another department governed by sections 23-2501 to 23-2516 with the consent of the commission and the department head of such other department.

Source: Laws 1971, LB 921, § 11.

A plain reading of the statutes which govern the appeal process from a county commission does not reveal an express or implied legislative intent to limit objections on appeal to those claims presented to the administrative tribunal. Although appeals through administrative channels are preferred and encouraged, procedural due process defenses should not be waived if timely raised in the first judicial tribunal to review the administrative action. Ashby v. Civil Serv. Comm. of Douglas County, 241 Neb. 988, 492 N.W.2d 849 (1992).

23-2512 Commission; subpoena, oaths, production of records; powers.

To effectively carry out the duties imposed on the commission by sections 23-2501 to 23-2516, the commission shall have the power to subpoena witnesses, administer oaths, and compel the production of books and papers.

Source: Laws 1971, LB 921, § 12.

23-2513 Employee; no discrimination against because of political, racial, or religious opinions or affiliations; exceptions.

No employee or person desiring to be an employee in an office governed by sections 23-2501 to 23-2516 shall be appointed, demoted or discharged, or in any way favored or discriminated against because of political, racial, or religious opinions or affiliations, but advocating, or being a member of a political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence shall be sufficient reason to discharge an employee.

Source: Laws 1971, LB 921, § 13.

23-2514 Chief deputy or deputy; removal; effect on salary.

Notwithstanding any other provision of sections 23-2501 to 23-2516, any person who holds the position of chief deputy, or deputy if there is not more than one deputy in the office, may be removed by the elected officer from the position of chief deputy or deputy without cause but such person shall, if he has been an employee of the county for more than two years prior to his appointment as chief deputy or deputy, have the right, unless discharged or demoted as provided in sections 23-2510 and 23-2511, to remain as a county employee at a salary not less than eighty percent of his average salary during the three preceding years.

Source: Laws 1971, LB 921, § 14.

23-2515 Commission; appeals; district court; procedure.

An appeal from a final order of the commission shall be in the manner provided in sections 25-1901 to 25-1908.

Source: Laws 1971, LB 921, § 15; Laws 1986, LB 595, § 1.

An appeal from a final order of the county civil service commission is a petition in error, not an original breach of contract action against the county under section 23-135. Pierce v. Douglas Cty. Civil Serv. Comm., 275 Neb. 722, 748 N.W.2d 660 (2008).

The district court had jurisdiction over a former employee's petition in error claiming that the county public properties department breached grievance procedures under a collective bargaining agreement in terminating his employment. Pierce v. Douglas Cty. Civil Serv. Comm., 275 Neb. 722, 748 N.W.2d 660 (2008).

When the county civil service commission acts in a judicial manner, a party adversely affected by its decision is entitled to appeal to the district court through the petition in error statutes. Pierce v. Douglas Cty. Civil Serv. Comm., 275 Neb. 722, 748 N.W.2d 660 (2008).

23-2516 Sections, how construed.

If any provision of sections 23-2501 to 23-2516 or of any rule, regulation or order thereunder or the application of such provision to any person or circumstances shall be held invalid, the remainder of sections 23-2501 to 23-2516 and the application of such provision of sections 23-2501 to 23-2516 or of such rule, regulation or order to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Source: Laws 1971, LB 921, § 16.

(b) COUNTIES OF 150,000 TO 300,000 INHABITANTS

23-2517 Purpose of sections.

(1) Sections 23-2517 to 23-2533 shall be known and may be cited as the County Civil Service Act.

(2) The general purpose of the County Civil Service Act is to establish a system of personnel administration that meets the social, economic, and program needs of county offices. This system shall provide means to recruit, select, develop and maintain an effective and responsive work force, and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, fringe benefits, discharge and other related activities. All appointments and promotions under the County Civil Service Act shall be made based on merit and fitness.

Source: Laws 1974, LB 995, § 1; Laws 2006, LB 808, § 7.

The board of county commissioners is required to bargain with its employees on all matters relating to employment except those covered by the specific provisions of these statutes. American Fed. of S., C. & M. Emp. v. County of Lancaster, 200 Neb. 301, 263 N.W.2d 471 (1978).

23-2518 Terms, defined.

For purposes of the County Civil Service Act:

(1) Appointing authority means elected officials and appointed department directors authorized to make appointments in the county service;

(2) Board of county commissioners means the board of commissioners of any county with a population of one hundred fifty thousand to three hundred thousand inhabitants;

(3) Classified service means the positions in the county service to which the act applies;

(4) County personnel officer means the employee designated by the board of county commissioners to administer the act;

(5) Department means a functional unit of the county government headed by an elected official or established by the board of county commissioners;

(6) Deputy means an individual who serves as the first assistant to and at the pleasure of an elected official;

(7) Elected official means an officer elected by the popular vote of the people and known as the county attorney, public defender, county sheriff, county treasurer, clerk of the district court, register of deeds, county clerk, county assessor, and county surveyor;

(8) Internal Revenue Code means the Internal Revenue Code as defined in section 49-801.01;

(9) Political subdivision means a village, city of the second class, city of the first class, city of the primary class, city of the metropolitan class, county, school district, public power district, or any other unit of local government including entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. Political subdivision does not include a contractor with the county;

(10) State means the State of Nebraska;

(11) Straight-time rate of pay means the rate of pay in effect on the date of transfer of employees stated in the resolution by the county board requesting the transfer; and

(12) Transferred employee means an employee of the state or a political subdivision transferred to the county pursuant to a request for such transfer made by the county under section 23-2518.01.

Source: Laws 1974, LB 995, § 2; Laws 1999, LB 272, § 11; Laws 2006, LB 808, § 8.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

23-2518.01 Transfer of employees to county; state employee; rights.

(1) The board of county commissioners may, by resolution, request that a state or political subdivision transfer employees to the county (a) if the board of county commissioners finds that direct control over such employees will be of benefit to the county, (b) pursuant to a merger of services, or (c) due to the assumption of functions of the state or a political subdivision by the county. Such resolution shall state an effective date for the transfer of such employees. If the state or political subdivision determines that the transfer of its employees is necessary or desirable and approves the request of the board of county commissioners, the employees who are being transferred shall become county employees on the effective date of the transfer as stated in the resolution of the board of county commissioners requesting such transfer.

(2) No state employee subject to a transfer under subsection (1) of this section is required to become a county employee and may instead exercise all of his or her rights under any contract involving state employees and negotiated pursuant to the Industrial Relations Act and the State Employees Collective Bargaining Act.

Source: Laws 2006, LB 808, § 9.

Cross References

Industrial Relations Act, see section 48-801.01.
State Employees Collective Bargaining Act, see section 81-1369.

23-2518.02 Transfer of employees; retirement benefits; calculation; funding.

(1) For transfers involving a retirement system which maintains a defined benefit plan, the transfer value of the transferring employee's accrued benefit shall be calculated by one or both of the retirement systems involved as follows:

(a) If the retirement system of the state or political subdivision maintains a defined benefit plan, an initial benefit transfer value of the employee's accrued benefit shall be determined by calculating the present value of the employee's retirement benefit based on the employee's years of service as of the date of transfer and the other actuarial assumptions of the retirement system of the state or political subdivision so that the effect on the retirement system of the state or political subdivision will be actuarially neutral; and

(b) If the retirement system of the county maintains a defined benefit plan, the final benefit transfer value of the employee's accrued benefit shall be determined by calculating the present value of the employee's retirement benefit as if the employee were employed on the date of transfer and had completed the same amount of service with the same compensation as the employee actually completed at the state or political subdivision prior to transfer. The calculation shall then be based on the employee's assumed years of service as of the date of transfer and the other actuarial assumptions of the retirement system of the county so that the effect on the retirement system of the county will be actuarially neutral.

(2) An employee of the state or a political subdivision who transfers from a position in the state or a political subdivision to a position in the county, and whose customary employment with the state or a political subdivision was for more than twenty hours per week shall receive credit for his or her years of participation in the retirement system of the state or political subdivision for purposes of membership in the retirement system of the county.

(3) An employee referred to in subsection (2) of this section shall have his or her participation in the retirement system of the state or political subdivision transferred to the retirement system of the county through one of the following options:

(a) If the retirement system of the county maintains a defined contribution plan, the employee shall transfer all of his or her funds by paying to the retirement system of the county from funds held by the retirement system of the state or political subdivision an amount equal to one of the following: (i) If the retirement system of the state or political subdivision maintains a defined benefit plan, an amount not to exceed the initial benefit transfer value, leaving no funds attributable to the transferred employee within the retirement system of the state or political subdivision; or (ii) if the retirement system of the state or political subdivision maintains a defined contribution plan, an amount not to exceed the employee and employer accounts of the transferring employee plus earnings during the period of employment with the state or political subdivision. The employee shall receive vesting credit for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the state or political subdivision. Payment shall be made within five years after employment begins with the receiving entity or prior to

retirement whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization; or

(b) If the retirement system of the county maintains a defined benefit plan, the employee shall transfer all of his or her funds out of the retirement system of the state or political subdivision to purchase service credits that will generate a final benefit transfer value not to exceed the employee's initial benefit transfer value in the retirement system of the state or political subdivision. After such purchase, the employee shall receive vesting credit in the retirement system of the county for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the state or political subdivision. The amount to be paid by the member for such service credit shall equal the actuarial cost to the retirement system of the county for allowing such additional service credit to the employee. If any funds remain in the retirement system of the state or political subdivision after the employee has purchased service credits in the retirement system of the county, such remaining funds shall be rolled over into another qualified trust under section 401(a) of the Internal Revenue Code, an individual retirement account, or an individual retirement annuity. Payment shall be made within five years after the transfer of services, but prior to retirement, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(4) The state or political subdivision, the county, and the employees who are being transferred may by binding agreement determine which parties will provide funds to pay any amount needed to purchase creditable service in the retirement system of the county sufficient to provide a final benefit transfer value not to exceed the employee's initial benefit transfer value, if the amount of a direct rollover from the retirement system of the state or political subdivision is not sufficient to provide a final benefit transfer value in the retirement system of the county.

(5) The retirement system of the county may accept cash rollover contributions from a member who is making payment pursuant to this section if the contributions do not exceed the amount of payment required for the service credits purchased by the member and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified trust under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, all of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified trust under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection shall be transferred to the retirement system within sixty days after the date of the distribution from the qualified trust, individual retirement account, or individual retirement annuity.

(6) Cash transferred to the retirement system of the county as a rollover contribution shall be deposited as other contributions.

(7) The retirement system of the county may accept direct rollover distributions made from a qualified trust pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(8) The county or its retirement system shall adopt provisions defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

(9) If the county participates in the Retirement System for Nebraska Counties and the transferred employee participates in the State Employees Retirement System, the transferred employee shall immediately begin participation in the Retirement System for Nebraska Counties under the same benefit which had been elected pursuant to subsection (1) of section 84-1309.02.

Source: Laws 2006, LB 808, § 10.

23-2518.03 Transfer of employees; sick leave; annual leave; vacation leave; other benefits; how treated.

(1) The state or a political subdivision shall transfer all accrued sick leave of the transferred employee up to the maximum number of accumulated hours for sick leave allowed by the county personnel system. The state or political subdivision shall reimburse the county for twenty-five percent of the value of the accrued sick leave hours based on the straight-time rate of pay for the employee.

(2) The transferred employee may transfer the maximum amount of accrued annual leave earned as an employee of the state or a political subdivision allowed by the county personnel system. The state or a political subdivision shall reimburse the county for one hundred percent of the value of the hours of accrued annual leave transferred.

(3) No transferred employee shall lose any accrual rate value of his or her sick leave and vacation leave as a result of becoming a county employee, and a transferred employee may credit years of service with the state or a political subdivision toward the accrual rate for sick leave and vacation leave plans. When accrued sick leave and vacation leave for a transferred employee are at a greater rate value than allowed by the county's sick leave and vacation leave plans, the state or political subdivision shall pay the county the difference between the value of the benefits allowed by the county and the state or political subdivision based on, at the time of the transfer, twenty-five percent of the employee's straight-time rate of pay for the sick leave and one hundred percent of the employee's straight-time rate of pay for vacation leave. A state or political subdivision shall reimburse the county not later than one year after the transfer is complete.

(4) The transferred employee shall not receive any additional accrual rate value for county benefits until the employee meets the qualifications for the increased accrual rates pursuant to the county's requirements.

(5) The transferred employee shall receive credit for time of service with the state or a political subdivision toward participation, coverage by insurance programs for the county, and the waiting period for medical insurance coverage provided by the county.

Source: Laws 2006, LB 808, § 11.

23-2518.04 Transfer of employees; credit for time of service; seniority.

(1) A transferred employee shall be credited for time of service with the state or a political subdivision toward the probationary period in the county:

(a) A transferred employee whose credited time of service with the state or a political subdivision does not satisfy the county's probationary period time requirement shall be a probationary employee of the county and afforded the same rights, benefits, and privileges as are afforded to a probationary employee under the county personnel system; and

(b) A transferred employee whose credited time of service with the state or a political subdivision does not satisfy the county's probationary period time requirement shall successfully complete the remainder of the county's probationary period time requirement before being given status with the county.

(2) Transferred employees shall retain seniority accumulated during service with the state or a political subdivision, and no transferred employee shall lose accumulated seniority as a result of becoming a county employee.

Source: Laws 2006, LB 808, § 12.

23-2519 County service; classified and unclassified service, defined; exemptions.

The county service shall be divided into the classified service and the unclassified service. All officers and positions of the county shall be in the classified service unless specifically designated as being in the unclassified service established by the County Civil Service Act. All county employees who have permanent status under any other act prior to the passage of the County Civil Service Act shall have status under the act without further qualification. Positions in the unclassified service shall not be governed by the act and shall include the following:

(1) County officers elected by popular vote and persons appointed to fill vacancies in such elective offices;

(2) The county personnel officer and the administrative assistant to the board of county commissioners;

(3) Bailiffs;

(4) Department heads and one principal assistant or chief deputy for each county department. When more than one principal assistant or chief deputy is mandated by law, all such positions shall be in the unclassified service;

(5) Members of boards and commissions appointed by the board of county commissioners;

(6) Persons employed in a professional or scientific capacity to make or conduct a temporary and special investigation or examination on behalf of the board of county commissioners;

(7) Attorneys;

(8) Physicians;

(9) Employees of an emergency management organization; and

(10) Deputy sheriffs.

Nothing in the act shall be construed as precluding the appointing authority from filling any positions in the unclassified service in the manner in which positions in the classified service are filled.

Source: Laws 1974, LB 995, § 3; Laws 1991, LB 117, § 1; Laws 1996, LB 43, § 4; Laws 2006, LB 808, § 13.

23-2520 Personnel office; created; county personnel officer; board; members; costs of administering.

There is hereby created a personnel office in the office of the board of county commissioners, the executive head of which shall be the county personnel officer. In such office there shall be a personnel policy board consisting of six members with powers and duties provided in the County Civil Service Act. The board of county commissioners shall make appropriations from the general fund to meet the estimated costs of administering the act.

Source: Laws 1974, LB 995, § 4; Laws 1987, LB 198, § 1; Laws 2006, LB 808, § 14.

23-2521 Personnel policy board; members; qualifications; appointment; term; removal; chairperson; meetings; quorum.

(1) The members of the personnel policy board shall be persons in sympathy with the application of merit principles to public employment and who are not otherwise employed by the county, except that the member employed by the county if serving on such board on May 6, 1987, shall continue to serve until the term of such member expires. No member shall hold during his or her term, or shall have held for a period of one year prior thereto, any political office or a position as officer or employee of a political organization.

(2) Two members of the board shall be appointed by the board of county commissioners, two members shall be appointed by the elected department heads, and two members shall be appointed by classified employees who are covered by the county personnel system.

(3) The first appointments made to the personnel policy board shall be for one, two, three, four, and five years. The board of county commissioners shall initially appoint members for terms of one and five years. The elected department heads shall initially appoint members for terms of two and four years. The classified employees who are covered by the county personnel system shall initially appoint a member for a term of three years. Within three months after May 6, 1987, the classified employees who are covered by the county personnel system shall initially appoint another member for a term of one year. Thereafter, each member shall be appointed in the same manner for a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed in the same manner for the remainder of the term. Each member of the board shall hold office until his or her successor is appointed and qualified.

(4) The board of county commissioners and elected department heads may remove any member of the personnel policy board for neglect of duty or misconduct in office after first giving him or her a copy of the reasons for removal and providing for the member to be heard publicly before the commissioners and elected department heads. A copy of the charges and a transcript of the record of the hearing shall be filed with the county clerk.

(5) The personnel policy board shall elect a chairperson from among its members. The board shall meet at such time and place as shall be specified by call of the chairperson or the county personnel officer. At least one meeting shall be held quarterly. Four members shall constitute a quorum for the transaction of business. Board members shall serve without compensation.

Source: Laws 1974, LB 995, § 5; Laws 1987, LB 198, § 2.

23-2522 Personnel policy board; powers; duties.

The powers and duties of the personnel policy board shall be:

(1) To review and make recommendations to the board of county commissioners on the personnel rules and regulations and any amendments thereto prior to the approval by the commissioners;

(2) To advise and assist the personnel officer on matters of personnel policy, administration, and practice;

(3) To cooperate with and advise the personnel officer in fostering interest and cooperation of institutions of learning and civic, professional, and employee organizations in the improvement of personnel standards and the development of high public regard for the county as an employer and for careers in the county service;

(4) To require the personnel officer to make or to make on its own initiative any investigation which it may consider necessary concerning the management of personnel in the county service;

(5) To review any grievance or case of disciplinary action of a classified service employee when appealed by such employee in accordance with approved personnel rules and regulations and issue a determination that is binding on all parties concerned;

(6) To issue subpoenas to compel the attendance of county employees as witnesses and the production of documents and to administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with any of the powers and duties of such board. In case of a refusal to obey a subpoena issued to any county employee, the personnel policy board on its own motion, or a party to the proceedings, may make application to the district court of Lancaster County for an enforcement order, and any failure to obey such order may be punished by such court as contempt thereof;

(7) To make annual reports and recommendations to the board of county commissioners; and

(8) To perform such other duties as may be expressly set forth in the County Civil Service Act and in the regulations adopted pursuant thereto.

Source: Laws 1974, LB 995, § 6; Laws 1987, LB 198, § 3; Laws 2006, LB 808, § 15.

23-2523 County personnel officer; appointment; qualifications.

The board of county commissioners shall appoint a county personnel officer who shall be a person experienced in the field of personnel administration and in known sympathy with the application of merit principles in public employment.

Source: Laws 1974, LB 995, § 7.

23-2524 County personnel officer; duties.

In addition to other duties imposed upon him or her by or pursuant to the County Civil Service Act, it shall be the duty of the county personnel officer:

(1) To apply and carry out the act and the rules and regulations adopted thereunder;

(2) To attend meetings of the personnel policy board and to act as its secretary and keep minutes of its proceedings;

(3) To establish and maintain a roster of all employees in the classified service, in which there shall be set forth as to each employee the class title, pay, or status, and other pertinent data;

(4) To appoint such employees of his or her office and such experts and special assistants as may be necessary to carry out effectively the act;

(5) To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling, and welfare;

(6) To encourage and exercise leadership in the development of effective personnel administration with the several county agencies, departments, and institutions; and

(7) To perform such other lawful acts as he or she may consider necessary or desirable to carry out the purposes and provisions of the County Civil Service Act.

Source: Laws 1974, LB 995, § 8; Laws 2006, LB 808, § 16.

23-2525 County personnel officer; personnel rules and regulations for classified service.

The county personnel officer shall, with the assistance of two advisory groups, one of classified employees and one of department heads, prepare and submit to the personnel policy board proposed personnel rules and regulations for the classified service. He or she shall give reasonable notice thereof to the heads of all agencies, departments, county employee associations, and institutions affected thereby, and they shall be given an opportunity, upon request, to appear before the board and present their views thereon. The personnel policy board shall submit the rules and regulations for adoption or amendment and adoption by resolution of the board of county commissioners. Amendments thereto shall be made in the same manner. The rules and regulations shall provide:

(1) For a single integrated classification plan covering all positions in the county service except those expressly exempt from the County Civil Service Act, which shall group all positions into defined classes containing a descriptive class title and a code identifying each class, and which shall be based on similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required and the same schedule of pay may be equitably applied to all positions in the same class. After the classification plan has been approved by the personnel policy board, the county personnel officer shall be responsible for the administration and maintenance of the plan and for the allocation of each classified position. Any employee affected by the allocation of a position to a class shall, upon request, be given a reasonable opportunity to be heard thereon by the personnel policy board who shall issue an advisory opinion to the personnel officer;

(2) For a compensation plan for all employees in the classified service, comprising salary schedules, hours of work, premium payments, special allowances, and fringe benefits, considering the amount of money available, the prevailing rates of pay in government and private employment, the cost of living, the level of each class of position in the classification plan, and other relevant factors. Initial, intervening, and maximum rates of pay for each class shall be established to provide for steps in salary advancement without change

of duty in recognition of demonstrated quality and length of service. The compensation plan and amendments thereto shall be adopted in the manner prescribed for rules and regulations and shall in no way limit the authority of the board of county commissioners relative to appropriations for salary and wage expenditures;

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions. Competitive examination shall not be required for transferred employees transferring from positions in the state or a political subdivision to positions in the county pursuant to a merger of services or transferred employees transferring from positions in the state or a political subdivision to positions in the county due to the assumption of functions of the state or a political subdivision by the county. The rules and regulations shall provide for the public announcement of the holding of examinations and shall authorize the personnel officer to prescribe examination procedures and to place the names of successful candidates on eligible lists in accordance with their respective ratings. Examinations may be assembled or unassembled and may include various job-related examining techniques, such as rating training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations, and any other measures of ability to perform the duties of the position. Examinations shall be scored objectively and employment registers shall be established in the order of final score. Certification of eligibility for appointment to vacancies shall be in accordance with a formula which limits selection by the hiring department from among the highest ranking available and eligible candidates, but which also permits selective certification under appropriate conditions as prescribed in the rules and regulations;

(4) For promotions which shall give appropriate consideration to examinations and to record of performance, seniority, and conduct. Vacancies shall be filled by promotion whenever practicable and in the best interest of the service, and preference may be given to employees within the department in which the vacancy occurs;

(5) For the rejection of candidates who fail to comply with reasonable requirements of the personnel officer in regard to such factors as physical conditions, training, and experience or who have been guilty of infamous or disgraceful conduct, who are addicted to alcohol or narcotics, or who have attempted any deception or fraud in connection with an examination;

(6) Prohibiting disqualification of any person from taking an examination, from promotion or from holding a position because of race, sex, unless it constitutes a bona fide occupational qualification, or national origin, physical disabilities, age, political or religious opinions or affiliations, or other factors which have no bearing upon the individual's fitness to hold the position;

(7) For a period of probation not to exceed one year before appointment or promotion may be made complete, and during which period a probationer may be separated from his or her position without the right of appeal or hearing except as provided in section 23-2531. After a probationer has been separated, he or she may again be placed on the eligible list at the discretion of the personnel officer. The rules shall provide that a probationer shall be dropped from the payroll at the expiration of his or her probationary period if, within ten days prior thereto, the appointing authority has notified the personnel officer in writing that the services of the employee have been unsatisfactory;

(8) When an employee has been promoted but fails to satisfactorily perform the duties of the new position during the probationary period, he or she shall be returned to a position comparable to that held immediately prior to promotion at the current salary of such position;

(9) For temporary or seasonal appointments of limited terms of not to exceed one year;

(10) For part-time appointment where the employee accrues benefits of full-time employment on a basis proportional to the time worked;

(11) For emergency employment for not more than thirty days with or without examination, with the consent of the county personnel officer and department head;

(12) For provisional employment without competitive examination when there is no appropriate eligible list available. No such provisional employment shall continue longer than six months, nor shall successive provisional appointments be allowed;

(13) For transfer from a position in one department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges;

(14) For the transfer of employees of the state or a political subdivision to the county pursuant to a merger of services or due to the assumption of functions of the state or a political subdivision by the county;

(15) For layoff by reason of lack of funds or work or abolition of the position, or material change in duties or organization, for the layoff of nontenured employees first, and for reemployment of permanent employees so laid off, giving consideration in both layoff and reemployment to performance record and seniority in service;

(16) For establishment of a plan for resolving employee grievances and complaints;

(17) For hours of work, holidays, and attendance regulations in the various classes of positions in the classified service, and for annual, sick, and special leaves of absence, with or without pay, or at reduced pay;

(18) For the development of employee morale, safety, and training programs;

(19) For a procedure whereby an appointing authority may suspend, reduce, demote, or dismiss an employee for misconduct, inefficiency, incompetence, insubordination, malfeasance, or other unfitness to render effective service and for the investigation and public hearing of appeals of such suspended, reduced, demoted, or dismissed employee;

(20) For granting of leave without pay to a permanent employee to accept a position in the unclassified service, and for his or her return to a position comparable to that formerly held in the classified service at the conclusion of such service;

(21) For regulation covering political activity of employees in the classified service; and

(22) For other regulations not inconsistent with the County Civil Service Act and which may be necessary for its effective implementation.

Source: Laws 1974, LB 995, § 9; Laws 2006, LB 808, § 17.

23-2526 Personal service; classified service; certification of payrolls.

(1) No county personnel or fiscal or other officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of such pay bears the certification of the county personnel officer or his or her authorized agent, in the manner he or she may prescribe, that the persons named therein have been appointed and employed in accordance with the County Civil Service Act and the rules and regulations adopted hereunder.

(2) The county personnel officer may, for proper cause, withhold certification from a payroll any specific item or items thereon. The personnel officer shall provide that certification of payrolls be made each year and that such certification shall remain in effect except in the case of an officer or employee whose status has changed after the last certification of his or her payroll, in which case no voucher for payment of salary to such officer or employee shall be issued or payment of salary made without further certification by the personnel officer.

Source: Laws 1974, LB 995, § 10; Laws 2006, LB 808, § 18.

23-2527 Reciprocal agreements; county personnel officer; cooperate with other governmental agencies.

(1) Any county subject to the County Civil Service Act may enter into reciprocal agreements, upon such terms as may be agreed upon, for the use of equipment, materials, facilities, and services with any public agency or body for purposes deemed of benefit to the county personnel system.

(2) The county personnel officer, with the approval of the board of county commissioners, may cooperate with other governmental agencies charged with public personnel administration in conducting personnel tests, recruiting personnel, training personnel, establishing lists from which eligible candidates shall be certified for appointment, and for the interchange of personnel and their benefits.

Source: Laws 1974, LB 995, § 11; Laws 2006, LB 808, § 19.

23-2528 Tenure.

(1) An employee in the classified service who has completed his probationary period shall have permanent tenure until he resigns voluntarily or is separated in accordance with the rules and regulations governing retirement, dismissal or layoff.

(2) An employee in the classified service with a probationary, provisional, temporary or emergency appointment shall have no tenure under that appointment and may be separated from employment by his appointing authority without any right of appeal except as provided in section 23-2531.

Source: Laws 1974, LB 995, § 12.

23-2529 Veterans preference; passing score.

Veterans preference shall be granted to all applicants who are otherwise eligible for employment and who request such preference on their applications. In order to receive preference, the veteran must submit a copy of his or her discharge papers and, for disability credit, proof from the United States Department of Veterans Affairs that the disability is at least ten percent. To the

passing score of veteran candidates, ten points shall be added for a disabled veteran and five points for all other veterans.

Source: Laws 1974, LB 995, § 13; Laws 1991, LB 2, § 4.

23-2530 Repealed. Laws 1989, LB 5, § 7.

23-2531 Discrimination; prohibited; other prohibited acts.

(1) Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of personnel administration because of political or religious opinions or affiliations or because of race, national origin, or other nonmerit factors shall be prohibited. Discrimination on the basis of age or sex or physical disability shall be prohibited unless specific age, sex, or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration. The rules and regulations shall provide for appeals in cases of alleged discrimination to the personnel policy board whose determination shall be binding upon a finding of discrimination.

(2) No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under the County Civil Service Act or in any manner commit or attempt to commit any fraud preventing the impartial execution of the act and the rules and regulations promulgated pursuant to the act.

(3) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.

(4) No employee of the personnel office, examiner, or other person shall defeat, deceive, or obstruct any person in his or her right to examination, eligibility, certification, or appointment under the act, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any persons with respect to employment in the classified service.

Source: Laws 1974, LB 995, § 15; Laws 2006, LB 808, § 20.

23-2532 Federal merit standards; federal Hatch Act provisions; applicable to programs.

Whenever federal merit standards or the federal Hatch Act provisions are applicable to programs, the personnel policy board shall take such action as is necessary to assure that all personnel practices in those programs are in accordance with federal regulations, and those practices found not to be in compliance with such regulations shall not be implemented in those programs.

Source: Laws 1974, LB 995, § 16.

23-2533 Violations; penalty.

Any person who willfully violates any provision of the County Civil Service Act or of the rules and regulations adopted under the act shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than five hundred dollars, or be imprisoned in the county jail for not more than six months, or be both so fined and imprisoned.

Source: Laws 1974, LB 995, § 17; Laws 2006, LB 808, § 21.

The board of county commissioners is required to bargain with its employees on all matters relating to employment except those covered by the specific provisions of these statutes. American Fed. of S., C. & M. Emp. v. County of Lancaster, 200 Neb. 301, 263 N.W.2d 471 (1978).

(c) COUNTIES OF LESS THAN 150,000 INHABITANTS

23-2534 County board; adopt personnel policies and procedures.

The county board of any county with a population of less than one hundred fifty thousand inhabitants may adopt policies and procedures pursuant to sections 23-2534 to 23-2544 which concern employee hiring, advancement, training, career development, position classification, salary administration, fringe benefits, discharge, and other related activities.

Source: Laws 1994, LB 212, § 1.

23-2535 Terms, defined.

For purposes of sections 23-2534 to 23-2544:

(1) Appointing authority shall mean officials and appointed department directors authorized to make appointments in the county service;

(2) Classified service shall mean the positions in the county service to which sections 23-2534 to 23-2544 are made applicable;

(3) County board shall mean the board of county supervisors or board of county commissioners of a county with a population of less than one hundred fifty thousand inhabitants;

(4) County personnel officer shall mean the employee designated by the county board to administer a program adopted pursuant to sections 23-2534 to 23-2544;

(5) Department shall mean a major functional unit of the county government headed by an official or established by the county board;

(6) Deputy shall mean an individual who serves as the first assistant to and at the pleasure of an official;

(7) Lay member shall mean anyone not employed by the county or acting on its behalf other than a member of the personnel policy board; and

(8) Official shall mean an officer elected by the popular vote of the people or a person appointed to a countywide office.

Source: Laws 1994, LB 212, § 2.

23-2536 County service; classified and unclassified service, defined.

If a program is adopted pursuant to sections 23-2534 to 23-2544, the county service shall be divided into the classified service and the unclassified service. All officials and employees of the county shall be in the classified service unless specifically designated as being in the unclassified service. Positions in the unclassified service shall not be governed by personnel rules and regulations adopted pursuant to sections 23-2534 to 23-2544. Unless otherwise designated by rules and regulations adopted pursuant to sections 23-2534 to 23-2544, the unclassified service shall include the following:

(1) Officials;

(2) The county personnel officer and the administrative assistant to the county board;

(3) Bailiffs;

(4) Department heads and one principal assistant or deputy for each county department;

(5) Members of boards and commissions appointed by the county board;

(6) Persons employed in a professional or scientific capacity to make or conduct a temporary and special investigation or examination on behalf of the county board;

(7) Attorneys, including deputy county attorneys; and

(8) Employees who are covered by the State Personnel System.

Nothing in sections 23-2534 to 23-2544 shall be construed as precluding the appointing authority from filling any positions in the unclassified service in the manner in which positions in the classified service are filled.

Source: Laws 1994, LB 212, § 3; Laws 1995, LB 124, § 1.

23-2537 Personnel policy board; members; terms; removal; officers; meetings.

(1) A personnel policy board may be created by resolution of the county board. The members of a personnel policy board shall include one elected county official chosen by the elected county officials other than the members of the county board, one county board member chosen by the county board, one member chosen by the employees who are not described in subdivisions (1) through (8) of section 23-2536, one lay member chosen by the elected county officials, and one lay member chosen by the county board. All members shall serve four-year terms, except of the members first chosen, the elected county official and the county board member shall serve one-year terms, the lay member chosen by the county board shall serve a two-year term, the lay member chosen by the elected county officials shall serve a three-year term, and the member chosen by the employees shall serve a four-year term. Each member of the board shall hold office until his or her successor is appointed and qualified. Any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed in the same manner for the remainder of the term.

(2) A majority of the county board and elected county officials may remove any member of the personnel policy board for nonattendance at three meetings.

(3) A personnel policy board shall elect a chairperson from among its members. A board shall meet at such time and place as shall be specified by call of the chairperson or the county personnel officer. At least one meeting shall be held quarterly. Three members shall constitute a quorum for the transaction of business. Board members shall serve without compensation but shall receive reimbursement for actual and necessary expenses.

Source: Laws 1994, LB 212, § 4; Laws 1995, LB 124, § 2.

23-2538 Personnel policy board; powers and duties.

The powers and duties of a personnel policy board shall be:

(1) To review and make recommendations to the county board on the personnel rules and regulations and any amendments thereto prior to the approval by the county board;

(2) To advise and assist the county personnel officer, if appointed, on matters of personnel policy, administration, and practice;

(3) To direct the county personnel officer, if appointed, in fostering the interest and cooperation of institutions of learning and civic, professional, and employee organizations in the improvement of personnel standards and the development of high public regard for the county as an employer and for careers in the county service;

(4) To require the county personnel officer, if appointed, to make any investigation which the personnel policy board may consider necessary concerning the management of personnel in the county service;

(5) To review any grievance or case of disciplinary action of a classified service employee when appealed by such employee in accordance with approved personnel rules and regulations and issue a determination that is binding on all parties concerned;

(6) To make annual reports and recommendations to the county board; and

(7) To perform such other acts and duties as may be expressly set forth in sections 23-2534 to 23-2544 and in the rules and regulations adopted pursuant thereto and such other acts and duties as directed by the county board in furtherance of the purposes of sections 23-2534 to 23-2544.

Source: Laws 1994, LB 212, § 5.

23-2539 County personnel officer; appointment.

Only the county board of a county having a personnel policy board may appoint a county personnel officer who shall be a person experienced in the field of personnel administration. The person appointed may be an elected county official, a member of the personnel policy board, a county employee, or a person employed for the position.

Source: Laws 1994, LB 212, § 6.

23-2540 County personnel officer; powers.

In addition to other duties imposed upon a county personnel officer, if appointed, a county personnel officer may:

(1) Attend meetings of the personnel policy board and act as its secretary and keep minutes of its proceedings;

(2) Establish and maintain a roster of all employees in the classified service in which there shall be set forth as to each employee the class title, pay or status, and other pertinent data;

(3) Establish and maintain a central record-keeping system for all county personnel records;

(4) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling, and welfare;

(5) Encourage and exercise leadership in the development of effective personnel administration with the several county agencies, departments, and institutions; and

(6) Perform such other lawful acts as the personnel policy board may direct.

Source: Laws 1994, LB 212, § 7.

23-2541 Personnel rules and regulations; adoption; contents.

The personnel policy board, if created, shall, with the assistance of two advisory groups, one of classified employees and one of department heads, adopt proposed personnel rules and regulations for the classified service and provide reasonable notice of proposed rules and regulations to the heads of all agencies, departments, county employee associations, and institutions affected thereby. Any person affected by such rules and regulations shall be given an opportunity, upon request, to appear before the personnel policy board and present his or her views on the rules and regulations. The personnel policy board shall submit proposed rules and regulations or amendments for adoption by the county board. The county board may consider and adopt only personnel rules and regulations or amendments proposed by the personnel policy board and may not repeal or revoke a rule or regulation except upon the recommendation of the personnel policy board.

The rules and regulations or amendments may provide:

(1) For a single integrated classification plan covering all positions in the county service except those expressly exempt from sections 23-2534 to 23-2544, which shall (a) group all positions into defined classes containing a descriptive class title and a code identifying each class and (b) be based on similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required and the same schedule of pay may be equitably applied to all positions in the same class. After the classification plan has been approved by the personnel policy board, the county personnel officer shall be responsible for the administration and maintenance of the plan and for the allocation of each classified position. Any employee affected by the allocation of a position to a class shall, upon request, be given a reasonable opportunity to be heard on such allocation by the personnel policy board which shall issue an advisory opinion to the county personnel officer;

(2) For a compensation plan for all employees in the classified service, comprising salary schedules, attendance regulations, premium payments, special allowances, and fringe benefits, considering the amount of money available, the prevailing rates of pay in government and private employment, the cost of living, the level of each class of position in the classification plan, and other relevant factors. The compensation plan and amendments to such plan shall be adopted in the manner prescribed for rules and regulations and shall in no way limit the authority of the county board relative to appropriations for salary and wage expenditures;

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions. The rules and regulations shall provide for the public announcement of the holding of examinations and shall authorize the county personnel officer to prescribe examination procedures and to place the names of successful candidates on eligible lists in accordance with their respective ratings. Examinations may be assembled or unassembled and may include various job-related examining techniques, such as rating training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations, and any other measures of ability to perform the duties of the position. Examinations shall be scored objectively and employment registers shall be established in the order of final score. Certification of eligibility for appointment to vacancies shall be in accordance with a formula which limits selection by the hiring department from among the highest

ranking available and eligible candidates, but which also permits selective certification under appropriate conditions as prescribed in the rules and regulations;

(4) For promotions which shall give appropriate consideration to examinations and to record of performance, seniority, and conduct. Vacancies shall be filled by promotion whenever practicable and in the best interest of the service and preference may be given to employees within the department in which the vacancy occurs;

(5) For the rejection of candidates who fail to comply with reasonable requirements of the county personnel officer in regard to such factors as physical conditions, training, and experience, who have been guilty of infamous or disgraceful conduct, who are currently abusing alcohol or narcotics, or who have attempted any deception or fraud in connection with an examination;

(6) For prohibiting disqualification of any person from (a) taking an examination, (b) promotion, or (c) holding a position, solely because of race, sex, national origin, physical disabilities, age, political or religious opinions or affiliations, or other factors which have no bearing upon the individual's fitness to hold the position;

(7) For a period of probation, not to exceed one year, before appointment or promotion may be made complete and during which period a probationer may be separated from his or her position without the right of appeal or hearing. After a probationer has been separated, he or she may again be placed on the eligible list at the discretion of the county personnel officer. The rules and regulations shall provide that a probationer shall be dropped from the payroll at the expiration of his or her probationary period if, within ten days prior thereto, the appointing authority has notified the county personnel officer in writing that the services of the employee have been unsatisfactory;

(8) For temporary or seasonal appointments of limited terms of not to exceed one year;

(9) For part-time appointment in which the employee accrues benefits of full-time employment on a basis proportional to the time worked;

(10) For emergency employment for not more than thirty days with or without examination with the consent of the county personnel officer and department head;

(11) For provisional employment without competitive examination when there is no appropriate eligible list available. Provisional employment shall not continue longer than six months and successive provisional appointments shall not be allowed;

(12) For transfer from a position in one department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges;

(13) For layoff by reason of lack of funds or work, abolition of the position, or material change in duties or organization, for the layoff of nontenured employees first, and for reemployment of permanent employees so laid off, giving consideration in both layoff and reemployment to performance record and seniority in service;

(14) For establishment of a plan for resolving employee grievances and complaints;

(15) For holidays, for attendance regulations in the various classes of positions in the classified service, and for annual, sick, and special leaves of absence, with or without pay or at reduced pay;

(16) For the development of employee morale, safety, and training programs;

(17) For a procedure whereby an appointing authority may suspend, reduce, demote, or dismiss an employee for misconduct, inefficiency, incompetence, insubordination, malfeasance, or other unfitness to render effective service and for the investigation and public hearing of appeals of such suspended, reduced, demoted, or dismissed employee;

(18) For granting of leave without pay to a permanent employee to accept a position in the unclassified service and for his or her return to a position comparable to that formerly held in the classified service at the conclusion of such service;

(19) For regulation covering political activity of employees in the classified service; and

(20) For other rules and regulations not inconsistent with sections 23-2534 to 23-2544 and the implementation of personnel policy in the county.

Source: Laws 1994, LB 212, § 8.

23-2542 Federal law; compliance.

Whenever federal Hatch Act provisions are applicable to programs, action shall be taken to assure that all personnel practices in those programs are in accordance with federal regulations. Those practices found not to be in compliance with such regulations shall not be implemented in those programs.

Source: Laws 1994, LB 212, § 9.

23-2543 Abolishment or termination of provisions.

The county board of a county which creates a personnel policy board may, by a two-thirds majority, vote to abolish such board, terminate the position of the personnel officer, and revoke all rules and regulations.

Source: Laws 1994, LB 212, § 10.

23-2544 Violations; penalty.

Any person who willfully violates sections 23-2534 to 23-2544 or the rules and regulations adopted pursuant to sections 23-2534 to 23-2544 shall be guilty of a Class II misdemeanor.

Source: Laws 1994, LB 212, § 11.

(d) METHOD OF PAYMENT TO EMPLOYEES

23-2545 Payments to employees; methods authorized.

The county board of each county in this state may authorize payments that include, but are not limited to, salary and reimbursable expenses to any employee by electronic funds transfer or a similar means of direct deposit.

Source: Laws 2011, LB278, § 2.

ARTICLE 26
PUBLIC BUILDING COMMISSION

Section
23-2601. Transferred to section 13-1301.
23-2602. Transferred to section 13-1302.
23-2603. Transferred to section 13-1303.
23-2604. Transferred to section 13-1304.
23-2605. Transferred to section 13-1305.
23-2606. Transferred to section 13-1306.
23-2607. Transferred to section 13-1307.
23-2608. Transferred to section 13-1308.
23-2609. Transferred to section 13-1309.
23-2610. Transferred to section 13-1310.
23-2611. Transferred to section 13-1311.
23-2612. Transferred to section 13-1312.

23-2601 Transferred to section 13-1301.

23-2602 Transferred to section 13-1302.

23-2603 Transferred to section 13-1303.

23-2604 Transferred to section 13-1304.

23-2605 Transferred to section 13-1305.

23-2606 Transferred to section 13-1306.

23-2607 Transferred to section 13-1307.

23-2608 Transferred to section 13-1308.

23-2609 Transferred to section 13-1309.

23-2610 Transferred to section 13-1310.

23-2611 Transferred to section 13-1311.

23-2612 Transferred to section 13-1312.

ARTICLE 27
LOCAL GOVERNMENTS REVENUE SHARING

Section
23-2701. Transferred to section 13-601.
23-2702. Transferred to section 13-602.
23-2703. Transferred to section 13-603.

23-2701 Transferred to section 13-601.

23-2702 Transferred to section 13-602.

23-2703 Transferred to section 13-603.

ARTICLE 28
COUNTY CORRECTIONS

Cross References

Jails, see Chapter 47.

Section
23-2801. Declaration of intent.
23-2802. County board of corrections; created; powers and duties.
23-2803. County board of corrections; meetings; functions; dissolution; procedure.
23-2804. County board of corrections; functions, duties, and responsibilities; how performed.
23-2805. Division of corrections; established; administrative officer; qualifications.
23-2806. Employment rights of employee of sheriff's office.
23-2807. Repealed. Laws 1979, LB 396, § 8.
23-2808. Repealed. Laws 1979, LB 396, § 8.
23-2809. County board of corrections; contracts authorized.
23-2810. Transferred to section 47-501.
23-2811. Transferred to section 47-502.

23-2801 Declaration of intent.

It has been the declared policy of the State of Nebraska in the exercise of its police powers to foster and promote local control of local affairs. Highest ranking in this hierarchy of local matters is the supervision of law enforcement. The state provides a system of law enforcement and local officers to carry out the functions thereof on a day-to-day basis within such system. When shifting populations and modern day trends make particular divisions of responsibilities obsolete, it is incumbent on the Legislature to remedy such a situation when it arises on the county level. It is in the interest of the people of the State of Nebraska that the Legislature establish a new structure of responsibility over the county jails and correctional facilities in certain heavily populated counties and give other counties the discretion whether or not to employ such structure. Such a structure would enable county boards to constitute themselves as county boards of corrections while the sheriffs of such counties would be released to pursue more fully their primary duties as law enforcement officers.

Source: Laws 1974, LB 782, § 1; Laws 1979, LB 396, § 2; Laws 1984, LB 394, § 2.

23-2802 County board of corrections; created; powers and duties.

In each county having a population of one hundred fifty thousand or more inhabitants, the county board shall also serve as the county board of corrections and in counties of less than one hundred fifty thousand inhabitants the county board may choose to serve as the county board of corrections. Any such county board of corrections shall have charge of the county jail and correctional facilities and of all persons by law confined in such jail or correctional facilities. Such county board of corrections shall comply with any rule prescribed by the Jail Standards Board pursuant to sections 47-101 to 47-104.

Source: Laws 1974, LB 782, § 2; Laws 1979, LB 396, § 3; Laws 1984, LB 394, § 3; Laws 1996, LB 233, § 1.

Cross References

Implement sentence reduction provision, see section 47-501.

23-2803 County board of corrections; meetings; functions; dissolution; procedure.

A county board which, by a majority vote of its members, elects to serve as the county board of corrections shall meet as the county board of corrections within sixty days after such election and shall meet at least once every sixty days thereafter. Such board of corrections shall hear arguments and make

recommendations for the maintenance, supervision, control, and direction of the county jail and correctional facilities.

A county board which, by a majority vote of its members, elects to serve as the county board of corrections may elect to dissolve the county board of corrections by a majority vote of its members. Such election to dissolve the county board of corrections shall be made at least sixty days before the beginning of the fiscal year in which the sheriff would resume responsibility for the jail.

Source: Laws 1974, LB 782, § 3; Laws 1979, LB 396, § 4; Laws 1984, LB 394, § 4.

23-2804 County board of corrections; functions, duties, and responsibilities; how performed.

Each county board of corrections shall carry out the functions, duties, and responsibilities as provided in Chapter 47, article 1.

Source: Laws 1974, LB 782, § 4.

23-2805 Division of corrections; established; administrative officer; qualifications.

To aid the county board of corrections in accomplishing the purposes of sections 23-1723 and 23-2801 to 23-2806, there is hereby established the division of corrections under the jurisdiction of the board. The administrative officer of the division shall be the director of corrections, who shall be qualified by education, training, and experience to perform the duties of such position.

Source: Laws 1974, LB 782, § 5; Laws 1979, LB 396, § 5; Laws 1984, LB 394, § 5.

23-2806 Employment rights of employee of sheriff's office.

No person in the employ of the office of the sheriff shall be reduced in rank or pay, suspended, removed, or deprived of any benefits accrued as of July 10, 1984, except as provided in the rules of the merit commission.

Source: Laws 1974, LB 782, § 7; Laws 1979, LB 396, § 6; Laws 1984, LB 394, § 6.

23-2807 Repealed. Laws 1979, LB 396, § 8.

23-2808 Repealed. Laws 1979, LB 396, § 8.

23-2809 County board of corrections; contracts authorized.

The county board of corrections may, pursuant to the Interlocal Cooperation Act or Joint Public Agency Act, contract with any governmental unit for the purposes of implementing and complying with this section and sections 23-1703, 23-2801 to 23-2803, 23-2805, and 23-2806 and may contract with any individual, firm, partnership, limited liability company, or corporation to provide goods or services essential to the operation and maintenance of the county jail.

Source: Laws 1979, LB 396, § 7; Laws 1984, LB 394, § 7; Laws 1993, LB 121, § 163; Laws 1999, LB 87, § 66.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

23-2810 Transferred to section 47-501.

23-2811 Transferred to section 47-502.

ARTICLE 29
COUNTY COMMUNITY BUILDINGS

Section
23-2901. Legislative intent.
23-2902. Site acquisition; purpose.
23-2903. Building; use; rules and regulations; agreements; funds.
23-2904. Community building district; establish; purpose.
23-2905. District; petition; requirements.
23-2906. District; petition; hearing; notice.
23-2907. District; boundaries; election.
23-2908. District; voter approval; board of trustees; how appointed; officers.
23-2909. Board of trustees; budget statement; tax; levied; warrants.
23-2910. District; bylaws.
23-2911. District; unpaid warrants; interest; rate.
23-2912. District; territory; added or withdrawn; procedure.
23-2913. District; territory withdrawn; outstanding obligations; liability.
23-2914. District; territory withdrawn; obligations; when not liable.
23-2915. District; dissolution; procedure.

23-2901 Legislative intent.

The Legislature finds that it is in the public interest to encourage maintenance of community buildings and grounds for the housing of various community enterprises and activities and for social, athletic, and recreational purposes and that different methods of accomplishing this should be made available in order to meet the desires and needs of different areas of the state.

Source: Laws 1977, LB 29, § 1.

23-2902 Site acquisition; purpose.

Any county in the State of Nebraska is hereby authorized to acquire a site or sites for and to equip a county community building or buildings for housing county enterprises and community activities and for social, athletic, and recreational purposes.

Source: Laws 1977, LB 29, § 2.

23-2903 Building; use; rules and regulations; agreements; funds.

The county board of any county may (1) make such rules and regulations as may be appropriate with respect to the use of any such building, including fees and charges for such use, (2) enter into agreements with any city, village, or school district in such county with respect to the use, maintenance, and support of any such building, and (3) use any available funds including federal revenue-sharing funds to aid in the equipping of any such building.

Source: Laws 1977, LB 29, § 3.

23-2904 Community building district; establish; purpose.

A majority of the resident taxpayers in any compact and contiguous district, territory, neighborhood, or community in the State of Nebraska, which is equivalent in area to one township or more, is hereby authorized to form, organize, and establish a community building district which shall be empowered to equip and maintain a community building or buildings for the purposes set forth in section 23-2901 when the organization thereof is completed.

Source: Laws 1977, LB 29, § 4.

23-2905 District; petition; requirements.

Whenever a majority of the resident taxpayers of any such district, territory, neighborhood, or community intends or desires to form, organize, and establish a community building district which will be empowered to acquire and maintain a community building or buildings for the purposes set forth in section 23-2901 when the organization thereof is completed, they shall signify such intention or desire by presenting to the county board of the county in which the greater portion of the land proposed to be included in such district is situated a petition setting forth the desires and intentions of such petitioners. Such petition may be in the form of two or more separate petitions which read substantially the same except for the different signatures and addresses thereon. Such petition shall contain the full names and post office addresses of the petitioners, a statement of the area in square miles, and the complete description of the boundaries of the real properties to be embraced in the proposed district. When such proposed district includes any municipality, the petitions must be signed by a majority of the resident taxpayers within such municipality and by a majority of the resident taxpayers outside such municipality and within the boundaries of the proposed district.

Source: Laws 1977, LB 29, § 5.

23-2906 District; petition; hearing; notice.

Upon receipt of such petition, the county board shall examine it to determine whether it complies with the requirements of section 23-2905. Upon finding that such petition complies with such requirements, the county board shall set a hearing thereon and cause notice thereof to be published at least three successive weeks in a newspaper of general circulation throughout the area to be included in the proposed district. Such notice shall contain a statement of the information contained in such petition and of the date, time, and place at which the hearing shall be held and that at such hearing proposals may be submitted for the exclusion of land from or the inclusion of additional land in the proposed district. If the proposed district lies in two or more counties, the hearing shall be held before the combined boards of all counties interested and the time and place thereof shall be as mutually agreed by such boards.

Source: Laws 1977, LB 29, § 6.

23-2907 District; boundaries; election.

After completion of the hearing required by section 23-2906, the county board, if it determines that formation of the proposed district would promote public health, convenience, or welfare, shall propose such changes in the boundaries of such proposed district or of the areas into which such proposed district is to be divided as it shall deem proper. The county board shall call a special election for the purpose of approval of the formation of such district and

the boundaries thereof by a majority of the qualified electors of the area affected by such district, or may submit the question of approval to be voted upon at any primary or general election.

Source: Laws 1977, LB 29, § 7.

23-2908 District; voter approval; board of trustees; how appointed; officers.

If the voters approve the formation and boundaries of the district, permanent organization shall be effected by the appointment by the county board of a board of trustees consisting of five residents of the district if the district includes territory in five townships or less. If the district embraces or includes territory in more than five townships, each township shall be represented on the board of trustees by one trustee who shall be a resident of the township. All trustees shall be appointed for two years and hold office until their successors have been appointed, except at the first appointment at least two trustees shall be appointed for one-year terms. The board of trustees shall organize by electing a president, vice president, and secretary-treasurer from the members of the board for a term of one year. All officers shall serve without pay.

Source: Laws 1977, LB 29, § 8.

23-2909 Board of trustees; budget statement; tax; levied; warrants.

The board of trustees shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary for carrying out the proposed policy in regard to the contemplated building or buildings for the ensuing fiscal year. After the adoption of the district's budget statement, the president and secretary shall certify the amount to be received from taxation, according to the adopted budget statement, to the proper county clerk or county clerks and the proper county board or boards which may levy a tax subject to section 77-3443, not to exceed the amount so certified nor to exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district, for the acquisition or maintenance of the building or buildings in the district for the fiscal year as provided by law. Such tax shall be collected as other taxes are collected in the county by the county treasurer, shall be placed to the credit of the district so authorizing the same, and shall be paid to the treasurer of the district upon warrants drawn upon the fund by the board of trustees of the district. Such warrants shall bear the signature of the president and the countersignature of the secretary of the district. The amount of the tax levy shall not exceed the amount of funds required to defray the expenses of the district for a period of one year as set forth in the adopted budget statement.

Source: Laws 1977, LB 29, § 9; Laws 1979, LB 187, § 257; Laws 1992, LB 719A, § 109; Laws 1996, LB 1114, § 47.

23-2910 District; bylaws.

The board of trustees of the district may adopt such bylaws as may be deemed necessary for the government of the district.

Source: Laws 1977, LB 29, § 10.

23-2911 District; unpaid warrants; interest; rate.

All warrants for the payment of any indebtedness of such a district, which are unpaid for want of funds, shall bear interest, not to exceed six percent per annum, from the date of the registering of such unpaid warrants with the district treasurer. The amount of such warrants shall not exceed the revenue provided for the year in which the indebtedness was incurred.

Source: Laws 1977, LB 29, § 11.

23-2912 District; territory; added or withdrawn; procedure.

Lands may be added to or withdrawn from such district in the manner provided for its formation, but no withdrawal may be allowed if the result thereof would be to reduce the remaining territory included in the district below the minimum area provided in section 23-2904.

Source: Laws 1977, LB 29, § 12.

23-2913 District; territory withdrawn; outstanding obligations; liability.

Any area withdrawn from a district shall be subject to assessment and be otherwise chargeable for the payment and discharge of all of the obligations outstanding at the time of the filing of the petition for the withdrawal of the area as fully as though the area had not been withdrawn. All provisions which could be used to compel the payment by a withdrawn area of its portion of the outstanding obligations had the withdrawal not occurred may be used to compel the payment on the part of the area of the portion of the outstanding obligations of the district for which it is liable.

Source: Laws 1977, LB 29, § 13.

23-2914 District; territory withdrawn; obligations; when not liable.

An area withdrawn from a district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred after the withdrawal of the area.

Source: Laws 1977, LB 29, § 14.

23-2915 District; dissolution; procedure.

Any district subject to the provisions of sections 23-2904 to 23-2915 which has no outstanding indebtedness may be dissolved in the manner provided for formation of such districts. When such dissolution is ordered, any remaining funds of the district shall be transferred to the counties in which the district is situated in the same proportion as the area of the district in each county bears to the total area of the district, and such funds shall be deposited in the general fund of the respective counties.

Source: Laws 1977, LB 29, § 15.

ARTICLE 30

POLITICAL ACTIVITIES

Section
23-3001. Transferred to section 20-160.

23-3001 Transferred to section 20-160.

ARTICLE 31
COUNTY PURCHASING

Section

23-3101 Act, how cited.

Sections 23-3101 to 23-3115 shall be known and may be cited as the County Purchasing Act.

Source: Laws 1985, LB 393, § 1; Laws 1988, LB 828, § 3.

23-3102 Purpose of act.

The purpose of the County Purchasing Act is to provide a uniform purchasing procedure for county purchases of equipment, supplies, other items of personal property, and services and to provide for county sales of surplus personal property which is obsolete or not usable by the county.

Source: Laws 1985, LB 393, § 2; Laws 1988, LB 828, § 4.

23-3103 Legislative intent.

The Legislature encourages counties to work together under the provisions of the County Purchasing Act when joint purchases would be to the best advantage of such counties.

Source: Laws 1985, LB 393, § 3.

23-3104 Terms, defined.

As used in the County Purchasing Act, unless the context otherwise requires:

(1) Mobile equipment means all vehicles propelled by any power other than muscular, including, but not limited to, motor vehicles, off-road designed vehicles, motorcycles, passenger cars, self-propelled mobile homes, truck-tractors, trucks, cabin trailers, semitrailers, trailers, utility trailers, and road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors;

(2) Personal property includes, but is not limited to, supplies, materials, mobile equipment, and equipment used by or furnished to any county officer, office, department, institution, board, or other agency of the county government. Personal property does not include election ballots;

(3) Services means any and all services except telephone, telegraph, postal, and electric light and power service, other similar services, and election contractual services; and

(4) Purchasing or purchase means the obtaining of personal property or services by sale, lease, or other contractual means. Purchase also includes contracting with sheltered workshops for products or services as provided in Chapter 48, article 15. Purchasing or purchase does not include any purchase or lease of personal property or services by a facility established under section 23-3501.

Source: Laws 1943, c. 57, § 5, p. 228; R.S.1943, § 23-324.03; R.S.1943, (1983), § 23-324.03; Laws 1985, LB 393, § 4; Laws 1988, LB 602, § 1; Laws 1988, LB 828, § 5; Laws 2003, LB 41, § 1; Laws 2011, LB628, § 1; Laws 2012, LB995, § 1.
Effective date April 6, 2012.

23-3105 Purchasing agent; compensation; bond.

The governing board of a county with a population of more than one hundred fifty thousand shall and the governing board of any other county may employ a purchasing agent who shall not be a county officer of the county. All purchases made from appropriated funds of the county shall be made through the purchasing agent. The county board shall pay the agent for such services as shall be agreed upon at the time of employment. The person so employed and designated shall serve at the pleasure of the county board and give bond to the county in such amount as the county board shall prescribe.

Source: Laws 1943, c. 57, § 3, p. 227; R.S.1943, § 23-324.01; Laws 1974, LB 1007, § 2; R.S.1943, (1983), § 23-324.01; Laws 1985, LB 393, § 5; Laws 1988, LB 602, § 2.

23-3106 Purchasing agent or county board; powers; election supplies.

The purchasing agent, under the supervision of the county board, or the county board, if there is no purchasing agent, shall purchase all personal property and services required by any office, officer, department, or agency of the county government in the county, subject to the County Purchasing Act. The purchasing agent or the county board, if there is no purchasing agent, shall draw up and enforce standard specifications which shall apply to all personal property purchased for the use of the county government, shall have charge of all central storerooms operated or established by the county board, and shall transfer personal property to or between the several county offices, officers, and departments. All purchases of election ballots and election contractual services shall be made by the election commissioner or by the county clerk in counties without an election commissioner.

Source: Laws 1943, c. 57, § 4, p. 228; R.S.1943, § 23-324.02; R.S.1943, (1983), § 23-324.02; Laws 1985, LB 393, § 6; Laws 1988, LB 602, § 3; Laws 1988, LB 828, § 6.

23-3107 County board or purchasing agent; administrative duties.

The county board or purchasing agent, subject to the approval of the county board, shall: (1) Prescribe the manner in which personal property shall be purchased, delivered, and distributed; (2) prescribe dates for making estimates, the future period which they are to cover, the form in which they are submitted, and the manner of their authentication; (3) revise forms from time to time as conditions warrant; (4) provide for the transfer to and between county departments and agencies of personal property which is surplus with one department or agency but which may be needed by another or others; (5) dispose of by sale personal property which has been declared by the county board to be surplus and which is obsolete or not usable by the county. Except as otherwise provided in subsection (2) of section 23-3115, such property with a value of less than two thousand five hundred dollars may be sold without competitive bidding. Except as otherwise provided in subsection (2) of section 23-3115, property with a value of two thousand five hundred dollars or more shall be sold through competitive bidding; (6) prescribe the amount of cash deposit or bond to be submitted with a bid on a contract and the amount of deposit or bond to be given for the performance of a contract, if the amount of the bond is not specifically provided by law; and (7) prescribe the manner in which claims for personal property or services delivered to any department or agency of the county shall be submitted, approved, and paid.

Source: Laws 1943, c. 57, § 6, p. 228; R.S.1943, § 23-324.04; R.S.1943, (1983), § 23-324.04; Laws 1985, LB 393, § 7; Laws 1988, LB 828, § 7; Laws 2003, LB 41, § 2; Laws 2011, LB628, § 2.

23-3108 Purchases; how made.

(1) Except as provided in section 23-3109, purchases of personal property or services by the county board or purchasing agent shall be made:

(a) Through the competitive sealed bidding process prescribed in section 23-3111 if the estimated value of the purchase is twenty thousand dollars or more;

(b) By securing and recording at least three informal bids, if practicable, if the estimated value of the purchase is equal to or exceeds five thousand dollars, but is less than twenty thousand dollars; or

(c) By purchasing in the open market if the estimated value of the purchase is less than five thousand dollars, subject to section 23-3112. In any county having a population of less than one hundred thousand inhabitants and in which the county board has not appointed a purchasing agent pursuant to section 23-3105, all elected officials are hereby authorized to make purchases with an estimated value less than five thousand dollars.

(2) In no case shall a purchase made pursuant to subdivision (1)(a), (b), or (c) of this section be divided to produce several purchases which are of an estimated value below that established in the relevant subdivision.

(3) All contracts and leases shall be approved as to form by the county attorney, and a copy of each long-term contract or lease shall be filed with the county clerk.

Source: Laws 1985, LB 393, § 8; Laws 1987, LB 55, § 1; Laws 2003, LB 41, § 3.

23-3109 Competitive bidding; when not required; waiver of bidding requirements; when.

(1) Competitive bidding shall not be required (a) when purchasing unique or noncompetitive items, (b) when purchasing petroleum products, (c) when obtaining professional services or equipment maintenance, or (d) when the price has been established by one of the following: (i) The federal General Services Administration; (ii) the materiel division of the Department of Administrative Services; or (iii) a cooperative purchasing agreement by which supplies, equipment, or services are procured in accordance with a contract established by another governmental entity or group of governmental entities if the contract was established in accordance with the laws and regulations applicable to the establishing governmental entity or, if a group, the lead governmental entity.

(2) The county board may, by majority vote of its members, waive the bidding requirements of the County Purchasing Act if such waiver is necessary to meet an emergency which threatens serious loss of life, health, or property in the county.

(3) The governing board may waive the bidding requirements of the County Purchasing Act if the county can save a significant amount of money by entering into a special purchase. The county board shall, five days prior to such special purchase, publish notice of its intention to make such a special purchase, stating the items considered and inviting informal quotes. A two-thirds vote of the entire county board shall approve such special purchase.

Source: Laws 1985, LB 393, § 9; Laws 2003, LB 41, § 4.

23-3110 Competitive bidding; considerations.

In awarding the bid, the following elements shall be given consideration when applicable:

(1) The price;

(2) The ability, capacity, and skill of the supplier to perform;

(3) The character, integrity, reputation, judgment, experience, and efficiency of the supplier;

(4) The quality of previous performance;

(5) Whether the supplier can perform within the time specified;

(6) The previous and existing compliance of the supplier with laws relating to the purchase or contract;

(7) The life-cost of the personal property or service in relation to the purchase price and the specific use;

(8) The performance of the personal property or service taking into consideration any commonly accepted tests and standards of product or service usability and user requirements;

(9) The energy efficiency ratio as stated by the supplier;

(10) The life-cycle costs between alternatives for all classes of equipment, the evidence of expected life, the repair and maintenance costs, and the energy consumption on a per year basis; and

(11) Such other information as may be secured having a bearing on the decision.

Source: Laws 1985, LB 393, § 10.

23-3111 Competitive bidding; procedure.

When competitive sealed bidding is required by section 23-3108:

(1) Sealed bids shall be solicited by public notice in a legal newspaper of general circulation in the county at least once a week for two consecutive weeks before the final date of submitting bids;

(2) In addition to subdivision (1) of this section, sealed bids may also be solicited by sending requests by mail to prospective suppliers and by posting notice on a public bulletin board;

(3) The notice shall contain: (a) A general description of the proposed purchase; (b) an invitation for sealed bids; (c) the name of the county official in charge of receiving the bids; (d) the date, time, and place the bids received shall be opened; and (e) whether alternative items will be considered;

(4) All bids shall remain sealed until opened on the published date and time by the county board or its designated agent;

(5) Any or all bids may be rejected and the bid need not be awarded at the time of opening, but may be held over for further consideration;

(6) If all bids received on a pending contract are for the same unit price or total amount and appear to be so as the result of collusion between the bidders, the county board or purchasing agent shall have authority to reject all bids and to purchase the personal property or services in the open market, except that the price paid in the open market shall not exceed the bid price;

(7) Each bid, with the name of bidder, shall be entered on a record and each record, with the successful bidder indicated thereon, shall, after the award or contract, be open to public inspection; and

(8) All lettings on such bids shall be public and shall be conducted as provided in Chapter 73, article 1.

Source: Laws 1985, LB 393, § 11.

23-3112 Insufficient funds; compliance with budget; wrongful purchase, effect.

Except in an emergency, which the county board shall declare by resolution, no order for delivery on a contract on open market order for personal property or services for any county department or agency shall be awarded until the county clerk is satisfied that the unencumbered balance in the fund concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order or contract or the county clerk is satisfied that the purchase is one contemplated in the terms of the county budget as set up by the county board. Whenever any officer, office, department, or agency of the county government shall purchase or contract for any personal property or services contrary to the County Purchasing Act, such order or contract shall be void. The county officer or the head of such department or agency shall be personally liable for the costs

of such order or contract and, if already paid for out of county funds, the amount may be recovered in the name of the county in an appropriate action.

Source: Laws 1943, c. 57, § 8, p. 230; R.S.1943, § 23-324.06; R.S.1943, (1983), § 23-324.06; Laws 1985, LB 393, § 12.

23-3113 Purchasing agent or staff; financial interest prohibited; penalty; county board; limitation.

(1) Neither the county purchasing agent nor any member of his or her office staff, if any, shall be financially interested in or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any personal property or services used by or furnished to any office, officer, department, or agency of the county government, nor shall such purchasing agent or a member of his or her staff, if any, receive directly or indirectly, from any person, firm, or corporation to which any contract or purchase order may be awarded, by rebate, gift, or otherwise, any money, anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. Any county purchasing agent or any member of his or her office staff, if any, who violates any of the provisions of the County Purchasing Act shall, upon conviction thereof, be guilty of a Class IV felony. All contracts or agreements in violation of this section are declared unlawful and shall be wholly void as an obligation against the county.

(2) If there is no purchasing agent, the county board acting pursuant to the County Purchasing Act shall be subject to section 49-14,103.01.

Source: Laws 1943, c. 57, § 9, p. 230; R.S.1943, § 23-324.07; Laws 1983, LB 370, § 15; R.S.1943, (1983), § 23-324.07; Laws 1985, LB 393, § 13; Laws 1986, LB 548, § 10.

23-3114 Equipment; lease; contract.

The county board, in addition to other powers granted it by law, may enter into contracts for lease of real or personal property for authorized purposes. Such leases shall not be restricted to a single year and may provide for the purchase of the property in installment payments. This section shall be in addition to and notwithstanding the provisions of sections 23-132 and 23-916.

Source: Laws 1967, c. 115, § 1, p. 363; R.S.1943, (1983), § 23-324.08; Laws 1985, LB 393, § 14.

23-3115 Surplus personal property other than mobile equipment; surplus mobile equipment; sale; conditions.

(1) The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus personal property, other than mobile equipment, which is obsolete or not usable by the county and which has a value of less than two thousand five hundred dollars. In making such authorization, the county board or purchasing agent may place any restriction on the type or value of property to be sold, restrict such authority to a single transaction or to a period of time, or make any other appropriate restrictions or conditions.

(2) The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus mobile equipment which is obsolete or not usable by the county and which has a value

of less than five thousand dollars. Surplus mobile equipment which is obsolete or not usable by the county and which has a value of five thousand dollars or more shall be sold through competitive bidding.

(3) Any county official or employee granted the authority to sell surplus personal property which is obsolete or not usable by the county as prescribed in subsection (1) or (2) of this section shall make a written report to the county board within thirty days after the end of the fiscal year reflecting, for each transaction, the item sold, the name and address of the purchaser, the price paid by the purchaser for each item, and the total amount paid by the purchaser.

(4) The money generated by any sales authorized by this section shall be payable to the county treasurer and shall be credited to the funds of the department, office, or agency to which the property belonged.

(5) No person authorized by the county board or purchasing agent to make such sales shall be authorized to make or imply any warranty of any kind whatsoever as to the nature, use, condition, or fitness for a particular purpose of any property sold pursuant to this section. Any person making sales authorized by this section shall inform the purchaser that such property is being sold as is without any warranty of any kind whatsoever.

Source: Laws 1988, LB 828, § 2; Laws 2011, LB628, § 3.

ARTICLE 32

COUNTY ASSESSOR

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska
Certification, see sections 77-421 and 77-422.
Elected, when, see section 32-519.
Property Tax Administrator, obey instructions of, see section 77-1311.
Taxation of property, general powers and duties, see Chapter 77.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

23-3201 County assessor; elected; when; duties; county assessor, defined; additional salary for county clerk.

Except as provided in section 22-417, (1) each county having a population of more than three thousand five hundred inhabitants and having more than one thousand two hundred tax returns in any tax year shall have an elected county

assessor and (2) each other county shall have an elected county assessor or shall have the county clerk serve as county assessor as determined by the registered voters of the county in accordance with section 32-519.

The county assessor shall work full time and his or her office shall be separate from that of the county clerk except in counties which do not elect a full-time assessor.

For purposes of sections 23-3201 to 23-3210, county assessor shall mean a county assessor or a county clerk who is the ex officio county assessor. For the performance of the duties as county assessor, the county clerk shall receive such additional salary as may be fixed by the county board.

Source: Laws 1959, c. 85, § 1, p. 391; Laws 1961, c. 146, § 7, p. 428; R.S.1943, (1988), § 32-310.01; Laws 1990, LB 821, § 16; Laws 1992, LB 1063, § 19; Laws 1992, Second Spec. Sess., LB 1, § 19; Laws 1994, LB 76, § 544; Laws 1996, LB 1085, § 36.

Cross References

Assessment duties, performance by Property Tax Administrator, see section 77-1340.
Election and term, see section 32-519.

23-3202 County assessor or deputy; county assessor certificate; required; exception.

No person shall be eligible to file for, be appointed to, or hold the office of county assessor or serve as deputy assessor in any county of this state unless he or she holds a county assessor certificate issued pursuant to section 77-422.

Source: Laws 1969, c. 623, § 3, p. 2521; Laws 1983, LB 245, § 2; R.S.1943, (1986), § 77-423; Laws 1990, LB 821, § 17; Laws 1999, LB 194, § 3; Laws 2000, LB 968, § 14; Laws 2006, LB 808, § 22; Laws 2009, LB121, § 3.
Operative date July 1, 2013.

The right of a person elected county assessor to assume office may be tested in quo waranto, mandamus, or injunction even though no election contest is filed. Shear v. County Board of Commissioners, 187 Neb. 849, 195 N.W.2d 151 (1972).

23-3203 County clerk acting as ex officio county assessor; county assessor certificate; required.

No person shall be eligible to file for, assume, or be appointed to the office of county clerk acting as ex officio county assessor unless he or she holds a county assessor certificate issued pursuant to section 77-422.

Source: Laws 1969, c. 622, § 13, p. 2517; R.S.1943, (1981), § 77-1337; Laws 1986, LB 817, § 10; Laws 1987, LB 508, § 13; R.S.Supp.,1988, § 77-429; Laws 1990, LB 821, § 18.

23-3204 County assessor; residence requirements.

A county assessor need not be a resident of the county when he or she files for election as county assessor, but a county assessor shall reside in a county for which he or she holds office.

Source: Laws 1969, c. 623, § 6, p. 2522; R.S.1943, (1986), § 77-426; Laws 1990, LB 821, § 19; Laws 1996, LB 1085, § 37.

23-3205 County assessor; oath; bond.

The county assessor, before entering upon the duties of the office, shall take and subscribe an oath to perform well, faithfully, and impartially such duties and shall execute a bond as required by Chapter 11, article 1.

Source: Laws 1903, c. 73, § 21, p. 393; R.S.1913, § 6307; Laws 1921, c. 133, art. IV, § 1, p. 551; C.S.1929, § 77-401; R.S.1943, § 77-401; Laws 1969, c. 52, § 2, p. 352; Laws 1987, LB 508, § 7; R.S.Supp.,1988, § 77-401; Laws 1990, LB 821, § 20.

Cross References

For form of oath, see section 11-101.
For other provisions relating to bond, see Chapter 11, article 1.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

23-3206 County assessor in counties over 200,000 population; deputies.

In counties having a population of over two hundred thousand, the county assessor shall have two chief deputies, a chief field deputy and a chief office deputy.

Source: Laws 1903, c. 73, § 22, p. 392; Laws 1905, c. 110, § 1, p. 509; Laws 1909, c. 111, § 1, p. 436; Laws 1913, c. 87, § 1, p. 229; R.S.1913, § 2451; Laws 1917, c. 46, § 1, p. 129; Laws 1919, c. 61, § 1, p. 168; C.S.1922, § 2390; C.S.1929, § 33-129; Laws 1931, c. 69, § 1, p. 188; Laws 1941, c. 65, § 1, p. 289; C.S.Supp.,1941, § 33-129; Laws 1943, c. 90, § 21, p. 307; R.S. 1943, § 33-129; Laws 1957, c. 133, § 1, p. 449; R.S.1943, (1988), § 33-129; Laws 1989, LB 5, § 6; R.S.Supp.,1989, § 77-401.02; Laws 1990, LB 821, § 21.

23-3207 Administration of oaths.

County assessors and their deputies may administer oaths within their respective counties in matters pertaining to their official duties.

Source: Laws 1990, LB 821, § 22.

Cross References

Fees for taking acknowledgments, oaths, and affirmations, disposition, see section 33-153.

23-3208 Repealed. Laws 1994, LB 76, § 615.

23-3209 Neglect of duty; damages.

Any county assessor, elected or appointed, who willfully neglects or refuses in whole or in part to perform the duties required by law in the assessment of property for taxation shall be answerable in damages to a political subdivision or any person thereby injured up to the limits of his or her official bond.

Source: Laws 1903, c. 73, § 27, p. 393; R.S.1913, § 6312; Laws 1921, c. 133, art. IV, § 6, p. 552; C.S.1922, § 5838; C.S.1929, § 77-406; R.S.1943, § 77-408; Laws 1947, c. 250, § 10, p. 791; Laws 1969, c. 650, § 1, p. 2567; Laws 1977, LB 39, § 211; Laws 1987, LB 508, § 8; R.S.Supp.,1988, § 77-408; Laws 1990, LB 821, § 24; Laws 2006, LB 808, § 23.

23-3210 Assessor's bond; action to recover upon; by whom brought.

The state, any municipality, or any person aggrieved or injured by the willful neglect of duty by the county assessor or any deputy or assistant assessor may recover upon the officer's bond the amount lost to the state, municipality, or person on account of such neglect of the county assessor or deputy or assistant assessor, together with the costs of suit.

Source: Laws 1903, c. 73, § 21, p. 393; R.S.1913, § 6307; Laws 1921, c. 133, art. IV, § 1, p. 551; C.S.1929, § 77-401; R.S.1943, § 77-403; Laws 1951, c. 260, § 2, p. 886; R.S.1943, (1986), § 77-403; Laws 1990, LB 821, § 25.

ARTICLE 33

COUNTY SCHOOL ADMINISTRATOR

Section

23-3301 Repealed. Laws 1999, LB 272, § 118.

23-3302 County school administrator; contract authorized.

The county board of any county may contract with the educational service unit of which it is a part, with a Class II, III, IV, V, or VI school district, or with an individual who holds a Nebraska certificate to administer, to be a county school administrator for Class I school districts in the county and to perform other designated county educational activities. Any contract entered into under this section shall not exceed a period of one year. The county school administrator, with the approval of the county board, shall have the authority to employ such other persons as may be necessary to assist the county school administrator in the performance of his or her duties.

Source: Laws 1973, LB 402, § 2; Laws 1979, LB 187, § 220; R.S.1943, (1987), § 79-320.01; Laws 1990, LB 821, § 27; Laws 1992, LB 719A, § 110; Laws 1997, LB 806, § 1; Laws 1999, LB 272, § 12; Laws 2003, LB 685, § 1.

23-3303 Repealed. Laws 1999, LB 272, § 118.

23-3304 Repealed. Laws 1999, LB 272, § 118.

23-3305 Repealed. Laws 1999, LB 272, § 118.

23-3306 Repealed. Laws 1999, LB 272, § 118.

23-3307 Repealed. Laws 1999, LB 272, § 118.

23-3308 Repealed. Laws 1999, LB 272, § 118.

23-3309 Repealed. Laws 1994, LB 76, § 615.

23-3310 Repealed. Laws 1999, LB 272, § 118.

23-3311 County school administrator; mileage.

When it is necessary for the county school administrator to travel on business of the county, he or she shall be allowed mileage at the rate allowed by the provisions of section 81-1176 for each mile actually and necessarily traveled by the most direct route if the trip or trips are made by automobile, but if travel by rail or bus is economical and practical, he or she shall be allowed only the actual cost of rail or bus transportation upon the presentation of the bill for the same accompanied by a proper voucher to the county board of his or her county in like manner as is provided for as to all other claims against the county.

Source: Laws 1953, c. 58, § 2, p. 196; Laws 1957, c. 70, § 8, p. 301; Laws 1971, LB 292, § 4; R.S.1943, (1987), § 79-320; Laws 1990, LB 821, § 36; Laws 1996, LB 1011, § 15; Laws 1999, LB 272, § 13.

23-3312 County superintendent; elimination of office; county clerk; duties.

The office of county superintendent of schools shall be eliminated on June 30, 2000. The records of the office of county superintendent of schools shall be transferred to and maintained by the county clerk in each county.

Source: Laws 1997, LB 806, § 63; Laws 1999, LB 272, § 14.

23-3313 Repealed. Laws 1999, LB 272, § 118.

ARTICLE 34
PUBLIC DEFENDER

Cross References

Constitutional provisions:
Election, when held, see Article XVII, section 4, Constitution of Nebraska.
Legislature, provide for election, see Article IX, section 4, Constitution of Nebraska.
Term begins, see Article XVII, section 5, Constitution of Nebraska.
Appointed counsel for indigent defendants, see sections 29-3901 to 29-3908.
Elected, when, see section 32-523.
Judicial district public defender, see sections 29-3909 to 29-3918.
Vacancy:
How filled, see section 32-567.
Possession and control of office by deputy, see section 32-563.

Section

23-3401 Public defender in certain counties; election; qualifications; prohibited practices; residency.

(1) There is hereby created the office of public defender in counties that have or that attain a population in excess of one hundred thousand inhabitants and in other counties upon approval by the county board. The public defender shall be elected as provided in the Election Act.

(2) The public defender shall be a lawyer licensed to practice law in this state. He or she shall take office after election and qualification at the same time that other county officers take office, except that upon the creation of such office in any county, a qualified person may be appointed by the county board to serve as public defender until such office can be filled by an election in accordance with section 32-523.

(3) In counties having a population of more than one hundred seventy thousand inhabitants, the public defender shall devote his or her full time to the legal work of the office of the public defender and shall not engage in the private practice of law. All assistant public defenders in such counties shall devote their full time to the legal work of such office of the public defender and shall not engage in the private practice of law so long as each assistant public defender receives the same annual salary as each deputy county attorney of comparable ability and experience receives in such counties.

(4) No public defender or assistant public defender shall solicit or accept any fee for representing a criminal defendant in a prosecution in which the public defender or assistant is already acting as the defendant's court-appointed counsel.

(5) A public defender elected after November 1986 need not be a resident of the county when he or she files for election as public defender, but a public defender shall reside in a county for which he or she holds office, except that in counties with a population of one hundred thousand or less inhabitants, the public defender shall not be required to reside in the county in which he or she holds office.

Source: Laws 1915, c. 165, § 1, p. 336; Laws 1917, c. 150, § 1, p. 335; Laws 1919, c. 58, § 1, p. 162; C.S.1922, § 10105; C.S.1929, § 29-1803; Laws 1931, c. 65, § 6, p. 179; C.S.Supp.,1941, § 29-1803; Laws 1943, c. 90, § 15, p. 303; R.S.1943, § 29-1804; Laws 1947, c. 62, § 10, p. 203; Laws 1957, c. 107, § 7, p. 382; Laws 1961, c. 134, § 1, p. 387; Laws 1965, c. 151, § 4, p. 495; Laws 1967, c. 605, § 5, p. 2050; Laws 1967, c. 178, § 1, p. 495; Laws 1969, c. 238, § 1, p. 878; Laws 1972, LB 1463, § 1; Laws 1984, LB 189, § 1; Laws 1986, LB 812, § 8; Laws 1989, LB 627, § 1; R.S.1943, (1989), § 29-1804; Laws 1990, LB 822, § 1; Laws 1991, LB 343, § 1; Laws 1994, LB 76, § 546; Laws 1996, LB 1085, § 38.

Cross References

Election Act, see section 32-101.

23-3402 Public defender; duties; appointment; prohibitions.

(1) It shall be the duty of the public defender to represent all indigent felony defendants within the county he or she serves. The public defender shall represent indigent felony defendants at all critical stages of felony proceedings against them through the stage of sentencing. Sentencing shall include hearings on charges of violation of felony probation. Following the sentencing of any indigent defendant represented by him or her, the public defender may take any

direct, collateral, or postconviction appeals to state or federal courts which he or she considers to be meritorious and in the interest of justice and shall file a notice of appeal and proceed with one direct appeal to either the Court of Appeals or the Supreme Court of Nebraska upon a timely request after sentencing from any such convicted felony defendant, subject to the public defender's right to apply to the court to withdraw from representation in any appeal which he or she deems to be wholly frivolous.

(2) It shall be the duty of the public defender to represent all indigent persons against whom a petition has been filed with a mental health board as provided in sections 71-945 to 71-947.

(3) It shall be the duty of the public defender to represent all indigent persons charged with misdemeanor offenses punishable by imprisonment when appointed by the court.

(4) Appointment of a public defender shall be by the court in accordance with sections 29-3902 and 29-3903. A public defender shall not represent an indigent person prior to appointment by the court, except that a public defender may represent a person under arrest for investigation or on suspicion. A public defender shall not inquire into a defendant's financial condition for purposes of indigency determination except to make an initial determination of indigency of a person under arrest for investigation or on suspicion. A public defender shall not make a determination of a defendant's indigency, except an initial determination of indigency of a person under arrest for investigation or on suspicion, nor recommend to a court that a defendant be determined or not determined as indigent.

(5) For purposes of this section, the definitions found in section 29-3901 shall be used.

Source: Laws 1972, LB 1463, § 2; Laws 1975, LB 285, § 1; Laws 1984, LB 189, § 2; R.S.1943, (1989), § 29-1804.03; Laws 1990, LB 822, § 2; Laws 1991, LB 732, § 27; Laws 1991, LB 830, § 28; Laws 2004, LB 1083, § 85.

A public defender is not attorney for a defendant until appointed to represent him in the particular case by a judge. State v. Russell, 194 Neb. 64, 230 N.W.2d 196 (1975).

A public defender may apply to the court to withdraw from appeal when he deems such appeal to be frivolous. State v. Kellogg, 189 Neb. 692, 204 N.W.2d 567 (1973).

23-3403 Public defender; assistants; personnel; compensation; office space, fixtures, and supplies.

The public defender may appoint as many assistant public defenders, who shall be attorneys licensed to practice law in this state, secretaries, law clerks, investigators, and other employees as are reasonably necessary to permit him or her to effectively and competently represent the clients of the office subject to the approval and consent of the county board which shall fix the compensation of all such persons as well as the budget for office space, furniture, furnishings, fixtures, supplies, law books, court costs, and brief-printing, investigative, expert, travel, and other miscellaneous expenses reasonably necessary to enable the public defender to effectively and competently represent the clients of the office.

Source: Laws 1972, LB 1463, § 10; R.S.1943, (1989), § 29-1804.11; Laws 1990, LB 822, § 3.

This section shifts the authority to set salaries for the public defender's office to the county board. Hall Cty. Pub. Defenders Organization v. County of Hall, 253 Neb. 763, 571 N.W.2d 789

(1998); State ex rel. Garvey v. County Bd. of Comm. of Sarpy County, 253 Neb. 694, 573 N.W.2d 747 (1998).

The county board has the authority to set salaries for the public defender's office. State ex rel. Garvey v. County Bd. of Comm. of Sarpy County, 253 Neb. 694, 573 N.W.2d 747 (1998).

23-3404 Public defender; certain counties; appointment authorized.

(1) In a county having a population of less than thirty-five thousand inhabitants which does not have an elected public defender, the county board of such county may appoint a qualified attorney to serve as public defender for such county. In making the appointment and negotiating the contract, the county board shall comply with sections 23-3405 to 23-3408.

(2) Nothing in sections 23-3401 to 23-3403 or 29-3901 to 29-3908 shall be construed to apply to sections 23-3404 to 23-3408.

Source: Laws 1986, LB 885, § 1; R.S.1943, (1989), § 29-1824; Laws 1990, LB 822, § 4.

23-3405 Public defender; policy board created; members; duties.

(1) Prior to making the appointment and negotiating the contract provided for in section 23-3404, the county board of such county shall appoint a policy board which shall ensure the independence of the contracting attorney and provide the county board with expertise and support in such matters as criminal defense functions, determination of salary levels, determination of reasonable caseload standards, response to community and client concerns, and implementation of the contract. The policy board shall consist of three members. Two of the members shall be practicing attorneys, and one member shall be a layperson. The policy board shall not include judges, prosecutors, or law enforcement officials.

(2) The policy board shall: (a) Receive applications from all attorneys who wish to be a public defender; (b) screen the applications to insure compliance with sections 23-3404 to 23-3408; (c) forward the names of any qualified applicants to the county board which shall make the appointments from the list of qualified candidates; (d) recommend to the county board the level of compensation that the public defender should receive and further recommend any contract provisions consistent with such sections; and (e) monitor compliance with such sections, including any continuing legal education requirements.

Source: Laws 1986, LB 885, § 2; R.S.1943, (1989), § 29-1825; Laws 1990, LB 822, § 5.

23-3406 Public defender; contract; terms.

(1) The contract negotiated between the county board and the contracting attorney shall specify the categories of cases in which the contracting attorney is to provide services.

(2) The contract negotiated between the county board and the contracting attorney shall be awarded for at least a two-year term. Removal of the contracting attorney short of the agreed term may be for good cause only.

(3) The contract between the county board and the contracting attorney may specify a maximum allowable caseload for each full-time or part-time attorney who handles cases under the contract. Caseloads shall allow each lawyer to give every client the time and effort necessary to provide effective representation.

(4) The contract between the county board and the contracting attorney shall provide that the contracting attorney be compensated at a minimum rate which reflects the following factors:

(a) The customary compensation in the community for similar services rendered by a privately retained counsel to a paying client or by government or other publicly paid attorneys to a public client;

(b) The time and labor required to be spent by the attorney; and

(c) The degree of professional ability, skill, and experience called for and exercised in the performance of the services.

(5) The contract between the county board and the contracting attorney shall provide that the contracting attorney may decline to represent clients with no reduction in compensation if the contracting attorney is assigned more cases which require an extraordinary amount of time and preparation than the contracting attorney can competently handle.

(6) The contract between the contracting attorney and the county board shall provide that the contracting attorney shall receive at least ten hours of continuing legal education annually in the area of criminal law. The contract between the county board and the contracting attorney shall provide funds for the continuing legal education of the contracting attorney in the area of criminal law.

(7) The contract between the county board and the contracting attorney shall require that the contracting attorney provide legal counsel to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association and the Canons of Ethics for Attorneys in the State of Nebraska. The contract between the county board and the contracting attorney shall provide that the contracting attorney shall be available to eligible defendants upon their request, or the request of someone acting on their behalf, at any time the Constitution of the United States or the Constitution of Nebraska requires the appointment of counsel.

(8) The contract between the county board and the contracting attorney shall provide for reasonable compensation over and above the normal contract price for cases which require an extraordinary amount of time and preparation, including capital cases.

Source: Laws 1986, LB 885, § 3; R.S.1943, (1989), § 29-1826; Laws 1990, LB 822, § 6.

23-3407 Public defender; contracting attorney; qualifications; experts; support staff; fees.

(1) The contracting attorney shall have been a practicing attorney for at least two years prior to entering into the contract with the county board, shall be a member in good standing of the Nebraska State Bar Association at the time the contract is executed, and shall have past training or experience in criminal law.

(2) The contracting attorney shall apply to the court which is hearing the case for fees to employ social workers, mental health professionals, forensic experts, investigators, and other support staff to perform tasks for which such support staff and experts possess special skills and which do not require legal credentials or experience. The court which is hearing the case shall allow reasonable fees for such experts and support staff, and the fees shall be paid by the county

board. The contract between the county board and the contracting attorney shall not specify any sums of money for such experts or support staff.

Source: Laws 1986, LB 885, § 4; R.S.1943, (1989), § 29-1827; Laws 1990, LB 822, § 7.

23-3408 Public defender; second attorney authorized; when; fees.

In the event that the contracting attorney is appointed to represent an individual charged with a Class I or Class IA felony, the contracting attorney shall immediately apply to the district court for appointment of a second attorney to assist in the case. Upon application from the contracting attorney, the district court shall appoint another attorney with substantial felony trial experience to assist the contracting attorney in the case. Application for fees for the attorney appointed by the district court shall be made to the district court judge who shall allow reasonable fees. Once approved by the court, such fees shall be paid by the county board.

Source: Laws 1986, LB 885, § 5; R.S.1943, (1989), § 29-1828; Laws 1990, LB 822, § 8.

ARTICLE 35

MEDICAL AND MULTIUNIT FACILITIES

Cross References

Hospital Sinking Fund Act, see section 15-235.05.

(a) GENERAL PROVISIONS

Section

Section

(a) GENERAL PROVISIONS

23-3501 Medical and multiunit facilities; authorized; bonds; issuance; procedure.

(1) The county board in any county in this state having three thousand six hundred inhabitants or more or in which the taxable value of the taxable property is twenty-eight million six hundred thousand dollars or more may issue and sell bonds of such county in such an amount as the county board may deem advisable for the construction, acquisition, or replacement of a hospital, including any clinic of such hospital, a nursing facility, an assisted-living facility, a home health agency, a mental health clinic, a clinic or facility to combat developmental disabilities, a public health center, a medical complex, multiunit housing, or a similar facility required to protect the health and welfare of the people and to initially equip and acquire property deemed necessary for operation of such facility. Such bonds shall bear interest at a rate set by the county board.

(2) No bonds shall be issued pursuant to this section until the question of the issuance of the bonds has been submitted to the voters of such county at a general election or a special election called for such purpose. The issuance of such bonds shall be approved by a majority vote of the electors voting on such proposition at any such election. Such election may be called either by resolution of the county board or upon a petition submitted to the county board calling for an election. Such petition shall be signed by the legal voters of the county equal in number to ten percent of the number of votes cast in the county for the office of Governor at the last general election.

Source: Laws 1917, c. 170, § 1, p. 381; C.S.1922, § 1054; C.S.1929, § 26-748; Laws 1937, c. 54, § 1, p. 220; C.S.Supp.,1941, § 26-748; R.S.1943, § 23-343; Laws 1945, c. 44, § 1, p. 208; Laws 1957, c. 64, § 1, p. 284; Laws 1959, c. 82, § 1, p. 372; Laws 1963, c. 114, § 1, p. 447; Laws 1967, c. 121, § 1, p. 386; Laws 1969, c. 51, § 82, p. 326; Laws 1972, LB 1168, § 1; Laws 1979, LB 187, § 102; R.S.1943, (1987), § 23-343; Laws 1992, LB 1063, § 20; Laws 1992, LB 1240, § 20; Laws 1992, Second Spec. Sess., LB 1, § 20; Laws 2012, LB995, § 2.
Effective date April 6, 2012.

Lack of public notification of special county board meeting to call election upon initiative petition under this section did not invalidate resulting election. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

County board is permitted to issue and sell bonds for construction and acquisition of a county community hospital. Armstrong v. Board of Supervisors of Kearney County, 153 Neb. 858, 46 N.W.2d 602 (1951).

23-3502 Board of trustees; membership; vacancy; county board serve as board of trustees; terms; removal.

(1) When a county with a population of three thousand six hundred inhabitants or more and less than two hundred thousand inhabitants or with a taxable

value of the taxable property of twenty-eight million six hundred thousand dollars or more establishes a facility as provided by section 23-3501, the county board of the county shall appoint a board of trustees.

(2) In counties having a population of two hundred thousand inhabitants or more, the county board of the county having a facility, in lieu of appointing a board of trustees of such facility, may elect to serve as the board of trustees of such facility. If the county board makes such election, the county board shall assume all the duties and responsibilities of the board of trustees of the facility, including those set forth in sections 23-3504 and 23-3505. Such election shall be evidenced by the adoption of a resolution by the county board.

(3)(a) The board of trustees appointed pursuant to this section shall consist of three, five, seven, or nine members as fixed by the county board.

(b) When the board is first established:

(i) If the county provides for a three-member board, one member shall be appointed for a term of two years, one for four years, and one for six years from the date such member is appointed. Thereafter, as the members' terms expire, members shall be appointed for terms of six years;

(ii) If the county board provides for a five-member board, one additional member shall be appointed for four years and one for six years. If the board is changed to a five-member board, the three members who are serving as such trustees at the time of a change from a three-member to a five-member board shall each complete his or her respective term of office. The two additional members shall be appointed by the county board, one for a term of four years and one for a term of six years. Thereafter, as the members' terms expire, members shall be appointed for terms of six years;

(iii) If the county board provides for a seven-member board, one additional member shall be appointed for two years and one for four years. If the board is changed to a seven-member board, the three or five members who are serving as such trustees at the time of the change shall each complete his or her respective term of office. The two or four additional members shall be appointed by the county board. If two additional members are appointed, one shall be appointed for four years and one for six years. If four additional members are appointed, one shall be appointed for two years, two for four years, and one for six years. Thereafter, as the members' terms expire, members shall be appointed for terms of six years; and

(iv) If the county board provides for a nine-member board, one additional member shall be appointed for two years and one for six years. If the board is changed to a nine-member board, the three, five, or seven members who are serving as such trustees at the time of the change shall each complete his or her respective term of office. The two, four, or six additional members shall be appointed by the county board. If two additional members are appointed, one shall be appointed for two years and one for six years. If four additional members are appointed, two shall be appointed for two years, one for four years, and one for six years. If six additional members are appointed, two shall be appointed for two years, two for four years, and two for six years. Thereafter, as the members' terms expire, members shall be appointed for terms of six years.

(4)(a) All members of the board of trustees shall be residents of the county.

(b) In any county having a population of more than three hundred thousand inhabitants, a minimum of one member of the board of trustees shall reside outside the corporate limits of the city in which such facility or facilities are located. In any county having a population of more than three hundred thousand inhabitants, if only one member of the board of trustees resides outside the corporate limits of the city in which the facility is located and the residence of the member is annexed by the city, he or she shall be allowed to complete his or her term of office but shall not be eligible for reappointment.

(c) The trustees shall, within ten days after their appointment, qualify by taking the oath of county officers as provided in section 11-101 and by furnishing a bond, if required by the county board, in an amount to be fixed by the county board.

(d) Any person who has been excluded from participation in a federally funded health care program or is included in a federal exclusionary data base shall be ineligible to serve as a trustee.

(5) The board of trustees shall elect a trustee to serve as chairperson, one as secretary, and one as treasurer. The board shall make such elections at each annual board meeting.

(6)(a) When a member is absent from three consecutive board meetings, either regular or special, without being excused by the remaining members of the board, his or her office shall become vacant and a new member shall be appointed by the county board to fill the vacancy for the unexpired term of such member pursuant to subdivision (6)(b) of this section.

(b) Any member of such board may at any time be removed from office by the county board for any reason. Vacancies shall be filled in substantially the same manner as the original appointments are made. The person appointed to fill such a vacancy shall hold office for the unexpired term of the member that he or she has replaced.

(7) The county board shall consult with the existing board of trustees regarding the skills and qualifications of any potential appointees to the board pursuant to this section prior to appointing any new trustee.

Source: Laws 1945, c. 44, § 2, p. 208; Laws 1953, c. 53, § 1, p. 185; Laws 1957, c. 64, § 2, p. 284; Laws 1963, c. 113, § 3, p. 443; Laws 1963, c. 114, § 2, p. 447; Laws 1967, c. 121, § 2, p. 386; Laws 1974, LB 293, § 1; Laws 1977, LB 481, § 1; Laws 1979, LB 187, § 103; Laws 1980, LB 685, § 1; Laws 1981, LB 260, § 1; Laws 1982, LB 703, § 1; Laws 1987, LB 134, § 1; Laws 1991, LB 122, § 1; R.S.Supp.,1991, § 23-343.01; Laws 1992, LB 1063, § 21; Laws 1992, Second Spec. Sess., LB 1, § 21; Laws 1999, LB 212, § 1; Laws 2002, LB 1062, § 1; Laws 2012, LB995, § 3.
Effective date April 6, 2012.

23-3503 Board of trustees; compensation; mileage.

The salary of the members of the board of trustees of such facility or facilities as provided by section 23-3501 shall be fixed by an order of the county board of such county. The county board may establish a salary in an amount not less than one hundred dollars per year but not more than one hundred dollars per meeting of the board of trustees and not to exceed one thousand two hundred dollars per year. The members shall also be reimbursed for necessary mileage

at the rate provided in section 81-1176 while on business of the facility or facilities.

Source: Laws 1945, c. 44, § 3, p. 209; Laws 1963, c. 114, § 3, p. 449; Laws 1967, c. 121, § 3, p. 387; Laws 1978, LB 719, § 1; Laws 1981, LB 204, § 22; Laws 1989, LB 135, § 1; R.S.Supp.,1990, § 23-343.02; Laws 1996, LB 1011, § 16.

23-3504 Board of trustees; powers and duties.

The board of trustees:

(1) May purchase or lease a site for a facility established under section 23-3501 and provide and equip any building deemed necessary to fulfill the facility's mission;

(2) May accept property by gift, devise, bequest, or otherwise and may carry out any conditions connected to the receipt of any gift, devise, or bequest;

(3) May sell, lease, exchange, encumber, or otherwise dispose of a facility or any other property under the control of the board of trustees upon a concurring vote of a majority of the board of trustees. If such sale, lease, exchange, encumbrance, or disposal is of all or substantially all of the facility or property, the sale, lease, exchange, encumbrance, or disposal shall also be approved by the county board;

(4) May borrow money on an unsecured basis or secured by the facility and revenue of the facility for the purposes of initially financing or refinancing the construction, improvement, maintenance, or replacement of the facility or equipping the facility and acquiring other property or for any other purpose deemed appropriate by the board of trustees. Any issuance of revenue bonds for which the revenue of the facility has been pledged shall be subject to approval by the county board;

(5) Shall have exclusive control of the expenditures of all money collected to the credit of the fund for any such facility;

(6) Shall have exclusive control over any and all improvements or additions to the facility and equipment, including the authority to contract for improvements, additions, equipment, and other property. If any such improvement or addition to the facility costs more than fifty percent of the current replacement cost of the facility, the improvement or addition shall also be approved by the county board;

(7) Shall have exclusive control, supervision, care, and custody of the grounds, rooms, buildings, and other property purchased, constructed, leased, or set apart for the purposes set forth under section 23-3501;

(8) Shall have the authority to pay all bills and claims due and owing by the facility and the salaries of all employees of such facility;

(9) Shall have the authority to expend hospital operating funds for recruitment and reimbursement of the reasonable expenses of any person interviewed or retained for employment or for medical staff appointment at the facility;

(10) May authorize the delivery of any additional health care service, ambulance service, assisted-living or independent living service, or other ancillary service deemed by the board to be necessary for the betterment of the health status of the residents of the county;

(11) May control, own, and operate clinics and health care facilities both within and outside the county; and

(12) Is granted all other powers and duties necessary for the management, control, and governance of a facility, including, but not limited to, any applicable powers and duties granted to any board under Nebraska law relating to nonprofit corporations, except as otherwise provided in this section or section 23-3505.

Source: Laws 1945, c. 44, § 4, p. 209; Laws 1949, c. 38, § 1, p. 130; Laws 1951, c. 50, § 1, p. 168; Laws 1963, c. 114, § 4, p. 449; Laws 1965, c. 102, § 1, p. 424; Laws 1967, c. 121, § 4, p. 388; Laws 1981, LB 171, § 2; Laws 1981, LB 260, § 2; Laws 1991, LB 798, § 1; R.S.Supp.,1991, § 23-343.03; Laws 1995, LB 366, § 2; Laws 1996, LB 681, § 193; Laws 2012, LB995, § 4.
Effective date April 6, 2012.

Cost of improvements or additions is limited to fifty percent of original cost. Armstrong v. Board of Supervisors of Kearney County, 153 Neb. 858, 46 N.W.2d 602 (1951).

23-3505 Board of trustees; meetings; bylaws, rules, and regulations; employees; filing required; other duties.

The board of trustees shall:

(1) Hold meetings at least once each month and keep a complete record of all of its proceedings;

(2) Adopt bylaws, rules, and regulations for its own guidance and for the governance of a facility. The board of trustees shall file such bylaws, rules, and regulations with the county board;

(3) Employ or contract for an administrator of a facility, fix the administrator's compensation, and review the administrator's job performance on at least an annual basis. The administrator shall oversee the day-to-day operations of the facility and its employees;

(4) If a facility maintains a medical staff, adopt and approve medical staff bylaws that govern the medical staff of the facility, approve the appointment of a qualified medical staff, and oversee the quality of medical care and services provided at the facility;

(5) Manage and control a facility's funds in accordance with guidelines established for political subdivisions by the Nebraska Investment Council and invest such funds in investments as permitted for counties in the State of Nebraska;

(6) Fix the price to be charged to patients admitted to a facility for care and treatment;

(7) Establish charity-care policies for free treatment or financial assistance for care provided by a facility;

(8) Procure and pay premiums on any and all insurance policies required for the prudent management of a facility, including, but not limited to, general liability, professional malpractice liability, workers' compensation, vehicle liability, and directors' and officers' liability; and

(9) On or before July 15 of each year:

(a) File with the county board a report of its proceedings with reference to a facility and a statement of all receipts and expenditures during the year; and

(b) Certify the amount necessary, if any, to maintain and improve a facility for the ensuing year.

The treasurer of the board of trustees or his or her designee shall receive and pay out all money under the control of the board of trustees as ordered by the board and report such expenditures and receipts to the county board as required by subdivision (9)(a) of this section.

Source: Laws 1945, c. 44, § 5, p. 210; Laws 1963, c. 114, § 5, p. 450; Laws 1967, c. 121, § 5, p. 389; Laws 1987, LB 134, § 2; R.S. 1943, (1987), § 23-343.04; Laws 2012, LB995, § 5.
Effective date April 6, 2012.

23-3506 Repealed. Laws 2012, LB 995, § 20.

23-3507 Repealed. Laws 2012, LB 995, § 20.

23-3508 County board; bonds; purpose; terms; levy; limitation; procedure to exceed.

(1) The county board in counties in this state in which a facility has been established as provided in section 23-3501 may, by a majority vote of the board, issue and sell bonds of the county in such sums as the county board may deem advisable to defray the cost of improvements or additions thereto, equipment, and other property deemed necessary for operation of the facility.

(2) Such bonds shall (a) be payable in not to exceed thirty years after the date of issuance, (b) bear interest payable annually or semiannually, and (c) contain an option to the county to pay all or any part thereof at any time after five years after the date of issuance. When such bonds have been issued under this section or section 23-3501, the county board shall cause to be levied and collected annually a tax upon all of the taxable property of such county sufficient to pay the interest and principal of the bonds as the interest and principal become due and payable. If the county board deems it appropriate, the county board may submit to the electors of such county at a general or special election the question of whether to exceed the tax limitation set forth in Article VIII, section 5, of the Constitution of Nebraska or any other applicable statutory levy limitation.

(3) Any taxes levied to pay bonds issued under this section or section 23-3501 shall be kept in a separate fund in the county treasury. Any such bonds shall not be deemed to be payable from the general fund of the county.

(4) This section shall not apply to any bond or other indebtedness authorized by the board of trustees pursuant to section 23-3504.

Source: Laws 1945, c. 44, § 8, p. 210; Laws 1949, c. 38, § 2, p. 131; Laws 1963, c. 114, § 8, p. 451; Laws 1967, c. 121, § 8, p. 390; Laws 1969, c. 157, § 1, p. 729; Laws 1969, c. 51, § 83, p. 327; Laws 1978, LB 560, § 1; Laws 1991, LB 798, § 2; R.S.Supp.,1991, § 23-343.07; Laws 2012, LB995, § 6.
Effective date April 6, 2012.

Two alternative methods of defraying the cost of improvements or additions are provided. Armstrong v. Board of Supervisors of Kearney County, 153 Neb. 858, 46 N.W.2d 602 (1951).

23-3509 County board; tax levy; amount.

The county board may annually levy a tax upon all of the taxable property within the county sufficient to defray the amount required for such maintenance and improvement as certified to it by the board of trustees.

Source: Laws 1945, c. 44, § 9, p. 211; R.S.1943, (1987), § 23-343.08; Laws 1992, LB 719A, § 111; Laws 1996, LB 1085, § 40.

23-3510 Acceptance of gifts or devises; authorization; powers of county board; tax levy.

The county board of any county may, in its discretion, accept a gift or devise of a specific sum of money for the purposes of constructing, acquiring, or replacing a facility as provided by section 23-3501 and by tax levy raise such additional sum of money as may be necessary to construct, acquire, or replace such facility.

Source: Laws 1947, c. 61, § 1, p. 196; Laws 1963, c. 114, § 10, p. 453; Laws 1967, c. 121, § 10, p. 391; R.S.1943, (1987), § 23-343.10; Laws 2012, LB995, § 7.
Effective date April 6, 2012.

23-3511 Tax levy; limitation; purpose.

The county board may levy a tax each year of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such county for the purpose of acquiring, remodeling, improving, equipping, maintaining, and operating a facility as provided by section 23-3501. In counties having a population of not more than seven thousand inhabitants, such tax shall not exceed seven cents on each one hundred dollars of the taxable value.

Source: Laws 1947, c. 61, § 2, p. 196; Laws 1953, c. 287, § 44, p. 957; Laws 1963, c. 114, § 11, p. 453; Laws 1967, c. 121, § 11, p. 392; Laws 1973, LB 20, § 1; Laws 1979, LB 187, § 104; Laws 1991, LB 798, § 3; R.S.Supp.,1991, § 23-343.11; Laws 1992, LB 719A, § 112; Laws 1996, LB 1085, § 41; Laws 1996, LB 1114, § 48; Laws 2012, LB995, § 8.
Effective date April 6, 2012.

23-3512 Sections, how construed.

The provisions of sections 23-3510 to 23-3512 are intended to be cumulative to and not amendatory of sections 23-3501 to 23-3509.

Source: Laws 1947, c. 61, § 3, p. 196; Laws 1987, LB 134, § 4; R.S.1943, (1987), § 23-343.12.

23-3513 Cities and villages; gifts of money or property to aid county in acquisition, construction, or maintenance; issuance of bonds; procedure.

(1) Any city or village may make a gift of money or property, including equipment, to the county in which such city or village is situated to aid and assist in the acquisition, construction, or maintenance of such facility or facilities as provided by section 23-3501, to a nonprofit corporation which will provide or is providing hospital facilities within such city or village, or to a hospital district established pursuant to section 23-3529 and in which such city or village is located. Any such gift shall be approved by three-fourths of all the

members elected to the city council of the city or board of trustees of the village making such gift. In order to enable any such city or village to make such gift of money to such county, the city or village shall be empowered and authorized to borrow money, pledge the property and credit of the city or village, and issue its bonds to obtain money therefor in an amount not to exceed three and one-half percent of the taxable valuation of such city or village. No such bonds shall be issued until after the bonds have been authorized by a majority vote of the electors voting on the proposition of their issuance at a general municipal election or at a special election called for the submission of such proposition.

(2) Such bonds shall be payable in not to exceed twenty years from date and shall bear interest payable annually or semiannually. Notice of the time and place of the election shall be given by publication three successive weeks prior thereto in some legal newspaper printed in and of general circulation in such city or village or, if no newspaper is printed in such city or village, in a newspaper of general circulation in such city or village. No such election shall be called except upon a three-fourths vote of all the members elected to the city council of the city or board of trustees of the village, which three-fourths vote of the city council or board of trustees shall constitute the approval provided for in either subsection (1) or (2) of this section, and either the city council or village board shall be required to make such gift, in the event the electors vote such bonds.

Source: Laws 1947, c. 41, § 2, p. 157; Laws 1957, c. 65, § 1, p. 288; Laws 1963, c. 114, § 12, p. 454; Laws 1967, c. 121, § 12, p. 392; Laws 1969, c. 51, § 84, p. 328; Laws 1971, LB 80, § 1; Laws 1971, LB 534, § 26; Laws 1972, LB 1124, § 1; Laws 1979, LB 187, § 105; R.S.1943, (1987), § 23-343.13; Laws 1992, LB 719A, § 113.

23-3514 Repealed. Laws 2012, LB 995, § 20.

23-3515 Adjoining counties; issuance of joint bonds; election; majority required.

Any two or more adjoining counties having a combined population of thirty-six hundred inhabitants or more or having a combined taxable value of the taxable property of twenty-eight million six hundred thousand dollars or more may, upon resolution of the county board of each county, issue their joint bonds in the amount, for the purposes, and upon the conditions provided in section 23-3501. No bonds shall be issued until the question of their issuance has been submitted to the voters of each county at a general election or at a special election called for such purpose. The issuance of such bonds shall be approved by a majority vote of the electors voting on such question in each county, which election may be called either by resolution of the county boards or upon a petition submitted to the county boards calling for the same signed by the legal voters of each county equal in number to ten percent of the number of votes cast in each county for the office of Governor at the last general election.

Source: Laws 1957, c. 64, § 3, p. 286; Laws 1979, LB 187, § 106; R.S.1943, (1987), § 23-343.15; Laws 1992, LB 1063, § 22; Laws 1992, Second Spec. Sess., LB 1, § 22.

County in relation to hospital district remains basic unit. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

23-3516 Adjoining counties; board; membership; powers.

(1) Whenever two or more counties establish a facility or facilities as provided by section 23-3515, the county board of each such county shall proceed immediately to appoint three members to serve on the board of trustees of such facility or facilities. When such board is first established, each county board shall appoint one member for a term of two years, one for four years, and one for six years from the date they are appointed. Thereafter, as their terms expire, members shall be appointed for a term of six years.

(2) Whenever the board would consist of an even number of members, one additional member shall be appointed for a term of six years by the county board of the county having the greatest population as disclosed by the latest United States census.

(3) The board of trustees provided for in this section shall have the same powers, duties, obligations, and authority provided in sections 23-3502 to 23-3509.

Source: Laws 1957, c. 64, § 4, p. 286; Laws 1961, c. 88, § 2, p. 308; Laws 1963, c. 114, § 14, p. 455; Laws 1967, c. 121, § 14, p. 393; Laws 1987, LB 134, § 5; R.S.1943, (1987), § 23-343.16; Laws 1992, LB 1240, § 21.

23-3517 Adjoining counties; reports; county board actions; voter approval; construction of sections.

Sections 23-3501 to 23-3509 shall apply to any facility or facilities established pursuant to section 23-3515. For purposes of sections 23-3515 to 23-3519, whenever such sections: (1) Require the making of any report to the county board, such report shall be made to the county board of each county concerned; (2) authorize or require the taking of any action by the county board, such action shall be concurred in by the county board of each county concerned; and (3) provide for the submission of any question to the voters before any action may be taken, such question shall be submitted to the voters of each county concerned and shall be approved by a majority vote of the electors voting on such question in each such county.

Source: Laws 1957, c. 64, § 5, p. 287; Laws 1963, c. 114, § 15, p. 456; Laws 1967, c. 121, § 15, p. 394; Laws 1987, LB 134, § 6; R.S.1943, (1987), § 23-343.17.

23-3518 Repealed. Laws 1992, LB 1240, § 24.

23-3519 Adjoining counties; certification of taxes; levy; limitation; disposition of proceeds.

The board of trustees of any such facility organized under section 23-3515 shall, each year, fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary for the operation of such facility during the following calendar year. After the adoption of the budget statement and on or before July 15 of each year, the board of trustees of such facility shall certify to the county board of the county in which such facility is located the amount of the tax which may be levied under the facility's adopted budget statement to be received from taxation. Such county board may apportion such

amount among the counties concerned in proportion to the taxable valuation of all taxable property and shall certify to each county its share of such amount.

Each county may levy a tax sufficient to raise the amount so certified to it, and the county treasurer shall transmit the proceeds of such tax to the treasurer of the county in which such facility is located for credit to the facility fund.

Source: Laws 1957, c. 64, § 7, p. 287; Laws 1963, c. 114, § 17, p. 456; Laws 1967, c. 121, § 16, p. 394; Laws 1969, c. 145, § 28, p. 689; Laws 1971, LB 9, § 1; Laws 1979, LB 187, § 107; Laws 1991, LB 798, § 4; R.S.Supp.,1991, § 23-343.19; Laws 1992, LB 719A, § 114; Laws 1992, LB 1240, § 22; Laws 1995, LB 366, § 4; Laws 1996, LB 1085, § 42; Laws 1996, LB 1114, § 49.

23-3520 Preexisting rights; intent of sections.

The provisions of sections 23-3520 to 23-3525 are not intended to limit any preexisting rights to charge and collect for services rendered prior to the passage of sections 23-3520 to 23-3525 had by hospitals which are created and existing under the general powers of counties of this state or under the provisions of sections 23-3501 to 23-3519 and 23-3528 to 23-3572.

Source: Laws 1971, LB 908, § 1; R.S.1943, (1987), § 23-343.68.

23-3521 Governing board; rates and fees; establish.

The governing board of each hospital which is existing and operating under the general powers granted to counties of this state or under the provisions of sections 23-3501 to 23-3519 and 23-3528 to 23-3572, shall establish rates and fees to be charged for care or services, or both care and services rendered to persons by its hospital.

Source: Laws 1971, LB 908, § 2; R.S.1943, (1987), § 23-343.69.

23-3522 Care and services; liability.

Persons to whom care and services have been rendered shall be liable for the cost and fees of such care and services to the appropriate county, counties or hospital district maintaining and operating the hospital providing such care and services. In cases where the person receiving the care and services is a minor child, the parents of such minor patient shall be liable jointly and severally for the costs and fees of such care and services to the appropriate county, counties or hospital district maintaining and operating the hospital providing such care and services. In cases where the person receiving such care and services is married, both the patient and the patient's spouse shall be jointly and severally liable for the cost and fees of such care and services to the appropriate county, counties or hospital district maintaining and operating the hospital providing such care and services. In cases where the person receiving such care and services is under guardianship, the guardian, to the extent of the value of the estate of the ward controlled by the guardian, shall be liable for the cost and fees of such care and services to the appropriate county, counties or hospital district maintaining and operating the hospital providing such care and services. Persons, not otherwise legally liable for the care of another, may enter into an agreement with such hospitals for the care of such person and

having done so shall be liable to the hospital providing such care for the costs and fees of such care provided.

Source: Laws 1971, LB 908, § 3; R.S.1943, (1987), § 23-343.70.

23-3523 Care and services; action for recovery.

Any suit to recover any costs and fees for the care and services as described in section 23-3522 shall be brought (1) in the name of the board of trustees of the facility established under section 23-3501 or (2) in the case of a hospital maintained and operated by a hospital district, in the name of the hospital district.

Source: Laws 1971, LB 908, § 4; R.S.1943, (1987), § 23-343.71; Laws 2012, LB995, § 9.
Effective date April 6, 2012.

23-3524 Care and services; costs and fees; authority of board to compromise.

The governing board of any hospital providing the care and services described in section 23-3522 and its administrator or his or her designee may compromise and settle or completely write off the costs and fees for care and services rendered in or by the hospital pursuant to any terms and conditions of policies approved by the board.

Source: Laws 1971, LB 908, § 5; R.S.1943, (1987), § 23-343.72; Laws 2012, LB995, § 10.
Effective date April 6, 2012.

23-3525 Care and services; costs and fees; collection; disposition.

Costs and fees collected for care and services rendered by a county hospital or a hospital district hospital shall be deposited in a fund for the exclusive use by the appropriate county hospital or hospital district for the maintenance, operation, and improvement of the hospital.

Source: Laws 1971, LB 908, § 6; R.S.1943, (1987), § 23-343.73; Laws 2012, LB995, § 11.
Effective date April 6, 2012.

23-3526 Retirement plan; authorized; reports.

(1) The board of trustees of each facility, as provided by section 23-3501, shall, upon approval of the county board, have the power and authority to establish and fund a retirement plan for the benefit of its full-time employees. The plan may be funded by any actuarially recognized method approved by the county board. Employees participating in the plan may be required to contribute toward funding the benefits. The facility shall pay all costs of establishing and maintaining the plan. The plan may be integrated with old age and survivor's insurance.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the chairperson of the board of trustees of a facility with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report

shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan which is not administered by a retirement system under the County Employees Retirement Act, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan which is not administered by a retirement system under the County Employees Retirement Act, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan which is not administered by a retirement system under the County Employees Retirement Act contains no current active participants, the chairperson may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the board of trustees shall cause to be prepared a quadrennial report for each retirement plan which is not administered by a retirement system under the County Employees Retirement Act, and the chairperson shall file the same with the Public Employees Retirement Board and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section which is not administered by a retirement system under the County Employees Retirement Act. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1977, LB 346, § 1; R.S.1943, (1987), § 23-343.121; Laws 1998, LB 1191, § 35; Laws 1999, LB 795, § 11; Laws 2011, LB474, § 11.

Cross References

County Employees Retirement Act, see section 23-2331.

23-3527 Retirement system; option to discontinue participation under County Employees Retirement Act; future participation in a retirement system, option.

(1) A facility established under the provisions of section 23-3501, in a county which is presently participating in a retirement system under the County

Employees Retirement Act pursuant to Chapter 23, article 23, shall be given the option to continue participation under such act or to discontinue such participation.

(2) A facility established under the provisions of section 23-3501, in a county which in the future shall elect to participate in a retirement system under the County Employees Retirement Act shall be given the option to participate in a retirement system pursuant to such act or to decline such participation.

Source: Laws 1977, LB 346, § 2; R.S.1943, (1987), § 23-343.122.

Cross References

County Employees Retirement Act, see section 23-2331.

(b) HOSPITAL DISTRICTS

23-3528 Act, how cited.

Sections 23-3528 to 23-3552 may be cited as the Nebraska Local Hospital District Act.

Source: Laws 1959, c. 83, § 28, p. 384; R.S.1943, (1987), § 23-343.47.

23-3529 Hospital districts; establish.

Whenever it shall be conducive to the public health and welfare, a local hospital district may be established in the manner and having the powers and duties provided in sections 23-3528 to 23-3552.

Source: Laws 1959, c. 83, § 1, p. 375; R.S.1943, (1987), § 23-343.20.

County board is given power to determine if proposed district will be conducive to public health and welfare. Syfie v. Tri-County Hospital Dist., 186 Neb. 478, 184 N.W.2d 398 (1971).

23-3530 Hospital districts; petition; contents; signatures required; valuation required.

Whenever the formation of a local hospital district is desired, a petition stating (1) the name of the proposed district, (2) the location of the hospital to be maintained by such proposed district, and (3) the territory to be included within it, which territory should be contiguous, may be presented to the county board of the county in which the land or a greater portion of the land in the proposed district is situated. Such petitions shall be signed by at least ten percent of the resident freeholders whose names appear on the current tax schedules in the office of the county assessor and who appear to reside within the suggested boundaries of the proposed district. The minimum taxable valuation of all taxable property within such proposed district shall be eight million six hundred thousand dollars. Parts of a voting precinct may be included in the proposed district.

Source: Laws 1959, c. 83, § 2, p. 375; Laws 1963, c. 115, § 1, p. 458; Laws 1965, c. 103, § 1, p. 426; Laws 1979, LB 187, § 108; R.S.1943, (1987), § 23-343.21; Laws 1992, LB 719A, § 115.

County board in which the land or greater portion of land in proposed district is appropriate tribunal to determine if lands have been properly included. Syfie v. Tri-County Hospital Dist., 186 Neb. 478, 184 N.W.2d 398 (1971).

Harm from fractionating territories of counties under this section insufficient to constitute violation of Article I, section 25, or Article VIII, section 1, Constitution of Nebraska. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

23-3531 Hospital districts; petition; hearing; notice; modification of boundaries.

Upon receipt of such petition, the county board shall examine it to determine whether it complies with the requirements of section 23-3530. Upon finding that such petition complies with such requirements, the county board shall set a hearing thereon and cause notice thereof to be published at least three successive weeks in a newspaper of general circulation throughout the area to be included in such proposed district. Such notice shall contain a statement of the information contained in such petition and of the date, time, and place at which such hearing shall be held and that at such hearing proposals may be submitted for the exclusion of land from, or the inclusion of additional land in such proposed district or for modification of the boundaries of the areas into which such district shall be divided for the purpose of election of members of the board of directors.

Source: Laws 1959, c. 83, § 3, p. 375; R.S.1943, (1987), § 23-343.22.

Notice is complete upon distribution of last issue of paper although three full weeks have not elapsed since first publication. Syfie v. Tri-County Hospital Dist., 186 Neb. 478, 184 N.W.2d 398 (1971).

23-3532 Hospital districts; hearing; changes in boundary; submission to electors.

After completion of the hearing required by section 23-3531, the county board shall order such changes in the boundaries of such proposed district or of the areas into which such proposed district is to be divided as it deems proper, but no such change shall reduce the total taxable valuation of all taxable property within such proposed district below eight million six hundred thousand dollars. The county board shall also order that the question of the formation of such district, as set forth in the petition and any changes therein ordered by the board, shall be submitted to the electors of such proposed district at a special election to be held for that purpose and shall set a date when such election shall be held at the usual voting place within each precinct. The county board shall certify such question to the county clerk or election commissioner who shall give notice of such election in the manner provided by law for the conduct of special elections.

Source: Laws 1959, c. 83, § 4, p. 376; Laws 1979, LB 187, § 109; R.S.1943, (1987), § 23-343.23; Laws 1992, LB 719A, § 116.

County board in which the land or greater portion of land in proposed district is the appropriate tribunal to determine if lands have been properly included. It cannot establish district until it shall be conducive to the public health and welfare. Syfie v. Tri-County Hospital Dist., 186 Neb. 478, 184 N.W.2d 398 (1971).

23-3533 Hospital district; election; canvass of votes; resolution; district, body corporate; presumption.

The votes cast for and against the formation of such district shall be counted and canvassed in the manner provided by law and the results shall be certified to the county board. If the county board finds that a majority of the votes cast in the area of the proposed district favor the formation of such proposed district, it shall so declare by resolution entered on its records and forward a copy of such resolution to the county board of each county containing land embraced within such proposed district, and the district shall thereupon be fully organized. The district shall be a body corporate and politic and may sue and be sued in its own name. Every such hospital district shall, in all cases, be conclusively presumed to have been legally organized six months after such

resolution has been adopted by the county board unless an action attacking the validity of such organization is brought within such time.

Source: Laws 1959, c. 83, § 5, p. 376; Laws 1961, c. 88, § 3, p. 309; Laws 1963, c. 115, § 2, p. 458; Laws 1965, c. 103, § 2, p. 426; Laws 1967, c. 122, § 1, p. 396; R.S.1943, (1987), § 23-343.24.

Cross References

For canvass and return of votes, see Chapter 32, article 10.

23-3534 Board of directors; members; election; terms; vacancies.

The elective officers of a local hospital district shall be a board of directors consisting of five members. The members of the first board shall be appointed by the county board and shall be so appointed that two members shall serve terms ending on the first Tuesday in June following the first statewide primary election following the initial appointment, and three shall serve terms ending on the first Tuesday in June following the second statewide primary election following the initial appointment.

Members shall be elected as provided in section 32-550. All registered voters of this state who reside within the hospital district on or before the day of the election shall be entitled to vote in such hospital district election.

Any vacancy upon such board occurring other than by the expiration of a term shall be filled by appointment by the remaining members of the board of directors. Any person appointed to fill such vacancy shall serve for the remainder of the unexpired term. If there are vacancies in the offices of a majority of the members of the board, there shall be a special election conducted by the Secretary of State to fill such vacancies.

Source: Laws 1959, c. 83, § 6, p. 376; Laws 1963, c. 115, § 3, p. 458; Laws 1972, LB 661, § 15; Laws 1972, LB 1168, § 2; Laws 1973, LB 552, § 5; Laws 1989, LB 640, § 1; R.S.Supp.,1990, § 23-343.25; Laws 1994, LB 76, § 547.

23-3535 Hospital district; board of directors; meetings; officers; selection; expenses.

The board of directors shall meet on or before the second Monday after the completion of organization of the district and shall organize by the election of a chairperson, a vice-chairperson, and a secretary-treasurer. The members of such board shall serve without compensation, except that each shall be allowed his or her actual and necessary traveling and incidental expenses incurred in the performance of his or her official duties with reimbursement for mileage to be made at the rate provided in section 81-1176.

Source: Laws 1959, c. 83, § 7, p. 377; Laws 1981, LB 204, § 23; R.S.1943, (1987), § 23-343.26; Laws 1996, LB 1011, § 17.

23-3536 Hospital district; board of directors; meetings; quorum; rules and regulations.

The board of directors shall provide for the time and place of holding its regular meetings and the manner of calling the same and the manner for the calling of special meetings, and shall establish rules for its proceedings and may adopt such rules and regulations not inconsistent with law as may be necessary for the exercise of the powers conferred and the performance of the

duties imposed upon the board. All of the sessions of such board, whether regular or special, shall be open to the public, and a majority of the members of such board shall constitute a quorum for the transaction of business.

Source: Laws 1959, c. 83, § 8, p. 377; Laws 1972, LB 1168, § 3; R.S.1943, (1987), § 23-343.27.

23-3537 Repealed. Laws 1994, LB 76, § 615.

23-3538 Secretary-treasurer; bond.

The secretary-treasurer of such district shall give a corporate surety bond, in such penal sum, not less than five thousand dollars, as the board of directors shall determine, conditioned upon the faithful performance of all duties imposed upon him and the faithful and accurate accounting for all money belonging to such district coming into his possession.

Source: Laws 1959, c. 83, § 10, p. 378; R.S.1943, (1987), § 23-343.29.

23-3539 Hospital district; additional land; annexation; procedure.

A petition seeking the annexation of additional land to such district, signed by the legal voters in the area proposed for annexation equal in number to ten percent of the number of votes cast in the area for Governor at the last general election, may be filed with the board of directors. The board shall submit the question of annexation of such area to the legal voters of the district and of the area proposed for annexation, which question shall be submitted at the next annual hospital district election. If a majority of those voting on the question in the district and a majority of those voting on the question in the area proposed for annexation vote in favor of annexation, the board of directors shall declare such area annexed and certify the altered boundaries of the district to the county board of the county in which the annexed area is located and of the county in which the greater portion of the district is located.

Source: Laws 1959, c. 83, § 11, p. 378; R.S.1943, (1987), § 23-343.30.

23-3540 Hospital district; withdrawal of land from district; procedure.

A petition seeking the withdrawal of land from such district signed by the legal voters in the area proposed for withdrawal equal in number to ten percent of the number of votes cast for Governor at the last general election may be filed with the board of directors. If the board finds that the portion of the district that would remain after such proposed withdrawal would have a minimum taxable valuation of eight million six hundred thousand dollars, it shall submit the question of withdrawal of such area to the legal voters of the district at the next annual hospital district election. If a majority of those voting on the question in the area sought to be withdrawn and a similar majority in the remaining portion of the district vote in favor of such withdrawal, the board of directors shall declare such area withdrawn and certify the altered boundaries of the district to the county board of the county in which the withdrawn area is located and of the county in which the greater portion of the district is located.

Source: Laws 1959, c. 83, § 12, p. 378; Laws 1972, LB 1048, § 1; Laws 1979, LB 187, § 110; R.S.1943, (1987), § 23-343.31; Laws 1992, LB 719A, § 117.

23-3541 Hospital district; annexation or withdrawal; resubmission.

If the question of annexation or withdrawal is defeated at the polls, it may again be submitted after the expiration of one year.

Source: Laws 1959, c. 83, § 13, p. 379; R.S.1943, (1987), § 23-343.32.

23-3542 Hospital district; area excluded from district; outstanding obligations; chargeable.

Any area excluded from a district shall be subject to assessment and be otherwise chargeable for the payment and discharge of all of the obligations outstanding at the time of the filing of the petition for the exclusion of the area as fully as though the area had not been excluded. All provisions which could be used to compel the payment by an excluded area of its portion of the outstanding obligations had the exclusion not occurred may be used to compel the payment on the part of the area of the portion of the outstanding obligations of the district for which it is liable.

Source: Laws 1959, c. 83, § 14, p. 379; R.S.1943, (1987), § 23-343.33.

23-3543 Hospital district; area withdrawn; not subject to assessments after withdrawal.

An area withdrawn from a district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred after the withdrawal of the area from the district.

Source: Laws 1959, c. 83, § 15, p. 379; R.S.1943, (1987), § 23-343.34.

23-3544 Hospital district; dissolution; petition; signatures required; submission to electors.

Upon the filing of a petition with the board of directors signed by ten percent of the qualified electors in the district, the board of directors shall submit the question of dissolution of the district to the district electors at the next annual district election. If a majority of the voters favor dissolution, the board shall by resolution dissolve the district.

Source: Laws 1959, c. 83, § 16, p. 379; R.S.1943, (1987), § 23-343.35.

23-3545 Hospital district; dissolution; resolution; winding up of affairs.

The board of directors shall file a certified copy of the resolution of dissolution with the county board of each of the counties in which any part of the district is situated, and thereupon the district shall be dissolved for all purposes, except for winding up its affairs. The board of directors shall be, ex officio, the governing body of any dissolved district, and it may perform all acts necessary to wind up the affairs of the district.

Source: Laws 1959, c. 83, § 17, p. 379; R.S.1943, (1987), § 23-343.36.

23-3546 Hospital district; dissolution; convert property to cash; disposition.

When a district is dissolved its board of directors shall convert all property of the district to cash and discharge all indebtedness of the district. All funds remaining after discharge of the district's indebtedness shall be deposited in the county treasuries of the counties in which the district is located in proportion to

the population of the district located in each county, and credited to the general fund.

Source: Laws 1959, c. 83, § 18, p. 380; R.S.1943, (1987), § 23-343.37.

23-3547 Hospital district; general powers; hospital, defined.

Each local hospital district shall have and exercise the following powers:

(1) To have and use a corporate seal and alter it at pleasure;

(2) To sue and be sued in all courts and places and in all actions and proceedings whatever;

(3) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and outside the district and to control, dispose of, convey, and encumber the same and create a leasehold interest in such property for the benefit of the district;

(4) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district, which power shall be exercised in the manner provided in sections 76-704 to 76-724;

(5) To administer any trust declared or created for hospitals of the district and receive by gift, devise, or bequest and hold in trust or otherwise property situated in this state or elsewhere and, when not otherwise provided, dispose of the same for the benefit of such hospitals;

(6) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district and to perform such functions in respect to the legal affairs of the district as the board may direct;

(7) To employ such officers and employees, including architects and consultants, as the board of directors deems necessary to carry on properly the business of the district;

(8) To prescribe the duties and powers of the manager, secretary, and other officers and employees of any such hospitals, to determine the number of and appoint all such officers and employees, and to fix their compensation. Such officers and employees shall hold their offices or positions at the pleasure of such boards;

(9) To do any and all things which an individual might do which are necessary for and to the advantage of a hospital;

(10) To establish, maintain, lease, or operate one or more hospitals within or outside the district, or both. For purposes of the Nebraska Local Hospital District Act, hospital has the meaning provided in subdivision (10) of section 23-3594;

(11) To do any and all other acts and things necessary to carry out the Nebraska Local Hospital District Act; and

(12) To acquire, maintain, and operate ambulances or an emergency medical service, including the provision of scheduled and unscheduled ambulance service, within and outside the district.

Source: Laws 1959, c. 83, § 19, p. 380; Laws 1969, c. 158, § 1, p. 730; Laws 1987, LB 134, § 7; R.S.1943, (1987), § 23-343.38; Laws 1994, LB 1118, § 18; Laws 1997, LB 28, § 1; Laws 1997, LB 138, § 34; Laws 2001, LB 808, § 2.

23-3548 Hospital district; board of directors; purchase of equipment.

(1) The board of directors may purchase all necessary surgical instruments and hospital equipment and equipment for nurses' homes and all other property necessary for equipping a hospital and nurses' home.

(2) The board of directors may purchase such real property, and erect or rent and equip such buildings or building, room or rooms as may be necessary for the hospital.

Source: Laws 1959, c. 83, § 20, p. 381; R.S.1943, (1987), § 23-343.39.

23-3549 Hospital district; board of directors; operation; fix rates.

The board of directors shall be responsible for the operation of all hospitals owned or leased by the district, according to the best interests of the public health and shall make and enforce all rules, regulations, and bylaws necessary for the administration, government, protection, and maintenance of hospitals under their management and all property belonging thereto and may prescribe the terms upon which patients may be admitted thereto. Such hospitals shall not contract to care for indigent county patients at below the cost for care. In fixing the rates the board shall, insofar as possible, establish such rates as will permit the hospital to be operated upon a self-supporting basis. The board may establish different rates for residents of the district than for persons who do not reside within the district. Minimum standards of operation as prescribed in sections 23-3528 to 23-3552 shall be established and enforced by the board of directors.

Source: Laws 1959, c. 83, § 21, p. 382; R.S.1943, (1987), § 23-343.40.

23-3550 Hospital district; board; membership in organization; dues.

The board of directors may maintain membership in any local, state or national group or association organized and operated for the promotion of the public health and welfare or the advancement of the efficiency of hospital administration, and in connection therewith pay dues and fees thereto.

Source: Laws 1959, c. 83, § 23, p. 382; R.S.1943, (1987), § 23-343.42.

23-3551 Hospital district; board of directors; officers; books and records; open to inspection.

The board of directors shall annually select such officers as may be necessary. The board shall cause to be kept accurate minutes of all meetings and accurate records and books of accounts, conforming to approved methods of bookkeeping, clearly reflecting the entire operation, management, and business of the district, which shall be kept at the principal place of business of the district. All books, papers, and vouchers shall be subject to public inspection at all reasonable hours.

Source: Laws 1959, c. 83, § 24, p. 382; R.S.1943, (1987), § 23-343.43.

23-3552 Hospital district; board of directors; budget statement; tax; levy; limitation; additional annual tax; election; collection.

(1) The board of directors may, after the adoption of the budget statement, levy and collect an annual tax which the district requires under the adopted budget statement to be received from taxation for the ensuing fiscal year not to exceed three and five-tenths cents on each one hundred dollars of the taxable

value of the taxable property within such district. On and after July 1, 1998, the tax levy provided in this subsection is subject to section 77-3443.

(2) In addition to the levy authorized in subsection (1) of this section, the board of directors of a hospital district may authorize an additional annual tax not to exceed three and five-tenths cents on each one hundred dollars of the taxable value of the taxable property within such district. On and after July 1, 1998, the tax levy provided in this subsection is subject to section 77-3443. Such tax shall not be authorized until the question of such additional tax has been submitted to the qualified electors of the district at a primary or general election or a special election called for that purpose and a majority of those voting approve the additional tax. Notice of the time and place of the special election shall be given by publication at least once each week in a legal newspaper of general circulation in the district for three successive weeks immediately preceding such election.

(3) Until July 1, 1998, the taxes authorized by subsections (1) and (2) of this section shall not be included within the levy limitations for general county purposes prescribed in section 23-119 or Article VIII, section 5, of the Constitution of Nebraska. On and after July 1, 1998, the taxes authorized by subsections (1) and (2) of this section shall not be included within the levy limitations for general county purposes prescribed in section 77-3442 or Article VIII, section 5, of the Constitution of Nebraska. On and after July 1, 1998, for purposes of section 77-3443, the county board of each of the counties having land embraced within the district shall approve the tax levy.

(4) The taxes authorized by subsections (1) and (2) of this section shall not be used to support or supplement the operations of health care services or facilities located outside the geographic boundaries of the district.

(5) The board shall annually, on or before September 20, certify the taxes authorized by this section to the county clerk of each of the counties having land embraced within such district. The county clerk shall extend such levies on the tax list, and the county treasurer shall collect the tax in the same manner as county taxes and shall remit the taxes collected to the county treasurer of the county in which the petition for the formation of the district was filed. The county treasurer shall credit the local hospital district with the amount thereof and make disbursements therefrom on warrants of the district signed by the chairperson and secretary-treasurer of the board of directors.

Source: Laws 1959, c. 83, § 27, p. 383; Laws 1969, c. 145, § 29, p. 690; Laws 1979, LB 187, § 111; Laws 1986, LB 753, § 1; R.S.1943, (1987), § 23-343.46; Laws 1992, LB 1063, § 23; Laws 1992, LB 1019, § 28; Laws 1992, Second Spec. Sess., LB 1, § 23; Laws 1993, LB 734, § 34; Laws 1995, LB 452, § 7; Laws 1996, LB 1114, § 50; Laws 1997, LB 28, § 2.

23-3553 Depreciation funds, authorized; limitations on use.

Nothing contained in the Nebraska Local Hospital District Act and sections 23-3501 to 23-3519 shall be construed to prohibit the board of trustees of any facility established under section 23-3501 or a local hospital district from establishing depreciation funds from patient or other revenue income for the purpose of replacing equipment or providing for future improvements or additions or from using such patient or other revenue income for purchasing equipment or for retiring indebtedness incurred for improvements or additions

not financed by bonds of the county or direct tax levies. The limitations upon expenditures provided for in section 23-3508 shall not apply to expenditures made from patient or other revenue income or for the retiring of indebtedness or payment of other obligations from such patient or revenue income.

Source: Laws 1965, c. 95, § 1, p. 411; Laws 1967, c. 121, § 17, p. 395; Laws 1991, LB 798, § 5; R.S.Supp.,1991, § 23-343.48; Laws 1992, LB 1240, § 23; Laws 2012, LB995, § 12.
Effective date April 6, 2012.

Cross References

Nebraska Local Hospital District Act, see section 23-3528.

23-3554 Hospital district; bonds; issuance; purpose.

The board of directors of any hospital district may, on the terms and conditions set forth in sections 23-3554 to 23-3572, issue the bonds of the district for the purpose of (1) purchasing a site for and erecting thereon a hospital, nursing home, or both, or for such purchase or erection, and furnishing and equipping the same, in such district, (2) purchasing an existing building or buildings and related furniture and equipment, including the site or sites upon which such building or buildings are located, for use as a hospital, nursing home, or both, and to furnish and equip them in such district, (3) retiring registered warrants, and (4) paying for additions to or repairs for a hospital, nursing home, or both.

Source: Laws 1967, c. 109, § 1, p. 352; Laws 1972, LB 1168, § 5; R.S.1943, (1987), § 23-343.49.

23-3555 Hospital district; bonds; issuance; approval of electors.

No bonds shall be issued under the provisions of sections 23-3554 to 23-3572 until the question has been submitted to the qualified electors of the district, and a majority of all the qualified electors voting on the question shall have voted in favor of issuing the same, at a special election called for that purpose, upon notice given by the board of directors at least twenty days prior to such election.

Source: Laws 1967, c. 109, § 2, p. 352; R.S.1943, (1987), § 23-343.50.

23-3556 Hospital districts; bonds; issuance; petition.

A vote shall be ordered upon the issuance of such bonds either (1) upon resolution of a majority of the members of the board of directors, or (2) whenever a petition shall be presented to the board requesting that a vote be taken for or against the issuing of bonds in such amount as may be specified for any one or more of the purposes authorized by section 23-3554. Such petition shall be signed by at least ten percent of the qualified voters of such district.

Source: Laws 1967, c. 109, § 3, p. 352; R.S.1943, (1987), § 23-343.51.

23-3557 Hospital districts; bonds; issuance; election; polling places; ballots; counting.

In all elections at which the registered voters of hospital districts are voting on the question of issuing bonds of the district, the board of directors shall designate the polling places, prepare the form of ballot, and appoint the election officials. Ballots for early voting shall be issued by the secretary of the

board of directors in the same manner as provided in the Election Act and returned to the secretary. All ballots cast at the election shall be counted by the same board. When all the ballots have been counted, the returns of such election shall be turned over to the board of directors of the district in which the election was held for the purpose of making a canvass thereof.

Source: Laws 1967, c. 109, § 4, p. 353; Laws 1984, LB 920, § 32; R.S.1943, (1987), § 23-343.52; Laws 1994, LB 76, § 548; Laws 2005, LB 98, § 2.

Cross References

Election Act, see section 32-101.

23-3558 Hospital districts; bonds; issuance; limitation.

The aggregate amount of bonds issued for all purposes in hospital districts shall in no event exceed fourteen percent of the last taxable valuation of all taxable property in such hospital district, but such limitation shall not apply to the issuance of refunding or compromise of indebtedness bonds by any such hospital district for the purpose of retiring outstanding bonds, warrants, or other indebtedness.

Source: Laws 1967, c. 109, § 5, p. 353; Laws 1979, LB 187, § 112; R.S.1943, (1987), § 23-343.53; Laws 1992, LB 719A, § 118.

23-3559 Hospital districts; bonds; interest; rate.

The bonds issued under the provisions of sections 23-3554 to 23-3572 shall draw such interest as shall be agreed upon.

Source: Laws 1967, c. 109, § 6, p. 353; Laws 1969, c. 51, § 85, p. 329; R.S.1943, (1987), § 23-343.54.

23-3560 Hospital districts; bonds; contents.

The bonds shall specify on their face the date, amount, purpose for which issued, time they shall run, and rate of interest. The bonds shall be printed on good paper, with coupons attached for each year's or half year's interest, and the amount of each year's interest shall be placed on corresponding coupons until such bonds shall become due, in such manner that the last coupon shall fall due at the same time as the bonds. The bonds and coupons thereto attached shall be severally signed by the president and secretary of the board of directors. The bonds and interest shall be payable at the office of the county treasurer in the county in which the district is located and if the district is located in more than one county, at the office of the county treasurer as may be provided in the history of the district and in the bonds.

Source: Laws 1967, c. 109, § 7, p. 353; R.S.1943, (1987), § 23-343.55.

23-3561 Hospital districts; bonds; issuance; statement; contents.

The board of directors of any hospital district in which any bonds may be voted shall, before the issuance of such bonds, make a written statement of all proceedings relative to the vote upon the issuance of such bonds and the notice of the election, the manner and time of giving notice, the question submitted, and the result of the canvass of the vote on the proposition pursuant to which it is proposed to issue such bonds, together with a full statement of the taxable valuation, the number of persons residing within the district, and the total

bonded indebtedness of the hospital district voting such bonds. Such statement shall be certified to under oath by the board of directors.

Source: Laws 1967, c. 109, § 8, p. 354; Laws 1979, LB 187, § 113; R.S.1943, (1987), § 23-343.56; Laws 1992, LB 719A, § 119; Laws 2001, LB 420, § 21.

23-3562 Repealed. Laws 2001, LB 420, § 38.

23-3563 Hospital districts; bonds; taxes.

Taxes for the payment of the hospital district bonds and the interest thereon shall be levied in the manner provided by section 23-3565.

Source: Laws 1967, c. 109, § 10, p. 354; R.S.1943, (1987), § 23-343.58; Laws 2001, LB 420, § 22.

23-3564 Repealed. Laws 2001, LB 420, § 38.

23-3565 Hospital districts; bonds; interest; levy; sinking fund.

The county board in each county shall levy annually upon all the taxable property in each hospital district in such county a tax sufficient to pay the interest accruing upon any bonds issued by such hospital district and to provide a sinking fund for the final redemption of the same. Such levy shall be made with the annual levy of the county and the taxes collected with other taxes and when collected shall be and remain in the hands of the county treasurer as a special fund for the payment of the interest upon such bonds and for the final payment of the same at maturity. The county clerk shall furnish a copy of his or her register to the county treasurer. The levy for the purpose of paying off such indebtedness providing a sinking fund for the final redemption of such indebtedness may be in addition to the levy provided for in section 23-3552.

Source: Laws 1967, c. 109, § 12, p. 355; R.S.1943, (1987), § 23-343.60; Laws 1992, LB 719A, § 120.

23-3566 Hospital district, defined.

The phrase hospital district, as used in section 23-3565, shall mean the hospital district as it existed immediately prior to and at the time of the issuance of any bonds by such hospital district, including all lands, property, and inhabitants contained in the hospital district at the time of the issuance of any bonds, and all portions of the district subsequently separated from the district, whether by the formation of a new district or by any change of boundaries of the original district and all territory annexed to the hospital district during the life of such bonds.

Source: Laws 1967, c. 109, § 13, p. 355; R.S.1943, (1987), § 23-343.61.

23-3567 Hospital district; sinking fund; investment.

Any money in the hands of any treasurer as a sinking fund for the redemption of bonds which are a valid and legal obligation of the hospital district to which such money belongs or for the payment of interest on any such bonds and which is not currently required to retire bonds and pay interest on bonds, shall be invested by the treasurer, when so ordered by the board of directors, in securities authorized as legal investments for counties, school districts or

hospital districts. The interest earned on such investments shall be credited to the sinking fund from which the invested funds were drawn.

Source: Laws 1967, c. 109, § 14, p. 355; R.S.1943, (1987), § 23-343.62.

23-3568 Hospital districts; tax; collection; disbursement.

The tax and funds collected under the provisions of sections 23-3554 to 23-3572 shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds provided for in sections 23-3554 to 23-3572, until fully satisfied, and the treasurer shall be liable on his official bond for the faithful disbursement of all money so collected or received by him. After the principal and interest of such bonds shall have been fully paid and all obligations for which such fund and taxes were raised have been discharged, the county clerk, upon the order of the county board, shall notify the county treasurer to transfer all such funds remaining in his hands to the credit of the district to which they belong.

Source: Laws 1967, c. 109, § 15, p. 356; R.S.1943, (1987), § 23-343.63.

23-3569 Hospital districts; bonds; maturity; payment.

When any registered bonds shall mature, the same shall be paid off by the treasurer at the place where the same shall be payable out of any money in his hands or under his control for that purpose, and when so paid the same shall be endorsed by the treasurer on the face thereof Canceled, together with the date of such payment, and thereupon shall be filed with the clerk who shall enter satisfaction of such bonds upon the records of such hospital district.

Source: Laws 1967, c. 109, § 16, p. 356; R.S.1943, (1987), § 23-343.64.

23-3570 Hospital districts; bonds; liability of district; redemption.

Any hospital district which has heretofore voted and issued, or which shall hereafter vote and issue, bonds to build or furnish a hospital, or for any other purpose, and which bonds, or any part thereof, still remain unpaid and remain and are a legal liability against such district and are bearing interest, may issue coupon bonds to be substituted in place of, and exchanged for such bonds heretofore issued, whenever such hospital district can effect such substitution and exchange at a rate of not to exceed dollar for dollar or such bonds may be sold for cash where such bonds heretofore issued are subject to the right of redemption at the time the refunding bonds are issued. All bonds issued under the provisions of sections 23-3570 to 23-3572 must, on their face, contain a clause that the district issuing such bonds shall have the right to redeem such bonds at the expiration of five years from the date of the issuance thereof.

Source: Laws 1967, c. 109, § 17, p. 356; Laws 1969, c. 51, § 86, p. 329; R.S.1943, (1987), § 23-343.65.

23-3571 Hospital districts; bonds; issuance; statement; contents.

Each new bond issued under the provisions of sections 23-3570 to 23-3572 shall state therein (1) the object of its issuance, (2) the section or sections of the law under which the issuance thereof was made, including a statement that the issuance is made pursuant thereto, and (3) the number, date, and amount of the bond or bonds for which it is substituted. Such new bond shall not be delivered

until the surrender of the bond or bonds so designated or until such bonds are called for redemption.

Source: Laws 1967, c. 109, § 18, p. 357; R.S.1943, (1987), § 23-343.66.

23-3572 Hospital districts; bonds; new; vote of electors not required.

The issuance of such new bonds shall not require a vote of the people to authorize such issue, and such bonds shall be paid, and the levy be made and tax collected for their payment, in accordance with laws governing the bonds which they are issued to replace.

Source: Laws 1967, c. 109, § 19, p. 357; R.S.1943, (1987), § 23-343.67.

23-3573 Hospital districts; merger; petition; election.

Any two or more hospital districts may merge into one district if a petition for merger is presented to the county board in the county which will include the greater portion of the proposed district by population and such merger is approved by a majority of the voters in the existing districts at an election as provided in section 23-3575. A petition for merger shall be sufficient if for each district affected by the proposed merger it has been either signed by a majority of the board of directors of each district or signed by the legal voters in each district equal to at least ten percent of the number of votes cast in such district for the Governor at the last general election. The petition shall be filed at least sixty days prior to any election.

Source: Laws 1978, LB 560, § 4; R.S.1943, (1987), § 23-343.123.

23-3574 Hospital districts; petition for merger; plan; contents.

The petition for merger shall include a plan for the proposed merger which plan shall contain:

(1) A description of the proposed boundaries of the merged district;

(2) A summary statement of the reasons for the proposed merger;

(3) The amount of the outstanding bonded indebtedness of each district and the manner in which such outstanding bonded indebtedness is proposed to be allocated if the merger is approved;

(4) The amount of outstanding indebtedness other than the bonded indebtedness of each district;

(5) The name of the proposed district; and

(6) Such other matters as the petitioner shall determine proper to be included.

Source: Laws 1978, LB 560, § 5; R.S.1943, (1987), § 23-343.124.

23-3575 Hospital districts; merger; election; procedure.

After determining the sufficiency of the petition presented under section 23-3573, the county board shall by resolution provide for the submission of the question of the merger of the districts at a general, primary, or special election. If a special election is called, the costs of such election shall be borne equally by the districts petitioning for the merger. If the question is submitted at a special election, the county clerk or election commissioner of each county having registered voters entitled to vote on the issue shall conduct the special election in such county and shall be responsible for designating the polling places and

appointing the election officials, who need not be the regular election officials, and otherwise conducting the election within such county. The county board shall designate the form of ballot.

The county clerk or election commissioner for the county whose county board has received the petition and called the election shall be responsible for giving notice of the special election. Such notice shall be published at least twenty days prior to the election and shall be published, for each district, in a legal newspaper of general circulation in such district. The notice of election shall state where ballots for early voting may be obtained pursuant to the Election Act.

In any such special election, the ballots shall be counted by the county clerks or election commissioners conducting the election and each such county clerk or election commissioner shall designate two disinterested persons to assist him or her with the counting of ballots. If the question is submitted at the statewide general election or primary election, the ballots shall be counted as provided in the Election Act. When all of the ballots have been counted in each county, the returns of such election shall be canvassed by the county canvassing board.

All elections conducted pursuant to this section shall be conducted as provided under the Election Act except as otherwise specifically provided for in this section.

Source: Laws 1978, LB 560, § 6; Laws 1984, LB 920, § 33; R.S.1943, (1987), § 23-343.125; Laws 1994, LB 76, § 549; Laws 2005, LB 98, § 3.

Cross References

Election Act, see section 32-101.

23-3576 Hospital districts; merger; voter approval; order.

If after canvassing the returns for each county the county board determines that the merger has been approved by a majority of the voters in each district, the county board shall enter an order for the merger of the districts.

Source: Laws 1978, LB 560, § 7; R.S.1943, (1987), § 23-343.126.

23-3577 Hospital districts; merger; new officers; board of directors; elected; term.

Immediately following the entry of the order of merger by the county board, the members of the board of directors of the former hospital districts which were merged by such order shall meet and elect from among themselves a chairperson, vice-chairperson, and secretary-treasurer. No more than two of such offices may be held by persons from one of such former hospital districts. The members of such boards shall adopt as rules for its proceeding the rules of one of such former districts with such changes and modifications as the members shall deem necessary. The members of the board of directors shall continue to serve as members of the board of directors of the merged district until the next statewide primary, at which time a board of directors, consisting of five members, shall be elected from the merged district for staggered terms of two for two years and three for four years in the manner prescribed for the election of an original board under section 23-3534.

Source: Laws 1978, LB 560, § 8; R.S.1943, (1987), § 23-343.127.

23-3578 Hospital districts; merger; property, debts, liabilities; transferred; exception.

After the entry by the county board of its order for merger of the districts, all property, debts, and liabilities of the former hospital districts shall be transferred to the new district, except that all outstanding bonded indebtedness of the previously existing hospital districts shall be allocated to the real estate included within such prior existing districts as provided in the plan of merger.

Source: Laws 1978, LB 560, § 9; R.S.1943, (1987), § 23-343.128.

(c) HOSPITAL AUTHORITIES

23-3579 Act, how cited.

Sections 23-3579 to 23-35,120 shall be known and may be cited as the Hospital Authorities Act.

Source: Laws 1971, LB 54, § 1; R.S.1943, (1987), § 23-343.74; Laws 1993, LB 815, § 1.

23-3580 Hospital Authorities Act; declaration of purpose.

It is declared that conditions resulting from the concentration of population of various counties, cities, and villages in this state require the construction, maintenance, and operation of adequate hospital facilities for the care of the public health and for the control and treatment of epidemics, for the care of the indigent and for the public welfare; that in various counties, cities, and villages of the state there is a lack of adequate hospital facilities available to the inhabitants thereof and that consequently many persons including persons of low income are forced to do without adequate medical and hospital care and accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the state and impair economic values; that these conditions cannot be remedied by the ordinary operations of private enterprises; that the providing of adequate hospital and medical care are public uses; that it is in the public interest that adequate hospital and medical facilities and care be provided in order to care for and protect the health and public welfare; and the necessity in the public interest for the provisions of sections 23-3579 to 23-35,120 is hereby declared as a matter of legislative determination.

It is hereby further declared as a matter of legislative determination that high interest rates are contributing to rising costs of health care, that techniques of financing health care facilities have changed, that existing financing documents may impose unnecessary burdens, and that the giving of power to hospital authorities created pursuant to sections 23-3579 to 23-35,120 to refinance existing indebtedness and to utilize improved financing techniques would serve the public interest by improving the quality of health care or minimizing the cost thereof.

Source: Laws 1971, LB 54, § 2; Laws 1980, LB 801, § 1; R.S.1943, (1987), § 23-343.75.

23-3581 Hospital authority; public corporation; powers.

Whenever it shall be conducive to the public health and welfare, a hospital authority constituting a public corporation and body politic may be established

in the manner and having the powers and duties provided in sections 23-3579 to 23-35,120.

Source: Laws 1971, LB 54, § 3; R.S.1943, (1987), § 23-343.76.

23-3582 Hospital authority; formation; requirements.

(1) Whenever the formation of a hospital authority is desired, a petition or petitions stating (a) the general location of the hospital to be maintained by such proposed authority, (b) the territory to be included within it, which territory shall be contiguous, (c) the approximate number of persons believed to reside within the boundaries of the proposed authority, and (d) the names of five or more, but not exceeding eleven, proposed trustees, who shall be electors residing within the boundaries of the proposed authority, to serve as a board of trustees until their successors are appointed and qualified, should the authority be formed, together with a prayer that the same be declared to be a hospital authority under the Hospital Authorities Act may be filed in the office of the county clerk of the county in which the proposed authority is situated.

(2)(a) Each hospital authority established in a county having a total population of three hundred thousand or more, as shown by the most recent federal census, shall encompass an area in which at least forty thousand persons reside, (b) each hospital authority established in a county having a total population of one hundred fifty thousand to three hundred thousand, as shown by the most recent federal census, shall encompass an area in which at least thirty thousand persons reside, (c) each hospital authority established in a county having a total population of twenty thousand to one hundred fifty thousand, as shown by the most recent federal census, shall encompass an area in which at least twenty thousand persons reside, and (d) no hospital authority shall be established in any county having a total population of less than twenty thousand, as shown by the most recent federal census, unless the hospital authority encompasses the entire county which it is to serve. Such petitions shall be signed by at least one hundred electors who appear to reside within the suggested boundaries of the proposed authority.

Source: Laws 1971, LB 54, § 4; R.S.1943, (1987), § 23-343.77; Laws 1993, LB 815, § 2.

23-3583 Hospital authority; formation; petitions; notice; contents.

Upon receipt of such petitions, the county clerk shall set the date for a hearing thereon, which shall not be less than twenty nor more than forty-five days from their date of filing, and cause notice thereof to be published on the same day in each of three successive weeks in one or more newspapers of general circulation throughout the area to be included in the proposed authority. Such notice shall contain a statement of the information contained in such petitions and of the date, time, and place at which such hearing shall be held before the board of county commissioners and that at such hearing proposals may be considered for the exclusion of land from or the inclusion of additional land in such proposed authority, and for designating as initial trustees persons other than those named in the petitions.

Source: Laws 1971, LB 54, § 5; R.S.1943, (1987), § 23-343.78.

23-3584 Hospital authority; objections; contents.

All electors residing within the boundaries of the proposed authority who have not signed the petitions and who may object to the organization of the authority or to any one or more of the proposed trustees shall, not less than five days prior to the date set for the hearing on the petitions, file with the county clerk any such objection in writing, stating (1) why such hospital authority should not be organized and declared a public corporation in this state, (2) why the territory comprising the authority should be enlarged, decreased or otherwise changed, and (3) their objections to any one or more of the proposed trustees.

Source: Laws 1971, LB 54, § 6; R.S.1943, (1987), § 23-343.79.

23-3585 Hospital authority; formation; submission to health planning agency prior to hearing; findings.

Prior to the holding of a hearing on the petitions, the question of forming the proposed hospital authority shall be submitted to the appropriate local or area health planning agency for its consideration and review if there has been created, pursuant to state or federal law, such a local or area health planning agency having jurisdiction within the area in which the proposed hospital authority is to be established. Such local or area health planning agency shall within sixty days render its findings and recommendations, if any, and shall be deemed to have approved the formation of the proposed hospital authority if its findings and recommendations have not been rendered within such period of sixty days.

Source: Laws 1971, LB 54, § 7; Laws 1986, LB 733, § 1; R.S.1943, (1987), § 23-343.80.

23-3586 Hospital authority; hearing; county board; findings; initial trustees; qualifications; terms.

Such petitions, written objections, findings, and recommendations filed as provided in sections 23-3584 and 23-3585, if any, shall be heard by the county board without any unnecessary delay. In making its determination with respect to whether or not a proposed authority should be declared a public corporation of this state, the county board shall ascertain, to its satisfaction, that all of the requirements set forth in the Hospital Authorities Act have been met or complied with. If the county board determines that the formation of such authority will be conducive to the public health, convenience, or welfare, it shall declare the authority a public corporation and body politic of this state and shall declare the trustees nominated, or in case of meritorious objection thereto, other suitable trustees who shall be electors residing within the county in which the authority is situated, to be the board of trustees of the authority to serve until their successors are appointed and qualified. The board of trustees shall not consist of more than eleven members. In arriving at its determination as to who should be appointed to initial membership on the board of trustees of an authority, the county board shall give due consideration to each nominee's general reputation in the community, his or her education and experience in areas such as education, medicine, hospital administration, business management, finance, law, engineering, and other fields which might be of benefit to the authority, his or her background in public service activities, the amount of time and energy that he or she might be expected to be able to devote to the affairs of the authority, and such other factors as the county board may deem

relevant. One or more of the trustees initially appointed shall be consumers of health care services as distinguished from providers of health care services. The county board in appointing the initial trustees shall classify such initial trustees so that approximately one-third of their number shall serve for two years, approximately one-third of their number shall serve for four years, and approximately one-third of their number shall serve for six years, their successors to be thereafter appointed for terms of six years each.

Source: Laws 1971, LB 54, § 11; Laws 1986, LB 733, § 2; R.S.1943, (1987), § 23-343.84; Laws 1993, LB 815, § 3; Laws 1996, LB 898, § 1.

23-3586.01 Repealed. Laws 1996, LB 898, § 8.

23-3587 Hospital authority; certificate; transmit to Secretary of State; county clerk.

Within twenty days after the authority has been declared a public corporation and body politic by the county board, the county clerk shall transmit to the Secretary of State a certified copy of the record relating thereto, and the same shall be filed in his office in the same manner as articles of incorporation are required to be filed under the general law concerning corporations. A copy of such record shall also be filed by the county clerk in his own office.

Source: Laws 1971, LB 54, § 12; R.S.1943, (1987), § 23-343.85.

23-3588 Hospital authority; corporate name.

Such authority shall be a public body corporate and politic by the name of Hospital Authority No. . . . . of . . . . . County, Nebraska.

Source: Laws 1971, LB 54, § 13; R.S.1943, (1987), § 23-343.86.

23-3589 Hospital authority; trustees; meetings; officers; expenses; seal; rules and regulations.

Within thirty days after the county board shall have declared the authority a public corporation, the trustees so appointed by the county board shall meet and elect one of their number chairperson, one of their number vice-chairperson, and one of their number secretary of the authority. The trustees shall serve without compensation, except that each shall be allowed his or her actual and necessary traveling and incidental expenses incurred in the performance of his or her official duties with reimbursement for mileage to be made at the rate provided in section 81-1176. The board shall (1) adopt a seal, bearing the name of the authority, (2) keep a record of all of its proceedings which shall be open to inspection by all interested persons during regular business hours and under reasonable circumstances, and (3) establish the time and place of holding its regular meetings and the manner of calling special meetings and shall have the power from time to time to pass all necessary resolutions, orders, rules, and regulations for the necessary conduct of its business and to carry into effect the objects for which such authority was formed.

Source: Laws 1971, LB 54, § 14; Laws 1981, LB 204, § 24; R.S.1943, (1987), § 23-343.87; Laws 1996, LB 1011, § 18.

23-3590 Hospital authority; trustees; vacancy; how filled.

Any vacancy upon the board of trustees, occurring other than by the expiration of a term, shall be filled by appointment by the remaining members of the board of trustees. Any person appointed to fill such vacancy shall serve for the remainder of the unexpired term. There shall at all times be one or more members of the board of trustees who are consumers of health care services as distinguished from providers of health care services.

Source: Laws 1971, LB 54, § 15; R.S.1943, (1987), § 23-343.88.

23-3591 Hospital authority; trustees; election.

Candidates for other than initial appointment to the board of trustees of a hospital authority may be nominated by petitions signed by not less than twenty-five electors residing within the boundaries of the authority. Such petitions shall be filed with the board of trustees not less than forty-five days prior to the date upon which the term of office of any trustee is due to expire. Not less than thirty days prior to such date of expiration the board of trustees shall cause such petitions to be filed in the office of the county clerk of the county in which the authority is situated. Upon receipt of such petitions, the county clerk shall set the date for a hearing thereon, which shall be not less than ten nor more than forty-five days from their date of filing, and cause notice thereof to be published on the same day in each of two successive weeks in one or more newspapers of general circulation throughout the area included within the authority. Such notice shall contain the date, time and place at which such hearing shall be held before the county board; the names of each person nominated for appointment to a six-year term on the board of trustees of the authority; and that at the hearing before the county board objections will be heard to the appointment of any one or more of the persons nominated. Any member of the board of trustees may be nominated for reappointment.

Source: Laws 1971, LB 54, § 16; R.S.1943, (1987), § 23-343.89.

23-3592 Hospital authority; trustees; appointment; objections; file with county clerk.

All electors residing within the boundaries of the authority who have not signed the petitions nominating a candidate for appointment to the board of trustees may, not less than five days prior to the date set for hearing on the nominations, file with the county clerk any objections to the appointment of any such candidate stating their objections to any one or more of the candidates.

Source: Laws 1971, LB 54, § 17; R.S.1943, (1987), § 23-343.90.

23-3593 Hospital authority; trustees; nominations; objections; hearing; findings; appointment.

The petitions for nomination of candidates for the office of trustee of an authority, and any written objections filed as provided in section 23-3592, if any, shall be heard by the county board without unnecessary delay. In arriving at its determination as to which of the candidates should be appointed to serve a six-year term on the board of trustees of the authority, the county board shall give due consideration to each nominee's general reputation in the community, his education and experience in areas such as education, medicine, hospital administration, business management, finance, law, engineering and other fields which might be of benefit to the authority, his background in public service activities, the amount of time and energy that he might be expected to

be able to devote to the affairs of the authority and such other factors as the county board may deem relevant. At the conclusion of the hearing, the county board shall, within ten days, enter its order appointing such candidate or candidates as it shall have determined upon to serve a term of six years on the board of trustees of the authority, such term of office to continue until a successor has been appointed.

Source: Laws 1971, LB 54, § 18; R.S.1943, (1987), § 23-343.91.

23-3594 Hospital authority; powers.

Each hospital authority shall have and exercise the following powers:

(1) To have perpetual succession as a body politic and corporate, except that any county board having declared a hospital authority to be a public corporation and body politic of this state shall, upon a showing duly made and with appropriate notice given to the Secretary of State, but not sooner than upon expiration of a period of two years from and after the date upon which the record relating to formation of such hospital authority was filed with the Secretary of State pursuant to section 23-3587, enter an order dissolving any hospital authority which does not then have under construction, own, lease as lessee or as lessor, or operate a hospital;

(2) To have and use a corporate seal and alter it at pleasure;

(3) To sue and be sued in all courts and places and in all actions and proceedings whatever;

(4) To purchase, receive, have, take, hold, lease as lessee, use, and enjoy property of every kind and description within the limits of the authority and to control, dispose of, sell for a nominal or other consideration, convey, and encumber the same and create a leasehold interest in the same, as lessor, with any nonprofit person, firm, partnership, limited liability company, association, or corporation, other than a county, city, or village in this state, for the benefit of the authority;

(5) To administer any trust declared or created for hospitals of the authority and to receive by gift, devise, or bequest and hold, in trust or otherwise, property situated in this state or elsewhere and, if not otherwise provided, dispose of the same for the benefit of such hospitals;

(6) To employ legal counsel to advise the board of trustees in all matters pertaining to the business of the authority and to perform such functions with respect to the legal affairs of the authority as the board may direct;

(7) To employ such technical experts and such officers, agents, and employees, permanent and temporary, as it may require and to determine their qualifications, duties, and compensation, such technical experts, officers, agents, and employees to hold their offices or positions at the pleasure of the board;

(8) To delegate to one or more of its agents or employees such powers and duties as it deems proper;

(9) To do any and all things which an individual might do which are necessary for and to the advantage of a hospital;

(10) To purchase, construct, establish, or otherwise acquire and to improve, alter, maintain, and operate one or more hospitals situated within the territorial limits of the authority. The term hospital as used in the Hospital Authorities Act

shall mean and include, except as used in section 23-3597, any structure or structures suitable for use as a hospital, nursing home, clinic, or other health care facility, laboratory, laundry, nurses' or interns' residences and dormitories, administration buildings, research facilities, and maintenance, storage, or utility facilities and other structures or facilities reasonably related thereto or required or useful for the operation thereof, including parking and other facilities or structures essential or convenient for the orderly operation thereof and shall also include furniture, instruments, equipment, and machinery and other similar items necessary or convenient for the operations thereof, and any hospital authority which has established or acquired a hospital may also purchase, construct, or otherwise acquire and improve, alter, maintain, and operate all types of ancillary care facilities, including rehabilitation, recreational, and research facilities for children, addicted persons, disabled individuals, and elderly persons, including both residential and outpatient care and ancillary facilities for physicians, technicians, educators, psychologists, social scientists, scientists, nutritionists, administrators, interns, residents, nurses, students preparing to engage in the health service field, and other health care related personnel;

(11) To enter into contracts and other agreements for the purchase, construction, establishment, acquisition, management, operation, and maintenance of any hospital or any part thereof upon such terms and conditions and for such periods of time as its board of trustees may determine;

(12) To do any and all other acts and things necessary to carry out the Hospital Authorities Act, including the power to borrow money on its bonds, notes, debentures, or other evidences of indebtedness and to secure the same by pledges of its revenue in the manner and to the extent provided in the act and to fund or refund the same; and

(13) To acquire, maintain, and operate ambulances or an emergency medical service, including the provision of scheduled or unscheduled ambulance service, within and without the authority.

Source: Laws 1971, LB 54, § 19; Laws 1972, LB 1382, § 1; Laws 1974, LB 693, § 3; R.S.1943, (1987), § 23-343.92; Laws 1993, LB 121, § 164; Laws 1993, LB 815, § 5; Laws 1996, LB 898, § 2; Laws 1997, LB 138, § 35; Laws 2001, LB 808, § 3.

23-3594.01 Repealed. Laws 1996, LB 898, § 8.

23-3594.02 Repealed. Laws 1996, LB 898, § 8.

23-3594.03 Repealed. Laws 1996, LB 898, § 8.

23-3594.04 Repealed. Laws 1996, LB 898, § 8.

23-3594.05 Repealed. Laws 1996, LB 898, § 8.

23-3594.06 Repealed. Laws 1996, LB 898, § 8.

23-3594.07 Repealed. Laws 1996, LB 898, § 8.

23-3594.08 Repealed. Laws 1996, LB 898, § 8.

23-3594.09 Repealed. Laws 1996, LB 898, § 8.

23-3595 Hospital authority; board of trustees; duties.

All hospitals operated directly by an authority and not operated or leased as lessee by a nonprofit person, firm, partnership, limited liability company, association, or corporation shall be operated by the board of trustees of such authority according to the best interests of the public health, and the board of trustees shall make and enforce all rules, regulations, and bylaws necessary for the administration, government, protection, and maintenance of such hospitals and all property belonging thereto and may prescribe the terms upon which patients may be admitted thereto. Such hospitals shall not be required to contract with counties or with agencies thereof to provide care for indigent county patients at below the cost for care. In fixing the basic room rates for such hospitals, the board of trustees shall establish such basic room rates as will, together with other income and revenue available for such purpose and however derived, permit each such hospital to be operated upon a self-supporting basis. In establishing basic room rates for such hospital, the board of trustees shall give due consideration to at least the following factors: Costs of administration, operation, and maintenance of such hospitals; the cost of making necessary repairs and renewals thereto; debt service requirements; the creation of reserves for contingencies; and projected needs for expansion and for the making of major improvements. Minimum standards of operation for such hospitals, at least equal to those set by the Department of Health and Human Services, shall be established and enforced by the board of trustees.

In the case of hospitals financed with the proceeds of bonds issued by an authority, but not operated directly by an authority, the board of trustees shall require that the financing documents contain covenants of the operators of such hospitals to establish rates at least sufficient to pay costs of administration, operation, and maintenance of such hospitals, the cost of making necessary repairs and renewals thereto, and to provide for debt service requirements, the creation of reserves for contingencies, and projected needs for expansion and the making of major improvements.

Source: Laws 1971, LB 54, § 20; Laws 1972, LB 1382, § 2; Laws 1980, LB 801, § 2; R.S.1943, (1987), § 23-343.93; Laws 1993, LB 121, § 165; Laws 1996, LB 1044, § 58; Laws 2007, LB296, § 25.

23-3596 Hospital authority; board of trustees; pecuniary interest in contract; prohibited; penalty.

No member of the board of trustees, or any person who shall have been a member of the board of trustees at any time during the immediately preceding period of two years, shall have any direct or indirect personal pecuniary interest in the purchase of any material to be used by or supplied to such authority, or in any contract with such authority. Any person violating the provisions of this section shall be guilty of a Class II misdemeanor, and his office shall be vacated.

Source: Laws 1971, LB 54, § 21; Laws 1977, LB 40, § 88; R.S.1943, (1987), § 23-343.94.

23-3597 Hospital authority; structures; construction; submission of plans.

Prior to constructing any structure which is to be utilized as a hospital or as a nursing home, as opposed to structures related thereto, the question of constructing such structure shall be submitted to the appropriate local or area health planning agency for its consideration and review if there has been

created, pursuant to state or federal law, such a local or area health planning agency having jurisdiction within the area in which the proposed structure is to be constructed. Such local or area health planning agency shall within sixty days render its findings and recommendations, if any, and shall be deemed to have approved construction of the proposed structure if its findings and recommendations have not been rendered within such period of sixty days. The provisions of this section shall not apply to the purchase or other acquisition by an authority of any interest in any existing structure which is to be utilized as a hospital if such structure has been in existence for more than one year.

Source: Laws 1971, LB 54, § 22; Laws 1972, LB 1382, § 3; Laws 1986, LB 733, § 3; R.S.1943, (1987), § 23-343.95.

23-3598 Hospital authority; construction; plans; recommendations; effect.

The findings and recommendations, if any, of the appropriate local health planning agency, if any, shall be considered by the board of trustees of the hospital authority in making its determination as to whether or not to proceed with construction of the proposed structure.

Source: Laws 1971, LB 54, § 24; Laws 1979, LB 412, § 4; Laws 1986, LB 733, § 4; R.S.1943, (1987), § 23-343.97.

23-3599 Hospital authority; bonds; issuance.

An authority may issue bonds for the purpose of purchasing or otherwise acquiring an existing structure or structures and related furniture and equipment, including the site or sites upon which the same are located, for use as a hospital, and to furnish, equip, alter, renovate, and remodel the same, or for constructing, furnishing, and equipping new facilities or additions or improvements to existing facilities, or for the purpose of providing for the refunding of any bonds issued under sections 23-3579 to 23-35,120.

An authority shall also have the power to issue bonds for the purpose of refinancing indebtedness incurred for the benefit of a hospital.

In lieu of acquiring an interest in a hospital, an authority may lend the proceeds from the sale of its bonds for any of the purposes set forth in this section, and such financing, which shall be pursuant to a loan agreement, may be either unsecured or secured as the board of trustees of the authority shall determine. Bonds may be issued under sections 23-3579 to 23-35,120 notwithstanding any debt or other limitation, including limitation as to interest rates, prescribed in any statute.

Source: Laws 1971, LB 54, § 26; Laws 1972, LB 1382, § 5; Laws 1980, LB 801, § 3; R.S.1943, (1987), § 23-343.99.

23-35,100 Hospital authority; bonds; principal and interest; payment out of revenue.

The principal and interest on such bonds shall be payable exclusively from the income and revenue of the facilities purchased, constructed, altered, renovated, remodeled, furnished and equipped with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing, furnishing or equipping thereof; *Provided,* that an authority may, in its discretion, also pledge to the payment of the principal and interest on any such bonds all or any part of the income and revenue

derived from the operation of any or all of the other facilities then owned or operated by it; *and provided further,* that an authority may in its discretion, also expressly provide that any such bonds shall be general obligations of the authority payable out of any revenue, income, receipts, profits, or other money or funds of the authority derived from any source whatsoever. Such bonds may be additionally secured by a trust indenture.

Source: Laws 1971, LB 54, § 27; Laws 1972, LB 1382, § 6; Laws 1974, LB 693, § 4; R.S.1943, (1987), § 23-343.100.

23-35,101 Hospital authority; trustees; bonds; exempt from liability.

Neither the trustees of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

Source: Laws 1971, LB 54, § 28; R.S.1943, (1987), § 23-343.101.

23-35,102 Hospital authority; bonds, obligations; not debt of political subdivision.

The bonds and other obligations of the authority shall not be a debt of any county, city or village in which the authority is located or of the state, and neither the state nor any such county, city or village shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority, and such bonds and obligations shall so state on their face. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of this state.

Source: Laws 1971, LB 54, § 29; R.S.1943, (1987), § 23-343.102.

23-35,103 Hospital authority; bonds; maturity; interest.

The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates, payable annually or semiannually, be in such denominations, which may be made interchangeable, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places either within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or its trust indenture may provide.

Source: Laws 1971, LB 54, § 30; R.S.1943, (1987), § 23-343.103.

23-35,104 Hospital authority; bonds; sale.

The bonds may be sold at public or private sale at such price or prices or such rate or rates, and at such premiums or at such discounts, as the authority shall determine.

Source: Laws 1971, LB 54, § 31; R.S.1943, (1987), § 23-343.104.

23-35,105 Hospital authority; interim certificates; issuance.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating

to their discharge or payment or the delivery of definitive bonds as the authority may by resolution or trust indenture determine.

Source: Laws 1971, LB 54, § 32; R.S.1943, (1987), § 23-343.105.

23-35,106 Hospital authority; bonds; signature; validation.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

Source: Laws 1971, LB 54, § 33; R.S.1943, (1987), § 23-343.106.

23-35,107 Hospital authority; bonds; purchase; cancellation.

The authority shall have the power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof, the then applicable premium payable upon their redemption, or the next applicable redemption premium if the bonds are not then redeemable, and the accrued interest; *Provided,* that bonds payable exclusively from the revenue of a designated facility or facilities shall be purchased only out of any such revenue available therefor. All bonds so purchased shall be canceled. This section shall not apply to the redemption of bonds.

Source: Laws 1971, LB 54, § 34; R.S.1943, (1987), § 23-343.107.

23-35,108 Hospital authority; bonds, interim certificates, obligations; issuance; validation.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to the provisions of sections 23-3579 to 23-35,120 shall be fully negotiable.

Source: Laws 1971, LB 54, § 35; R.S.1943, (1987), § 23-343.108.

23-35,109 Hospital authority; bonds; obligations; secure; powers of authority.

In connection with the issuance of bonds or the incurring of any obligations under a lease and in order to secure the payment of such bonds or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, or other contract, all or any part of its income, rents, fees, revenue or other funds;

(2) To covenant to impose and maintain such schedule of fees and charges as will produce funds sufficient to pay operating costs and debt service;

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any hospital facility or any part thereof, or with respect to limitations on its right to undertake additional hospital facilities;

(4) To covenant against pledging all or any part of its income, rents, fees, revenue and other funds to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;

(5) To provide for the release of income, rents, fees, revenue and other funds, from any pledge and to reserve rights and powers in, or the right to dispose of

property, the income, rents, fees and revenue from which are subject to a pledge;

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

(7) To covenant as to what other, or additional debt, may be incurred by it;

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds;

(9) To provide for the replacement of lost, destroyed, or mutilated bonds;

(10) To covenant as to the use of any or all of its property, real or personal;

(11) To create or to authorize the creation of special funds in which there shall be segregated: (a) The proceeds of any bequest, gift, loan or grant; (b) all of the income, rents, fees and revenue of any hospital facility or facilities or parts thereof; (c) any money held for the payment of the costs of operation and maintenance of any such hospital facilities or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any money held for the payment of the principal and interest on its bonds or the sums due under its leases or as a reserve for such payments; and (e) any money held for any other reserve or contingencies; and to covenant as to the use and disposal of the money held in such funds;

(12) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

(13) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner;

(14) To prescribe the procedure, if any, by which the authority may issue additional parity or junior lien bonds;

(15) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(16) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance money;

(17) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any money necessary for such purpose, and the money so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, lease or contract of the authority with reference thereto;

(18) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(19) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation;

(20) To covenant to surrender possession of all or any part of any hospital facility or facilities the revenue from which have been pledged as provided for

in sections 23-3579 to 23-35,120 upon the happening of any event of default, as defined in the contract, and to vest in an obligee the right without judicial proceeding to obtain a substitute lessee for the hospital facilities or any part thereof or to take possession of and to use, operate, manage and control such hospital facilities or any part thereof, and to collect and receive all income, rents, fees and revenue arising therefrom in the same manner as the authority itself might do and to dispose of the money collected in accordance with the agreement of the authority with such obligee;

(21) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant;

(22) To make covenants other than in addition to the covenants expressly authorized in this section, of like or different character;

(23) To execute all instruments necessary or convenient in the exercise of the powers granted in this section or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those specified in sections 23-3579 to 23-35,120, as the government or any purchaser of the bonds of the authority may reasonably require; and

(24) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated in this section; it being the intention hereof to give the authority power to do all things in the issuance of bonds and in the making of provisions for their security that are not inconsistent with the Constitution of this state without the consent or approval of any judge or court being required therefor.

Source: Laws 1971, LB 54, § 36; Laws 1972, LB 1382, § 7; R.S.1943, (1987), § 23-343.109.

23-35,110 Hospital authority; bonds; obligee; rights.

An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding in law or equity, all of which may be joined in one action, to compel the authority, and the trustees, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any resolutions, contracts or trust indentures of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by the provisions of sections 23-3579 to 23-35,120; or

(2) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the authority.

Source: Laws 1971, LB 54, § 37; R.S.1943, (1987), § 23-343.110.

23-35,111 Hospital authority; bonds; default; remedies of obligees.

Any authority shall have power by its trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an event of default as defined in such instrument:

(1) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any hospital facility or facilities of the authority or any part or parts thereof. If such receiver be appointed, he may enter and take possession of such hospital facility or facilities or any part or parts thereof and operate and maintain the same, and collect and receive all income, fees, rents, revenue, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct; or

(2) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the trustees thereof to account as if it and they were the trustees of an express trust.

Source: Laws 1971, LB 54, § 38; R.S.1943, (1987), § 23-343.111.

23-35,112 Hospital authority; rights and remedies; cumulative.

All the rights and remedies conferred in sections 23-3579 to 23-35,120 shall be cumulative and shall be subject to sale by the foreclosure of a trust indenture, or any other instrument thereon, or relating to any contract with the authority.

Source: Laws 1971, LB 54, § 39; R.S.1943, (1987), § 23-343.112.

23-35,113 Hospital authority; property; subject to foreclosure; exempt from execution and liens.

No interest of the authority in any property, real or personal, shall be subject to sale by foreclosure of a mortgage, trust indenture, or any other instrument thereon, or relating thereto, either through judicial proceedings or the exercise of a power of sale contained in such instrument. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. Nothing in this section shall limit or be construed as limiting the right of a holder of a bond to reduce such bond, or the interest thereon, to judgment in the event of the failure of the authority to pay the principal of or interest on such bond as and when the same become due, or to prohibit, or be construed as prohibiting, such holder from enforcing and collecting such judgment out of the revenue and other money of the authority pledged to the payment of such bond and the interest thereon.

Source: Laws 1971, LB 54, § 40; R.S.1943, (1987), § 23-343.113.

23-35,114 Hospital authority; bonds; refunding; applicability of provisions.

(1) Any hospital authority is hereby authorized to provide for the issuance of bonds of the authority for the purpose of refunding any bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such bonds, and, if deemed advisable by

the authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a hospital or any portion thereof. Any such refunding bonds may, if the board of trustees in its absolute discretion finds the same to be in the best interests of the authority, bear a rate of interest or rates of interest higher than the rate or rates of interest carried by the bonds to be refunded and redeemed.

(2) The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority.

(3) All such refunding bonds shall be subject to the provisions of sections 23-3579 to 23-35,120 in the same manner and to the same extent as other bonds issued pursuant to the provisions of sections 23-3579 to 23-35,120.

Source: Laws 1971, LB 54, § 41; R.S.1943, (1987), § 23-343.114.

23-35,115 Hospital authority; bonds; who may purchase.

Bonds issued by any authority under the provisions of sections 23-3579 to 23-35,120 are hereby made securities in which all agencies, public officers and public bodies of the state and its political subdivisions, all insurance companies, state banks and trust companies, national banking associations, building and loan associations, savings and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law, and shall also be eligible and lawful security for all deposits of public funds of the state and of its political subdivisions, to the extent of the full value of the bonds and appurtenant coupons.

Source: Laws 1971, LB 54, § 42; R.S.1943, (1987), § 23-343.115.

23-35,116 Hospital authority; powers; supplemental to other laws; bonds.

The Hospital Authorities Act shall be deemed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, except that the issuance of bonds and refunding bonds under the act need not comply with the requirements of any other law applicable to the issuance of bonds, including, but not limited to, Chapter 10, and the bonds shall not be required to be registered in the office of any county clerk or treasurer, comptroller, or finance director of any city or village. The bonds shall constitute exempt securities within the meaning of section 8-1110. Except as otherwise expressly provided in the Hospital Authorities Act, none of the powers granted to an authority under the act shall be subject to the supervision or regulation or require the approval or consent of any municipality or political subdivision or

any commission, court, board, body, bureau, official, or agency thereof or of the state.

Source: Laws 1971, LB 54, § 43; R.S.1943, (1987), § 23-343.116; Laws 2001, LB 420, § 23.

23-35,117 Hospital authority; taxation exemption.

The exercise of the powers granted by the provisions of sections 23-3579 to 23-35,120 will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a hospital by an authority or its agents will constitute the performance of an essential public function, neither the authority nor its agents shall be required to pay any taxes or assessments upon or in respect of a hospital or any property acquired or used by the authority or its agents under the provisions of sections 23-3579 to 23-35,120 or upon the income therefrom, and any bonds issued under the provisions of sections 23-3579 to 23-35,120, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and by the municipalities and other political subdivisions in the state.

Source: Laws 1971, LB 54, § 44; R.S.1943, (1987), § 23-343.117.

23-35,118 Hospital authority; county board; dissolve; when.

Whenever it shall have paid or provided for the payment of all of its outstanding obligations, and it shall appear to the board of trustees of an authority that the need for such authority no longer exists, then upon petition by the board of trustees to the county board of the county in which the authority is situated, and upon the production of satisfactory evidence in support of such petition, the county board shall enter an order declaring that the need for such authority no longer exists, and approving a plan for the winding up of the business of the authority, the payment or assumption of its obligations, and the transfer of its assets.

Source: Laws 1971, LB 54, § 45; R.S.1943, (1987), § 23-343.118.

23-35,119 Hospital authority; order of dissolution; effect.

If the county board shall enter an order, as provided in section 23-35,118, that the need for such authority no longer exists, except for the winding up of its affairs in accordance with the plan approved by the county board, its authorities, powers and duties to transact business or to function shall cease to exist as of that date set forth in the order of the county board.

Source: Laws 1971, LB 54, § 46; R.S.1943, (1987), § 23-343.119.

23-35,120 Hospital authority; bonds; holders; contract with state; powers.

(1) The State of Nebraska covenants and agrees with the holders of bonds issued by an authority that the state will not limit or alter the rights vested by sections 23-3579 to 23-35,120 in an authority to acquire, maintain, construct, reconstruct, and operate hospitals; to establish and collect such rates, rentals, charges, and fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such hospitals and to fulfill the terms of any agreements made with holders of bonds of the

authority. The state will also not in any way impair the rights and remedies of the bondholders until the bonds together with interest thereon and with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The provisions of sections 23-3579 to 23-35,120 and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of said bonds.

(2) Notwithstanding any other provision of the Hospital Authorities Act to the contrary, in addition to any other powers which an authority has, an authority may engage in the financing of any hospital or the refinancing of any indebtedness incurred to finance a hospital, whether or not incurred prior to or after March 27, 1979, by issuing its bonds pursuant to a plan of financing involving an acquisition or commitment to acquire or use any federally guaranteed security or securities and may enter into any agreement which it deems necessary or desirable in order to effectuate any such plan. For the purposes of this section, federally guaranteed security shall mean any direct obligation of the United States of America or any obligation the payment of principal of and interest on which are fully or partially guaranteed by the United States of America, whether or not secured by other collateral, and shall include, without limitation, any security guaranteed by the Government National Mortgage Association under section 306(g) of the National Housing Act, 12 U.S.C. 1721(g). The provisions of section 23-35,113, shall not apply in the case of any such financing or refinancing.

Source: Laws 1971, LB 54, § 47; Laws 1979, LB 441, § 1; R.S.1943, (1987), § 23-343.120.

ARTICLE 36

INDUSTRIAL SEWER CONSTRUCTION

Section

Section

23-3601 Act, how cited.

Sections 23-3601 to 23-3637 shall be known and may be cited as the County Industrial Sewer Construction Act.

Source: Laws 1994, LB 1139, § 1.

23-3602 Legislative findings.

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.

Source: Laws 1994, LB 1139, § 2.

23-3603 Terms, defined.

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.

Source: Laws 1994, LB 1139, § 3.

23-3604 Sewerage disposal system and plant; authorized; county; powers; vote by city or village governing body; when required.

(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 perform-

ance 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.

Source: Laws 1994, LB 1139, § 4.

23-3605 Proposed system; resolution of county board; contents; procedure; county board; duties.

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.

Source: Laws 1994, LB 1139, § 5.

23-3606 Adoption of resolution; notices required.

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 23-3605, 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.

Source: Laws 1994, LB 1139, § 6.

23-3607 City or village; proposed boundaries; file map.

Within forty-five days after the receipt of the notice provided for in section 23-3606, 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.

Source: Laws 1994, LB 1139, § 7.

23-3608 City or village; proposed boundaries; contents.

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 conformance 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.

Source: Laws 1994, LB 1139, § 8.

23-3609 Maps; review by county board; notice.

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 23-3607, 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.

Source: Laws 1994, LB 1139, § 9.

23-3610 Public hearing; adoption of map; disputed area; county board; duties.

(1) The county board shall hold a public hearing on each disputed area pursuant to such notice as set out in section 23-3609. 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.

Source: Laws 1994, LB 1139, § 10.

23-3611 Map; change or amendment; procedure.

(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 23-3610, 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 23-3609 and 23-3610 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.

Source: Laws 1994, LB 1139, § 11.

23-3612 Notice to city or village; contents.

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 23-3605, 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.

Source: Laws 1994, LB 1139, § 12.

23-3613 City or village; schedule public hearing; presentation by county.

Not less than twenty days after receiving the notice provided for in section 23-3612, 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.

Source: Laws 1994, LB 1139, § 13.

23-3614 City or village; vote on proposal; criteria.

Within fifteen days after the public hearing under section 23-3613, 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 stan-

dards 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.

Source: Laws 1994, LB 1139, § 14.

23-3615 Order for installation, improvement, or extension; bids.

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.

Source: Laws 1994, LB 1139, § 15.

23-3616 Sewer tax levy; authorized; use; vote; when required.

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 subject to section 77-3443. 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. The proceeds of

such levy shall be used only for the purposes enumerated in this section and for no other purpose.

Source: Laws 1994, LB 1139, § 16; Laws 1996, LB 299, § 18; Laws 1996, LB 1114, § 51.

23-3617 Revenue bonds; authorized.

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.

Source: Laws 1994, LB 1139, § 17.

23-3618 County board; adopt rules and regulations; connection to system; penalty; usage fees; permit; fee.

(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.

Source: Laws 1994, LB 1139, § 18.

23-3619 Revenue bonds; how paid; sinking fund; rights of holders.

(1) Revenue bonds issued as provided in section 23-3617 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 23-3618.

(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 23-3617, 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.

Source: Laws 1994, LB 1139, § 19.

23-3620 General obligation bonds; issuance.

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 23-3621. 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.

Source: Laws 1994, LB 1139, § 20.

23-3621 Bonds; resolution required; vote; when required.

Revenue bonds authorized by section 23-3617 may be issued by resolution duly passed by the governing body of the county without any other authority. General obligation bonds authorized by section 23-3620 may be issued by resolution duly adopted by the county board without any other authority, unless the proposed sewer tax levy authorized by section 23-3616 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.

Source: Laws 1994, LB 1139, § 21.

23-3622 Rental or use charge; authorized; use.

(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 23-3625.

Source: Laws 1994, LB 1139, § 22.

23-3623 Warrants; registration; sewerage fund.

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 23-3616, 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.

Source: Laws 1994, LB 1139, § 23.

23-3624 Warrants; issuance for partial and final payments; redemption; interest.

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 23-3616 or usage fees adopted pursuant to section 23-3618 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.

Source: Laws 1994, LB 1139, § 24.

23-3625 Sinking fund; transfer of excess by county board.

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.

Source: Laws 1994, LB 1139, § 25.

23-3626 Annexation of sewerage disposal system and plant by city or village; powers and duties of city or village.

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, relevy, or reassess, but which were not levied, assessed, relevied, or reassessed at the time of the annexation for improvements made by the county pursuant to such act, may be levied, assessed, relevied, or reassessed by the annexing city or village to the same extent as the county may have levied or assessed prior to the annexation.

Source: Laws 1994, LB 1139, § 26.

23-3627 Annexation of sewerage disposal system and plant by city or village; when effective; duties of county board.

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.

Source: Laws 1994, LB 1139, § 27.

23-3628 Partial annexation by city or village; agreement with county; approval by district court; adjustment; decree.

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 23-3626 and 23-3627 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.

Source: Laws 1994, LB 1139, § 28.

23-3629 Connection of lot or structure; when allowed.

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.

Source: Laws 1994, LB 1139, § 29.

23-3630 Owners of real property; subdivide or plat property; connection to system or plant; duty to inform; failure to inform; effect; county board; duties.

After the county board formally adopts its resolution of intent to develop a sewerage disposal system and plant or plants pursuant to section 23-3605, 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 23-3610, 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 23-3610.

Source: Laws 1994, LB 1139, § 30.

23-3631 Application to subdivide or plat; referral to urbanizing area planning commission; when.

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 23-3610, 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.

Source: Laws 1994, LB 1139, § 31.

23-3632 Urbanizing area planning commission; members; terms; vacancies.

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 23-3610. 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.

Source: Laws 1994, LB 1139, § 32.

23-3633 Urbanizing area planning commission; jurisdiction; powers and duties.

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 23-3610, 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.

Source: Laws 1994, LB 1139, § 33.

23-3634 Urbanizing area planning commission; county provide documentation or materials; when.

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.

Source: Laws 1994, LB 1139, § 34.

23-3635 Application for connection; county clerk; duties; public hearing; notice; approval by city or village; criteria.

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.

Source: Laws 1994, LB 1139, § 35.

23-3636 County board; prepare statement; contents; approval; provide to applicants; signed acknowledgment.

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 23-3605, 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.

Source: Laws 1994, LB 1139, § 36.

23-3637 Joint action agreements; terms and conditions.

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 or the Joint Public Agency 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.

Source: Laws 1994, LB 1139, § 37; Laws 1999, LB 87, § 67.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

ARTICLE 37
AUDITOR IN CERTAIN COUNTIES

Section
23-3701. Auditor; duties.

23-3701 Auditor; duties.

In any county in which a city of the metropolitan class is located, the county board shall provide for an auditor who shall report directly to the county board. The auditor shall be the internal auditor of the county and shall examine or cause to be examined books, accounts, vouchers, records, expenditures, and information technology systems of all elected or appointed county officers and offices. Such examinations shall be done in accordance with generally accepted government auditing standards set forth in the most recent Government Auditing Standards, published by the Comptroller General of the United States, Government Accountability Office. The auditor shall report promptly to the county board and the elected official whose office was the subject of the audit regarding the fiscal condition shown by such examination conducted by the auditor, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts.

Source: Laws 2010, LB475, § 2.

ARTICLE 38
BLACK-TAILED PRAIRIE DOG MANAGEMENT ACT

Section
23-3801. Act, how cited.
23-3802. Terms, defined.
23-3803. Program for management of black-tailed prairie dogs; county; finding required; powers; discontinuance of program; collection of unpaid assessments.
23-3804. Person owning or controlling property; duty to manage colonies.
23-3805. County board; powers.
23-3806. Notices for management of colonies; form; publication; hearing; failure to comply with notice; powers of county board; costs; lien; notice to county attorney; penalty; collection actions.
23-3807. Costs; written protest; hearing; county board; power.
23-3808. Entry upon land authorized.
23-3809. Black-tailed prairie dog management fund; authorized; use.
23-3810. Land owned or controlled by state or political subdivision; payment of cost.

23-3801 Act, how cited.

Sections 23-3801 to 23-3810 shall be known and may be cited as the Black-Tailed Prairie Dog Management Act.

Source: Laws 2012, LB473, § 1.
Effective date July 19, 2012.

23-3802 Terms, defined.

For purposes of the Black-Tailed Prairie Dog Management Act:

(1) Colony means the series of burrows and tunnels created by the black-tailed prairie dog where black-tailed prairie dogs live;

(2) County board means the county board of commissioners or supervisors of a county that has adopted the act;

(3) Managed colony means a colony that is confined to land owned by one person; and

(4) Person means any individual, partnership, firm, limited liability company, corporation, company, society, or association, the state or any department, agency, or political subdivision thereof, or any other public or private entity.

Source: Laws 2012, LB473, § 2.
Effective date July 19, 2012.

23-3803 Program for management of black-tailed prairie dogs; county; finding required; powers; discontinuance of program; collection of unpaid assessments.

(1) A county may adopt by resolution and carry out a coordinated program for the management of black-tailed prairie dogs on property within the county consistent with the Black-Tailed Prairie Dog Management Act. When a county adopts such a resolution, the county shall assume the authority and duties provided in the act and the act shall be applicable to persons owning or controlling property within the county.

(2) A black-tailed prairie dog management plan shall include a finding by the county board of adverse impacts of unmanaged colonies within the county and the necessity to exercise the authority made available under the Black-Tailed Prairie Dog Management Act. Such management plan shall include a listing of the methods for management of colonies to be used for purposes which are consistent with the act. Such management plan shall not conflict with any state management plan for black-tailed prairie dogs or any rules or regulations adopted and promulgated pursuant to the Nongame and Endangered Species Conservation Act and shall not conflict with any state or federal recovery plan for endangered or threatened species.

(3) A county may cooperate and coordinate with the Animal and Plant Health Inspection Service of the United States Department of Agriculture, the Game and Parks Commission, the United States Fish and Wildlife Service, and other local, state, and national agencies and organizations, public or private, to prepare a coordinated program for the control and management of black-tailed prairie dogs and to carry out its duties and responsibilities under the Black-Tailed Prairie Dog Management Act.

(4) A county may by resolution discontinue a coordinated program for the management of black-tailed prairie dogs. If such a program is discontinued, any unpaid assessments against landowners for costs of black-tailed prairie dog management shall continue to be collected pursuant to the Black-Tailed Prairie Dog Management Act.

Source: Laws 2012, LB473, § 3.
Effective date July 19, 2012.

Cross References

Nongame and Endangered Species Conservation Act, see section 37-801.

23-3804 Person owning or controlling property; duty to manage colonies.

Each person who owns or controls property within a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803 shall effectively manage colonies present upon his, her, or its property to prevent the expansion of colonies to adjacent property if the owner of the adjacent property objects to such expansion.

Source: Laws 2012, LB473, § 4.
Effective date July 19, 2012.

23-3805 County board; powers.

A county board of a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803 may:

(1) Employ personnel and expend funds for the purchase of materials, machinery, and equipment to carry out its duties and responsibilities under the Black-Tailed Prairie Dog Management Act;

(2) Issue general and individual notices as provided in section 23-3806 for the management of colonies; and

(3) Examine property within the county for the purpose of determining the location of colonies.

Source: Laws 2012, LB473, § 5.
Effective date July 19, 2012.

23-3806 Notices for management of colonies; form; publication; hearing; failure to comply with notice; powers of county board; costs; lien; notice to county attorney; penalty; collection actions.

(1)(a) Notices for management of colonies shall consist of two kinds: General notice and individual notices, which notices shall be on a form prescribed by this section. Failure to publish general notice or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Black-Tailed Prairie Dog Management Act.

(b) General notice shall be published by the county board of each county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803 in one or more newspapers of general circulation in the county on or before May 1 of each year or at such other times as the county board may determine.

(c) Whenever any county board of a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803 has reason to believe, based upon information or through its own investigation, that a colony, or any portion of a colony, has expanded onto adjacent property and the owner of the adjacent property objects to such expansion and the county board determines that it is necessary to secure more prompt or definite management of a colony than is accomplished by the general published notice, it shall cause to be served individual notice, upon the owner of record of the property upon which the colony is located at his or her last-known address, of recommended methods of when and how black-tailed prairie dogs are to be managed.

(d) The county board shall use one or both of the following forms for all individual notices:

(i) . . . . . County Board

OFFICIAL NOTICE

Information received by the county board indicates the existence of an unmanaged black-tailed prairie dog colony on property owned by you at: . . . . The method of management recommended by the county board is as follows: . . . . . Other appropriate management methods are acceptable if approved by the county board.

State law specifies a duty of each person who owns or controls property within a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803 to manage black-tailed prairie dog colonies present upon his or her property to prevent the expansion of colonies to adjacent property if the owner of the adjacent property objects to such expansion. You must provide notice and evidence to the county board within sixty days after the date specified at the bottom of this notice that appropriate management as specified in this notice, or alternative management that is approved by the board, has been initiated. If services for the management of black-tailed prairie dogs are not available within the sixty-day period specified in this notice, you may satisfy this notice by providing evidence that you have arranged for management to occur when available. If such notice and evidence are not received by the county board within sixty days after the date specified at the bottom of this notice, the county board or its agent may enter upon your property for the purpose of taking the appropriate management measures. Costs for the management activities performed by the county board shall be at the expense of the owner of the property and shall become a lien on the property as a special assessment levied on the date of control.

If the county board receives a written request from you within fifteen days after the date specified at the bottom of this notice, you are entitled to a hearing before the county board to challenge this notice.

County Board

Dated . . . . . ; or

(ii) . . . . . County Board

OFFICIAL NOTICE

Information received by the county board indicates the presence of an unmanaged black-tailed prairie dog colony on property owned by you at: . . . . . The method of management recommended by the county board is as follows: . . . . . Other appropriate management methods are acceptable if approved by the county board.

State law specifies a duty of each person who owns or controls property within a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803 to manage black-tailed prairie dog colonies present upon his or her property to prevent the expansion of colonies to adjacent property if the owner of the adjacent property objects to such expansion. You must provide notice and evidence to the county board within sixty days after the date specified at the bottom of this notice that appropriate management as specified in this notice, or alternative management

that is approved by the board, has been initiated. If services for the management of black-tailed prairie dogs are not available within the sixty-day period specified in this notice, you may satisfy this notice by providing evidence that you have arranged for management to occur when available. If such notice and evidence are not received by the county board within sixty days after the date specified at the bottom of this notice you may, upon conviction, be subject to a fine of $100.00 per day for each day of noncompliance beginning on ....., up to a maximum of fifteen days of noncompliance (maximum $1,500).

If the county board receives a written request from you within fifteen days after the date specified at the bottom of this notice, you are entitled to a hearing before the county board to challenge this notice.

County Board

Dated .....

(2) Upon the written request of any landowner served with an individual notice pursuant to subsection (1) of this section received within fifteen days after the date specified by such notice, the county board shall hold an informal public hearing to allow such landowner an opportunity to address the county board's notice.

(3) If a landowner who has received a notice pursuant to subsection (1) of this section fails to comply with the notice, the county board shall:

(a) If, upon expiration of the sixty-day period specified on the notice required by subdivision (1)(d)(i) of this section, the landowner has not complied with the notice and has not requested a hearing pursuant to subsection (2) of this section, the county board may cause proper management methods to be used on such property and shall advise the record landowner of the cost incurred in connection with such operation. The cost of any such management shall be at the expense of the landowner. In addition, the county board shall immediately cause notice to be filed of possible unpaid black-tailed prairie dog management assessments against the property upon which the management measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the county board shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the management measures were taken as a special assessment levied on the date of management. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as delinquent taxes; or

(b) If, upon the expiration of the sixty-day period specified on the notice required by subdivision (1)(d)(ii) of this section, the landowner has not complied with the notice and has not requested a hearing pursuant to subsection (2) of this section, the county board shall notify the county attorney who shall proceed against such landowner as prescribed in this subdivision. A person who is responsible for an unmanaged colony shall, upon conviction, be guilty of an infraction pursuant to sections 29-431 to 29-438, except that the penalty shall be a fine of one hundred dollars per day for each day of violation, up to a total of one thousand five hundred dollars for fifteen days of noncompliance.

(4) This section shall not be construed to limit satisfaction of the obligation imposed by this section in whole or in part by tax foreclosure proceedings. The expense may be collected by suit instituted for that purpose as a debt due the county or by any other or additional remedy otherwise available. Amounts

collected under this section shall be deposited to the black-tailed prairie dog management fund of the county board if such fund has been created by the county board or, if no such fund has been created, then to the county general fund.

Source: Laws 2012, LB473, § 6.
Effective date July 19, 2012.

23-3807 Costs; written protest; hearing; county board; power.

If any person is dissatisfied with the amount of any costs charged against him or her under the Black-Tailed Prairie Dog Management Act, he or she may, within fifteen days after being advised of the amount of the charge, file a written protest with the county board. The county board shall hold a hearing to determine whether the charges were appropriate, taking into consideration whether the management measures were conducted in a timely fashion. Following the hearing, the county board shall have the power to adjust or affirm such charge.

Source: Laws 2012, LB473, § 7.
Effective date July 19, 2012.

23-3808 Entry upon land authorized.

The county board of a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803, or anyone authorized by the county board, may enter upon property in the county for purposes of performing the duties and exercising the powers under the Black-Tailed Prairie Dog Management Act without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised and forty-eight hours' written advance notice of entrance is provided to the property owner or occupant.

Source: Laws 2012, LB473, § 8.
Effective date July 19, 2012.

23-3809 Black-tailed prairie dog management fund; authorized; use.

A black-tailed prairie dog management fund may be established by a county, which fund shall be available for expenses authorized to be paid from such fund, including necessary expenses of the county board in carrying out its duties and responsibilities under the Black-Tailed Prairie Dog Management Act.

Source: Laws 2012, LB473, § 9.
Effective date July 19, 2012.

23-3810 Land owned or controlled by state or political subdivision; payment of cost.

The cost of managing colonies on all land owned or controlled by a state department, agency, commission, or board or a political subdivision shall be paid by the state department, agency, commission, or board in control thereof or the political subdivision out of funds appropriated to the state department, agency, commission, or board or budgeted by the political subdivision for its use.

Source: Laws 2012, LB473, § 10.
Effective date July 19, 2012.