

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 13

Introduced By: Mines, 18;

Read first time: January 4, 2007

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Interlocal Cooperation Act; to amend
2 sections 13-801, 13-803, 13-806, and 13-820, Reissue Revised
3 Statutes of Nebraska, and section 13-804, Revised Statutes
4 Cumulative Supplement, 2006; to provide a procedure for the
5 creation and certification of joint entities and the
6 corresponding governing bodies; to provide powers and duties
7 for joint entities and the Secretary of State; to define
8 terms; to harmonize provisions; and to repeal the original
9 sections.

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

1 Section 1. Section 13-801 Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 13-801. Sections 13-801 to 13-827 and sections 5 to 13 of
4 this act shall be known and may be cited as the Interlocal
5 Cooperation Act.

6 Sec. 2. Section 13-803 Reissue Revised Statutes of Nebraska,
7 is amended to read:

8 13-803. For purposes of the Interlocal Cooperation Act:

9 (1) Board means the board of representatives of a joint
10 entity;

11 (2) Governing body has the same meaning as in section
12 13-503 and includes a board as defined in subdivision (1) of this
13 section and, when referring to state agencies, includes the governing
14 board of a state agency or the Governor and, when referring to
15 federal agencies, includes the governing board of a federal agency or
16 the President of the United States;

17 ~~(1)~~ (3) Joint entity shall mean an entity created by
18 agreement pursuant to section 13-804;

19 ~~(2)~~ (4) Public agency shall mean any county, city,
20 village, school district, or agency of the state government or of the
21 United States, any drainage district, sanitary and improvement
22 district, or other municipal corporation or political subdivision of
23 this state, and any political subdivision of another state;

24 ~~(3)~~ (5) Public safety services shall mean public
25 services for the protection of persons or property. Public safety
26 services shall include law enforcement, fire protection, and emergency
27 response services; ~~and~~

1 (6) Representative means a member of the board and includes
2 an alternate representative; and

3 ~~(4)~~ (7) State shall mean a state of the United States
4 and the District of Columbia.

5 Sec. 3. Section 13-804 Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 13-804. (1) Any power or powers, privileges, or authority
8 exercised or capable of exercise by a public agency of this state may
9 be exercised and enjoyed jointly with any other public agency of this
10 state and jointly with any public agency of any other state or of the
11 United States to the extent that laws of such other state or of the
12 United States permit such joint exercise or enjoyment. Any agency of
13 state government when acting jointly with any public agency may
14 exercise and enjoy all of the powers, privileges, and authority
15 conferred by the Interlocal Cooperation Act upon a public agency. Any
16 existing joint entity as of the effective date of this act shall
17 complete the application and certification process pursuant to the
18 act.

19 (2) Any two or more public agencies may enter into
20 agreements with one another for joint or cooperative action pursuant
21 to the Interlocal Cooperation Act. Appropriate action by ordinance,
22 resolution, or otherwise pursuant to law of the governing bodies of
23 the participating public agencies shall be necessary before any such
24 agreement may enter into force.

25 (3) Any such agreement shall specify the following:

26 (a) Its duration;

27 (b) The general organization, composition, and nature of any

1 separate legal or administrative entity created by the agreement
2 together with the powers delegated to the entity;

3 (c) Its purpose or purposes;

4 (d) The manner of financing the joint or cooperative
5 undertaking and of establishing and maintaining a budget;

6 (e) The permissible method or methods to be employed in
7 accomplishing the partial or complete termination of the agreement and
8 for disposing of property upon such partial or complete termination;

9 (f) The manner of levying, collecting, and accounting for
10 any tax authorized under sections 13-318 to 13-326 or 13-2813 to
11 13-2816; and

12 (g) Any other necessary and proper matters.

13 (4) In the event that the agreement does not establish a
14 ~~separate legal entity~~ board to conduct the joint or cooperative
15 undertaking, the agreement shall, in addition to items enumerated in
16 subsection (3) of this section, contain the following:

17 (a) Provision for an administrator or a joint ~~board~~
18 committee responsible for administering the joint or cooperative
19 undertaking. In the case of a joint ~~board~~, committee, the public
20 agencies party to the agreement shall be represented; and

21 (b) The manner of acquiring, holding, and disposing of real
22 and personal property used in the joint or cooperative undertaking.

23 (5) No agreement made pursuant to the Interlocal Cooperation
24 Act shall relieve any public agency of any obligation or
25 responsibility imposed upon it by law except to the extent of actual
26 and timely performance by a joint ~~board~~ committee or other legal
27 or administrative entity created by an agreement made pursuant to the

1 act, which performance may be offered in satisfaction of the
2 obligation or responsibility.

3 (6) In the event that an agreement made pursuant to this
4 section creates a joint entity, such joint entity shall be subject to
5 control by its members in accordance with the terms of the agreement;
6 shall constitute a separate public body corporate and politic of this
7 state, exercising public powers and acting on behalf of the public
8 agencies which are parties to such agreement; and shall have power (a)
9 to sue and be sued, (b) to have a seal and alter the same at pleasure
10 or to dispense with its necessity, (c) to make and execute contracts
11 and other instruments necessary or convenient to the exercise of its
12 powers, and (d) from time to time, to make, amend, and repeal bylaws,
13 rules, and regulations, not inconsistent with the Interlocal
14 Cooperation Act and the agreement providing for its creation, to carry
15 out and effectuate its powers and purposes.

16 (7) No entity created by local public agencies pursuant to
17 the Interlocal Cooperation Act shall be considered a state agency, and
18 no employee of such an entity shall be considered a state employee.

19 (8) Any governing body as defined in section 13-503 which is
20 a party to an agreement made pursuant to the Interlocal Cooperation
21 Act shall provide information to the Auditor of Public Accounts
22 regarding such agreements as required in section 13-513.

23 Sec. 4. Section 13-806 Reissue Revised Statutes of Nebraska,
24 is amended to read:

25 13-806. Any public agency entering into an agreement
26 pursuant to the Interlocal Cooperation Act may appropriate funds and
27 may sell, lease, give, or otherwise supply the administrative joint

1 ~~board,~~ committee, joint entity, or other legal or administrative
2 entity created to operate the joint or cooperative undertaking by
3 providing such personnel or services therefor as may be within its
4 legal power to furnish.

5 Sec. 5. (1) The governing body of each public agency
6 participating in the creation of a joint entity shall adopt a
7 resolution determining that there is a need for a joint entity and
8 setting forth the names of the proposed participating public
9 agencies. The resolution shall be published in three issues, not less
10 than seven days between issues, of a legal newspaper for each
11 proposed participating public agency or a newspaper having general
12 circulation in the area served by a proposed participating public
13 agency if no legal newspaper exists for the participating public
14 agency and of one or more newspapers of general circulation in the
15 area to be served by the joint entity. Any such resolution shall not
16 be adopted by a public agency prior to five days after the last
17 publication by the proposed participating public agency. In the case
18 of a state agency, the governing board shall adopt the resolution, or
19 if there is no governing board, the Governor shall issue a
20 proclamation without notice in lieu of a resolution. In the case of a
21 federal agency, the governing board shall adopt the resolution or, if
22 there is no governing board, the President of the United States shall
23 issue a proclamation without notice in lieu of a resolution. The
24 resolution may be adopted by a governing body on its own motion upon
25 determining, in its discretion, that a need exists for a joint
26 entity. In determining whether such a need exists, a governing body
27 may take into consideration the present and future needs of the

1 public agency with respect to the materials, goods, property, and
2 services which a joint entity may utilize or provide, the adequacy,
3 suitability, and availability of such materials, goods, property, and
4 services to meet the needs of the participating public agency if no
5 joint entity is formed, and economic or other advantages or
6 efficiencies which may be realized by cooperative action through a
7 joint entity.

8 (2) Upon issuance of a certificate of creation by the
9 Secretary of State, the Governor in the case of a participating state
10 agency which does not have a governing board, the President of the
11 United States or federal agency head in the case of a federal agency,
12 the mayor or city manager in the case of a city which has not elected
13 to be governed as a village, or the chairperson of the governing body
14 of each participating public agency shall appoint representatives as
15 provided by the agreement for creation of the joint entity.
16 Representatives, other than representatives appointed by the
17 Governor, the President of the United States, or a federal agency
18 head, must be members of the governing body of the participating
19 public agency which they are appointed to represent. Upon issuance of
20 an amended certificate of creation pursuant to section 9 of this act,
21 a representative shall be appointed by each additional participating
22 public agency as provided in this section. An alternate
23 representative with the same qualifications may be appointed in the
24 same manner as a representative and shall serve and exercise all
25 powers of a representative in the absence of the representative for
26 whom he or she is the alternate. The representatives shall constitute
27 the board in which shall be vested all powers of the joint entity.

1 Sec. 6. Within thirty days after adoption of the
2 resolutions for creation of a joint entity by the proposed
3 participating public agencies, the board shall file with the
4 Secretary of State a statement signed by the proposed representatives
5 setting forth (1) the names of all the proposed participating public
6 agencies, (2) a certified copy of each of the resolutions of the
7 participating public agencies determining the need for such a joint
8 entity, (3) proof of publication as required in subsection (1) of
9 section 5 of this act, (4) a brief description of the nature of the
10 joint entity's activities, and (5) the name of the joint entity.

11 Sec. 7. The Secretary of State shall examine the statement,
12 and if he or she finds that the name proposed for the joint entity is
13 distinguishable from any other entity name registered or on file with
14 the Secretary of State pursuant to Nebraska law and that the
15 statement conforms to the requirements of the Interlocal Cooperation
16 Act, the Secretary of State shall record it and issue and record a
17 certificate of creation. The certificate shall state the name of the
18 joint entity, the fact and date of creation, and the names of the
19 participating public agencies. Upon the issuance of the certificate,
20 the existence of the joint entity as a political subdivision and a
21 body corporate and politic of this state shall commence. Notice of
22 the issuance of the certificate shall be given to all of the proposed
23 participating public agencies by the Secretary of State and shall be
24 published in one issue of a legal newspaper for each proposed
25 participating public agency or a newspaper having general circulation
26 in the area served by a proposed participating public agency if no
27 legal newspaper exists for the participating public agency and of one

1 or more newspapers of general circulation in the area to be served by
2 the joint entity.

3 Sec. 8. In any suit, action, or proceeding involving the
4 validity or enforcement of, or relating to, any contract of the joint
5 entity, the joint entity shall be conclusively deemed to have been
6 established, except as against the state, in accordance with the
7 Interlocal Cooperation Act upon proof of the filing of the
8 certificate of creation by the Secretary of State. A copy of the
9 certificate or amended certificate, duly certified by the Secretary
10 of State, shall be admissible in evidence in any suit, action, or
11 proceeding and shall be conclusive proof of the filing and contents
12 thereof.

13 Sec. 9. After the creation of a joint entity, any other
14 public agency may become a participating public agency therein upon
15 (1) the adoption of a resolution by the governing body of the public
16 agency setting forth the determination prescribed in section 5 of
17 this act and authorizing the public agency to become a participating
18 public agency after notice as described in subsection (1) of section
19 5 of this act, (2) application to the joint entity, and (3) adoption
20 by a majority vote of the representatives, unless the joint entity's
21 rules of governance require a greater percentage, of a resolution by
22 the board admitting the public agency as a participating public
23 agency. Thereupon the public agency shall become a participating
24 public agency entitled to appoint a representative or representatives
25 in the manner prescribed by sections 5 and 11 of this act and to
26 otherwise participate in the joint entity to the same extent as if
27 the public agency had participated in the creation of the joint

1 entity. Upon the filing with the Secretary of State of certified
2 copies of the resolutions described in this section and proof of
3 publication of notice, the Secretary of State shall issue an amended
4 certificate of creation setting forth the names of the participating
5 public agencies, the date of creation, and the name of the joint
6 entity. Notice shall be given as provided in section 7 of this act.

7 Sec. 10. Each representative shall serve for a term
8 specified in the agreement creating the joint entity, not to exceed
9 four years, or until his or her successor has been appointed and has
10 qualified in the same manner as the original appointment. A
11 representative shall be eligible for reappointment upon the
12 expiration of his or her term. A certificate of the appointment or
13 reappointment of any representative or alternate representative shall
14 be issued by the governing body and shall be filed with the clerk or
15 secretary of the public agency for which the representative acts and
16 the joint entity. The certificate shall be conclusive evidence of the
17 due and proper appointment of the representative. A representative
18 may be removed for any cause at any time by the governing body of the
19 participating public agency for which the representative acts. A
20 representative shall be removed if he or she is no longer a member of
21 the governing body of the public agency which makes the appointment.
22 A vacancy shall be filled for the balance of the unexpired term of a
23 person who is no longer eligible to hold office in the same manner as
24 the original appointment. A representative shall receive no
25 compensation for his or her services but shall be entitled to actual
26 and necessary expenses incurred in the discharge of his or her
27 official duties, including mileage at the rate provided in section

1 81-1176.

2 Sec. 11. (1) Each participating public agency shall at all
3 times be entitled to appoint at least one representative. A joint
4 entity's rules of governance may allow any participating public
5 agency to appoint additional representatives and shall specify the
6 number of representatives to be appointed by each participating
7 public agency. The number of representatives may be increased or
8 decreased from time to time by an amendment to the rules of
9 governance approved by each participating public agency as evidenced
10 by a resolution of the governing body thereof unless the agreement
11 provides for approval by less than all participating public
12 agencies.

13 (2) Each representative shall be entitled to one vote. With
14 the approval of each participating public agency as evidenced by a
15 resolution of the governing body thereof unless the agreement
16 provides for approval by less than all participating public agencies,
17 a joint entity's rules of governance may allow the representative of
18 any participating public agency to cast more than one vote and shall
19 specify the number of votes such representative may cast.

20 (3) A quorum of the board is required for conducting the
21 business and exercising the powers of the joint entity and for all
22 other purposes. Unless the rules of governance require a larger
23 quorum, the presence at the meeting of the number of representatives
24 entitled to cast a majority of the total votes which may be cast by
25 all of the representatives constitutes a quorum. Action may be taken
26 upon a vote of a majority of the votes which the representatives
27 present are entitled to cast unless the rules of governance require a

1 larger vote.

2 (4) The manner of scheduling regular meetings and the
3 method of calling special board meetings, including the giving or
4 waiving of notice, shall be as provided in the rules of governance
5 within the constraints of the Open Meetings Act.

6 Sec. 12. The board shall elect a chairperson and
7 vice-chairperson from among its representatives. The joint entity may
8 employ an executive director. The board shall elect a secretary who
9 shall either be from among the representatives or the executive
10 director. The joint entity may employ or obtain the services of legal
11 counsel, technical experts, and such other officers, agents, and
12 employees as it may require and shall determine their qualifications,
13 duties, compensation, and term of office. The board may delegate to
14 its officers, agents, or employees such powers and duties as the
15 board deems proper.

16 Sec. 13. (1) The board may create an executive committee
17 the composition of which shall be set forth in the joint entity's
18 rules of governance. The executive committee shall have and exercise
19 the power and authority of the board during intervals between the
20 board's meetings in accordance with the rules of governance, motions,
21 or resolutions creating the executive committee. The terms of office
22 of the members of the executive committee and the method of filling
23 vacancies shall be fixed by the rules of governance.

24 (2) The board may also create one or more committees to
25 which the board may delegate such powers and duties as the board shall
26 specify. In no event shall any committee be empowered to authorize
27 the issuance of bonds. The membership and voting requirements for

1 action by a committee shall be specified by the board.

2 (3) The board shall be subject to the Open Meetings Act.

3 Sec. 14. Section 13-820 Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 13-820. The ~~governing body of the joint entity~~ board may
6 provide for the publication of any resolution or other proceeding
7 adopted by it pursuant to the Interlocal Cooperation Act in a
8 newspaper of general circulation published in the political
9 subdivision or county where the principal office or place of business
10 of the joint ~~agency~~ entity is located or, if no newspaper is so
11 published, in a newspaper qualified to carry legal notices having
12 general circulation in the political subdivision or county.

13 Sec. 15. Original sections 13-801, 13-803, 13-806, and
14 13-820, Reissue Revised Statutes of Nebraska, and section 13-804,
15 Revised Statutes Cumulative Supplement, 2006, are repealed.