

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 829**

Introduced by Kiel, 9; Beutler, 28; Bromm, 23; Brown, 6;  
Landis, 46; Preister, 5; Raikes, 25; Robak, 22;  
Schimek, 27; Suttle, 10

Read first time January 20, 1999

Committee: Transportation

A BILL

- 1 FOR AN ACT relating to transportation; to adopt the Nebraska
- 2 Transit and Rail Advisory Council Act.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1.   Sections 1 to 15 of this act shall be known  
2 and may be cited as the Nebraska Transit and Rail Advisory Council  
3 Act.

4           Sec. 2.   (1) The Legislature finds that:

5           (a) Access to timely and efficient modes of passenger  
6 transportation is necessary for Nebraska's travelers, visitors, and  
7 day-to-day commuters; to the quality of life in the state; and to  
8 the economy of the state;

9           (b) Technological advances in passenger transportation  
10 can significantly and positively affect the ability of the state to  
11 attract and provide efficient services for domestic and  
12 international businesses and tourists and thus significantly affect  
13 the revenue of the state;

14           (c) The development and utilization of a properly  
15 designed, constructed, and financed passenger rail, high-speed  
16 rail, or other passenger surface transportation systems can act as  
17 a catalyst for economic growth and development; alleviate  
18 traffic-congested commutes for day-to-day commuters; create new  
19 employment opportunities; create a safer transportation  
20 alternative; serve as a positive growth management system for  
21 building a better and more environmentally secure state; and  
22 promote the health, safety, and welfare of the citizens of the  
23 state;

24           (d) Joint development between the public and private  
25 sector may be necessary in the planning, financing, management,  
26 operation, and construction mechanism to ensure the continued  
27 future development of an efficient and economically viable  
28 passenger rail, high-speed rail, or other passenger surface

1 transportation system in this state; and

2 (e) Transportation benefits include improved travel times  
3 and more reliable travel, hence increased productivity.

4 (2) The Legislature hereby declares that creation,  
5 improvement, and operation of passenger rail, high-speed rail, and  
6 other passenger surface transportation systems and the construction  
7 of rail and transit facilities in Nebraska through the  
8 encouragement of private investments and the use of federal and  
9 state funds is a public purpose and use for which public money  
10 provided by the sale of bonds and appropriations of the Legislature  
11 may be borrowed, expended, advanced, loaned, or granted. Such  
12 activity is a proper governmental function and can best be  
13 accomplished by the creation of a Nebraska Transit and Rail  
14 Advisory Council, N-TRAC, with the powers and duties specified in  
15 the Nebraska Transit and Rail Advisory Council Act.

16 Sec. 3. For purposes of the Nebraska Transit and Rail  
17 Advisory Council Act:

18 (1) Department means the Department of Roads;

19 (2) High-speed rail means any high-speed fixed-guideway  
20 transportation system for transporting people or goods, which  
21 system is capable of operating at speeds in excess of one hundred  
22 twenty miles per hour, including a monorail system, dual track rail  
23 system, suspended rail system, magnetic levitation system, or  
24 pneumatic repulsion system. The term includes a corridor and  
25 structures essential to the operation of the system, including the  
26 land, structures, improvements, rolling stock, rights-of-way,  
27 easements, rail lines, rail beds, guideway structures, stations,  
28 platforms, switches, yards, terminals, parking lots, power relays,

1 switching houses, transit station, associated development, and any  
2 other facilities or equipment used or useful for the purposes of  
3 high-speed rail transportation construction, operation, or  
4 maintenance or the financing of high-speed rail transportation;

5 (3) Joint development means the planning, managing,  
6 financing, operating, or constructing of projects adjacent to, or  
7 physically related, functionally related, or otherwise related to  
8 passenger rail, high-speed rail, or other passenger surface  
9 transportation system in order to effect the policy and purposes of  
10 these sections pursuant to agreements between any person, firm,  
11 corporation, association, organization, agency, or other entity,  
12 public or private;

13 (4) Passenger rail means any fixed-guideway  
14 transportation system for transporting people or goods, which  
15 operates at speeds below one hundred twenty miles per hour. The  
16 term includes a corridor and structures essential to the operation  
17 of the system, including the land, structures, improvements,  
18 rolling stock, rights-of-way, easements, rail lines, rail beds,  
19 guideway structures, stations, platforms, switches, yards,  
20 terminals, parking lots, power relays, switching houses, transit  
21 station, associated development, and any other facilities or  
22 equipment used or useful for the purposes of passenger rail  
23 transportation construction, operation, or maintenance or the  
24 financing of passenger rail transportation;

25 (5) Right-of-way means land necessary for the  
26 construction, operation, and maintenance of passenger rail,  
27 high-speed rail, or other transportation system;

28 (6) Terminus means the transit station serving the

1 service area at the end of a passenger rail, high-speed rail, or  
2 other passenger surface transportation systems;

3 (7) Transit station or station means any structure or  
4 transportation facility that is primarily used, as part of  
5 passenger rail, high-speed rail, or other passenger surface  
6 transportation systems, for the purpose of loading, unloading, or  
7 transferring passengers or accommodating the movement of passengers  
8 from one mode of transportation to another; and

9 (8) Associated development means property, equipment, or  
10 buildings which are built, installed, or established to provide  
11 financing, funding, or revenue for the planning, constructing,  
12 managing, and operating of a high-speed rail transportation system  
13 and which are directly associated with transit stations. The term  
14 includes property necessary for joint development.

15 Sec. 4. (1) The Nebraska Transit and Rail Advisory  
16 Council is created as a body politic and corporate and as an  
17 independent instrumentality, and not as a state agency. The State  
18 of Nebraska shall not be responsible for the debts, contracts,  
19 general obligations, or liabilities of the council or its members  
20 or agents, including tort claims. The council shall consist of  
21 eleven members to be appointed by the Governor with the approval of  
22 a majority of the Legislature as follows:

23 (a) The Director of the Department of Roads or his or her  
24 designee;

25 (b) One public service commissioner;

26 (c) Two members of the general public with demonstrated  
27 knowledge of rail, high-speed rail, and transit systems;

28 (d) Two representatives of private railroads;

1           (e) One representative from the Department of Economic  
2 Development; and

3           (f) Four representatives of local government.

4           (2) The Governor shall appoint council members for  
5 four-year terms, except that the first appointees shall serve  
6 one-year, two-year, three-year, or four-year terms, as designated  
7 by the Governor to result in staggered terms for the council. The  
8 Governor shall fill vacancies caused by any reason, except that an  
9 appointment to fill a vacancy shall be only for the remainder of  
10 the unexpired term of such member. The Governor may remove any  
11 council member for just cause.

12           (3) The council members shall have an interest in or  
13 knowledge of passenger rail, high-speed rail, or other passenger  
14 surface transportation systems. A council member shall abstain  
15 from voting on any decision or policy of the council if the  
16 decision or policy will result in any financial benefit or  
17 detriment to him or her, any member of his or her family, or any  
18 business with which he or she is associated and the benefit or  
19 detriment is distinguishable from the effects of the actions on the  
20 public generally or a broad segment of the public.

21           (4) The council may employ or designate an executive  
22 director to provide operative and administrative support for the  
23 council. The Department of Roads shall assist with administrative  
24 and operational support for the Nebraska Transit and Rail Advisory  
25 Council.

26           (5) Members of the council who are not employed by the  
27 State of Nebraska may receive a per diem of sixty dollars, not to  
28 exceed six thousand dollars in any one year, and all members of the

1 council shall be reimbursed for their actual and necessary expenses  
2 as provided in sections 81-1174 to 81-1177.

3 (6) A majority of the council members constitutes a  
4 quorum for the transaction of business, and all decisions of the  
5 council shall be approved by at least a majority of members  
6 present.

7 (7) There shall be no liability for damages on the part  
8 of and no cause of action in tort of any nature shall arise against  
9 the council or its agents or employees for any action taken by any  
10 of them in the performance of their powers and duties under the  
11 Nebraska Transit and Rail Advisory Council Act, unless the action  
12 is grossly negligent.

13 Sec. 5. (1) The council shall be responsible for  
14 administering programs and funds for rehabilitation, improvement,  
15 operation, and construction of passenger rail, high-speed rail, or  
16 other passenger surface transportation system right of ways,  
17 terminus and transit stations, or associated development  
18 construction projects implemented pursuant to the Nebraska Transit  
19 and Rail Advisory Council Act.

20 (2) The council may do all things necessary to implement  
21 the Nebraska Transit and Rail Advisory Council Act including, but  
22 not limited to:

23 (a) Entering into agreements and contracts for the sale,  
24 lease, or purchase of tangible, intangible, real, and personal  
25 property;

26 (b) Suing and being sued in its own name;

27 (c) Hiring a director and necessary staff personnel;

28 (d) Entering into agreements and contracts with state and

1 federal agencies, political subdivisions, railroads, high-speed  
2 rail operators, or other passenger surface transportation system  
3 operators and other persons;

4 (e) Collecting, administering, and expending funds;

5 (f) Issuing bonds;

6 (g) Borrowing money;

7 (h) Loaning federal funds, state funds, or both for  
8 approved projects;

9 (i) Conducting or authorizing feasibility studies or any  
10 other studies deemed necessary or required by law for projects  
11 proposed under the Nebraska Transit and Rail Advisory Council Act;

12 (j) Exercising the power of eminent domain as provided in  
13 section 6 of this act;

14 (k) Recommending the type of zoning to county and  
15 municipal zoning and planning agencies for property along proposed  
16 passenger rail, high speed rail, or other passenger surface  
17 transportation system routes and associated development;

18 (l) Determining the route location, frequency of service,  
19 and type of equipment to be used on any project proposed under the  
20 act; and

21 (m) Adopting and promulgating rules and regulations to  
22 provide procedures to carry out the act.

23 Sec. 6. Property needed for passenger rail, high-speed  
24 rail, or other passenger surface transportation systems including,  
25 but not limited to, right of ways, associated development, terminus  
26 and transit stations, may be acquired by purchase, gift, devise,  
27 lease, or other means, if such an agreement can be made with the  
28 owners of the property on the terms of such acquisition, and

1 otherwise by condemnation. Full power to exercise the right of  
2 eminent domain for such purposes is hereby granted. Approval must  
3 be obtained from the county board of the county where the property  
4 is located before the right of eminent domain may be exercised.  
5 The procedure to condemn property shall be exercised in the manner  
6 set forth in sections 76-704 to 76-724. The title to real property  
7 so acquired shall be in fee simple, absolute, and unqualified in  
8 any way. The fact that the property needed has been acquired by  
9 the owner under power of eminent domain shall not prevent its  
10 acquisition by the exercise of the right of eminent domain herein  
11 conferred. It shall not be precluded from abandoning the  
12 condemnation of any such property in any case where possession  
13 thereof has not been taken.

14           Sec. 7. Any lease agreement or option to buy entered  
15 into pursuant to the authority granted in the Nebraska Transit and  
16 Rail Advisory Council Act shall provide for a fair rate of return  
17 as determined by reasonable commercial standards in the industry.

18           Sec. 8. Trade secrets and other proprietary or  
19 commercial information which may be filed with an application for a  
20 grant or loan or other financial assistance pursuant to the  
21 Nebraska Transit and Rail Advisory Council Act shall not be  
22 considered public records as defined in section 84-712.01 if the  
23 release of such trade secrets or information would give advantage  
24 to business competitors and serve no public purpose. Any person  
25 seeking release of the trade secrets or information as a public  
26 record shall demonstrate to the satisfaction of the council that  
27 the release would not violate this section.

28           Sec. 9. The department shall:

1           (1) Conduct research on passenger rail, high-speed rail,  
2 or other passenger transportation systems, plan and assist in the  
3 development of passenger rail, high-speed rail, or other passenger  
4 surface transportation systems, develop, and maintain a  
5 federal-state relationship with regard to programs relating to  
6 passenger rail, high-speed rail, or other passenger surface  
7 transportation systems, assist any public or private agency or  
8 corporation in coordinating passenger rail, high-speed rail, or  
9 other passenger surface transportation system services with those  
10 of other transportation modes, and recommend, prepare, and review  
11 plans and specifications for any project to be proposed to the  
12 council;

13           (2) Conduct studies and investigations and act in an  
14 advisory capacity to the council in the establishment of broad  
15 policies for carrying out the Nebraska Transit and Rail Advisory  
16 Council Act;

17           (3) Advise the public regarding the policies, conditions,  
18 and activities of the department;

19           (4) Hold hearings, make investigations, studies, and  
20 inspections and do all other things necessary to carry out the  
21 duties imposed upon it by law;

22           (5) Advance information and advice conducive to providing  
23 adequate passenger rail, high-speed rail, or other passenger  
24 surface transportation systems in the state;

25           (6) Furnish necessary assistance to the council in making  
26 its inspection and study of any proposed project;

27           (7) Make data and information of the department available  
28 to the council; and

1           (8) Adopt and promulgate rules and regulations necessary  
2 for the department to carry out its duties under the Nebraska  
3 Transit and Rail Advisory Council Act.

4           Sec. 10. (1) The Nebraska Transit and Rail Advisory  
5 Council Cash Fund is created. The fund shall be used by the  
6 council to carry out its responsibilities under the Nebraska  
7 Transit and Rail Advisory Council Act. The fund may be used:

8           (a) To defray the expenses of the council;

9           (b) To purchase shares of stock or otherwise invest to  
10 facilitate council projects; and

11           (c) To purchase and enter into agreements for the  
12 operation of passenger rail, high-speed rail, or other passenger  
13 surface transportation systems.

14           (2) The State Treasurer shall credit to the fund any  
15 money (a) appropriated to the fund by the Legislature, (b) donated  
16 as gifts, bequests, grants, or other contributions to the fund from  
17 public or private sources, and (c) received pursuant to these  
18 sections. Money made available by any department or agency of the  
19 United States may also be credited to the fund if so directed by  
20 the Director-State Engineer or may be credited to the revolving  
21 fund pursuant to these sections. Any money in the Nebraska Transit  
22 and Rail Advisory Council Cash Fund available for investment shall  
23 be invested by the state investment officer pursuant to the  
24 Nebraska Capital Expansion Act and the Nebraska State Funds  
25 Investment Act.

26           Sec. 11. The Nebraska Transit and Rail Advisory Council  
27 Revolving Fund is created. The fund shall be used by the council  
28 to carry out its responsibilities under the Nebraska Transit and

1 Rail Advisory Council Act. The revolving fund shall consist of any  
2 money credited to the revolving fund pursuant to the act, any loan  
3 repayment money received, any interest received on such money, and  
4 other funds as the council may designate. Any money in the fund  
5 available for investment shall be invested by the state investment  
6 officer pursuant to the Nebraska Capital Expansion Act and the  
7 Nebraska State Funds Investment Act.

8           Sec. 12. The department and council are encouraged to  
9 solicit and may expend the federal funds which are or may become  
10 available for construction, operation, capital expenditures, or  
11 program administration for any passenger rail, high-speed rail, or  
12 other passenger surface transportation systems projects allowable  
13 under the federal law.

14           Sec. 13. The council may accept gifts, donations, money,  
15 and services, including in-kind resources, for any purpose  
16 allowable under the Nebraska Transit and Rail Advisory Council Act.

17           Sec. 14. (1) If the governing body of a political  
18 subdivision determines that it is necessary or beneficial to expend  
19 local tax funds for the acquisition, creation, or construction of  
20 passenger rail, high-speed rail, or other passenger surface  
21 transportation systems, including the issuance of bonds for the  
22 purposes set forth in the Nebraska Transit and Rail Advisory  
23 Council Act, the governing body shall by resolution place the  
24 proposition for such expenditure or bond issue on the general or  
25 primary election ballot or in odd-numbered years only call for a  
26 special election in such political subdivision for the purpose of  
27 approving such expenditure of local tax funds.

28           (2) The resolution calling for the election and the

1 election notice shall show the proposed purpose for which such  
2 local tax funds will be expended and the amount of money sought.

3 (3) Notice of the election shall state the date the  
4 election is to be held and the hours the polls will be open. Such  
5 notice shall be published in a newspaper of general circulation in  
6 such political subdivision at least once each week for three weeks  
7 prior to such election. If no such newspaper exists, notice shall  
8 be posted in at least three public places in the political  
9 subdivision for at least three weeks prior to such election.

10 (4) The proposition appearing on the ballot in any  
11 election shall state the purpose for which such local tax funds  
12 will be spent, the amount of local tax funds to be so expended, and  
13 the source from which the revenue will be raised. Such proposition  
14 shall be adopted if approved by a majority of those voting in such  
15 election.

16 (5) If a special election is called, the governing body  
17 shall prescribe the form of the ballot to be used.

18 Sec. 15. (1) The council may issue from time to time  
19 bonds to renew or to pay bonds, including the interest on such  
20 bonds, and whenever it deems refunding expedient, to refund any  
21 bonds by the issuance of new bonds, whether the bonds to be  
22 refunded have or have not matured, and to issue bonds partly to  
23 refund outstanding bonds and partly for any other of its corporate  
24 purposes. The refunding bonds may be sold and the proceeds applied  
25 to the purchase, redemption, or payment of the bonds to be refunded  
26 or exchanged for the bonds to be refunded.

27 (2) Except as may otherwise be expressly provided by the  
28 council, every issue of its bonds shall be general obligations of

1 the council payable solely out of any revenue or money of the  
2 council, subject only to any agreements with the holders of  
3 particular bonds pledging any particular money or revenue. The  
4 bonds may be additionally secured by a pledge of any grant or  
5 contribution from the federal government or any corporation,  
6 association, institution, or person or a pledge of any money,  
7 income, or revenue of the council from any source.

8 (3) No bonds issued by the council under The Nebraska  
9 Transit and Rail Advisory Council shall constitute a debt,  
10 liability, or general obligation of the state or a pledge of the  
11 faith and credit of the state, but shall be payable solely as  
12 provided by the Nebraska Transit and Rail Advisory Council Act.  
13 Each bond issued under the act shall contain on its face a  
14 statement that neither the faith and credit nor the taxing power of  
15 this state is pledged to the payment of the principal of or the  
16 interest on such bond.