

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 666

Introduced by Langemeier, 23; Fischer, 43.

Read first time January 21, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Niobrara Council; to amend sections
2 19-902, 23-114, 23-373, 72-2004.01, 72-2007, 72-2008,
3 and 76-2,112, Reissue Revised Statutes of Nebraska;
4 to change and eliminate intent and powers and duties
5 of the council; to change membership; to harmonize
6 provisions; to repeal the original sections; to outright
7 repeal sections 72-2005, 72-2010, 72-2011, and 72-2012,
8 Reissue Revised Statutes of Nebraska; and to declare an
9 emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 19-902, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 19-902 (1) For any or all of the purposes designated
4 in section 19-901, the city council or village board may divide
5 the municipality into districts of such number, shape, and area
6 as may be deemed best suited to carry out the purposes of
7 sections 19-901 to 19-914 and may regulate and restrict the
8 erection, construction, reconstruction, alteration, repair, or use
9 of buildings, structures, or land within the districts. All such
10 regulations shall be uniform for each class or kind of buildings
11 throughout each district, but the regulations applicable to one
12 district may differ from those applicable to other districts. ~~If a~~
13 ~~regulation affects the Niobrara scenic river corridor as defined in~~
14 ~~section 72-2006 and is not incorporated within the boundaries of~~
15 ~~the municipality, the Niobrara Council shall act on the regulation~~
16 ~~as provided in section 72-2010.~~

17 (2)(a) The city council or village board shall not adopt
18 or enforce any zoning ordinance or regulation which prohibits the
19 use of land for a proposed residential structure for the sole
20 reason that the proposed structure is a manufactured home if such
21 manufactured home bears an appropriate seal which indicates that
22 it was constructed in accordance with the standards of the Uniform
23 Standard Code for Manufactured Homes and Recreational Vehicles,
24 the Nebraska Uniform Standards for Modular Housing Units Act, or
25 the United States Department of Housing and Urban Development.

1 The city council or village board may require that a manufactured
2 home be located and installed according to the same standards
3 for foundation system, permanent utility connections, setback,
4 and minimum square footage which would apply to a site-built,
5 single-family dwelling on the same lot. The city council or village
6 board may also require that manufactured homes meet the following
7 standards:

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

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

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

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

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

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

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

25 (c) Nothing in this subsection shall be deemed to

1 supersede any valid restrictive covenants of record.

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

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

18 Sec. 2. Section 23-114, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 23-114 (1) The county board shall have power: (a) To
21 provide for temporary zoning as provided in sections 23-115 to
22 23-115.02; (b) to create a planning commission with the powers
23 and duties set forth in sections 23-114 to 23-114.05, 23-168.01 to
24 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376; (c) to
25 make, adopt, amend, extend, and implement a county comprehensive

1 development plan; (d) to adopt a zoning resolution, which shall
2 have the force and effect of law; and (e) to cede and transfer
3 jurisdiction pursuant to section 13-327 over land otherwise subject
4 to the authority of the county board pursuant to this section.

5 (2) The zoning resolution may regulate and restrict:

6 (a) The location, height, bulk, number of stories, and size of
7 buildings and other structures, including tents, cabins, house
8 trailers, and automobile trailers; (b) the percentage of lot areas
9 which may be occupied; (c) building setback lines; (d) sizes
10 of yards, courts, and other open spaces; (e) the density of
11 population; (f) the uses of buildings; and (g) the uses of land
12 for agriculture, forestry, recreation, residence, industry, and
13 trade, after considering factors relating to soil conservation,
14 water supply conservation, surface water drainage and removal, or
15 other uses in the unincorporated area of the county. If a zoning
16 resolution or regulation affects the Niobrara scenic river corridor
17 as defined in section 72-2006, the Niobrara Council shall act on
18 the measure as provided in section 72-2010.

19 (3)(a) The county board shall not adopt or enforce any
20 zoning resolution or regulation which prohibits the use of land
21 for a proposed residential structure for the sole reason that the
22 proposed structure is a manufactured home if such manufactured home
23 bears an appropriate seal which indicates that it was constructed
24 in accordance with the standards of the Uniform Standard Code for
25 Manufactured Homes and Recreational Vehicles, the Nebraska Uniform

1 Standards for Modular Housing Units Act, or the United States
2 Department of Housing and Urban Development. The county board may
3 require that a manufactured home be located and installed according
4 to the same standards for foundation system, permanent utility
5 connections, setback, and minimum square footage which would apply
6 to a site-built, single-family dwelling on the same lot. The county
7 board may also require that manufactured homes meet the following
8 standards:

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

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

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

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

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

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

23 (b) The county board may not require additional standards
24 unless such standards are uniformly applied to all single-family
25 dwellings in the zoning district.

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

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

15 (5) Special districts or zones may be established in
16 those areas subject to seasonal or periodic flooding, and such
17 regulations may be applied as will minimize danger to life and
18 property.

19 (6) The powers conferred by this section shall not
20 be exercised within the limits of any incorporated city or
21 village nor within the area over which a city or village has
22 been granted or ceded zoning jurisdiction and is exercising such
23 jurisdiction. At such time as a city or village exercises control
24 over an unincorporated area by the adoption or amendment of a
25 zoning ordinance, the ordinance or amendment shall supersede any

1 resolution or regulation of the county.

2 Sec. 3. Section 23-373, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 23-373 Before an owner of real property located in an
5 unincorporated area may subdivide, plat, or lay out the real
6 property in building lots, streets, or other portions or for
7 the use of the purchasers or owners of lots fronting thereon or
8 adjacent thereto, the approval of the county board is required,
9 except that:~~(1) If the property is within the Niobrara scenic~~
10 ~~river corridor as defined in section 72-2006,~~ the approval of the
11 ~~Niobrara Council is required;~~ and~~(2) If~~ if the property is located
12 in an area where a municipality exercises zoning control, ~~and does~~
13 ~~not require approval of the Niobrara Council,~~ the approval of the
14 municipality is required.

15 Sec. 4. Section 72-2004.01, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 72-2004.01 Sections 72-2004.01 to ~~72-2012~~ 72-2009 and
18 sections 5 and 8 of this act shall be known and may be cited as the
19 Niobrara Scenic River Act.

20 Sec. 5. Due to the national scenic river designation of
21 the Niobrara River under 16 U.S.C. 1274(a)(117), as such section
22 existed on May 24, 1991, and the diverse interests of water and
23 land resources, the Legislature recognizes the need to maintain
24 local representation and contribution for planning and management
25 of the Niobrara scenic river corridor. In an effort to promote

1 wise use of this valuable resource, the Niobrara Council shall be
2 created. The council shall represent local interests and serve as
3 an advisory council to the National Park Service and the county
4 boards of Brown, Cherry, Keya Paha, and Rock counties in the
5 Niobrara scenic river corridor. The council shall represent the
6 cultural, economic, and agricultural attributes and interests of
7 the region. It shall be the responsibility of the council to
8 ensure local participation and collaboration for management of the
9 Niobrara River.

10 In order to fulfill the requirements of the Niobrara
11 Scenic River Act, the council, as an advisory body, may:

12 (1) Collaborate with the National Park Service in the
13 management of the corridor;

14 (2) Monitor activities and water and related land uses in
15 the corridor;

16 (3) Provide information to citizens, local government,
17 and state agencies;

18 (4) Review and recommend proposed uses of water and land
19 resources with regard to property rights in the corridor;

20 (5) Suggest alternative uses of water and land resources
21 for resource management and development in the corridor; and

22 (6) Act as a facilitator between landowners and citizens
23 and the National Park Service.

24 Sec. 6. Section 72-2007, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 72-2007 (1) The Niobrara Council is created. The council
2 membership shall include:

3 (a) A board member representative of each of the county
4 boards of Brown, Cherry, Keya Paha, and Rock counties chosen by the
5 county board of the respective county;

6 (b) A representative of the Middle Niobrara Natural
7 Resources District and the Lower Niobrara Natural Resources
8 District chosen by the board of the respective district;

9 (c) The secretary of the Game and Parks Commission or his
10 or her designee;

11 (d) A representative of the United States Fish and
12 Wildlife Service and a representative of the National Park Service,
13 selected chosen by the Governor from lists of at least three
14 individuals, or fewer if there are not at least three qualified
15 individuals, submitted by the federal services. The appointments
16 representatives under this subdivision shall be nonvoting members
17 unless and until the agencies represented by these appointees
18 representatives formally authorize such appointees representatives
19 to vote on all matters before the council;

20 (e) An individual from each of Brown, Cherry, Keya Paha,
21 and Rock counties who resides in the Niobrara River drainage
22 area and owns land in the Niobrara scenic river corridor chosen
23 by the Governor from a list of at least three individuals, or
24 fewer if there are not at least three qualified individuals, from
25 each county submitted by the county board representatives on the

1 council;

2 (f) A representative from a recreational business
3 operating within the Niobrara scenic river corridor chosen by the
4 Governor from a list of at least three individuals who reside in a
5 county that includes land in the Niobrara scenic river corridor,
6 or fewer if there are not at least three qualified individuals,
7 submitted by the county board representatives on the council;

8 (g) A timber industry representative operating within the
9 Niobrara scenic river corridor chosen by the Governor from a list
10 of at least three individuals who reside in a county that includes
11 land in the Niobrara scenic river corridor, or fewer if there are
12 not at least three qualified individuals, submitted by the county
13 board representatives on the council; and

14 (h) A representative of a recognized, nonprofit
15 environmental, conservation, or wildlife organization chosen by the
16 Governor from a list of at least three individuals who reside in a
17 county that includes land in the Niobrara scenic river corridor,
18 or fewer if there are not at least three qualified individuals,
19 submitted by the county board representatives on the council.

20 ~~The council members shall be selected within ninety days~~
21 ~~after July 13, 2000.~~ The council members shall hold office for
22 three-year terms and until a successor is appointed and qualified.
23 The council members shall serve at the pleasure of the appointing
24 board or the Governor. The changes made to this section by this
25 legislative bill apply beginning with the first appointment of such

1 a representative after the effective date of this act.

2 (2) The council shall elect a chairperson, a
3 vice-chairperson, a secretary, and a treasurer who shall jointly
4 serve as the executive committee for the council. The council shall
5 meet on a regular basis, preferably once a month, with a minimum of
6 six meetings per year. Special meetings may be called by any member
7 of the executive committee or at the request of a simple majority
8 of the members of the council.

9 (3) A quorum shall be present at a meeting before any
10 action may be taken by the council. A quorum shall be a majority
11 of the members who are selected and serving and who vote on issues
12 before the council. All ~~actions~~ recommendations of the council
13 require a majority vote of the quorum present at any meeting. 7
14 ~~except that any vote to reject or adopt any zoning regulation or~~
15 ~~variance under section 72-2010 requires a vote of two-thirds of all~~
16 ~~the council members who are selected and serving and who vote on~~
17 ~~issues before the council.~~ A council member may not participate or
18 vote on any matter on which he or she participated or voted as a
19 member of a county board, county planning commission, or natural
20 resources district board, and in such a case such council member
21 shall not be counted for purposes of determining whether quorum or
22 vote requirements have been satisfied.

23 (4) Members shall be reimbursed for actual and necessary
24 expenses incurred in carrying out their duties on the council as
25 provided in sections 81-1174 to 81-1177.

1 Sec. 7. Section 72-2008, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 72-2008 The mission of the Niobrara Council is to ~~assist~~
4 provide local representation to the National Park Service and
5 report to the county boards of Brown, Cherry, Keya Paha, and Rock
6 counties in the Niobrara scenic river corridor in all aspects
7 of the management of the Niobrara scenic river corridor, ~~since~~
8 ~~portions of the Niobrara River have been designated as a national~~
9 ~~scenic river under 16 U.S.C. 1274(a)(117), as such section existed~~
10 ~~on May 24, 1991,~~ giving consideration and respect to local and
11 governmental input and private landowner rights, and to maintain
12 and protect the integrity of the resources associated with the
13 Niobrara scenic river corridor. The council shall encourage the
14 use and enjoyment of the Niobrara River for recreational, fish
15 and wildlife, geological, historical, cultural, or other assets,
16 and encourage continuance of existing agricultural, horticultural,
17 forestry, and open space land and water uses. ~~The council shall~~
18 ~~perform management functions related to the Niobrara scenic river~~
19 ~~corridor, including, but not limited to, those authorized and~~
20 ~~delegated to it by the National Park Service.~~ The council may
21 promulgate its own rules and internal policies to carry out the
22 purposes of the Niobrara Scenic River Act. stated in section 5 of
23 this act. The Game and Parks Commission may provide administrative
24 support when requested by the council to carry out its duties. This
25 support shall not exceed ~~fifty~~ twenty-five thousand dollars in any

1 calendar year. In the Niobrara scenic river corridor, the council
2 may hold title to real estate in the name of the council. The
3 council may purchase, accept gifts of, or trade real estate and may
4 obtain conservation easements as provided in the Conservation and
5 Preservation Easements Act. Acquisition of conservation easements
6 outside the boundaries of the Niobrara scenic river corridor shall
7 require the approval of the appropriate governing body as provided
8 in section 76-2,112.

9 Sec. 8. The Niobrara Council shall submit an annual
10 report of the activities and actions of the council for the
11 preceding fiscal year, compiled by the executive director of the
12 council, to the Governor, the county boards of Brown, Cherry, Keya
13 Paha, and Rock counties, and to the public upon request on or
14 before December 1. Each report shall, at a minimum, include the
15 following information:

16 (1) A complete operating and financial statement for the
17 board for the prior fiscal year;

18 (2) A summary of recommendations issued to local
19 governments and agencies;

20 (3) Any correspondence and communications with federal
21 agencies or federal employees;

22 (4) Recommendations for planning and development in the
23 Niobrara scenic river corridor for consistency with the scenic
24 river designation, including the scenic river's free-flowing
25 condition and scenic, geological, biological, agricultural,

1 historic, and prehistoric resources; and

2 (5) Any other relevant information which the council
3 deems necessary to report.

4 Sec. 9. Section 76-2,112, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 76-2,112 (1) A conservation or preservation easement
7 shall be an interest in real property, created by an instrument
8 in which the purpose for the easement is clearly stated. The
9 instrument shall be filed, duly recorded, and indexed in the office
10 of the register of deeds of the county in which the real property
11 subject to the conservation or preservation easement is located.

12 (2) No conveyance of a conservation or preservation
13 easement shall be effective until accepted by the holder.

14 (3) In order to minimize conflicts with land-use
15 planning, each conservation or preservation easement shall be
16 approved by the appropriate governing body. Such approving body
17 shall first refer the proposed acquisition to and receive comments
18 from the local planning commission with jurisdiction over such
19 property, which shall within sixty days of the referral provide
20 such comments regarding the conformity of the proposed acquisition
21 to comprehensive planning for the area. If such comments are not
22 received within sixty days, the proposed acquisition shall be
23 deemed approved by the local planning commission. If the property
24 is located partially or entirely within the boundaries or zoning
25 jurisdiction of a city or village, approval of the governing body

1 of such city or village shall be required. If such property is
2 located entirely outside the boundaries and zoning jurisdiction
3 of any city or village, approval of the county board shall be
4 required. ~~If the property is located in the Niobrara scenic river~~
5 ~~corridor as defined in section 72-2006 and is not incorporated~~
6 ~~within the boundaries of a city or village,~~ the Niobrara Council
7 ~~approval rather than city, village, or county approval shall be~~
8 ~~required.~~ Approval of a proposed acquisition may be denied upon a
9 finding by the appropriate governing body that the acquisition is
10 not in the public interest when the easement is inconsistent with
11 (a) a comprehensive plan for the area which had been officially
12 adopted and was in force at the time of the conveyance, (b) any
13 national, state, regional, or local program furthering conservation
14 or preservation, or (c) any known proposal by a governmental body
15 for use of the land.

16 (4) Notwithstanding the provisions of subsection (3)
17 of this section, the state, or any state agency or political
18 subdivision other than a city, village, or county, may accept
19 an easement after first referring the proposed acquisition to
20 and receiving comments from the local planning commission with
21 jurisdiction over the property, which shall within sixty days
22 of the referral provide such comments regarding the conformity
23 of the proposed acquisition to comprehensive planning for the
24 area. If such comments are not received within sixty days, the
25 proposed acquisition shall be deemed approved by the local planning

1 commission.

2 Sec. 10. Original sections 19-902, 23-114, 23-373,
3 72-1004.01, 72-2007, 72-2008, and 76-2,112, Reissue Revised
4 Statutes of Nebraska, are repealed.

5 Sec. 11. The following sections are outright repealed:
6 Sections 72-2005, 72-2010, 72-2011, and 72-2012, Reissue Revised
7 Statutes of Nebraska.

8 Sec. 12. Since an emergency exists, this act takes effect
9 when passed and approved according to law.