

LEGISLATIVE BILL 159

Approved by the Governor March 16, 2011

Introduced by Urban Affairs Committee: McGill, 26, Chairperson; Ashford, 20; Coash, 27; Cook, 13; Krist, 10; Schumacher, 22.

FOR AN ACT relating to cities, villages, and counties; to amend sections 13-1101, 13-1102, 13-1104, 13-1105, and 13-1109, Reissue Revised Statutes of Nebraska; to provide for bonds for nonprofit enterprises; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 13-1101, Reissue Revised Statutes of Nebraska, is amended to read:

13-1101 As used in sections 13-1101 to 13-1110, unless the context otherwise requires:

(1) Municipality ~~shall mean~~ means any incorporated city or village in the state, including cities operating under home rule charters and entities created by interlocal agreements among cities, villages, and counties;

(2) Nonprofit enterprise means any activity, venture, undertaking, trade, or business conducted or to be conducted by a nonprofit organization incorporated or authorized to do business in this state as permitted under its governing documents and the applicable laws of its jurisdiction of organization;

~~(2)~~ (3) Project shall mean means (a) any land, building, or equipment or other improvement, and all real and personal properties deemed necessary in connection therewith, ~~whether or not now in existence,~~ which shall be suitable for use for manufacturing or industrial enterprises, ~~or~~ (b) any land, building, or equipment or other improvement, and all real and personal properties deemed necessary in connection therewith, which shall be suitable for use as a nonprofit enterprise or the refinancing of outstanding debt of a nonprofit enterprise incurred to finance such land, building, equipment, improvement, or other properties, except that a project under this subdivision shall not include any portion of such land, building, equipment, improvement, or other properties or the refinancing thereof to the extent used for sectarian instruction or study or devotional activities or religious worship, or (c) any land, building, or improvements located in a blighted area located within a ~~municipality~~ city of the metropolitan, primary, first, or second class, and all real and personal properties deemed necessary in connection therewith, ~~whether or not now in existence,~~ which shall be suitable for any enterprise, including, but not limited to, profit or nonprofit commercial, business, governmental, or multifamily housing enterprises;

~~(3)~~ (4) Governing body shall mean means the board or body in which the general legislative powers of the municipality or county are vested;

~~(4)~~ (5) Mortgage shall mean means a mortgage or a mortgage and deed of trust, or other security device; and

~~(5)~~ (6) Blighted area shall mean means an area within a ~~city or village~~ municipality (a) which by reason of the presence of a substantial number of deteriorated or deteriorating structures, existence of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use, and (b) in which there is at least one of the following conditions: (i) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (ii) the average age of the residential or commercial units in the area is at least forty years; (iii) more than half of the plotted and subdivided property in an area is unimproved land that has been within the municipality for forty years and has remained unimproved during that time; (iv) the per capita income of the area is lower than the average per capita income of the municipality in which the area is designated; or (v) ~~that~~ the area has had either stable or decreasing population based on the last two decennial censuses. In no event shall a city of the metropolitan, primary, or first class designate more than

thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted.

Sec. 2. Section 13-1102, Reissue Revised Statutes of Nebraska, is amended to read:

13-1102 (1) In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers:

~~(1)~~ (a) To acquire, whether by construction, purchase, devise, gift, or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within, or partially without the municipality or county;

~~(2)~~ (b) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with ~~the provisions of~~ sections 13-1101 to 13-1110;

~~(3)~~ (c) To finance the acquisition, construction, rehabilitation, or purchase of projects in blighted areas. The power to finance such projects in blighted areas ~~shall mean and include~~ means and includes the power to enter into any type of agreement, including a loan agreement, when the other party to the agreement agrees ~~(a)~~ (i) to use the proceeds of money provided under the agreement to pay the costs of such acquisition, construction, rehabilitation, or purchase and any costs incident to the issuance of the related bonds and the funding of any reserve funds, ~~(b)~~ (ii) to be bound by the terms of the Age Discrimination in Employment Act, the Nebraska Fair Employment Practice Act, and sections 48-1219 to 48-1227, regardless of the number of employees, and ~~(c)~~ (iii) to make payments to the municipality or county sufficient to enable it to pay on a timely basis all principal, redemption premiums, and interest on the related revenue bonds issued to provide such financing, and any amounts necessary to repay such municipality or county for any and all costs incurred by it that are incidental to such financing. Title to any such project in a blighted area need not be in the name of the municipality or county, but may be in the name of a private party;

(d) To acquire, own, develop, lease, or finance or refinance the acquisition, construction, rehabilitation, or purchase of one or more projects for use as a nonprofit enterprise, regardless of whether such project or projects are within a blighted area. Such projects shall be located within this state and may be located within, without, partially within, or partially without the municipality or county; provided, for any project located without the municipality or county, such municipality or county shall find that a reasonable relationship exists between such municipality or county and the project, borrower, or other party or parties to the financing agreement, as applicable. The power to finance such projects means and includes the power to enter into any type of agreement, including a loan agreement, when the other party to the agreement agrees (i) to use the proceeds of money provided under the agreement to pay the costs of such acquisition, construction, rehabilitation, or purchase and any costs incident to the issuance of the related bonds and the funding of any reserve funds and (ii) to make payments to the municipality or county sufficient to enable it to pay on a timely basis all principal, redemption premiums, and interest on the related revenue bonds issued to provide such financing and any amounts necessary to repay such municipality or county for any and all costs incurred by it that are incidental to such financing. Title to any such project need not be in the name of the municipality or county but may be in the name of a private party;

~~(4)~~ (e) To issue revenue bonds for the purpose of defraying the cost of acquiring, improving, or financing any project or projects, including the cost of any real estate previously purchased and used for such project or projects, or the cost of any option in connection with acquiring such property, and to secure the payment of such bonds as provided in sections 13-1101 to 13-1110, which revenue bonds may be issued in two or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenue available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with ~~the provisions of~~ sections 13-1101 to 13-1110; and

~~(5)~~ (f) To sell and convey any real or personal property acquired as provided by subdivision ~~(1)~~ (1)(a) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county, except that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other

encumbrance.

(2) No municipality or county shall have the power to (a) operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, (b) lease any project acquired under powers conferred by this section for use principally for commercial feeding of livestock, (c) issue bonds under this section principally for the purpose of financing the construction or acquisition of commercial feeding facilities for livestock, or (d) acquire any project or any part thereof by condemnation.

Sec. 3. Section 13-1104, Reissue Revised Statutes of Nebraska, is amended to read:

13-1104 (1) The principal of and interest on any bonds issued under the authority of sections 13-1101 to 13-1110 (a) shall be secured by a pledge of the revenue out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the project, and (c) may be secured by a pledge of the lease of such project or by any related financing agreement, or (d) may be secured by such other security device as may be deemed most advantageous by the issuing authority and other parties to the transaction.

(2) The proceedings, under which the bonds are authorized to be issued under ~~the provisions of~~ sections 13-1101 to 13-1110, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any project covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease or financing of such project, (c) the maintenance and insurance of such project, (d) the creation and maintenance of special funds from the revenue of such project, and (e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with ~~the provisions of~~ sections 13-1101 to 13-1110. In + Provided, ~~that in~~ making any such agreements or provisions, a municipality or county shall not have the power to obligate itself, except with respect to the project and the application of the revenue therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under ~~the provisions of~~ sections 13-1101 to 13-1110 and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenue from the project in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage, made under ~~the provisions of~~ sections 13-1101 to 13-1110, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if it is the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

Sec. 4. Section 13-1105, Reissue Revised Statutes of Nebraska, is amended to read:

13-1105 (1) Prior to the leasing or financing of any project, the governing body must determine and find the following: The amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project; the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes; and, with respect to leases, unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

(2) The determinations and findings of the governing body, required to be made by subsection (1) of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of the bonds authorized by sections 13-1101 to 13-1110, the municipality or county shall (a) lease the project to a lessee or lessees under an agreement conditioned upon completion of the project and providing for payment to the municipality or county of such rentals as, upon the

basis of such determinations and findings, will be sufficient (i) to pay the principal of and interest on the bonds issued to finance the project, (ii) to pay the taxes on the project, (iii) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (iv) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured or (b) enter into a financing agreement pursuant to subdivision ~~(3)~~ (1)(c) or (d) of section 13-1102. Subject to the limitations of sections 13-1101 to 13-1110, the lease or financing agreement or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties. Notwithstanding ~~7~~ and notwithstanding any other provisions of law relating to the sale of property owned by municipalities and counties, any such lease may contain an option for the lessees to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

(3) At a public hearing or at the adjournment of such hearing, the governing body of the city in which the proposed project is located shall determine whether the location of the proposed project is within a blighted area and whether the proposed project is within the development plan or plans for the area. Notice of the time and place of the hearing shall be published at least two times not less than seven days prior to the hearing in a legal newspaper having a general circulation within the boundaries of the city. Upon a favorable resolution by the governing body of the city where the proposed project is located, the governing body of the city or county may proceed to issue bonds.

(4) The requirements for notice and public hearing as set forth in subsection (3) of this section shall not apply to projects for manufacturing or industrial enterprises or for nonprofit enterprises as described in subdivision (3)(a) or (b) of section 13-1101 or refunding bonds authorized under section 13-1106.

Sec. 5. Section 13-1109, Reissue Revised Statutes of Nebraska, is amended to read:

13-1109 ~~Neither sections (1) Sections 13-1101 to 13-1110 nor anything herein contained shall not be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state, but shall be construed as cumulative.~~

(2) Sections 13-1101 to 13-1110 shall be full authority for the exercise of the powers described in such sections by a municipality or county, and no action, proceeding, or election shall be required prior to the exercise of such powers under such sections or to authorize the exercise of any of the powers granted in such sections, except as specifically provided in such sections, any provision of law applicable to a municipality or county to the contrary notwithstanding. No proceedings for the issuance of bonds of a municipality or county shall be required other than those required by sections 13-1101 to 13-1110, and the provisions of all other laws and charters of any municipality or county, if any, relative to the terms and conditions for the acquisition, leasing, financing construction, rehabilitation, or purchase of projects as provided in such sections and the issuance, payment, redemption, registration, sale, or delivery of bonds by a municipality or county shall not be applicable to bonds issued by a municipality or county pursuant to such sections. No municipality, county, or governing body or officer thereof shall be subject to the Securities Act of Nebraska with respect to any revenue bonds issued under sections 13-1101 to 13-1110. Insofar as sections 13-1101 to 13-1110 are inconsistent with the provisions of any other law or of any law otherwise applicable to a municipality or county, if any, sections 13-1101 to 13-1110 shall be controlling.

(3) In any suit, action, or proceeding involving the validity or enforceability of any bond of a municipality or county or the security therefor brought after the lapse of thirty days after the issuance of such bonds has been authorized, any such bond reciting in substance that it has been authorized by the municipality or county to aid in financing a project shall be conclusively deemed to have been authorized for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with sections 13-1101 to 13-1110.

(4) In any suit, action, or proceeding involving the validity or enforceability of any agreement of a municipality or county brought after the lapse of thirty days after the agreement has been formally entered into, any such agreement reciting in substance that it has been entered into by the municipality or county to provide financing for a project shall be conclusively deemed to have been entered into for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with sections 13-1101 to 13-1110.

Sec. 6. Original sections 13-1101, 13-1102, 13-1104, 13-1105, and 13-1109, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.