

## LEGISLATIVE BILL 168

Approved by the Governor February 26, 2015

Introduced by Mello, 5.

A BILL FOR AN ACT relating to the Business Improvement District Act; to amend sections 19-4015, 19-4016, 19-4017, 19-4017.01, 19-4020, 19-4021, 19-4025, 19-4026, 19-4027, 19-4028, 19-4029, 19-4030, 19-4033, 19-4037, and 19-4038, Reissue Revised Statutes of Nebraska; to authorize expansion of existing district boundaries; to define and redefine terms; to harmonize provisions; to repeal the original sections; and to outright repeal section 19-4024, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 19-4015, Reissue Revised Statutes of Nebraska, is amended to read:

19-4015 Sections 19-4015 to 19-4038 and sections 7 and 12 to 15 of this act shall be known and may be cited as the Business Improvement District Act.

Sec. 2. Section 19-4016, Reissue Revised Statutes of Nebraska, is amended to read:

19-4016 The Business Improvement District Act provides 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 the act, sections 19-4015 to 19-4038, their provisions only the provisions of the act need be followed.

Sec. 3. Section 19-4017, Reissue Revised Statutes of Nebraska, is amended to read:

19-4017 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 the Business Improvement District Act 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 the act sections 19-4015 to 19-4038.

Sec. 4. Section 19-4017.01, Reissue Revised Statutes of Nebraska, is amended to read:

19-4017.01 For purposes of the Business Improvement District Act 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 19-4026 or section 13 of this act 19-4028 or protest pursuant to section 19-4027 or section 14 of this act, 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 ordinance creating 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; and -

(4) Business area shall mean an established area of the city zoned for business, public, or commercial purposes.

Sec. 5. Section 19-4020, Reissue Revised Statutes of Nebraska, is amended to read:

19-4020 A business improvement district may be created as provided by the Business Improvement District Act sections 19-4015 to 19-4038 and shall be within the boundaries of a an established business area of the city zoned for business, public, or commercial purposes.

Sec. 6. Section 19-4021, Reissue Revised Statutes of Nebraska, is amended to read:

19-4021 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 the Business Improvement District Act sections 19-4015 to 19-4038, more than one business improvement district as part of the same development plan for improvements 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. The board shall also review and make

recommendations to the city regarding expansion of the boundaries of the business improvement district under sections 12 to 15 of this act.

Sec. 7. Section 19-4025, Reissue Revised Statutes of Nebraska, is amended to read:

19-4025 (1) A notice of hearing for any hearing under section 19-4029 and sections 12 and 13 of this act sections 19-4015 to 19-4038 shall be given by (a 1) one publication of the notice of hearing resolution of intention in a newspaper of general circulation in the city and (b 2) mailing a complete copy of the notice of hearing 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 notice of hearing 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.

(2) Any notice of hearing for any hearing required by section 19-4029 shall contain the following information:

(a) A description of the boundaries of the proposed district;

(b) The time and place of a hearing to be held by the city council to consider establishment of the district;

(c) The proposed public facilities and improvements to be made or maintained within any such district; and

(d) The proposed or estimated costs for improvements and facilities within the proposed district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

(3) Any notice of hearing for any hearing required by sections 12 and 13 of this act shall contain the following information:

(a) A description of the boundaries of the area to be added to the existing business improvement district and a description of the new boundaries of the modified district;

(b) The time and place of a hearing to be held by the city council to consider establishment of the modified district;

(c) The new public facilities and improvements, if any, to be made or maintained within any such district; and

(d) The proposed or estimated costs for new and existing improvements and facilities within the proposed modified district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

Sec. 8. Section 19-4026, Reissue Revised Statutes of Nebraska, is amended to read:

19-4026 In the event that the city council has not acted to call a hearing to create a district as provided in section 19-4029 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.

Sec. 9. Section 19-4027, Reissue Revised Statutes of Nebraska, is amended to read:

19-4027 Whenever a hearing is held under section 19-4029 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 users of over fifty percent of the users of space in the proposed district.

Sec. 10. Section 19-4028, Reissue Revised Statutes of Nebraska, is amended to read:

19-4028 If the city council decides to change the boundaries of the proposed district or to change the proposed modifications to the boundaries of an existing business improvement district or districts from those recommended by the business improvement board, 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 7 of this act 19-4026, showing the boundary amendments. The city council may not expand the proposed boundaries recommended by the business improvement board without the council's proposed boundaries being considered by the business improvement board, but no new or additional resolution of intention shall be required.

Sec. 11. Section 19-4029, Reissue Revised Statutes of Nebraska, is amended to read:

19-4029 Upon receiving the recommendation from the business improvement board, the city council may create one or more business improvement districts. The city council, following a 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) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 7 of this act 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 users of space professions in the district area established by the ordinance shall be subject to the general business occupation tax or that the real property in the district area will be subject to the special assessment authorized by the Business Improvement District Act 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.

The ordinance 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.

Sec. 12. Upon receiving the recommendation to expand the boundaries of an existing business improvement district from the business improvement board, the city council may expand the boundaries of one or more business improvement districts by adopting an ordinance to expand the boundaries of a district or districts. Prior to adopting the ordinance, a hearing shall be held to consider the ordinance.

Sec. 13. In the event that the city council has not acted to call a hearing to expand district boundaries as provided in section 12 of this act, it shall do so when presented with a petition signed by the users of thirty percent of space in a business area proposed to be added to an existing business improvement district where an occupation tax is imposed or by the record owners of thirty percent of the assessable front footage in a portion of a business area proposed to be added to an existing business improvement district.

Sec. 14. Whenever a hearing is held to expand district boundaries under section 12 or 13 of this act, 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 modified district as proposed. If an occupation tax is to be used, proceedings shall terminate if protest is made by users of over fifty percent of space in the modified district as proposed.

Sec. 15. The city council, following a hearing under section 12 or 13 of this act, may expand the boundaries of any district or districts. If the city council decides to expand the boundaries, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The name of the district whose boundaries will be expanded;

(2) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 7 of this act;

(3) The time and place the hearing was held concerning the new boundaries of such district;

(4) The purposes of the boundary expansion and any new public improvements and facilities to be included in such district;

(5) The description of the new boundaries of such district;

(6) A statement that the businesses and users of space in the modified district established by the ordinance shall be subject to the general business occupation tax or that the real property in the modified district will be subject to the special assessment authorized by the Business Improvement District Act;

(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.

The ordinance 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.

Sec. 16. Section 19-4030, Reissue Revised Statutes of Nebraska, is amended to read:

19-4030 A city may levy a special assessment against the real estate located in a business improvement 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 the Business Improvement District Act 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 the act 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.

Sec. 17. Section 19-4033, Reissue Revised Statutes of Nebraska, is amended to read:

19-4033 The total amount of assessments or general business occupation taxes levied under the Business Improvement District Act 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.

Sec. 18. Section 19-4037, Reissue Revised Statutes of Nebraska, is amended to read:

19-4037 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 the Business Improvement District Act sections 19-4015 to 19-4038.

Sec. 19. Section 19-4038, Reissue Revised Statutes of Nebraska, is amended to read:

19-4038 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 the Business Improvement District Act sections 19-4015 to 19-4038.

Sec. 20. Original sections 19-4015, 19-4016, 19-4017, 19-4017.01, 19-4020, 19-4021, 19-4025, 19-4026, 19-4027, 19-4028, 19-4029, 19-4030, 19-4033, 19-4037, and 19-4038, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 21. The following section is outright repealed: Section 19-4024, Reissue Revised Statutes of Nebraska.