

AMENDMENTS TO LB663

(Amendments to Standing Committee amendments, AM973)

Introduced by Storer, 43.

1 1. Strike the original sections and insert the following new
2 sections:

3 **Section 1.** Section 23-114.01, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 23-114.01 (1) In order to avail itself of the powers conferred by
6 section 23-114, the county board shall appoint a ~~planning commission to~~
7 ~~be known as the~~ county planning commission. The members of the commission
8 shall be residents of the county to be planned and shall be appointed
9 with due consideration to geographical and population factors. Since the
10 primary focus of concern and control in county planning and land-use
11 regulatory programs is the unincorporated area, a majority of the members
12 of the commission shall be residents of unincorporated areas, except that
13 this requirement shall not apply to joint planning commissions. Members
14 of the commission shall hold no county or municipal office, except that a
15 member may also be a member of a city, village, or other type of planning
16 commission. The term of each member shall be three years, except that
17 approximately one-third of the members of the first commission shall
18 serve for terms of one year, one-third for terms of two years, and one-
19 third for terms of three years. All members shall hold office until their
20 successors are appointed. Members of the commission may be removed by a
21 majority vote of the county board for inefficiency, neglect of duty, or
22 malfeasance in office or other good and sufficient cause upon written
23 charges being filed with the county board and after a public hearing has
24 been held regarding such charges. Vacancies occurring otherwise than
25 through the expiration of terms shall be filled for the unexpired terms
26 by individuals appointed by the county board. Members of the commission

1 shall be compensated for their actual and necessary expenses incurred in
2 connection with their duties in an amount to be fixed by the county
3 board. Reimbursement for mileage shall be made at the rate provided in
4 section 81-1176. Each county board may provide a per diem payment for
5 members of the commission of not to exceed fifteen dollars for each day
6 that each such member attends meetings of the commission or is engaged in
7 matters concerning the commission, but no member shall receive more than
8 one thousand dollars in any one year. Such per diem payments shall be in
9 addition to and separate from compensation for expenses.

10 (2) The county attorney, each member of the commission, and each
11 member of the county board of any county that has enacted county zoning
12 regulations shall undertake two hours of education per term on topics
13 specific to the role of the county attorney, commissioner, or board
14 member when addressing matters subject to this section.

15 (3) ~~(2)~~ The commission: (a) Shall prepare and adopt as its policy
16 statement a comprehensive development plan and such implemental means as
17 a capital improvement program, subdivision regulations, building codes,
18 and a zoning resolution; (b) shall consult with and advise public
19 officials and agencies, public utilities, civic organizations,
20 educational institutions, and citizens relating to the promulgation of
21 implemental programs; (c) may delegate authority to any of the groups
22 named in subdivision (b) of this subsection to conduct studies and make
23 surveys for the commission; and (d) shall make preliminary reports on its
24 findings and hold public hearings before submitting its final reports.
25 The county board shall not hold its public meetings or take action on
26 matters relating to the comprehensive development plan, capital
27 improvements, building codes, subdivision development, or zoning until it
28 has received the recommendations of the commission.

29 (4)(a) ~~(3)~~ The commission may, with the consent of the governing
30 body, in its own name: (i) Make and enter into contracts with public or
31 private bodies; (ii) receive contributions, bequests, gifts, or grants of

1 funds from public or private sources; (iii) expend the funds appropriated
2 to it by the county board; (iv) employ agents and employees; and (v)
3 acquire, hold, and dispose of property.

4 (b) The commission may, on its own authority: (i) Make arrangements
5 consistent with its program; (ii) conduct or sponsor special studies or
6 planning work for any public body or appropriate agency; (iii) receive
7 grants, remuneration, or reimbursement for such studies or work; and (iv)
8 at its public hearings, summon witnesses, administer oaths, and compel
9 the giving of testimony.

10 (5)(a) ~~(4)~~ In all counties in the state, the county planning
11 commission may grant conditional uses or special exceptions to property
12 owners for the use of their property if the county board of commissioners
13 or supervisors has officially and generally authorized the commission to
14 exercise such powers and has approved the standards and procedures the
15 commission adopted for equitably and judiciously granting such
16 conditional uses or special exceptions. The granting of a conditional use
17 permit or special exception shall only allow property owners to put their
18 property to a special use if it is among those uses specifically
19 identified in the county zoning regulations as classifications of uses
20 which may require special conditions or requirements to be met by the
21 owners before a use permit or building permit is authorized.

22 (b) The applicant for a conditional use permit or special exception
23 for a livestock operation specifically identified in the county zoning
24 regulations as a classification of use which may require special
25 conditions or requirements to be met within an area of a county zoned for
26 agricultural use may request a determination of the special conditions or
27 requirements to be imposed by the county planning commission or by the
28 county board of commissioners or supervisors if the board has not
29 authorized the commission to exercise such authority. Upon request the
30 commission or board shall issue such determination of the special
31 conditions or requirements to be imposed in a timely manner. Such special

1 conditions or requirements to be imposed may include, but are not limited
2 to, the submission of information that may be separately provided to
3 state or federal agencies in applying to obtain the applicable state and
4 federal permits. Granting a conditional use permit or special exception
5 by the commission or county board shall be based solely on county zoning
6 regulations. Nothing in this section shall be construed to release the
7 applicant from complying with applicable rules and regulations of any
8 local, state, or federal agency or with any applicable state or federal
9 permit requirements. A commission or county board shall not require an
10 applicant for a conditional use permit or special exception to apply for
11 or obtain any other permit from a federal, state, or local agency as a
12 condition for granting such conditional use permit or special exception.
13 The granting of a conditional use permit or special exception by a
14 commission or county board shall not relieve the applicant of any
15 requirement to obtain other necessary permits from any federal, state, or
16 local agency.

17 (c) The commission or the board may request and review, prior to
18 making a determination of the special conditions or requirements to be
19 imposed, reasonable information relevant to the conditional use or
20 special exception. If a determination of the special conditions or
21 requirements to be imposed has been made, final permit approval may be
22 withheld subject only to a final review by the commission or county board
23 to determine whether there is a substantial change in the applicant's
24 proposed use of the property upon which the determination was based and
25 that the applicant has met, or will meet, the special conditions or
26 requirements imposed in the determination. When making the determination
27 as to whether the special use permit application should be approved or
28 denied, the commission and board shall presume that the applicant for the
29 permit will comply with all local, state, and federal requirements. The
30 burden of proof to the contrary shall rest on the party challenging said
31 presumption. Without factual evidence contrary to the application, the

1 commission or board shall approve the application.

2 (d) For purposes of this section, substantial change shall include
3 any significant alteration in the original application including a
4 significant change in the design or location of buildings or facilities,
5 in waste disposal methods or facilities, or in capacity.

6 (6) (5) The power to grant conditional uses or special exceptions as
7 set forth in subsection (5) (4) of this section shall be the exclusive
8 authority of the commission, except that the county board of
9 commissioners or supervisors may choose to retain for itself the power to
10 grant conditional uses or special exceptions for those classifications of
11 uses specified in the county zoning regulations. The county board of
12 commissioners or supervisors may exercise such power if it has formally
13 adopted standards and procedures for granting such conditional uses or
14 special exceptions in a manner that is equitable and which will promote
15 the public interest. In an appeal of a decision by the county planning
16 commission or county board of commissioners or supervisors regarding a
17 conditional use or special exception, the appealing party shall have the
18 burden of proving by clear and convincing evidence that such decision (i)
19 was arbitrary, capricious, or illegal or (ii) did not adhere to the
20 county's zoning regulations. In any county other than a county in which
21 is located a city of the primary class, an appeal of a decision by the
22 county planning commission or county board of commissioners or
23 supervisors regarding a conditional use or special exception shall be
24 made to the district court. In any county in which is located a city of
25 the primary class, an appeal of a decision by the county planning
26 commission regarding a conditional use or special exception shall be made
27 to the county board of commissioners or supervisors, and an appeal of a
28 decision by the county board of commissioners or supervisors regarding a
29 conditional use or special exception shall be made to the district court.

30 (7)(a) (6) Whenever a county planning commission or county board is
31 authorized to grant conditional uses or special exceptions pursuant to

1 subsection ~~(5)~~ ~~(4)~~ or ~~(6)~~ ~~(5)~~ of this section, the planning commission or
2 county board shall, with its decision to grant or deny a conditional use
3 permit or special exception, issue a statement of factual findings
4 arising from the record of proceedings that support the granting or
5 denial of the conditional use permit or special exception. If a county
6 planning commission's role is advisory to the county board, the county
7 planning commission shall submit such statement with its recommendation
8 to the county board as to whether to approve or deny a conditional use
9 permit or special exception.

10 (b) Upon receipt by the planning commission of an application, the
11 county zoning administrator or commission shall have thirty days to
12 determine if the application is complete. If the administrator or
13 commission determines the application is incomplete, within ten days
14 following such determination, the administrator or commission shall
15 notify the applicant in writing as to what information is required to
16 make the application complete. The administrator or commission shall have
17 thirty days after receipt of any additional information provided by the
18 applicant to redetermine if the application is complete. Within ninety
19 days after the commission receives a complete application, the commission
20 shall:

21 (i) If the commission has the authority to grant or deny a
22 conditional use permit or special exception, grant or deny such
23 application; or

24 (ii) If the commission does not have the authority to grant or deny
25 a conditional use permit or special exception, make a recommendation to
26 the board that such application be granted or denied.

27 (c) Once the board has received the recommendation of the
28 commission, the board shall have thirty days to make its own
29 determination if the application is complete. If the board determines the
30 application is incomplete, within ten days following such determination,
31 the board shall notify the applicant in writing as to what information is

1 required to make the application complete. The board shall have thirty
2 days after receipt of any additional information provided by the
3 applicant to redetermine if the application is complete. The board shall
4 have ninety days after receiving a complete application as determined by
5 the board to decide whether to grant or deny a conditional use permit or
6 special exception. If the board has not granted or denied a conditional
7 use permit or special exception by the end of such ninety-day period, the
8 conditional use permit or special exemption shall be deemed granted.

9 (d) If, at any time after the board has received the recommendation
10 of the commission and before the expiration of the ninety-day period
11 described in subdivision (7)(b) of this section, the board comes into
12 possession of information which materially affects an application, the
13 board may take action during an open meeting of the board to require the
14 submission of a new application to the board or the presentation of
15 information deemed necessary by the board to the board at a hearing not
16 less than ninety days after the board takes such action. The board shall
17 have ninety days after the submission of the new application or the
18 presentation of information to decide whether to grant or deny the
19 conditional use permit or special exception. If the board has not granted
20 or denied the conditional use permit or special exception by the end of
21 such ninety-day period, the conditional use permit or special exemption
22 shall be deemed granted.

23 (e) For purposes of this subsection, materially affect means having
24 a significant or substantial impact relating to state law, compliance
25 with county zoning regulations, or the rights of any affected party.

26 **Sec. 2.** Original section 23-114.01, Reissue Revised Statutes of
27 Nebraska, is repealed.