

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.