

AMENDMENTS TO LB663

Introduced by Government, Military and Veterans Affairs.

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
27 shall be compensated for their actual and necessary expenses incurred in

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

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

14 (3) ~~(2)~~ The commission: (a) Shall prepare and adopt as its policy
15 statement a comprehensive development plan and such implemental means as
16 a capital improvement program, subdivision regulations, building codes,
17 and a zoning resolution; (b) shall consult with and advise public
18 officials and agencies, public utilities, civic organizations,
19 educational institutions, and citizens relating to the promulgation of
20 implemental programs; (c) may delegate authority to any of the groups
21 named in subdivision (b) of this subsection to conduct studies and make
22 surveys for the commission; and (d) shall make preliminary reports on its
23 findings and hold public hearings before submitting its final reports.
24 The county board shall not hold its public meetings or take action on
25 matters relating to the comprehensive development plan, capital
26 improvements, building codes, subdivision development, or zoning until it
27 has received the recommendations of the commission.

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

1 to it by the county board; (iv) employ agents and employees; and (v)
2 acquire, hold, and dispose of property.

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

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

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

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

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

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

5 (6) ~~(5)~~ The power to grant conditional uses or special exceptions as
6 set forth in subsection (5) ~~(4)~~ of this section shall be the exclusive
7 authority of the commission, except that the county board of
8 commissioners or supervisors may choose to retain for itself the power to
9 grant conditional uses or special exceptions for those classifications of
10 uses specified in the county zoning regulations. The county board of
11 commissioners or supervisors may exercise such power if it has formally
12 adopted standards and procedures for granting such conditional uses or
13 special exceptions in a manner that is equitable and which will promote
14 the public interest. In any county other than a county in which is
15 located a city of the primary class, an appeal of a decision by the
16 county planning commission or county board of commissioners or
17 supervisors regarding a conditional use or special exception shall be
18 made to the district court. In any county in which is located a city of
19 the primary class, an appeal of a decision by the county planning
20 commission regarding a conditional use or special exception shall be made
21 to the county board of commissioners or supervisors, and an appeal of a
22 decision by the county board of commissioners or supervisors regarding a
23 conditional use or special exception shall be made to the district court.

24 (7)(a) ~~(6)~~ Whenever a county planning commission or county board is
25 authorized to grant conditional uses or special exceptions pursuant to
26 subsection (5) ~~(4)~~ or (6) ~~(5)~~ of this section, the planning commission or
27 county board shall, with its decision to grant or deny a conditional use
28 permit or special exception, issue a statement of factual findings
29 arising from the record of proceedings that support the granting or
30 denial of the conditional use permit or special exception. If a county
31 planning commission's role is advisory to the county board, the county

1 planning commission shall submit such statement with its recommendation
2 to the county board as to whether to approve or deny a conditional use
3 permit or special exception.

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

15 (i) If the commission has the authority to grant or deny a
16 conditional use permit or special exception, grant or deny such
17 application; or

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

21 (c) Once the board has received the recommendation of the
22 commission, the board shall have thirty days to make its own
23 determination if the application is complete. If the board determines the
24 application is incomplete, within ten days following such determination,
25 the board shall notify the applicant in writing as to what information is
26 required to make the application complete. The board shall have thirty
27 days after receipt of any additional information provided by the
28 applicant to redetermine if the application is complete. Not later than
29 ninety days after receiving a complete application as determined by the
30 board, the board shall decide whether to grant or deny a conditional use
31 permit or special exception. If the board has not granted or denied a

1 conditional use permit or special exception by the end of such ninety-day
2 period, the conditional use permit or special exemption shall be deemed
3 granted.

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