

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 663

FINAL READING

Introduced by Storer, 43; DeKay, 40; Holdcroft, 36; Ibach, 44; Strommen,
47.

Read first time January 22, 2025

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to counties; to amend section 23-114.01,
- 2 Reissue Revised Statutes of Nebraska; to require education for
- 3 county attorneys, members of county planning commissions, and
- 4 members of county boards as provided; to change provisions relating
- 5 to conditional use and special exception zoning determinations and
- 6 determination appeals; and to repeal the original section.
- 7 Be it enacted by the people of the State of Nebraska,

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

3 23-114.01 (1) In order to avail itself of the powers conferred by
4 section 23-114, the county board shall appoint a ~~planning commission to~~
5 ~~be known as the~~ county planning commission. The members of the commission
6 shall be residents of the county to be planned and shall be appointed
7 with due consideration to geographical and population factors. Since the
8 primary focus of concern and control in county planning and land-use
9 regulatory programs is the unincorporated area, a majority of the members
10 of the commission shall be residents of unincorporated areas, except that
11 this requirement shall not apply to joint planning commissions. Members
12 of the commission shall hold no county or municipal office, except that a
13 member may also be a member of a city, village, or other type of planning
14 commission. The term of each member shall be three years, except that
15 approximately one-third of the members of the first commission shall
16 serve for terms of one year, one-third for terms of two years, and one-
17 third for terms of three years. All members shall hold office until their
18 successors are appointed. Members of the commission may be removed by a
19 majority vote of the county board for inefficiency, neglect of duty, or
20 malfeasance in office or other good and sufficient cause upon written
21 charges being filed with the county board and after a public hearing has
22 been held regarding such charges. Vacancies occurring otherwise than
23 through the expiration of terms shall be filled for the unexpired terms
24 by individuals appointed by the county board. Members of the commission
25 shall be compensated for their actual and necessary expenses incurred in
26 connection with their duties in an amount to be fixed by the county
27 board. Reimbursement for mileage shall be made at the rate provided in
28 section 81-1176. Each county board may provide a per diem payment for
29 members of the commission of not to exceed fifteen dollars for each day
30 that each such member attends meetings of the commission or is engaged in
31 matters concerning the commission, but no member shall receive more than

1 one thousand dollars in any one year. Such per diem payments shall be in
2 addition to and separate from compensation for expenses.

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

8 (3) (2) The commission: (a) Shall prepare and adopt as its policy
9 statement a comprehensive development plan and such implemental means as
10 a capital improvement program, subdivision regulations, building codes,
11 and a zoning resolution; (b) shall consult with and advise public
12 officials and agencies, public utilities, civic organizations,
13 educational institutions, and citizens relating to the promulgation of
14 implemental programs; (c) may delegate authority to any of the groups
15 named in subdivision (b) of this subsection to conduct studies and make
16 surveys for the commission; and (d) shall make preliminary reports on its
17 findings and hold public hearings before submitting its final reports.
18 The county board shall not hold its public meetings or take action on
19 matters relating to the comprehensive development plan, capital
20 improvements, building codes, subdivision development, or zoning until it
21 has received the recommendations of the commission.

22 (4)(a) (3) The commission may, with the consent of the governing
23 body, in its own name: (i) Make and enter into contracts with public or
24 private bodies; (ii) receive contributions, bequests, gifts, or grants of
25 funds from public or private sources; (iii) expend the funds appropriated
26 to it by the county board; (iv) employ agents and employees; and (v)
27 acquire, hold, and dispose of property.

28 (b) The commission may, on its own authority: (i) Make arrangements
29 consistent with its program; (ii) conduct or sponsor special studies or
30 planning work for any public body or appropriate agency; (iii) receive
31 grants, remuneration, or reimbursement for such studies or work; and (iv)

1 at its public hearings, summon witnesses, administer oaths, and compel
2 the giving of testimony.

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

15 (b) The applicant for a conditional use permit or special exception
16 for a livestock operation specifically identified in the county zoning
17 regulations as a classification of use which may require special
18 conditions or requirements to be met within an area of a county zoned for
19 agricultural use may request a determination of the special conditions or
20 requirements to be imposed by the county planning commission or by the
21 county board of commissioners or supervisors if the board has not
22 authorized the commission to exercise such authority. Upon request the
23 commission or board shall issue such determination of the special
24 conditions or requirements to be imposed in a timely manner. Such special
25 conditions or requirements to be imposed may include, but are not limited
26 to, the submission of information that may be separately provided to
27 state or federal agencies in applying to obtain the applicable state and
28 federal permits. Granting a conditional use permit or special exception
29 by the commission or county board shall be based solely on county zoning
30 regulations. Nothing in this section shall be construed to release the
31 applicant from complying with applicable rules and regulations of any

1 local, state, or federal agency or with any applicable state or federal
2 permit requirements. A commission or county board shall not require an
3 applicant for a conditional use permit or special exception to apply for
4 or obtain any other permit from a federal, state, or local agency as a
5 condition for granting such conditional use permit or special exception.
6 The granting of a conditional use permit or special exception by a
7 commission or county board shall not relieve the applicant of any
8 requirement to obtain other necessary permits from any federal, state, or
9 local agency.

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

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

31 (6) ~~(5)~~ The power to grant conditional uses or special exceptions as

1 set forth in subsection ~~(5)~~ (4) of this section shall be the exclusive
2 authority of the commission, except that the county board of
3 commissioners or supervisors may choose to retain for itself the power to
4 grant conditional uses or special exceptions for those classifications of
5 uses specified in the county zoning regulations. The county board of
6 commissioners or supervisors may exercise such power if it has formally
7 adopted standards and procedures for granting such conditional uses or
8 special exceptions in a manner that is equitable and which will promote
9 the public interest. In an appeal of a decision by the county planning
10 commission or county board of commissioners or supervisors regarding a
11 conditional use or special exception, the appealing party shall have the
12 burden of proving by clear and convincing evidence that such decision (i)
13 was arbitrary, capricious, or illegal or (ii) did not adhere to the
14 county's zoning regulations. In any county other than a county in which
15 is 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. The board shall
29 have ninety days after receiving a complete application as determined by
30 the board to decide whether to grant or deny a conditional use permit or
31 special exception. If the board has not granted or denied a conditional

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

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

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

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