

LEGISLATIVE BILL 161

Approved by the Governor May 13, 2005

Introduced by Aguilar, 35; Burling, 33; Johnson, 37; Schrock, 38; Stuhr, 24;
Price, 26

AN ACT relating to political subdivisions; to amend sections 14-405, 15-201, 16-669, 16-670, 17-522, 19-905, 19-2404, 19-2405, 23-165, and 74-1307, Reissue Revised Statutes of Nebraska, and sections 16-611 and 17-558, Revised Statutes Supplement, 2004; to change provisions relating to zoning, the vacation of streets and alleys, sewer and water improvements, and sidewalk construction and maintenance; to provide powers relating to trees; to provide for special assessment districts; to change provisions relating to bond issuance by railroad transportation safety districts; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 14-405, Reissue Revised Statutes of Nebraska, is amended to read:

14-405. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. When a protest against a change of boundaries is presented to the city clerk at least six days prior to the city council vote on such change, and such change is not in accordance with the comprehensive development plan, such change shall not become effective except by a favorable vote of five-sevenths of all members of the city council. The protest shall be in writing, signed, and sworn and acknowledged pursuant to section 64-206 by the required owners. For purposes of this section, the required owners ~~shall mean~~ means those fee simple owners of record as recorded by the register of deeds owning at least twenty percent of the area: (1) Included in the proposed change; (2) abutting either side of the proposed change; (3) abutting the rear of the proposed change; (4) abutting the front of the proposed change; or (5) directly opposite of the proposed change on the other side of a dedicated public right-of-way and extending fifty feet on either side of such opposite lot.

Sec. 2. Section 15-201, Reissue Revised Statutes of Nebraska, is amended to read:

15-201. Cities of the primary class shall be bodies corporate and politic and shall have power:

- (1) To sue and be sued;
- (2) To purchase, lease, or otherwise acquire as authorized by their home rule charters or state statutes real estate or personal property within or without the limits of the city for its use for a public purpose;
- (3) To purchase real or personal property upon sale for general or special taxes or assessments and to lease, sell, convey, or exchange such property so purchased;
- (4) To sell, convey, exchange, or lease real or personal property owned by the city in such manner and upon such terms and conditions as shall be deemed in the best interests of the city as authorized by its home rule charter, except that real estate owned by the city may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed in the manner strictly as provided in sections 18-1001 to 18-1006;
- (5) To make contracts and do all acts relative to the property and concerns of the city necessary or incident or appropriate to the exercise of its corporate powers, including powers granted by the Constitution of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto and including the power to execute such bonds and obligations on the part of the city as may be required in judicial proceedings;
- (6) To purchase, construct, and otherwise acquire, own, maintain, and operate public service and public utility property and facilities within and without the limits of the city and to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein and to exercise such other and further powers as may be necessary or incident or appropriate to the powers of such city, including powers granted by the Constitution of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto. If the public service or public utility property or facility is located outside the limits of the city but within the zoning jurisdiction of another political subdivision, the city and the other political subdivision may by interlocal agreement provide or exchange

services, including utility services, relating to the property or facilities; and

(7) To receive grants, devises, donations, and bequests of money or property for public purposes in trust or otherwise; and

(8) To provide for the planting, maintenance, protection, and removal of shade, ornamental, and other useful trees upon the streets or boulevards; to assess the cost thereof, when appropriate, as a special assessment against the property specially benefited to the extent of benefits received; and to provide by general ordinance for the manner in which such benefits are to be measured and the assessments calculated and the means of notice to the owners of the record title of the property proposed to be improved, including a written statement of the proposed benefits and an estimate of the costs to be assessed according to the method of assessment. The city may create districts by ordinance which shall designate the property within the district to be benefited and the method of assessment. Notwithstanding the provisions of any city charter and except as provided below, no such improvement shall be finally ordered by the city council until a petition, signed by the owners of the record title of property within the proposed district which would be subject to more than fifty percent of the total of all special assessments to be levied for the purposes authorized by this subdivision, is presented and filed with the city clerk petitioning therefor. The sufficiency of the petitions and objections so presented and the sufficiency of notice as provided in this subdivision shall be determined by the city council and its determination thereof shall be conclusive in the absence of objections made and presented to the city council prior to the letting of the contract for the improvement. If an assessment district is proposed without a prior authorizing petition as described in this subdivision, the owners of the record title of property within the proposed district which would be subject to more than fifty percent of the total of all special assessments to be levied for the purposes authorized by this subdivision may, by petition, stop formation of such district. Such written protest shall be submitted to the city council or clerk within thirty calendar days after publication of notice concerning the ordinance in a newspaper of general circulation in the city.

The powers shall be exercised by the mayor and council of the city except in cases otherwise specified by law. The mayor and council shall adopt a corporate seal for the use of any officer, board, or agent of the city whose duties require an official seal.

Sec. 3. Section 16-611, Revised Statutes Supplement, 2004, is amended to read:

16-611. (1) Upon the vacation of any street or alley by the city, the title to such property shall vest in the owners of the abutting property and become a part of such property, one-half on each side thereof, unless the city reserves title in the ordinance vacating such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

~~(2) When an alley is vacated by the city, the title to such property shall vest in the owners of the abutting property and become a part of such property, one-half on each side thereof, unless the alley is taken wholly from one or more lots, in which case the title to such property shall vest in the owner of the abutting property and become a part of such property.~~

~~(3) When a portion of a street or alley is vacated only on one side of the center thereof, the title to such property shall vest in the owner of the abutting property and become part of such property unless the city reserves title in the ordinance vacating a portion of such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.~~

~~(4) (3) When the city vacates all or any portion of a street or alley, the city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.~~

(4) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines,

sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

Sec. 4. Section 16-669, Reissue Revised Statutes of Nebraska, is amended to read:

16-669. (1) Except as provided in subsection (2) of this section, the assessment of special taxes for sewer or water improvements in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 16-670. The assessment of special taxes for sewer mains or water mains so provided for and constructed shall be levied at one time and shall become delinquent in equal annual installments over such period of years of not less than four years and not more than ten years as the mayor and council may determine at the time of making the levy. The first installment shall become becomes delinquent fifty days after the making of such levy. Each of said installments installment, except the first, shall draw interest from the time of such levy until they shall become such installment becomes delinquent. After the same become an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon, until the same such installment is collected and paid. Such special taxes shall be collected and enforced as in cases of other special taxes and shall be a lien on said such real estate from and after the date of the levy thereof. Should there be If three or more of said installments are delinquent and unpaid on the same property, the mayor and city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the names of its record title owners and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper of general circulation published in the city and after the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments.

(2) If the city incurs no new indebtedness pursuant to section 16-670 for sewer or water improvements in a district, the assessment of special taxes for sewer or water improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council determines at the time of making the levy to be reasonable and fair.

Sec. 5. Section 16-670, Reissue Revised Statutes of Nebraska, is amended to read:

16-670. For the purpose of paying the cost of any such sewer or water improvements in any such district, the ~~mayor and~~ city council shall have the power and may by ordinance cause bonds of the city to be issued ~~bonds of the city, to be~~ called District Sewer (Water) Bonds of District No., payable in not exceeding ~~fifteen~~ twenty years from date and to bear interest payable annually or semiannually with interest coupons attached. All special assessments which may be levied upon properties specially benefited by such work or improvements shall, when collected, be set aside and constitute a sinking fund for the payment of the interest and principal of such bonds. The cost of such sewer or water improvements chargeable by special assessment to the private property within such district may be paid by the owners of such property within fifty days from the levy of such special assessments, + and thereupon ~~said such~~ property shall be exempt from any lien ~~therefor~~ for the special assessment. Such bonds shall not be sold for less than their par value and if any assessment or any part thereof ~~shall fail~~ fails or for any reason ~~be is~~ is invalid, the ~~mayor and~~ city council may make such other and further assessments on such lots or lands as may be required to collect from the ~~same lots or lands~~ the cost of any such sewer or water improvements properly chargeable ~~thereto as herein provided~~ to the lots or lands as provided in this section. If such assessments or any part thereof ~~shall fail~~ fails or for any reason ~~be is~~ is invalid, the ~~mayor and~~ city council may, without further notice, make such other and further assessments on such lots or lands as may be required to collect from the ~~same lots or lands~~ the cost of such improvement properly chargeable ~~thereto as hereinbefore provided~~ to the lots or lands as provided in this section. Nothing in this section shall be construed to prevent a city from paying the cost of sewer or water improvements from revenue bonds as otherwise provided by law. When revenue

bonds are issued to pay the cost of sewer or water improvements, the ~~mayor and city council~~ may provide that the collections from any related special assessment district shall be allocated to the gross revenue of the appropriate utility system.

Sec. 6. Section 17-522, Reissue Revised Statutes of Nebraska, is amended to read:

17-522. ~~Second-class cities and villages shall have the power to~~
(1) The mayor and city council of a city of the second class or board of trustees of a village may construct and ~~to~~ repair sidewalks or cause the construction and repair of sidewalks in such manner as the mayor and city council or board of trustees deems necessary and assess the expense thereof on the property in front of which such construction or repairs are made, after having given notice of their intention to do so ~~(1)~~ (a) by publication in one issue of a legal newspaper of general circulation in such city or village, and ~~(2)~~ (b) by either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such construction or repair. The powers conferred under this section are in addition to those provided in sections 17-509 to 17-521, and may be exercised without creating an improvement district.

(2) If the owner of any property abutting any street or avenue or part thereof fails to construct or repair any sidewalk in front of the owner's property within the time and in the manner as directed and requested by the mayor and council or board of trustees, after having received due notice to do so, the mayor and council or board of trustees may cause the sidewalk to be constructed or repaired and may assess the cost thereof against the property.

Sec. 7. Section 17-558, Revised Statutes Supplement, 2004, is amended to read:

17-558. ~~Second-class cities~~ (1) Cities of the second class and villages shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the city or village, and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the city or village, or by the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance.

(2) Whenever any street, avenue, alley, or lane ~~shall be~~ is vacated, the same shall revert to the owners of the abutting real estate, one-half on each side thereof, and become a part of such property, unless the city or village reserves title in the ordinance vacating such street or alley. If title is retained by the city or village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city or village.

(3) When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property unless the city or village reserves title in the ordinance vacating a portion of such street or alley. If title is retained by the city or village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city or village.

(4) When the city or village vacates all or any portion of a street, avenue, alley, or lane, the city or village shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

(5) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city or village the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city or village, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

Sec. 8. Section 19-905, Reissue Revised Statutes of Nebraska, is amended to read:

19-905. Regulations, restrictions, and boundaries authorized to be created pursuant to sections 19-901 to 19-915 may from time to time be

amended, supplemented, changed, modified, or repealed. In case of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred feet therefrom, and of those directly opposite thereto extending three hundred feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of section 19-904 relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice therein prescribed, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than eighteen inches in height and twenty-four inches in width with a white or yellow background and black letters not less than one and one-half inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least ten days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor. If the record title owners of any lots included in such proposed change be nonresidents of the municipality, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last-known addresses at least ten days prior to such hearing. At the option of the legislative body of the municipality, in place of the posted notice provided above, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within three hundred feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least ten days prior to the date of the hearing, if they can be served with such notice within the county where such real estate is located. Where such notice cannot be served personally upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last-known addresses at least ten days prior to such hearing. The provisions of this section in reference to notice shall not apply (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different types of zoning districts are proposed, whether or not such additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the municipality, but only the requirements of section 19-904 shall be applicable.

Sec. 9. Section 19-2404, Reissue Revised Statutes of Nebraska, is amended to read:

19-2404. (1) Except as provided in subsection (2) of this section, the assessment of special taxes for sanitary sewer extension mains or water extension mains in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 19-2405. The assessment of special taxes for sanitary sewer extension mains or water extension mains so provided for and constructed shall be levied at one time and shall become delinquent in equal annual installments over a period of years of not less than four years and not more than ten years as the mayor and council or chairperson and board of trustees may determine at the time of making the levy. The first installment ~~shall become~~ becomes delinquent fifty days after the making of such levy. Subsequent installments ~~shall become delinquent~~ on the anniversary date of the levy. Each ~~of such installments~~ installment, except the first, shall draw interest at the rate set by the city council or board of trustees, ~~as the case may be,~~ from the time of such levy until ~~they shall become~~ such installment becomes delinquent. After ~~such installments become~~ an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until ~~the same are~~ such installment is collected and paid. Such special taxes shall be collected and enforced as in the case of general municipal taxes and shall be a lien on such real estate from and after the date of the levy. If three or more of such installments become delinquent and unpaid on the same property, the ~~mayor and city council or the chairperson and board of trustees,~~ ~~as the case may be,~~ may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time in a legal newspaper of general

circulation published in the municipality or, if none is published in such municipality, in a legal newspaper of general circulation in the municipality. After the fixed date such future installments shall be deemed to be delinquent and the municipality may proceed to enforce and collect the total amount due including all future installments.

(2) If the city or village incurs no new indebtedness pursuant to section 19-2405 for any water service extension or sanitary sewer extension in a district, the assessment of special taxes for such improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council or board of trustees determines at the time of making the levy to be reasonable and fair.

Sec. 10. Section 19-2405, Reissue Revised Statutes of Nebraska, is amended to read:

19-2405. For the purpose of paying the cost of any such water service extension or sanitary sewer service extension, in any such district, the ~~mayer and city council or chairman and board of trustees, as the case may be,~~ may, by ordinance, cause bonds of the municipality to be issued, ~~bonds of the municipality, to be~~ called district water service extension bonds of district No. or district sanitary sewer service extension bonds of district No., ~~as the case may be,~~ payable in not exceeding ~~ten~~ twenty years from date and to bear interest payable annually or semiannually with interest coupons attached. The ordinance effectuating the issuance of such bonds shall provide that ~~said~~ the special tax and assessments shall constitute a sinking fund for the payment of such bonds and interest. If a written protest, signed by owners of the property located in ~~said~~ the improvement district and representing a majority of the front footage which may become subject to assessment for the cost of the improvement, ~~be is~~ filed with the municipal clerk within three days before the date of the meeting for the consideration of such ordinance, such ordinance shall not be passed. The entire cost of such water extension mains or sanitary sewer extension mains in any such street, avenue, or alley may be chargeable to the private property therein, and may be paid by the owner of such property within fifty days from the levy of such special taxes and assessments, and thereupon ~~said~~ such property shall be exempt from any lien ~~therefor~~ for the special taxes and assessments. ~~Said~~ The bonds shall not be sold for less than their par value. If ~~said~~ the assessment or any part thereof ~~shall fail~~ fails or for any reason ~~be is~~ invalid, the governing body of the municipality may, without further notice, make such other and further assessments on ~~said~~ the lots and lands as may be required to collect from the ~~same~~ lots and lands the cost of ~~said~~ the improvement, properly chargeable as ~~hereinbefore provided~~ provided in this section. In lieu of such general obligation bonds, the municipality may issue revenue bonds as provided in section 18-502, to pay all or part of the cost of the construction of such improvement.

Sec. 11. Section 23-165, Reissue Revised Statutes of Nebraska, is amended to read:

23-165. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or to those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendments shall not become effective except by the favorable vote of two-thirds majority of the county board. The provisions of section 23-164 relative to public hearings and official notice shall apply equally to all changes or amendments.

Sec. 12. Section 74-1307, Reissue Revised Statutes of Nebraska, is amended to read:

74-1307. For carrying out the purposes and powers set forth in sections 74-1302, 74-1303, and 74-1305, including paying the cost thereof, the district may: (1) Borrow money and issue its negotiable general obligation bonds upon such terms and conditions as the board of directors may determine and without a vote of the electors; ~~except that no such bonds shall be issued more than twenty-five years after the creation of such district,~~ (2) issue warrants to contractors and others furnishing services or materials or in satisfaction of other obligations created under sections 74-1302, 74-1303, and 74-1305, such warrants to be issued in such amounts and on such terms and conditions as the board shall determine, and to be redeemed and paid upon the sale of bonds or receipt of other funds available for such purpose; and (3) establish a sinking fund for the payment of such bonds as may be issued under this section.

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Sec. 13. Original sections 14-405, 15-201, 16-669, 16-670, 17-522, 19-905, 19-2404, 19-2405, 23-165, and 74-1307, Reissue Revised Statutes of Nebraska, and sections 16-611 and 17-558, Revised Statutes Supplement, 2004, are repealed.