A BILL FOR AN ACT relating to the Municipal Cooperative Financing Act; to amend sections 18-2409, 18-2410, 18-2413, 18-2414, 18-2420, 18-2427, 18-2435, 18-2436, 18-2439, 18-2445, 18-2446, 18-2451, and 18-2461, Reissue Revised Statutes of Nebraska; to redefine terms; to change provisions relating to qualifications, removal, terms, and votes by directors, provisions relating to municipality participation, termination, expulsion, and suspension, and provisions relating to bonds; to change an audit filing deadline; to change agency restrictions as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 18-2409, Reissue Revised Statutes of Nebraska, is amended to read:

18-2409 Governing body shall mean the council in the case of a city, the board of trustees in the case of a village, and the equivalent body in the case of a municipality incorporated under the laws of another state, and the board in the case of an agency primarily comprised of municipalities.

Sec. 2. Section 18-2410, Reissue Revised Statutes of Nebraska, is amended to read:

18-2410 Municipality shall mean (1) any city or village incorporated under the laws of this state, any equivalent entity incorporated under the laws of another state, or any separate municipal utility which has autonomous control and was established by such a city, village, or equivalent entity or by the citizens thereof for the purpose of providing electric energy for such municipality, or (2) any public entity organized under Chapter 70, article 6, and incorporated under the laws of this state for the sole purpose of providing wholesale electric energy to a single municipality which is incorporated under the laws of this state, or (3) any agency primarily comprised of municipalities.

Sec. 3. Section 18-2413, Reissue Revised Statutes of Nebraska, is amended to read:

18-2413 Power project shall mean any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, conservation, transformation, distribution, purchase, sale, exchange, or interchange of electric power and energy, or any interest therein or right to capacity thereof, any energy conservation system or device for reducing the energy demands or any interest therein, and the acquisition of energy sources or fuel of any kind, for any such purposes, including, without limitation, facilities for the acquisition, transformation, collection, utilization,
and disposition of nuclear fuel or solar, geothermal, hydroelectric, or wind energy and the acquisition or construction and operation of facilities for extracting fuel including agricultural ethyl alcohol from natural deposits or agricultural products, for converting it for use in another form, for burning it in place, or for transportation and storage.

Sec. 4. Section 18-2414, Reissue Revised Statutes of Nebraska, is amended to read:

18-2414 Project shall mean any power project, sewerage project, solid waste disposal project, waterworks project, or any combination of two or more thereof or any interest therein or right to capacity thereof. Project does not include the construction, maintenance, or remodeling of an agency's headquarters office building or any other improvements thereto.

Sec. 5. Section 18-2420, Reissue Revised Statutes of Nebraska, is amended to read:

18-2420 The governing body of each of the municipalities participating in the creation of such agency shall by appropriate action by ordinance or resolution determine that there is a need for such agency and set forth the names of the proposed participating municipalities of the agency. Such an action may be taken by a municipality's governing body on its own motion upon determining, in its discretion, that a need exists for an agency. In determining whether such a need exists, a governing body may take into consideration the present and future needs of the municipality with respect to the commodities and services which an agency may provide, the adequacy and suitability of the supplies of such commodities and services to meet such needs, and economic or other advantages or efficiencies which may be realized by cooperative action through an agency. Upon the adoption of an ordinance or passage of a resolution as provided in this section, the mayor, in the case of a city, the chairperson of the board of trustees, in the case of a village, or the chairperson of the governing body, of each of the proposed
participating municipalities, with the approval of the respective
governing body, shall appoint a director who shall be an elector of the
municipality for which he or she acts as director. The qualifications for
appointment as a director shall be as determined by the board in its
bylaws. The directors shall constitute the board in which shall be vested
all powers of the agency.

Sec. 6. Section 18-2427, Reissue Revised Statutes of Nebraska, is
amended to read:

18-2427 Upon adoption of ordinances or resolutions in accordance
with section 18-2420, a petition shall be addressed to the Nebraska Power
Review Board stating that it is the intent and purpose to create an
agency pursuant to sections 18-2426 to 18-2434, subject to approval by
the Nebraska Power Review Board. The petition shall state the name of the
proposed agency, the names of the proposed participating municipalities,
the name and residence of each of the directors so far as known, a
certified copy of each of the ordinances or resolutions of the
participating municipalities determining the need for such an agency, a
certified copy of the proceedings of each municipality evidencing the
director's right to office, a general description of the operation in
which the agency intends to engage, and the location and method of
operation of the proposed plants and systems of the agency.

Sec. 7. Section 18-2435, Reissue Revised Statutes of Nebraska, is
amended to read:

18-2435 A director may be removed for any cause at any time by the
governing body of the municipality for which such director acts or by the
board pursuant to its bylaws. A certificate of the appointment or
reappointment of any director shall be filed with the clerk of the
municipality for which such director acts and such certificate shall be
conclusive evidence of the due and proper appointment of such director.
Each director appointed prior to the effective date of this act shall
serve for a term of three years or until his or her successor has been
appointed and has qualified in the same manner as the original appointment. Beginning on the effective date of this act, each director shall serve for a term as established by the bylaws of the board. A director shall be eligible for reappointment upon the expiration of his or her term. A vacancy shall be filled for the balance of the unexpired term of the person who has ceased to hold office in the same manner as the original appointment. A director shall receive no compensation for his or her services but shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his or her official duties, including mileage at the rate provided in section 81-1176 for state employees.

Sec. 8. Section 18-2436, Reissue Revised Statutes of Nebraska, is amended to read:

18-2436 Each participating municipality shall be entitled to appoint one director, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any of the participating municipalities to appoint more than one director and specifying the number of directors to be appointed by each of the participating municipalities of the agency. The number of directors may be increased or decreased from time to time by an amendment to the bylaws approved by each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof. The board may establish in its bylaws classes of membership which provide for allocated voting rights. Each participating municipality shall at all times be entitled to appoint at least one director. Each director shall be entitled to one vote, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any director or directors to cast more than one vote and specifying the number or numbers of votes such director or directors may
 Unless the bylaws of the agency shall require a larger number, a quorum of the board shall be constituted for the purpose of conducting the business and exercising the powers of the agency and for all other purposes when directors are present who are entitled to cast a majority of the total votes which may be cast by all of the board's directors. Action may be taken upon a vote of a majority of the votes which the directors present are entitled to cast unless the bylaws of the agency shall require a larger number. The manner of scheduling regular board meetings and the method of calling special board meetings, including the giving or waiving notice thereof, shall be as provided in the bylaws. Such meetings may be held by any means permitted by the Open Meetings Act.

Sec. 9. Section 18-2439, Reissue Revised Statutes of Nebraska, is amended to read:

18-2439 (1) An agency shall be dissolved upon the adoption, by the governing bodies of at least half of the participating municipalities, of an ordinance or resolution setting forth the determination that the need for such municipality to act cooperatively through an agency no longer exists. An agency shall not be dissolved so long as the agency has bonds outstanding, unless provision for full payment of such bonds and interest thereon, by escrow or otherwise, has been made pursuant to the terms of such bonds or the ordinance, resolution, trust indenture, or security instrument securing such bonds. If the governing bodies of one or more, but less than a majority, of the participating municipalities adopt such an ordinance or resolution, such municipalities shall be permitted to withdraw from participation in the agency, but such withdrawal shall not affect the obligations of such municipality pursuant to any contracts or other agreements with such agency. Such withdrawal shall not impair the payment of any outstanding bonds or interest thereon. In the event of the dissolution of an agency, its board shall provide for the disposition, division, or distribution of the agency's assets among the participating municipalities.
municipalities by such means as such board shall determine, in its sole discretion, to be fair and equitable. The board may provide in its bylaws a method by which to terminate a municipality's participation in an agency.

(2)(a) No participating municipality of an agency may be expelled or suspended, and no participation in such agency may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(i) The charter or bylaws set forth a procedure that provides:

(A) Not less than fifteen days' prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(B) An opportunity for the participating municipality to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, suspension, or termination not take place; or

(ii) Taking into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail must be given by first-class or certified mail sent to the last-known address of the participating municipality shown on the agency's records.

(d) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

(e) A participating municipality that has been expelled, suspended, or terminated may be liable to the agency for dues, assessments, fees, or contractual obligations as a result of obligations incurred or commitments made prior to expulsion, suspension, or termination.

Sec. 10. Section 18-2445, Reissue Revised Statutes of Nebraska, is
1 amended to read:

2 18-2445 (1) In the event of sudden or unexpected damage, injury, or
3 impairment of such project, plant, works, system, or other property
4 belonging to the agency, or an order of a regulatory body which would
5 prevent compliance with section 18-2442, the board of directors may, in
6 its discretion, declare an emergency, and proceed with the necessary
7 construction, reconstruction, remodeling, building, alteration,
8 maintenance, repair, extension, or improvement without first complying
9 with the provisions of sections 18-2442 to 18-2444.
10 (2) When, by reason of disturbed or disrupted economic conditions
11 due to war or due to the operation of laws, rules, or regulations of
12 governmental authorities, whether enacted, passed, promulgated, or issued
13 under or due to the emergency or necessities of war or national defense,
14 the contracting or purchasing by the agency is so restricted, prohibited,
15 limited, allocated, regulated, rationed, or otherwise controlled, that
16 the letting of contracts therefor, pursuant to the requirements of such
17 sections, is legally or physically impossible or impractical, the
18 provisions of sections 18-2442 to 18-2444 shall not apply to such
19 contracts or purchases.
20 (3) Such contract shall provide that, to the extent practicable,
21 workers who are citizens of Nebraska shall be given preference for
22 employment by the contractor.
23 (4) Section All provisions of section 52-118, with reference to
24 contractors' bonds, shall be applicable and effective as to any contract
25 let pursuant to the Municipal Cooperative Financing Act, except that for
26 any electric generation facility the penal sum of any contractor's bond
27 shall be the lesser of the contract amount or two hundred million
28 dollars. The bond required by section 52-118 may be satisfied by a
29 corporate surety bond or letter of credit, or a combination thereof, as
30 approved by the agency sections 18-2401 to 18-2485.
31 Sec. 11. Section 18-2446, Reissue Revised Statutes of Nebraska, is
amended to read:

18-2446 (1) Money of the agency shall be paid out or expended only upon the authorization or approval of the board of directors by specific agreement, by a written contract, or by a resolution, or by adoption of the budget. All money of the agency shall be paid out or expended only by check, draft, warrant, or other instrument authorized by the agency in writing, signed by the treasurer, assistant treasurer, or such other officer, employee, or agent of the agency as shall be authorized by the treasurer to sign in his or her behalf. Such authorization shall be in writing and filed with the secretary of the agency.

(2) A report of the money paid out or expended shall be provided to examined by the board of directors at the next regular meeting following such expenditure.

(3) In the event that there is no treasurer's bond that expressly insures the agency against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any and every person authorized to sign checks, drafts, warrants, or other instruments authorized by the agency in writing, there shall be bonds or insurance policies which adequately cover such risk procured and filed with the secretary of the agency, together with the written authorization filed with the secretary of the board, a surety bond, effective for protection against such loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the agency other than the treasurer. The secretary shall report to the board at each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the board.

Sec. 12. Section 18-2451, Reissue Revised Statutes of Nebraska, is amended to read:

18-2451 The books and records of an agency created pursuant to sections 18-2426 to 18-2434 shall be public records and shall be kept at
the principal place of business of such agency. The agency books and
records shall be open to public inspection at reasonable times and upon
reasonable notice. The agency shall annually cause to be filed with the
Auditor of Public Accounts an audit of the books, records, and financial
affairs of the agency. Such audit shall be made by a certified public
accountant or firm of such accountants selected by the agency and shall
be conducted in the manner prescribed in section 84-304.01. When the
audit has been completed, written copies of the audit shall be placed and
kept on file at the principal place of business of the agency and shall
be filed with the Auditor of Public Accounts and the Nebraska Power
Review Board within one hundred eighty days after the close of the fiscal
year of the agency December 31 of each year. If any agency created
pursuant to sections 18-2426 to 18-2434 fails to file a copy of an audit
within the time prescribed in this section, the books, records, and
financial affairs of such agency shall, within one hundred eighty days
after the close of the fiscal year of the agency, be audited by a
certified public accountant or firm of accountants selected by the
Auditor of Public Accounts. The cost of the audit shall be paid by the
agency.

Sec. 13. Section 18-2461, Reissue Revised Statutes of Nebraska, is
amended to read:

18-2461  (1) Any agency may sell to any public power district,
public power and irrigation district, irrigation district, city or
village, any power project, power plant, electric generation plant,
electric distribution system, or any parts thereof, for such sums and
upon such terms as the board of such agency may deem fair and reasonable.
Except as provided in this section, no power plant, system, or works
owned by an agency shall be sold, alienated, or mortgaged by such agency.
Nothing in the Municipal Cooperative Financing Act sections 18-2401 to
18-2485 shall prevent an agency from assigning, pledging, or otherwise
hypothecating, its revenue, incomes, receipts, or profits to secure the
payment of indebtedness, but the credit or funds of the State of Nebraska
or any political subdivision thereof shall never be pledged for the
payment or settlement of any indebtedness or obligation whatever of any
agency created pursuant to sections 18-2426 to 18-2434.

(2) Except as provided in sections 18-412.07 to 18-412.09, 18-2457
to 18-2460, or 18-2462, neither by sale under foreclosure,
receivership, or bankruptcy proceedings, nor by alienation in any other
manner, may the property of such an agency become the property of or come
under the control of any private person, firm, or corporation engaged in
the business of generating, transmitting, or distributing electricity for
profit. This restriction does not apply to (a) joint participation in any
electric generation or transmission facility pursuant to sections
18-412.07 to 18-412.09, 18-2457 to 18-2460 or (b) a nonprofit cooperative
corporation that has provided financing for property, projects, or
undertakings when such property is covered by a mortgage, pledge of
revenue, or other hypothecation to secure the payment of a loan or loans
made to an agency. This restriction does not apply to a sale, transfer,
or lease of property to a nonprofit electric cooperative corporation
engaged in the retail distribution of electric energy in established
service areas, which cooperative corporation is organized under the laws
of the State of Nebraska or domesticated in the State of Nebraska, except
that such property so acquired by a cooperative nonprofit corporation
organized to provide financing or by a nonprofit electric cooperative
corporation shall never become the property or come under the control of
any person, firm, or corporation engaged in the business of generating,
transmitting, or distributing electricity for profit.

(3) In order to protect and safeguard the security and the rights of
the purchasers or holders of revenue debentures, notes, bonds, warrants,
or other evidences of indebtedness, issued by any agency created pursuant
to sections 18-2426 to 18-2434, such agency may agree with the purchasers
or holders that in the event of default in the payment on, or principal
of, any such evidences of indebtedness or in the event of default in
performance of any duty or obligation of such agency in connection
therewith, such purchasers or holders, or trustees selected by them, may
take possession and control of the business and property of the agency
and proceed to operate the same, and to collect and receive the income
thereof, and after paying all necessary and proper operating expenses and
all other proper disbursements or liabilities made or incurred, use the
surplus, if any, of the revenue of the agency as follows: (a) (1) In the
payment of all outstanding past-due interest on each issue of revenue
debentures, notes, warrants, bonds, or other evidences of indebtedness,
so far as such net revenue will go, and paying pro rata the interest due
on each issue thereof when there is not enough to pay in full all of the
interest; and (b) (2) if any sums shall remain after the payment of
interest, then in the payment of the revenue debentures, notes, warrants,
bonds, or other evidences of indebtedness, which, by the terms thereof,
shall be due and payable on each outstanding issue in accordance with the
terms thereof, and paying pro rata when the money available is not
sufficient to pay in full. When all legal taxes and charges, all arrears
of interest, and all matured revenue debentures, notes, warrants, bonds,
or other evidences of indebtedness, have been paid in full, the control
of the business and the possession of the property of the agency shall
then be restored to such agency. The privilege granted in this section
shall be a continuing one as often as the occasion therefor may arise.

Sec. 14. Original sections 18-2409, 18-2410, 18-2413, 18-2414,
18-2420, 18-2427, 18-2435, 18-2436, 18-2439, 18-2445, 18-2446, 18-2451,
and 18-2461, Reissue Revised Statutes of Nebraska, are repealed.