

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1056

Introduced by Brewer, 43.

Read first time January 18, 2022

Committee:

- 1 A BILL FOR AN ACT relating to counties; to amend sections 23-114 and
- 2 23-114.05, Reissue Revised Statutes of Nebraska, and section 23-172,
- 3 Revised Statutes Supplement, 2021; to change provisions relating to
- 4 zoning regulations, violations, and codes; to provide for regulation
- 5 of industrial wind turbines; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-114, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 23-114 (1) The county board shall have power: (a) To create a
4 planning commission with the powers and duties set forth in sections
5 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02,
6 23-373, and 23-376; (b) to make, adopt, amend, extend, and implement a
7 county comprehensive development plan; (c) to adopt a zoning resolution,
8 which shall have the force and effect of law; and (d) to cede and
9 transfer jurisdiction pursuant to section 13-327 over land otherwise
10 subject to the authority of the county board pursuant to this section.

11 (2) The zoning resolution may regulate and restrict: (a) The
12 location, height, bulk, number of stories, and size of buildings and
13 other structures, including industrial wind turbines, tents, cabins,
14 house trailers, and automobile trailers; (b) the percentage of lot areas
15 which may be occupied; (c) building setback lines; (d) sizes of yards,
16 courts, and other open spaces; (e) the density of population; (f) the
17 uses of buildings; and (g) the uses of land for agriculture, forestry,
18 recreation, residence, industry, and trade, after considering factors
19 relating to soil conservation, water supply conservation, surface water
20 drainage and removal, or other uses in the unincorporated area of the
21 county. If a zoning resolution or regulation affects the Niobrara scenic
22 river corridor as defined in section 72-2006, the Niobrara Council shall
23 act on the measure as provided in section 72-2010.

24 (3)(a) The county board shall not adopt or enforce any zoning
25 resolution or regulation which prohibits the use of land for a proposed
26 residential structure for the sole reason that the proposed structure is
27 a manufactured home if such manufactured home bears an appropriate seal
28 which indicates that it was constructed in accordance with the standards
29 of the Uniform Standard Code for Manufactured Homes and Recreational
30 Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act,
31 or the United States Department of Housing and Urban Development. The

1 county board may require that a manufactured home be located and
2 installed according to the same standards for foundation system,
3 permanent utility connections, setback, and minimum square footage which
4 would apply to a site-built, single-family dwelling on the same lot. The
5 county board may also require that manufactured homes meet the following
6 standards:

7 (i) The home shall have no less than nine hundred square feet of
8 floor area;

9 (ii) The home shall have no less than an eighteen-foot exterior
10 width;

11 (iii) The roof shall be pitched with a minimum vertical rise of two
12 and one-half inches for each twelve inches of horizontal run;

13 (iv) The exterior material shall be of a color, material, and scale
14 comparable with those existing in residential site-built, single-family
15 construction;

16 (v) The home shall have a nonreflective roof material which is or
17 simulates asphalt or wood shingles, tile, or rock; and

18 (vi) The home shall have wheels, axles, transporting lights, and
19 removable towing apparatus removed.

20 (b) The county board may not require additional standards unless
21 such standards are uniformly applied to all single-family dwellings in
22 the zoning district.

23 (c) Nothing in this subsection shall be deemed to supersede any
24 valid restrictive covenants of record.

25 (4) For purposes of this section, manufactured home shall mean (a) a
26 factory-built structure which is to be used as a place for human
27 habitation, which is not constructed or equipped with a permanent hitch
28 or other device allowing it to be moved other than to a permanent site,
29 which does not have permanently attached to its body or frame any wheels
30 or axles, and which bears a label certifying that it was built in
31 compliance with National Manufactured Home Construction and Safety

1 Standards, 24 C.F.R. 3280 et seq., promulgated by the United States
2 Department of Housing and Urban Development, or (b) a modular housing
3 unit as defined in section 71-1557 bearing a seal in accordance with the
4 Nebraska Uniform Standards for Modular Housing Units Act.

5 (5) Special districts or zones may be established in those areas
6 subject to seasonal or periodic flooding, and such regulations may be
7 applied as will minimize danger to life and property.

8 (6) The powers conferred by this section shall not be exercised
9 within the limits of any incorporated city or village nor within the area
10 over which a city or village has been granted or ceded zoning
11 jurisdiction and is exercising such jurisdiction. At such time as a city
12 or village exercises control over an unincorporated area by the adoption
13 or amendment of a zoning ordinance, the ordinance or amendment shall
14 supersede any resolution or regulation of the county.

15 Sec. 2. Section 23-114.05, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 23-114.05 The erection, construction, reconstruction, alteration,
18 repair, conversion, maintenance, or use of any building, or other
19 structure, including an industrial wind turbine, a tent, a cabin, a house
20 trailer, or an automobile trailer, or use of land in violation of
21 sections 23-114 to 23-114.04, 23-168.01 to 23-168.04, 23-172 to 23-174,
22 23-174.02, 23-373, and 23-376 or of any regulation made by the county
23 board under such sections shall be a misdemeanor. Any person,
24 partnership, limited liability company, association, club, or corporation
25 violating such sections or any regulation of the county board or
26 erecting, constructing, reconstructing, altering, or converting any
27 structure without having first obtained a permit shall be guilty of a
28 Class III misdemeanor. Each day such violation continues after notice of
29 violation has been given to the offender may be considered a separate
30 offense. In addition to other remedies, the county board or the proper
31 local authorities of the county, as well as any owner or owners of real

1 estate within the district affected by the regulations, may institute any
2 appropriate action or proceedings to prevent such unlawful construction,
3 erection, reconstruction, alteration, repair, conversion, maintenance, or
4 use, to restrain, correct, or abate such violation, or to prevent the
5 illegal act, conduct, business, or use in or about such premises. Any
6 taxpayer or taxpayers of the county may institute proceedings to compel
7 specific performance by the proper official or officials of any duty
8 imposed by such sections or in resolutions adopted pursuant to such
9 sections.

10 Sec. 3. Section 23-172, Revised Statutes Supplement, 2021, is
11 amended to read:

12 23-172 (1) The county board may adopt by resolution, which shall
13 have the force and effect of law, the conditions, provisions,
14 limitations, and terms of a building or construction code, a plumbing
15 code, an electrical code, a fire prevention code, or any other code
16 relating to building or relating to the erection, construction,
17 reconstruction, alteration, repair, conversion, maintenance, placing, or
18 using of any building, structure, industrial wind turbine, automobile
19 trailer, house trailer, or cabin trailer. For this purpose, the county
20 board may adopt any standard code which contains rules or regulations
21 printed as a code in book or pamphlet form by reference to such code or
22 portions thereof without setting forth in the resolution the conditions,
23 provisions, limitations, or terms of such code. When such code or any
24 such standard code or portion thereof is incorporated by reference into
25 such resolution, it shall have the same force and effect as though it had
26 been written in its entirety in such resolution without further or
27 additional publication.

28 (2) Not less than one copy of such code or such standard code or
29 portion thereof shall be kept for use and examination by the public in
30 the office of the clerk of such county prior to the adoption thereof and
31 as long as such standard code is in effect in such county.

1 (3) Any building or construction code implemented under this section
2 shall be adopted and enforced as provided in section 71-6406.

3 (4) If there is no county resolution adopting a plumbing code in
4 effect for such county, the 2018 Uniform Plumbing Code designated by the
5 American National Standards Institute as an American National Standard
6 shall apply to all buildings.

7 (5) Any code adopted and approved by the county board, as provided
8 in this section, or if there is no county resolution adopting a plumbing
9 code in effect for such county, the 2018 Uniform Plumbing Code designated
10 by the American National Standards Institute as an American National
11 Standard, and the building permit requirements or occupancy permit
12 requirements imposed by such code or by sections 23-114.04 and 23-114.05,
13 shall apply to all of the county except within the limits of any
14 incorporated city or village and except within an unincorporated area
15 where a city or village has been granted zoning jurisdiction and is
16 exercising such jurisdiction.

17 (6) Nothing in this section shall be interpreted as creating an
18 obligation for the county to inspect plumbing work done within its
19 jurisdiction to determine compliance with the plumbing code.

20 Sec. 4. Original sections 23-114 and 23-114.05, Reissue Revised
21 Statutes of Nebraska, and section 23-172, Revised Statutes Supplement,
22 2021, are repealed.