

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 424

Introduced by Brewer, 43; Albrecht, 17; Bostelman, 23; Friesen, 34;
Groene, 42; Halloran, 33; Murman, 38.

Read first time January 15, 2021

Committee:

1 A BILL FOR AN ACT relating to zoning restrictions; to amend sections
2 23-114, 23-114.01, 23-114.05, 66-914, and 72-272, Reissue Revised
3 Statutes of Nebraska, and section 23-172, Revised Statutes
4 Cumulative Supplement, 2020; to define a term; to require county
5 zoning provisions prior to construction of wind energy generation
6 projects as prescribed; to provide for fees as prescribed; to change
7 provisions relating to county zoning resolutions, violations, and
8 codes; to eliminate provisions relating to variances or exceptions
9 from zoning regulations; to provide limitations on agreements
10 relating to school lands; and to repeal the original sections.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section, wind energy generation
2 project means a project for the construction of a facility for the
3 generation of electricity using wind that is subject to sections 70-1001
4 to 70-1028.

5 (2) Beginning September 1, 2021, no wind energy generation project
6 shall be constructed unless the county in which the project would be
7 located has zoning regulations or a zoning resolution described in
8 section 23-114 meeting the requirements of subsection (3) of this
9 section.

10 (3) For purposes of this section, the zoning provisions shall
11 address:

12 (a) Fixed-distance setbacks measured from buildings used for
13 residential purposes and setbacks measured from property lines. The
14 setbacks shall not be variable distances based on the height of an
15 industrial wind turbine. The determination of setbacks based on the
16 surface-danger area due to issues such as collapse and ice-throw shall
17 ensure that the surface-danger area does not overlap a nonparticipating
18 property owner's property;

19 (b) Noise standards restricting the low-level noise generated by the
20 operation of an industrial wind turbine so that it does not exceed a
21 specified A-weighted, equivalent sound level or specified A-weighted
22 decibels at the property line of the wind energy generation project. The
23 measure of noise shall meet the following requirements:

24 (i) Any instrument used to measure noise shall meet sound level
25 meter performance specifications of the American National Standards
26 Institute or the International Electrotechnical Commission for Wind Class
27 I;

28 (ii) The procedures used to measure noise shall meet the
29 requirements of the American National Standards Institute, the
30 International Electrotechnical Commission, or the International
31 Organization for Standardization for the measurement of sound or its

1 characteristics; and

2 (iii) The procedures shall not include procedures based on the
3 International Electrotechnical Commission Standard IEC 61400-11 (2002)
4 regarding noise measurement techniques;

5 (c) Decommissioning terms and conditions which must be in place
6 before construction begins. The terms and conditions shall include a site
7 restoration plan and surety to be held by the county to pay for
8 decommissioning, which may include, but not be limited to, a performance
9 bond for each industrial wind turbine; and

10 (d) Fees for conditional use permits for wind energy generation
11 projects.

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

14 23-114 (1) The county board shall have power: (a) To create a
15 planning commission with the powers and duties set forth in sections
16 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02,
17 23-373, and 23-376; (b) to make, adopt, amend, extend, and implement a
18 county comprehensive development plan; (c) to adopt a zoning resolution,
19 which shall have the force and effect of law; and (d) to cede and
20 transfer jurisdiction pursuant to section 13-327 over land otherwise
21 subject to the authority of the county board pursuant to this section.

22 (2) The zoning resolution may regulate and restrict: (a) The
23 location, height, bulk, number of stories, and size of buildings and
24 other structures, including industrial wind turbines, tents, cabins,
25 house trailers, and automobile trailers; (b) the percentage of lot areas
26 which may be occupied; (c) building setback lines; (d) sizes of yards,
27 courts, and other open spaces; (e) the density of population; (f) the
28 uses of buildings; and (g) the uses of land for agriculture, forestry,
29 recreation, residence, industry, and trade, after considering factors
30 relating to soil conservation, water supply conservation, surface water
31 drainage and removal, or other uses in the unincorporated area of the

1 county. If a zoning resolution or regulation affects the Niobrara scenic
2 river corridor as defined in section 72-2006, the Niobrara Council shall
3 act on the measure as provided in section 72-2010.

4 (3)(a) The county board shall not adopt or enforce any zoning
5 resolution or regulation which prohibits the use of land for a proposed
6 residential structure for the sole reason that the proposed structure is
7 a manufactured home if such manufactured home bears an appropriate seal
8 which indicates that it was constructed in accordance with the standards
9 of the Uniform Standard Code for Manufactured Homes and Recreational
10 Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act,
11 or the United States Department of Housing and Urban Development. The
12 county board may require that a manufactured home be located and
13 installed according to the same standards for foundation system,
14 permanent utility connections, setback, and minimum square footage which
15 would apply to a site-built, single-family dwelling on the same lot. The
16 county board may also require that manufactured homes meet the following
17 standards:

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

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

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

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

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

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

31 (b) The county board may not require additional standards unless

1 such standards are uniformly applied to all single-family dwellings in
2 the zoning district.

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

5 (4) For purposes of this section, manufactured home shall mean (a) a
6 factory-built structure which is to be used as a place for human
7 habitation, which is not constructed or equipped with a permanent hitch
8 or other device allowing it to be moved other than to a permanent site,
9 which does not have permanently attached to its body or frame any wheels
10 or axles, and which bears a label certifying that it was built in
11 compliance with National Manufactured Home Construction and Safety
12 Standards, 24 C.F.R. 3280 et seq., promulgated by the United States
13 Department of Housing and Urban Development, or (b) a modular housing
14 unit as defined in section 71-1557 bearing a seal in accordance with the
15 Nebraska Uniform Standards for Modular Housing Units Act.

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

19 (6) The powers conferred by this section shall not be exercised
20 within the limits of any incorporated city or village nor within the area
21 over which a city or village has been granted or ceded zoning
22 jurisdiction and is exercising such jurisdiction. At such time as a city
23 or village exercises control over an unincorporated area by the adoption
24 or amendment of a zoning ordinance, the ordinance or amendment shall
25 supersede any resolution or regulation of the county.

26 Sec. 3. Section 23-114.01, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 23-114.01 (1) In order to avail itself of the powers conferred by
29 section 23-114, the county board shall appoint a planning commission to
30 be known as the county planning commission. The members of the commission
31 shall be residents of the county to be planned and shall be appointed

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

28 (2) The commission: (a) Shall prepare and adopt as its policy
29 statement a comprehensive development plan and such implemental means as
30 a capital improvement program, subdivision regulations, building codes,
31 and a zoning resolution; (b) shall consult with and advise public

1 officials and agencies, public utilities, civic organizations,
2 educational institutions, and citizens relating to the promulgation of
3 implemental programs; (c) may delegate authority to any of the groups
4 named in subdivision (b) of this subsection to conduct studies and make
5 surveys for the commission; and (d) shall make preliminary reports on its
6 findings and hold public hearings before submitting its final reports.
7 The county board shall not hold its public meetings or take action on
8 matters relating to the comprehensive development plan, capital
9 improvements, building codes, subdivision development, or zoning until it
10 has received the recommendations of the commission.

11 (3) The commission may, with the consent of the governing body, in
12 its own name: Make and enter into contracts with public or private
13 bodies; receive contributions, bequests, gifts, or grants of funds from
14 public or private sources; expend the funds appropriated to it by the
15 county board; employ agents and employees; and acquire, hold, and dispose
16 of property. The commission may, on its own authority: Make arrangements
17 consistent with its program; conduct or sponsor special studies or
18 planning work for any public body or appropriate agency; receive grants,
19 remuneration, or reimbursement for such studies or work; and at its
20 public hearings, summon witnesses, administer oaths, and compel the
21 giving of testimony.

22 (4) In all counties in the state, the county planning commission may
23 grant conditional uses or special exceptions to property owners for the
24 use of their property if the county board of commissioners or supervisors
25 has officially and generally authorized the commission to exercise such
26 powers and has approved the standards and procedures the commission
27 adopted for equitably and judiciously granting such conditional uses or
28 special exceptions. The granting of a conditional use permit or special
29 exception shall only allow property owners to put their property to a
30 special use if it is among those uses specifically identified in the
31 county zoning regulations as classifications of uses which may require

1 special conditions or requirements to be met by the owners before a use
2 permit or building permit is authorized. The applicant for a conditional
3 use permit or special exception for a livestock operation specifically
4 identified in the county zoning regulations as a classification of use
5 which may require special conditions or requirements to be met within an
6 area of a county zoned for agricultural use may request a determination
7 of the special conditions or requirements to be imposed by the county
8 planning commission or by the county board of commissioners or
9 supervisors if the board has not authorized the commission to exercise
10 such authority. Upon request the commission or board shall issue such
11 determination of the special conditions or requirements to be imposed in
12 a timely manner. Such special conditions or requirements to be imposed
13 may include, but are not limited to, the submission of information that
14 may be separately provided to state or federal agencies in applying to
15 obtain the applicable state and federal permits. The commission or the
16 board may request and review, prior to making a determination of the
17 special conditions or requirements to be imposed, reasonable information
18 relevant to the conditional use or special exception. If a determination
19 of the special conditions or requirements to be imposed has been made,
20 final permit approval may be withheld subject only to a final review by
21 the commission or county board to determine whether there is a
22 substantial change in the applicant's proposed use of the property upon
23 which the determination was based and that the applicant has met, or will
24 meet, the special conditions or requirements imposed in the
25 determination. For purposes of this section, substantial change shall
26 include any significant alteration in the original application including
27 a significant change in the design or location of buildings or
28 facilities, in waste disposal methods or facilities, or in capacity.

29 (5) The power to grant conditional uses or special exceptions as set
30 forth in subsection (4) of this section shall be the exclusive authority
31 of the commission, except that the county board of commissioners or

1 supervisors may choose to retain for itself the power to grant
2 conditional uses or special exceptions for those classifications of uses
3 specified in the county zoning regulations. The county board of
4 commissioners or supervisors may exercise such power if it has formally
5 adopted standards and procedures for granting such conditional uses or
6 special exceptions in a manner that is equitable and which will promote
7 the public interest. In any county other than a county in which is
8 located a city of the primary class, an appeal of a decision by the
9 county planning commission or county board of commissioners or
10 supervisors regarding a conditional use or special exception shall be
11 made to the district court. In any county in which is located a city of
12 the primary class, an appeal of a decision by the county planning
13 commission regarding a conditional use or special exception shall be made
14 to the county board of commissioners or supervisors, and an appeal of a
15 decision by the county board of commissioners or supervisors regarding a
16 conditional use or special exception shall be made to the district court.

17 (6) Whenever a county planning commission or county board is
18 authorized to grant conditional uses or special exceptions pursuant to
19 subsection (4) or (5) of this section, the planning commission or county
20 board shall, with its decision to grant or deny a conditional use permit
21 or special exception, issue a statement of factual findings arising from
22 the record of proceedings that support the granting or denial of the
23 conditional use permit or special exception. If a county planning
24 commission's role is advisory to the county board, the county planning
25 commission shall submit such statement with its recommendation to the
26 county board as to whether to approve or deny a conditional use permit or
27 special exception.

28 (7) A county planning commission or county board may establish a fee
29 for an application for a conditional use permit or special exception.

30 Sec. 4. Section 23-114.05, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 23-114.05 The erection, construction, reconstruction, alteration,
2 repair, conversion, maintenance, or use of any building, or other
3 structure, including an industrial wind turbine, a tent, a cabin, a house
4 trailer, or an automobile trailer, or use of land in violation of
5 sections 23-114 to 23-114.04, 23-168.01 to 23-168.04, 23-172 to 23-174,
6 23-174.02, 23-373, and 23-376 or of any regulation made by the county
7 board under such sections shall be a misdemeanor. Any person,
8 partnership, limited liability company, association, club, or corporation
9 violating such sections or any regulation of the county board or
10 erecting, constructing, reconstructing, altering, or converting any
11 structure without having first obtained a permit shall be guilty of a
12 Class III misdemeanor. Each day such violation continues after notice of
13 violation has been given to the offender may be considered a separate
14 offense. In addition to other remedies, the county board or the proper
15 local authorities of the county, as well as any owner or owners of real
16 estate within the district affected by the regulations, may institute any
17 appropriate action or proceedings to prevent such unlawful construction,
18 erection, reconstruction, alteration, repair, conversion, maintenance, or
19 use, to restrain, correct, or abate such violation, or to prevent the
20 illegal act, conduct, business, or use in or about such premises. Any
21 taxpayer or taxpayers of the county may institute proceedings to compel
22 specific performance by the proper official or officials of any duty
23 imposed by such sections or in resolutions adopted pursuant to such
24 sections.

25 Sec. 5. Section 23-172, Revised Statutes Cumulative Supplement,
26 2020, is amended to read:

27 23-172 (1) The county board may adopt by resolution, which shall
28 have the force and effect of law, the conditions, provisions,
29 limitations, and terms of a building or construction code, a plumbing
30 code, an electrical code, a fire prevention code, or any other code
31 relating to building or relating to the erection, construction,

1 reconstruction, alteration, repair, conversion, maintenance, placing, or
2 using of any building, structure, industrial wind turbine, automobile
3 trailer, house trailer, or cabin trailer. For this purpose, the county
4 board may adopt any standard code which contains rules or regulations
5 printed as a code in book or pamphlet form by reference to such code or
6 portions thereof without setting forth in the resolution the conditions,
7 provisions, limitations, or terms of such code. When such code or any
8 such standard code or portion thereof is incorporated by reference into
9 such resolution, it shall have the same force and effect as though it had
10 been written in its entirety in such resolution without further or
11 additional publication.

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

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

18 (4) If there is no county resolution adopting a plumbing code in
19 effect for such county, the 2009 Uniform Plumbing Code accredited by the
20 American National Standards Institute shall apply to all buildings.

21 (5) Any code adopted and approved by the county board, as provided
22 in this section, or if there is no county resolution adopting a plumbing
23 code in effect for such county, the 2009 Uniform Plumbing Code accredited
24 by the American National Standards Institute, and the building permit
25 requirements or occupancy permit requirements imposed by such code or by
26 sections 23-114.04 and 23-114.05, shall apply to all of the county except
27 within the limits of any incorporated city or village and except within
28 an unincorporated area where a city or village has been granted zoning
29 jurisdiction and is exercising such jurisdiction.

30 (6) Nothing in this section shall be interpreted as creating an
31 obligation for the county to inspect plumbing work done within its

1 jurisdiction to determine compliance with the plumbing code.

2 Sec. 6. Section 66-914, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 66-914 When the application of any zoning or subdivision regulation
5 or ordinance would prevent or unduly restrict the use of solar energy
6 ~~systems or wind energy conversion systems~~, the governing body of the
7 county or municipality having zoning or subdivision jurisdiction is
8 authorized to grant a variance or exception from the strict application
9 thereof so as to relieve such restriction and protect access to solar
10 energy ~~or wind energy~~ if such relief may be granted without substantial
11 detriment to the public good and without substantially impairing the
12 intent and purpose of such regulation or ordinance. Any variance or
13 exception granted prior to the effective date of this act for a wind
14 energy conversion system may continue in effect as long as the system is
15 in operation subject to oversight by the county or municipality.

16 Sec. 7. Section 72-272, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 72-272 Subject to section 1 of this act, the The board may
19 authorize agreements for the use of any school or public lands belonging
20 to the state and under its control for exploration and development of
21 wind energy or solar energy for such durations and under such terms and
22 conditions as the board shall deem appropriate, except that such
23 agreements shall comply with sections 66-901 to 66-914. In making such
24 determinations, the board shall consider comparable arrangements
25 involving other lands similarly situated and any other relevant factors
26 bearing upon such agreements.

27 Sec. 8. Original sections 23-114, 23-114.01, 23-114.05, 66-914, and
28 72-272, Reissue Revised Statutes of Nebraska, and section 23-172, Revised
29 Statutes Cumulative Supplement, 2020, are repealed.