

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 858

Introduced by Hughes, 44.

Read first time January 09, 2020

Committee:

1 A BILL FOR AN ACT relating to the Municipal Cooperative Financing Act; to
2 amend sections 18-2409, 18-2410, 18-2413, 18-2414, 18-2420, 18-2427,
3 18-2435, 18-2436, 18-2439, 18-2445, 18-2446, 18-2451, and 18-2461,
4 Reissue Revised Statutes of Nebraska; to redefine terms; to change
5 provisions relating to qualifications, removal, terms, and votes by
6 directors, provisions relating to municipality participation,
7 termination, expulsion, and suspension, and provisions relating to
8 bonds; to change an audit filing deadline; to change agency
9 restrictions as prescribed; to harmonize provisions; and to repeal
10 the original sections.

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

1 Section 1. Section 18-2409, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 18-2409 Governing body shall mean the council in the case of a city,
4 the board of trustees in the case of a village, ~~and~~ the equivalent body
5 in the case of a municipality incorporated under the laws of another
6 state, and the board in the case of an agency primarily comprised of
7 municipalities.

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

10 18-2410 Municipality shall mean (1) any city or village incorporated
11 under the laws of this state, any equivalent entity incorporated under
12 the laws of another state, or any separate municipal utility which has
13 autonomous control and was established by such a city, village, or
14 equivalent entity or by the citizens thereof for the purpose of providing
15 electric energy for such municipality, ~~or~~ (2) any public entity organized
16 under Chapter 70, article 6, and incorporated under the laws of this
17 state for the sole purpose of providing wholesale electric energy to a
18 single municipality which is incorporated under the laws of this state, ~~or~~
19 or (3) any agency primarily comprised of municipalities.

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

22 18-2413 Power project shall mean any plant, works, system,
23 facilities, and real and personal property of any nature whatsoever,
24 together with all parts thereof and appurtenances thereto, used or useful
25 in the generation, production, transmission, conservation,
26 transformation, distribution, purchase, sale, exchange, or interchange of
27 electric power and energy, or any interest therein or right to capacity
28 thereof, any energy conservation system or device for reducing the energy
29 demands or any interest therein, and the acquisition of energy sources or
30 fuel of any kind, for any such purposes, including, without limitation,
31 facilities for the acquisition, transformation, collection, utilization,

1 and disposition of nuclear fuel or solar, geothermal, hydroelectric, or
2 wind energy and the acquisition or construction and operation of
3 facilities for extracting fuel including agricultural ethyl alcohol from
4 natural deposits or agricultural products, for converting it for use in
5 another form, for burning it in place, or for transportation and storage.

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

8 18-2414 Project shall mean any power project, sewerage project,
9 solid waste disposal project, waterworks project, or any combination of
10 two or more thereof or any interest therein or right to capacity thereof.
11 Project does not include the construction, maintenance, or remodeling of
12 an agency's headquarters office building or any other improvements
13 thereto.

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

16 18-2420 The governing body of each of the municipalities
17 participating in the creation of such agency shall by appropriate action
18 by ordinance or resolution determine that there is a need for such agency
19 and set forth the names of the proposed participating municipalities of
20 the agency. Such an action may be taken by a municipality's governing
21 body on its own motion upon determining, in its discretion, that a need
22 exists for an agency. In determining whether such a need exists, a
23 governing body may take into consideration the present and future needs
24 of the municipality with respect to the commodities and services which an
25 agency may provide, the adequacy and suitability of the supplies of such
26 commodities and services to meet such needs, and economic or other
27 advantages or efficiencies which may be realized by cooperative action
28 through an agency. Upon the adoption of an ordinance or passage of a
29 resolution as provided in this section, the mayor, in the case of a city,
30 the chairperson of the board of trustees, in the case of a village, or
31 the chairperson of the governing body, of each of the proposed

1 participating municipalities, with the approval of the respective
2 governing body, shall appoint a director ~~who shall be an elector of the~~
3 ~~municipality for which he or she acts as director.~~ The qualifications for
4 appointment as a director shall be as determined by the board in its
5 bylaws. The directors shall constitute the board in which shall be vested
6 all powers of the agency.

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

9 18-2427 Upon adoption of ordinances or resolutions in accordance
10 with section 18-2420, a petition shall be addressed to the Nebraska Power
11 Review Board stating that it is the intent and purpose to create an
12 agency pursuant to sections 18-2426 to 18-2434, subject to approval by
13 the Nebraska Power Review Board. The petition shall state the name of the
14 proposed agency, the names of the proposed participating municipalities,
15 the name ~~and residence~~ of each of the directors so far as known, a
16 certified copy of each of the ordinances or resolutions of the
17 participating municipalities determining the need for such an agency, a
18 certified copy of the proceedings of each municipality evidencing the
19 director's right to office, a general description of the operation in
20 which the agency intends to engage, and the location and method of
21 operation of the proposed plants and systems of the agency.

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

24 18-2435 A director may be removed for any cause at any time by the
25 governing body of the municipality for which such director acts or by the
26 board pursuant to its bylaws. A certificate of the appointment or
27 reappointment of any director shall be filed with the clerk of the
28 municipality for which such director acts and such certificate shall be
29 conclusive evidence of the due and proper appointment of such director.
30 Each director appointed prior to the effective date of this act shall
31 serve for a term of three years or until his or her successor has been

1 appointed and has qualified in the same manner as the original
2 appointment. Beginning on the effective date of this act, each director
3 shall serve for a term as established by the bylaws of the board. A
4 director shall be eligible for reappointment upon the expiration of his
5 or her term. A vacancy shall be filled for the balance of the unexpired
6 term of the person who has ceased to hold office in the same manner as
7 the original appointment. A director shall receive no compensation for
8 his or her services but shall be entitled to the necessary expenses,
9 including travel expenses, incurred in the discharge of his or her
10 official duties, including mileage at the rate provided in section
11 81-1176 for state employees.

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

14 18-2436 Each participating municipality shall be entitled to appoint
15 one director, but with the approval of each of the participating
16 municipalities as evidenced by an ordinance or resolution of the
17 governing body thereof, an agency's bylaws may contain a provision
18 entitling any of the participating municipalities to appoint more than
19 one director and specifying the number of directors to be appointed by
20 each of the participating municipalities of the agency. The number of
21 directors may be increased or decreased from time to time by an amendment
22 to the bylaws approved by each of the participating municipalities as
23 evidenced by an ordinance or resolution of the governing body thereof.
24 The board may establish in its bylaws classes of membership which provide
25 for allocated voting rights ~~Each participating municipality shall at all~~
26 ~~times be entitled to appoint at least one director. Each director shall~~
27 ~~be entitled to one vote, but with the approval of each of the~~
28 ~~participating municipalities as evidenced by an ordinance or resolution~~
29 ~~of the governing body thereof, an agency's bylaws may contain a provision~~
30 ~~entitling any director or directors to cast more than one vote and~~
31 ~~specifying the number or numbers of votes such director or directors may~~

1 ~~east~~. Unless the bylaws of the agency shall require a larger number, a
2 quorum of the board shall be constituted for the purpose of conducting
3 the business and exercising the powers of the agency and for all other
4 purposes when directors are present who are entitled to cast a majority
5 of the total votes which may be cast by all of the board's directors.
6 Action may be taken upon a vote of a majority of the votes which the
7 directors present are entitled to cast unless the bylaws of the agency
8 shall require a larger number. The manner of scheduling regular board
9 meetings and the method of calling special board meetings, including the
10 giving or waiving notice thereof, shall be as provided in the bylaws.
11 Such meetings may be held by any means permitted by the Open Meetings
12 Act.

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

15 18-2439 (1) An agency shall be dissolved upon the adoption, by the
16 governing bodies of at least half of the participating municipalities, of
17 an ordinance or resolution setting forth the determination that the need
18 for such municipality to act cooperatively through an agency no longer
19 exists. An agency shall not be dissolved so long as the agency has bonds
20 outstanding, unless provision for full payment of such bonds and interest
21 thereon, by escrow or otherwise, has been made pursuant to the terms of
22 such bonds or the ordinance, resolution, trust indenture, or security
23 instrument securing such bonds. If the governing bodies of one or more,
24 but less than a majority, of the participating municipalities adopt such
25 an ordinance or resolution, such municipalities shall be permitted to
26 withdraw from participation in the agency, but such withdrawal shall not
27 affect the obligations of such municipality pursuant to any contracts or
28 other agreements with such agency. Such withdrawal shall not impair the
29 payment of any outstanding bonds or interest thereon. In the event of the
30 dissolution of an agency, its board shall provide for the disposition,
31 division, or distribution of the agency's assets among the participating

1 municipalities by such means as such board shall determine, in its sole
2 discretion, to be fair and equitable. The board may provide in its bylaws
3 a method by which to terminate a municipality's participation in an
4 agency.

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

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

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

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

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

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

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

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

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

31 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

1 amended to read:

2 18-2446 (1) Money of the agency shall be paid out or expended only
3 upon the authorization or approval of the board of directors by specific
4 agreement, by a written contract, ~~or by a resolution, or by adoption of~~
5 the budget. All money of the agency shall be paid out or expended only by
6 check, draft, warrant, or other instrument authorized by the agency in
7 ~~writing, signed by the treasurer, assistant treasurer, or such other~~
8 ~~officer, employee, or agent of the agency as shall be authorized by the~~
9 ~~treasurer to sign in his or her behalf. Such authorization shall be in~~
10 ~~writing and filed with the secretary of the agency.~~

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

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

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

30 18-2451 The books and records of an agency created pursuant to
31 sections 18-2426 to 18-2434 shall be public records and shall be kept at

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

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

22 18-2461 (1) Any agency may sell to any public power district,
23 public power and irrigation district, irrigation district, city or
24 village, any power project, power plant, electric generation plant,
25 electric distribution system, or any parts thereof, for such sums and
26 upon such terms as the board of such agency may deem fair and reasonable.
27 Except as provided in this section, no ~~No~~ power plant, system, or works
28 owned by an agency shall be sold, alienated, or mortgaged by such agency.
29 Nothing in the Municipal Cooperative Financing Act ~~sections 18-2401 to~~
30 ~~18-2485~~ shall prevent an agency from assigning, pledging, or otherwise
31 hypothecating, its revenue, incomes, receipts, or profits to secure the

1 payment of indebtedness, but the credit or funds of the State of Nebraska
2 or any political subdivision thereof shall never be pledged for the
3 payment or settlement of any indebtedness or obligation whatever of any
4 agency created pursuant to sections 18-2426 to 18-2434.

5 (2) Except as provided in sections 18-412.07 to 18-412.09, 18-2457
6 to 18-2460, or 18-2462, neither ~~Neither~~ by sale under foreclosure,
7 receivership, or bankruptcy proceedings, nor by alienation in any other
8 manner, may the property of such an agency become the property of or come
9 under the control of any private person, firm, or corporation engaged in
10 the business of generating, transmitting, or distributing electricity for
11 profit. This restriction does not apply to (a) joint participation in any
12 electric generation or transmission facility pursuant to sections
13 18-412.07 to 18-412.09, 18-2457 to 18-2460 or (b) a nonprofit cooperative
14 corporation that has provided financing for property, projects, or
15 undertakings when such property is covered by a mortgage, pledge of
16 revenue, or other hypothecation to secure the payment of a loan or loans
17 made to an agency. This restriction does not apply to a sale, transfer,
18 or lease of property to a nonprofit electric cooperative corporation
19 engaged in the retail distribution of electric energy in established
20 service areas, which cooperative corporation is organized under the laws
21 of the State of Nebraska or domesticated in the State of Nebraska, except
22 that such property so acquired by a cooperative nonprofit corporation
23 organized to provide financing or by a nonprofit electric cooperative
24 corporation shall never become the property or come under the control of
25 any person, firm, or corporation engaged in the business of generating,
26 transmitting, or distributing electricity for profit.

27 (3) In order to protect and safeguard the security and the rights of
28 the purchasers or holders of revenue debentures, notes, bonds, warrants,
29 or other evidences of indebtedness, issued by any agency created pursuant
30 to sections 18-2426 to 18-2434, such agency may agree with the purchasers
31 or holders that in the event of default in the payment on, or principal

1 of, any such evidences of indebtedness or in the event of default in
2 performance of any duty or obligation of such agency in connection
3 therewith, such purchasers or holders, or trustees selected by them, may
4 take possession and control of the business and property of the agency
5 and proceed to operate the same, and to collect and receive the income
6 thereof, and after paying all necessary and proper operating expenses and
7 all other proper disbursements or liabilities made or incurred, use the
8 surplus, if any, of the revenue of the agency as follows: (a) ~~(1)~~ In the
9 payment of all outstanding past-due interest on each issue of revenue
10 debentures, notes, warrants, bonds, or other evidences of indebtedness,
11 so far as such net revenue will go, and paying pro rata the interest due
12 on each issue thereof when there is not enough to pay in full all of the
13 interest; and (b) ~~(2)~~ if any sums shall remain after the payment of
14 interest, then in the payment of the revenue debentures, notes, warrants,
15 bonds, or other evidences of indebtedness, which, by the terms thereof,
16 shall be due and payable on each outstanding issue in accordance with the
17 terms thereof, and paying pro rata when the money available is not
18 sufficient to pay in full. When all legal taxes and charges, all arrears
19 of interest, and all matured revenue debentures, notes, warrants, bonds,
20 or other evidences of indebtedness, have been paid in full, the control
21 of the business and the possession of the property of the agency shall
22 then be restored to such agency. The privilege granted in this section
23 shall be a continuing one as often as the occasion therefor may arise.

24 Sec. 14. Original sections 18-2409, 18-2410, 18-2413, 18-2414,
25 18-2420, 18-2427, 18-2435, 18-2436, 18-2439, 18-2445, 18-2446, 18-2451,
26 and 18-2461, Reissue Revised Statutes of Nebraska, are repealed.