

LEGISLATIVE BILL 228

Approved by the Governor April 27, 1977

Introduced by Stoney, 4

AN ACT to amend sections 31-727, 31-735, and 31-735.02, Revised Statutes Supplement, 1976, relating to sanitary and improvement districts; to provide additional purposes; to change the manner in which the board of trustees is elected; to provide for notices; to provide for compensation; and to repeal the original sections.

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

Section 1. That section 31-727, Revised Statutes Supplement, 1976, be amended to read as follows:

31-727. (1) A majority of the owners having an interest in the real property within the limits of a proposed sanitary and improvement district, situated in one or more counties in this state, may form a sanitary and improvement district for the purpose of installing electric service lines and conduits, a sewer system, a water system, a civil defense warning system, a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, to contract for water for fire protection and for resale to residents of the district, to contract for police protection and security services, and to contract for gas and for electricity for street lighting for the public streets and highways within said proposed district, to construct and to contract for the construction of dikes and levees for flood protection for the district, and to acquire, improve and operate public parks, playgrounds and recreational facilities; Provided, that sanitary and improvement districts located in any county which has a city of the metropolitan class within its boundaries or in any adjacent county which has adopted a comprehensive plan may contract with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts. Nothing in this section shall authorize districts to purchase electric service and resell the same. The district, in lieu of establishing its own water system, may contract with any utilities district, municipality or corporation for the installation of a water system and to provide water service for fire protection and for the use of the residents of the district. For that purpose said majority of the owners may make and sign articles of association in which shall be stated (a) the name of the

district, (b) that same shall have perpetual existence, (c) the limits of the district, (d) the names and places of residence of the owners of the land in the proposed district, (e) the description of the several tracts of land situated in the district owned by those who may organize the district, (f) the name or names and the description of the real estate owned by such owners as do not join in the organization of the district, but who will be benefited thereby, and (g) whether the purpose of the corporation shall be installing gas and electric service lines and conduits, installing a sewer system, installing a water system, installing a system of public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, or contracting for street lighting for the public streets and highways within the proposed district, constructing or contracting for the construction of dikes and levees for flood protection of the proposed district, or acquiring, improving and operating public parks, playgrounds and recreational facilities, or, where permitted by this section, contracting with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or a combination of any one or more of such purposes, or all of such purposes. Such owners of real estate as are unknown may also be set out in said articles as such. No sanitary and improvement district may own or hold land in excess of ten acres, unless such land so owned and held by such district is actually used for a public purpose, as provided in this section, within three years of its acquisition. Any sanitary and improvement district which has heretofore acquired land in excess of ten acres in area and has not devoted the same to a public purpose, as set forth in this section, within three years of the date of its acquisition, shall devote the same to a use set forth in this section, or shall divest itself of such land. When a district divests itself of land pursuant to this section, it shall do so by sale at public auction to the highest bidder after notice of such sale has been given by publication at least three times for three consecutive weeks prior to the date of sale in a legal newspaper of general circulation within the area of the district.

(2) The articles of association, ~~referred to in subsections (1), (3) and (4) of this section,~~ shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be levied

against all the property in the district and special assessments against the real property benefited which may be assessed against them, to pay the expenses that may be necessary to install a sewer, or water system, or both a sewer and water system, the cost of water for fire protection, the cost of grading, changing grade, paving, repairing, graveling, regravelling, widening, or narrowing sidewalks and roads, resurfacing or relaying existing pavement, or otherwise improving any public roads, streets, or highways within the district, the cost of constructing public waterways, docks or wharfs, and related appurtenances, the cost of constructing or contracting for the construction of dikes and levees for flood protection for the district, the cost of contracting for water for fire protection and for resale to residents of the district, the cost of contracting for police protection and security services, and the cost of electricity for street lighting for the public streets and highways within the district, the cost of installing gas and electric service lines and conduits, the cost of acquiring, improving and operating public parks, playgrounds, and recreational facilities, and, where permitted by this section, the cost of contracting for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, as provided by law.

(3) ~~The articles referred to in subsections (1), (2), and (4) of this section,~~ shall propose the names of five or more trustees, who shall be owners of real estate located in the proposed district, to serve as a board of trustees until their successors are elected and qualified, should said district be organized. No corporation formed or hereafter formed shall perform any new functions, other than those for which the corporation was formed, without amending its articles of association to include the new function or functions.

(4) ~~After the articles referred to in subsections (1), (2), and (3) of this section are signed,~~ the same shall be filed in the office of the clerk of the district court of the county in which such sanitary and improvement district is located or, if such sanitary and improvement district is composed of tracts or parcels of land in two or more different counties, in the office of the clerk of the district court for the county in which the greater portion of such proposed sanitary and improvement district is located, together with a petition praying that the same may be declared a sanitary and improvement district under sections 31-727 to 31-762.

(5) For the purposes of sections 31-727 to 31-762, unless the context otherwise requires:

(a) Public waterways shall mean artificially created boat channels dedicated to public use and providing access to navigable rivers or streams;

(b) Operation and maintenance expenses shall mean and include, but not be limited to, salaries, cost of materials and supplies for operation and maintenance of the district's facilities, cost of ordinary repairs, replacements, and alterations, cost of surety bonds and insurance, cost of audits and other fees, and taxes;

(c) Capital outlay shall mean expenditures for construction or reconstruction of major permanent facilities having an expected long life, including, but not limited to, street paving and curbs, storm and sanitary sewers, and other utilities;

(d) Warrant shall mean a short-term interest-bearing order payable on a specified date issued by the board of trustees of a sanitary and improvement district to be paid from funds expected to be received in the future, including, but not limited to, property tax collections, special assessment collections, and proceeds of sale of general obligation bonds; and

(e) General obligation bond shall mean a long-term written promise to pay a specified sum of money, referred to as the face value or principal amount, at a specified maturity date or dates in the future, plus periodic interest at a specified rate.

Sec. 2. That section 31-735, Revised Statutes Supplement, 1976, be amended to read as follows:

31-735. On the first Tuesday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district, and on the first Tuesday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. The term of office of an elected trustee on July 10, 1976, and a trustee appointed to fill the unexpired term of such elected trustee, shall be extended to the first Tuesday in September immediately following the date on which such term would otherwise have expired. Any person desiring to file for office of trustee may file for such office with the county clerk, or election commissioner in counties having election commissioners, of the county in which the greater proportion in area of the district is

located, not later than thirty days before the election. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he is a candidate for election by the resident owners of such district or whether he is a candidate for election by all of the owners of real estate located in the district. The name of such candidate shall appear on only one ballot. The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. Such trustees shall be owners of real estate located in the district. The election shall be conducted at a location or place within the boundaries of the district unless there is no building within the district or all of the owners in the district shall consent to an election outside the district, and the polling place shall remain open to the voters for not less than four consecutive hours between 8:00 a.m. and 8:00 p.m. of the date of election. Notice of the time and place of the election shall be mailed by the clerk of the district at least forty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the board of trustees, which shall be not more than fifty sixty-five days prior to the election. Notice of the time and place of the election shall also be mailed by the clerk of the district to the county clerk or election commissioner at least forty-five days prior to the election. Persons whose ownership or right to vote becomes of record or is received after such date may vote upon establishing their right to vote to the satisfaction of the election board. Such notice shall state the time, place, and purpose of the election. Any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he may own in the district. At the election held six four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district, and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. At the election held eight years after the first election of trustees, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district, and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, except that, if more than fifty per cent of the homes in any sanitary and

improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees, and at the election held six years after the first election of trustees, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district, and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district the five members shall be elected by the legal property owners of all property within such district as provided in this section. Each legal property owner resident within such sanitary and improvement district may cast one vote for each of the trustees such resident owners are entitled to elect and for the remaining members each owner may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he may own in the district. Any corporation, public, private, or municipal, owning any land or lot in the district, may vote at such election the same as an individual. For purposes of voting for trustees, each condominium apartment under a condominium property regime established under the Condominium Property Act shall be deemed to be a platted lot and the lessee, or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote; Such board shall select one of their number chairman and one of their number clerk. In case of a vacancy on said board the remaining trustees shall fill the vacancy on said board until the next election.

Sec. 3. That section 31-735.02, Revised Statutes Supplement, 1976, be amended to read as follows:

31-735.02. The county clerk or election commissioner shall certify the results of the election to the district. The election board shall also certify to the district the number of hours worked by the board. Payment shall be made by the district directly to election board members within forty-five days following such certification. Upon completion of the canvass, the county clerk or election commissioner shall turn all supplies, ballots, and books over to the district for which the election was held.

Sec. 4. That original sections 31-727, 31-735, and 31-735.02, Revised Statutes Supplement, 1976, are repealed.