

## LEGISLATIVE BILL 251

Approved by the Governor May 22, 1979

Introduced by Urban Affairs Committee, George, 16, Chan.; Koch, 12; Lewis, 45; Duis, 39; Schait, 23

AN ACT to adopt the Business Improvement District Act; to provide severability; to repeal sections 19-3401 to 19-3420 and 19-4001 to 19-4014, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. This act shall be known and may be cited as the Business Improvement District Act.

Sec. 2. This act provides a separate and additional method, authority, and procedure for the matters to which it relates and does not affect any other law relating to the same or similar subject. When proceeding under this act, its provisions only need be followed.

Sec. 3. Cities of the metropolitan, primary, first, and second class in the state at present have business areas in need of improvement and development, but lack the funds with which to provide and maintain such improvements. The purpose of this act is to provide a means by which such cities may raise the necessary funds to be used for the purpose of providing and maintaining the improvements authorized by this act.

Sec. 4. Pursuant to this act cities of the metropolitan, primary, first, or second class may impose (1) a special assessment upon the property within a business improvement district in the city or (2) a general business license and occupation tax on businesses and users of space within a business improvement district. The proceeds or other available funds may be used for the purposes stated in section 5 of this act.

Sec. 5. Any money available under section 4 of this act may be used for any one or more of the following purposes:

(1) The acquisition, construction, maintenance, and operation of public off-street parking facilities for the benefit of the district area;

(2) Improvement of any public place or facility in the district area, including landscaping and plantings;

(3) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(4) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the district area;

(5) Creation and implementation of a plan for improving the general architectural design of public areas in the district;

(6) The development of any public activities and promotion of public events in the district area;

(7) Maintenance, repair, and reconstruction of any improvements or facilities authorized by this act;

(8) Any other project or undertaking for the betterment of the public facilities in the district area, whether the project be capital or noncapital in nature;

(9) Enforcement of parking regulations within the district area; and

(10) Employing or contracting for personnel, including administrators for any improvement program under this act, and providing for any service as may be necessary or proper to carry out the purposes of this act.

Sec. 6. A business improvement district may be created as provided by this act and shall be within the boundaries of an established business area of the city zoned and used for business, public, or commercial purposes.

Sec. 7. The mayor, with the approval of the city council, shall appoint a business improvement board consisting of property owners, residents, business operators, or users of space within the business area to be improved. The board shall make recommendations to the city council for the establishment of a plan or plans for improvements in the district. If it is found that the improvements to be included in one business area offer

benefits that cannot be equitably assessed together under this act, more than one business improvement district as part of the same development plan for that business area may be proposed. The board may make recommendations to the city as to the use of any license and occupation tax funds collected, and may administer such funds if so directed by the mayor and city council.

Sec. 8. The board shall consist of five or more members to serve such terms as the city council, by resolution, determines. The mayor, with the approval of the city council, shall fill any vacancy for the term vacated. A board member may serve more than one term. The board shall select from its members a chairperson and a secretary.

Sec. 9. All public utilities or private companies having franchises for utilities from the city shall, before constructing any new utility facility valued in excess of five thousand dollars or substantially improving or changing existing facilities within a business improvement district, obtain approval of the mayor and city council after the mayor and city council have obtained written comments from the business improvement board to coordinate the business improvement district plan.

Sec. 10. Upon receiving the recommendation from the business improvement board, the city council after consulting with the planning commission if the city has a planning commission may create one or more business improvement districts by adopting a resolution of intention to establish a district or districts. The resolution shall contain the following information:

(1) A description of the boundaries of any proposed district;

(2) The time and place of a hearing to be held by the city council to consider establishment of a district or districts;

(3) The proposed public facilities and improvements to be made or maintained within any such district; and

(4) The proposed or estimated costs for improvements and facilities within any district, and the method by which the revenue shall be raised.

The notice of intention shall recite that the method of raising revenue shall be fair and equitable. In the use of a general license and occupation tax, the

tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Sec. 11. A notice of hearing under this act shall be given by (1) one publication of the resolution of intention in a newspaper of general circulation in the city and (2) mailing a complete copy of the resolution of intention to each owner of taxable property as shown on the latest tax rolls of the county treasurer for such county, and to each user of space in the proposed area. Publication and mailing shall be completed at least ten days prior to the time of hearing.

Sec. 12. In the event that the city council has not acted to call a hearing to create a district as provided in this act, it shall do so when presented with a petition signed by the owners of thirty per cent of the assessable front footage in the proposed area or by the users of thirty per cent of space in the proposed area.

Sec. 13. Whenever a hearing is held under the provisions of this act, the city council shall:

(1) Hear all protests and receive evidence for or against the proposed action;

(2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and

(3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the owners of over fifty per cent of the assessable units in the proposed district. If an occupation tax is to be used, proceedings shall terminate if protest is made by over fifty per cent of the users of space in the proposed district.

Sec. 14. If the city council decides to change the boundaries of the proposed area, the hearing shall be continued to a time at least fifteen days after such decision and the notice shall be given as prescribed in section 12 of this act, showing the boundary amendments, but no resolution of intention is required.

Sec. 15. The city council, following the hearing, may establish or reject any proposed district or

districts. If the city council decides to establish any district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The number, date, and title of the resolution of intention pursuant to which it was adopted;

(2) The time and place the hearing was held concerning the formation of such district;

(3) A statement that a business improvement district has been established;

(4) The purposes of the district, and the public improvements and facilities to be included in such district;

(5) The description of the boundaries of such district;

(6) A statement that the businesses and professions in the area established by the ordinance shall be subject to the general business license and occupation tax or that the real property in the area will be subject to the special assessment authorized by this act;

(7) The method of proposed assessment to be imposed within the district or the initial rate of the license and occupation tax to be imposed; and

(8) Any penalties to be imposed for failure to pay the tax or special assessment.

Sec. 16. A city may levy a special assessment against the real estate located in such district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of acquisition, including construction, of any authorized improvement or facility of such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Notice of a hearing on any special assessments to be levied under this act shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land. A direct appeal to the district court of the

county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law. All special assessments levied under this act shall be liens on the property and shall be certified for collection and collected in the same manner as special assessments for improvements and street improvement districts of the city are collected.

Sec. 17. (1) In addition to or in place of the special assessments authorized by this act, a city may levy a general business license and occupation tax upon the businesses and users of space within a district established for acquiring, constructing, maintaining or operating public off-street parking facilities and providing in connection therewith other public improvements and facilities authorized by this act, for the purpose of paying all or any part of the total cost and expenses of any authorized improvement or facility within such district. Notice of a hearing on any such tax levied under this act shall be given to the businesses and users of space of such districts, and appeals may be taken, all in the manner provided in section 16 of this act.

(2) For the purposes of the tax to be imposed under this section, the city council may make a reasonable classification of businesses or users of space. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance:

(3) As used in this section, space shall mean the square foot space wherein customers, patients, clients, or other invitees are received and space from time to time used or available for use in connection with a business or profession of a user, excepting all space owned or used by political subdivisions.

Sec. 18. If, subsequent to the levy of taxes or assessments, the use of any parcel of land shall change so that, had the new use existed at the time of making such levy, the assessment or levy on such parcel would have been higher than the levy or assessment actually made, an additional assessment or levy may be made on such parcel by the city council taking into consideration

the new and changed use of the property. Reassessments or changes in the rate of levy of assessments or taxes may be made by the city council after notice and hearing as provided in section 16 of this act. The city council shall adopt a resolution of intention to change the rate of levy at least fifteen days prior to the hearing required for changes. This resolution shall specify the proposed change and shall give the time and place of the hearing.

Sec. 19. The total amount of assessments or general business license and occupation taxes levied under this act shall not exceed the total costs and expenses of acquiring an authorized improvement or facility, or of maintaining such improvement or facility. The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied. The assessments or taxes levied must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose.

Sec. 20. A city may levy a general business license and occupation tax, or a special assessment against the real estate located in the district to the extent of special benefit to such real estate, for the purpose of paying all or any part of the cost of maintenance, repair, reconstruction, and utility costs, or any improvement of a facility in the district. Districts created for taxation or assessment of maintenance, repair, and reconstruction, and utility costs of improvements or facilities which are authorized by this act, but which were not acquired or constructed pursuant to this act, may be taxed or assessed as provided in this act. Any license and occupation tax levied under this section shall be limited to those improvements and facilities authorized by section 17 of this act. The city council may levy such taxes or assessments under either of the following methods:

(1) The city council may, not more frequently than annually, determine the costs of maintenance or repair, and reconstruction, of a facility. Such costs shall be either assessed to the real estate located in such district, or taxed against the businesses and users of space in the district, whichever may be applicable as determined by the ordinance creating the district. At the hearing on such taxes or assessments, objections may be made to the total cost and the proposed allocation of such costs among the parcels of real estate or businesses in such district; or

(2) After notice is given to the owners of businesses as provided in section 17 of this act the city

council may establish and may change from time to time, the percentage of such costs for maintenance, repair, and reconstruction which each parcel of real estate or each business or user of space in any district shall pay. The city council shall annually determine the total amount of such costs for each period since costs were last taxed or assessed, and shall, after a hearing, tax or assess such costs to the real estate in the district in accordance with the percentages previously established at such hearing. Notice of such hearing shall be given as provided in section 17 of this act and shall state the total costs and percentage to be taxed or assessed to each parcel of real estate. Unless objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages should be deemed to have been waived and the assessments shall be levied as stated in such notice except that the city council may reduce any assessment percentage.

Sec. 21. The city council may disestablish a district by ordinance after a hearing before the city council. The city council shall adopt a resolution of intention to disestablish the area at least fifteen days prior to the hearing required by this section. The resolution shall give the time and place of the hearing.

Sec. 22. Upon disestablishment of a district, any proceeds of the tax or the assessment, or assets acquired with such proceeds, shall be subject to disposition as the city council shall determine.

Sec. 23. The city is authorized to receive, administer, and disburse donated funds or grants of federal or state funds for the purposes of and in the manner authorized by this act.

Sec. 24. Any business improvement district or any downtown improvement and parking district created prior to the effective date of this act pursuant to sections 19-4001 to 19-4014, or sections 19-3401 to 19-3420, Reissue Revised Statutes of Nebraska, 1943, shall continue in existence and shall hereafter be governed by this act.

Sec. 25. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 26. That sections 19-3401 to 19-3420 and 19-4001 to 19-4014, Reissue Revised Statutes of Nebraska,



1943, are repealed.

Sec. 27. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.