

## LEGISLATIVE BILL 384

Approved by the Governor April 17, 2002

Introduced by Quandahl, 31; Bruning, 3; Cudaback, 36; Kristensen, 37;  
Redfield, 12; Wickersham, 49; Dw. Pedersen, 39; Baker, 44

AN ACT relating to condemnation; to amend sections 16-645, 16-674, 17-559, 18-2520, 18-2523, 19-701, 19-709, and 76-703, Reissue Revised Statutes of Nebraska, and section 18-2528, Revised Statutes Supplement, 2000; to adopt the Municipal Natural Gas System Condemnation Act; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. Sections 1 to 22 of this act shall be known and may be cited as the Municipal Natural Gas System Condemnation Act.

Sec. 2. A city may acquire and appropriate a gas system through the exercise of the power of eminent domain if such power is exercised in the manner specified in and subject to the Municipal Natural Gas System Condemnation Act.

Sec. 3. (1) A city may condemn the property of a utility which constitutes a portion of a gas system without complying with the Municipal Natural Gas System Condemnation Act if the condemnation is necessary for the public purpose of acquiring an easement or right-of-way across the property of the utility or is for the purpose of acquiring a portion of the gas system for a public use unrelated to the provision of natural gas service.

(2) Nothing in the act shall be construed to govern or affect the manner in which a city which owns and operates its own gas system condemns the property of a utility when such property is brought within the corporate boundaries of the city by annexation.

Sec. 4. For purposes of the Municipal Natural Gas System Condemnation Act:

(1) City means a city of the primary class, city of the first class, city of the second class, or village;

(2) Commission means the Public Service Commission;

(3) Gas system means all or any portion of a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, located or operating within or partly within and partly without a city, together with real and personal property needed or useful in connection therewith, if the main part of the works, plant, or system is located within the city; and

(4) Utility means an investor-owned utility owning, maintaining, and operating a gas system within a city.

Sec. 5. A city proposing to acquire a gas system through the exercise of the power of eminent domain shall initiate the process by ordering the preparation of a resolution of intent to pursue condemnation of the gas system in accordance with the requirements of the Municipal Natural Gas System Condemnation Act by a vote of a majority of the members of the governing body of the city.

Sec. 6. (1) The resolution of intent shall describe the property subject to the proposed condemnation, including the types of property and facilities to be subject to the condemnation and the extent and amount of property to be appropriated. The resolution of intent shall set forth one or more of the following:

(a) A description of the acts and omissions of the utility regarding natural gas safety which the city believes have created or may create a material threat to the health and safety of the public in the city and a description of the nature of the threat;

(b) A description of the acts and omissions of the utility regarding the terms, conditions, and quality of natural gas service to natural gas ratepayers in the city which the city believes fail to meet generally accepted standards of customer service within the natural gas industry;

(c) A comparison of the rates for natural gas charged by the utility to ratepayers in the city and of the rates charged to similarly situated ratepayers in comparably sized cities in Nebraska and neighboring states which are served by the same or different utilities, which comparison the city believes shows that the rates charged in the city are excessive; or

(d) A description of recent or contemporaneous events or disclosures regarding the utility, including, but not limited to, changes in ownership, corporate structure, financial stability, or debt rating or any other factor

which the city believes indicates financial instability in the utility which may materially impair its ability to maintain appropriate levels of safety and consumer service in the city.

(2) If the resolution of intent contains provisions as set out in subdivision (1)(a) or (b) of this section, the resolution shall describe the efforts by the city to inform the utility of the utility's acts or omissions regarding safety or service and shall describe the opportunities afforded the utility to remedy the stated defects.

(3) The resolution of intent shall not contain any provision regarding nor make any references to any expected or anticipated revenue to be derived by the city in consequence of the city's condemnation or operation of the gas system.

Sec. 7. (1) The resolution of intent to pursue condemnation shall be presented to the governing body of the city at a regular meeting of such governing body. At that meeting the governing body may adopt the resolution of intent and, if it does so, shall set a time at least forty-five days after the date of the meeting at which the resolution of intent was adopted at which time the governing body of the city shall hold a public hearing.

(2) At the public hearing, the sole item of business to be conducted shall be the public hearing on the resolution of intent at which the public shall be permitted to comment on the proposed condemnation, the utility shall be permitted to respond to the statements set out in the resolution of intent and any comments made at the public hearing, and the governing body may act as provided in section 8 of this act.

(3) The clerk of the city shall transmit a copy of the resolution of intent and notice of the date and time of the public hearing to the utility by United States registered mail with signature confirmation within seven days after the meeting at which the resolution of intent was adopted. At least thirty days prior to the public hearing, the city shall publish notice of the time and place of the public hearing and a summary of the resolution of intent in a legal newspaper published in or of general circulation in the city.

(4) The utility may present to the city a description of portions of the gas system which (a) are not described as part of the gas system being condemned by the city and (b) are served through the town border station of the city. The utility may require the city to include in its description of the gas system being condemned any or all of those portions of the system if the proposed condemnation would sever those portions of the system from the utility's distribution facilities and would require the utility to create new infrastructure to link these portions to its existing delivery system outside the city. If the utility chooses to require the city to include additional portions of the gas system in the description of the property being condemned, it shall do so prior to the adjournment of the public hearing.

Sec. 8. After the public hearing provided for in section 7 of this act, the governing body of the city, by majority vote of its members, may vote to exercise the power of eminent domain and condemn the gas system or such portion thereof as described in the motion. The motion shall identify fully and accurately the property subject to the condemnation.

Sec. 9. Following the adoption of the motion, including an override of any veto, if necessary, the clerk of the city shall transmit to the Chief Justice of the Supreme Court notice of the decision of the city to pursue condemnation of the gas system. The Supreme Court shall, within thirty days after the receipt of such notice, appoint three judges of the district court from three of the judicial districts of the state to constitute a court of condemnation to ascertain and find the value of the gas system being taken. The Supreme Court shall enter an order requiring the judges to attend as a court of condemnation at the county seat of the county in which the city is located, within such time as may be stated in the order, except upon stipulation by all necessary parties as to the value of the gas system filed with the Supreme Court prior to such date. The judges shall attend as ordered and at the first meeting shall select a presiding judge, organize, and proceed with the court's duties. The court may adjourn from time to time and shall fix a time for the appearance before it of all such corporations or persons as the court may deem necessary to be made parties to such condemnation proceedings or which the city or the utility may desire to have made a party to the proceedings. If such time of appearance shall occur after any proceedings have begun, the proceedings shall be reviewed by the court, as it may direct, to give all parties full opportunity to be heard. All corporations or persons, including all mortgagees, bondholders, trustees for bondholders, leaseholders, or other parties or persons claiming any interest in or lien upon the gas system, may be made parties to the proceedings. All parties shall be served with notice of the proceedings and the time and place of the meeting of the court of condemnation in the same manner and for such

length of time as the service of a summons in cases begun in the district court, either by personal service or service by publication, and actual personal service of notice within or without the state shall supersede the necessity of notice by publication.

Sec. 10. In all proceedings before it, the court of condemnation shall appoint a reporter of its proceedings who shall report and preserve all evidence introduced before it. The clerk of the district court, in the county where the city is located, shall attend upon the court of condemnation and perform the duties of the clerk thereof, as the court of condemnation may direct. The sheriff of the county or any of his or her deputies shall attend upon the court and shall have power to serve summonses, subpoenas, and all other orders or papers ordered to be served by the court. In case of a vacancy on the court, the vacancy shall be filled by the Supreme Court if the vacancy occurs while the Supreme Court is in session, and if it occurs while the Supreme Court is not in session, then by the Chief Justice. The judges constituting the court of condemnation shall be paid by the city a per diem for their services in an amount to be established by rule of the Supreme Court and the city shall pay their necessary traveling expenses, accommodation bills, and all other necessary expenses incurred while in attendance upon the sittings of the court of condemnation, with reimbursement for expenses to be made as provided in sections 81-1174 to 81-1177. The city shall pay the reporter that is appointed by the court the amount that is set by the court. The sheriff shall serve all summonses, subpoenas, or other orders or papers ordered issued or served by the court of condemnation at the same rate and compensation for which he or she serves like papers issued by the district court, but shall account to the county for all compensation as required of him or her under the law governing his or her duties as sheriff.

Sec. 11. (1) In ascertaining the value of the gas system, the court of condemnation shall have full power to summon witnesses, administer oaths, take evidence, order the taking of depositions, and require the production of any and all books and papers deemed necessary for a full investigation and ascertainment of the value of any portion of the gas system. When part of the gas system appropriated under the Municipal Natural Gas System Condemnation Act extends beyond the territory within which the city exercising the power of eminent domain has a right to operate the gas system, the court of condemnation, in determining the damages caused by the appropriation, shall take into consideration the fact that the portion of the gas system beyond that territory is being detached and not appropriated by the city, and the court of condemnation shall award damages by reason of the detachment and the destruction in value and usefulness of the detached and unappropriated property as it will remain and be left after the detachment and appropriation. The court shall have all the necessary powers and perform all the necessary duties in the condemnation and ascertainment of the value and in making an award of the value of the gas system.

(2) The court of condemnation shall have power to apportion the costs of the proceedings before it between the city and the utility and the city shall provide for and pay the costs as ordered by the court. The city shall make provisions for the necessary funds and expenses to carry on the proceedings of the court while the proceedings are in progress. If the governing body of the city elects to abandon the condemnation proceedings, the city shall pay all the costs made before the court.

(3) If the services of expert witnesses or attorneys are secured by the utility, their fees or compensation as billed to the utility are to be taxed and paid as costs by the city to the extent that the court determines that the fees and compensation sought (a) reflect the prevailing industry or professional charges for such services in cases of the size involved in the condemnation and (b) were reasonably necessary to a just and accurate determination of the value of the gas system. The costs of any appeal shall be adjudged against the party defeated in the appeal in the same degree and manner as is done under the general court practice relating to appellate proceedings.

Sec. 12. (1) Upon the determination and filing of a finding of the value of the gas system by the court of condemnation, the city shall have the right and power, by resolution adopted by a majority of the members of its governing body, to elect to abandon the proceedings to acquire the gas system by the exercise of the power of eminent domain.

(2) If the city (a) does not elect to abandon within ninety days after the finding and filing of value or (b) formally notifies the utility by United States registered mail with signature confirmation that its governing body has voted to proceed with the condemnation, the utility owning the gas system may appeal from the finding of value and award by the court of condemnation to the district court.

(3) The appeal shall be made by filing with the city clerk within twenty days after (a) the expiration of the time given the city to exercise its rights of abandonment or (b) the date of the receipt of the notice of the city's intent to proceed with condemnation, a bond to be approved by the court of condemnation, conditioned for the payment of all costs which may be made on any appeal, and by filing in the district court, within ninety days after such bond is filed, a transcript of the proceedings before the court of condemnation, including the evidence taken before it, certified by the clerk, reporter, and judges of the court of condemnation. The appeal in the district court shall be tried and determined upon the pleadings, proceedings, and evidence in the transcript.

(4) Notwithstanding the provisions of subsection (1) of this section, the city may abandon the proceedings to acquire the gas system by the exercise of the power of eminent domain at any time prior to taking physical possession of the gas system.

Sec. 13. Upon the hearing of the appeal in the district court, judgment shall be pronounced, as in ordinary cases, for the value of the gas system. The city or utility may appeal the judgment to the Supreme Court. All actions and proceedings under the Municipal Natural Gas System Condemnation Act which are heard by the district court or the Supreme Court shall be expedited for hearing and decision by the appropriate court as soon as the issues and parties are properly before such court. Such proceedings and actions shall be preferred over all other civil cases irrespective of their position on the calendar.

Sec. 14. (1) A city shall not appropriate a gas system through the exercise of the power of eminent domain without the approval of the registered voters of the city as provided in the Municipal Natural Gas System Condemnation Act.

(2) At such time as (a) the court of condemnation has finally determined the value of the gas system and no appeal has been perfected to the district court from that determination by the city or the utility, (b) the district court has pronounced its final judgment on the value of the gas system, and neither the utility or city has perfected an appeal to the Supreme Court from such judgment, or (c) the Supreme Court has pronounced its final judgment on the value of the gas system, the governing body of the city may submit to the registered voters of the city at any general or special city election the question of whether the city should acquire the gas system by the exercise of the power of eminent domain at the price established by the court of condemnation, the district court, or the Supreme Court as the case may be. The ballot language shall describe the property to be acquired and the interest in the property being sought and shall recite the cost of the acquisition as adjudged by the court establishing the value of the gas system. The ballot question shall be in the following form:

Shall the city of (name of city) acquire by the exercise of the power of eminent domain the gas system currently owned by (name of utility) at a total cost of (set out the total dollar amount to be awarded to the utility as determined by the court of condemnation, the district court, or the Supreme Court as the case may be): ....Yes ....No

(3) The city shall submit the question to the registered voters in the manner prescribed in the Election Act. The question may be placed before the registered voters of the city at any general or special city election called for the purpose and may be submitted in connection with any city special election called for any other purpose. The votes cast on the question shall be canvassed and the result found and declared as prescribed in the Election Act.

Sec. 15. If the election at which the question is submitted is a special election and sixty percent of the votes cast upon such proposition are in favor, or if the election at which the question is submitted is a general election and a majority of the votes cast upon such proposition are in favor, then the officer possessing the power and duty to ascertain and declare the result of the election shall certify the result immediately to the governing body of the city. The governing body of the city may then proceed to tender the amount of the value and award made by the court of condemnation, district court, or the Supreme Court to the utility owning the gas system and shall have the right and power to take immediate possession of the gas system upon the tender.

Sec. 16. If the governing body of the city abandons proceedings for the acquisition of the gas system at any time prior to taking possession of the gas system or the issue of acquiring the gas system by the exercise of the power of eminent domain has been submitted to and not approved by the registered voters of the city, the city shall not initiate a new proceeding for the acquisition of the gas system until twenty-four months have elapsed

after the date proceedings were abandoned or after the date of the election at which the question was not approved by the registered voters of the city.

Sec. 17. Following (1) the completion or dismissal of all appeals and upon a final judgment being pronounced in the case and (2) the approval of the voters to condemn the gas system at the election provided for in section 14 of this act, the governing body of the city may issue and sell bonds of the city to pay the amount of the value of the gas system set out in the award and any other obligations of the city arising from the condemnation including, but not limited to, acquisitions costs, fees, court costs, and related expenses. Such bonds may be issued and sold without an additional vote of the registered voters of the city.

Sec. 18. If a utility proposes to (1) construct a gas system in a city for the first time, (2) within an eighteen-month period, reconstruct or renovate a portion of a gas system in a city or expand the gas system in a city over an area equivalent to twenty percent or more of the area of the city being served by the utility, or (3) within an eighteen-month period, construct new facilities, improvements, or upgrades to an existing gas system to enhance service to customers or increase efficiency if the costs of making such improvements equal or exceed twenty percent of the estimated net depreciated cost of the gas system in the city prior to the addition of such improvements, the city may enter into a binding and enforceable contract as provided in sections 19 to 22 of this act with the utility to relinquish its right to condemn the gas system for an expressed period of time or for a period of time determinable by formula set out in the contract.

Sec. 19. If the utility seeks to pursue a qualifying project as specified in section 18 of this act, it may negotiate a contract with the city in which the city, in consideration of the utility's promise to provide, expand, or improve natural gas service to the citizens of the city at reasonable rates, with safeguards for public health and safety, and with appropriate standards for service, agrees to relinquish its right to condemn the gas system for a period of time sufficient to enable the utility to recover the reasonable costs of the project, but not to exceed such period.

Sec. 20. A contract entered into under section 18 of this act shall include provisions specifying:

(1) The nature of the qualifying project and the costs involved in its completion;

(2) The standards of safety to be applied to the gas system during the construction and following the completion of the project;

(3) Any terms and conditions of natural gas service to customers in the city deemed material to the contract by the city and the utility;

(4) The period of time necessary for the utility to recover the reasonable cost of the project, during which time the city relinquishes its right to condemn the gas system expressed either as a set period of time or as a period of time to expire upon the occurrence of a specified condition; and

(5) Any other provisions agreed by the city and the utility to be material to the contract.

Sec. 21. (1) A city and a utility shall not formally enter into a contract under section 18 of this act until the contract has been reviewed and approved by the commission.

(2) Upon completion of negotiations for the contract, the city and utility shall jointly submit the contract for review by the commission.

(3) The commission shall, following the submission of the contract and any supporting documentation requested by the commission, schedule a public hearing to be convened in the city at which the city and utility may present any additional information and respond to questions or inquiries by the commission and at which the public may comment upon the terms and conditions of the contract. The hearing may be recessed and reconvened in the city or at any other location at the discretion of the commission.

(4) The commission shall review the contract to determine (a) the accuracy of its factual representations and calculations, (b) the reasonableness of its terms and conditions, (c) that the disclosure of material information by the city or utility regarding the contract has been full, complete, accurate, and mutual, and (d) that the contract will, if entered into, further the public interest of the city in adequate and safe natural gas service.

(5) Following its review, the commission shall, within one hundred twenty days after the date of the submission to it of the contract, approve the contract, recommend amendments to the contract to conform it to the requirements of sections 18 to 22 of this act, or deny approval of the contract. If the commission recommends amendments, the city and utility may adopt the amendments or renegotiate provisions of the contract and submit the amended contract for additional commission review. If the commission

recommends amendments or denies approval of the contract, the city and utility may stipulate to additional time beyond the one hundred twenty days for the commission to further review amendments to or renegotiate provisions of the contract.

(6) When the commission approves the contract, the city and utility may formally enter into the contract.

(7) The commission may adopt and promulgate any rules or regulations necessary for the administration of its duties and responsibilities pursuant to sections 18 to 22 of this act.

Sec. 22. (1) Except as provided in subsection (2) or (3) of this section, a contract between a city and a utility entered into under sections 18 to 22 of this act shall bar the city from initiating condemnation proceedings during the period provided for in the contract.

(2) If the utility, by act or omission, breaches the contract, the city may pursue action in the district court of the county in which the city is located to have the court determine whether a material breach has occurred. If the court determines that a material breach has occurred, the city may initiate proceedings to condemn the gas system notwithstanding that the term of relinquishment set out in the contract has not expired.

(3) Except upon the express written approval of the city, the utility may not assign or transfer its interest in the contract to an independent third party.

Sec. 23. Section 16-645, Reissue Revised Statutes of Nebraska, is amended to read:

16-645. In all cases of damages arising from the creation or widening of new streets, avenues, or alleys, from the appropriation of property for sewers, parks, parkways, public squares, public heating plants, power plants, gas works, electric light plants, waterworks, or market places, and from change of grade in streets, avenues, or alleys, the damages sustained shall be ascertained and determined as provided in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 ~~are~~ or the Municipal Natural Gas System Condemnation Act is applicable.

Sec. 24. Section 16-674, Reissue Revised Statutes of Nebraska, is amended to read:

16-674. The mayor and city council shall have power to purchase or provide for, establish, construct, extend, enlarge, maintain, operate, and regulate for the city any such waterworks, gas works, power plant, including an electrical distribution facility, electric or other light works, or heating plant, or to condemn and appropriate, for the use of the city, waterworks, gas works, power plant, including an electrical distribution facility, electric or other light works, or heating plant. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 ~~are~~ or the Municipal Natural Gas System Condemnation Act is applicable. For purposes of this section, an electrical distribution facility shall be located within the retail service area of such city as approved by and on file with the Nebraska Power Review Board, pursuant to Chapter 70, article 10.

Sec. 25. Section 17-559, Reissue Revised Statutes of Nebraska, is amended to read:

17-559. Second-class cities and villages shall have power to create, open, widen, or extend any street, avenue, alley, offstreet parking area, or other public way, or annul, vacate, or discontinue the same; to take private property for public use for the purpose of erecting or establishing market houses, market places, parks, swimming pools, airports, gas systems, including distribution facilities, water systems, power plants, including electrical distribution facilities, sewer systems, or for any other needed public purpose; and to exercise the power of eminent domain within or without the city or village limits for the purpose of establishing and operating power plants including electrical distribution facilities to supply such city or village with public utility service, and for sewerage purposes, water supply systems, or airports. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 ~~are~~ or the Municipal Natural Gas System Condemnation Act is applicable. For purposes of this section, electrical distribution facilities shall be located within the retail service area of such city or village as approved by and on file with the Nebraska Power Review Board, pursuant to Chapter 70, article 10.

Sec. 26. Section 18-2520, Reissue Revised Statutes of Nebraska, is amended to read:

18-2520. The (1) Except as provided in subsection (2) of this section, the executive officer and governing body of a municipal subdivision may at any time, by resolution, provide for the submission to a direct vote of the electors of any measure pending before it, passed by it, including an override of any veto, if necessary, or enacted by the electors under sections 18-2501 to 18-2538 and may provide in such resolution that such measure shall be submitted at a special election or the next regularly scheduled primary or general election. Immediately upon the passage of any such resolution for submission, the city clerk shall cause such measure to be submitted to a direct vote of the electors, at the time specified in such resolution and in the manner provided in sections 18-2501 to 18-2538 for submission of measures upon proposals and petitions filed by voters. Such matter shall become law if approved by a majority of the votes cast.

(2) The executive officer and governing body of a municipal subdivision shall not submit to a direct vote of the electors the question of whether the municipal subdivision should initiate proceedings for the condemnation of a natural gas system.

Sec. 27. Section 18-2523, Reissue Revised Statutes of Nebraska, is amended to read:

18-2523. (1) The power of initiative allows citizens the right to enact measures affecting the governance of each municipal subdivision in the state. An initiative proposal shall not have as its primary or sole purpose the repeal or modification of existing law except if such repeal or modification is ancillary to and necessary for the adoption and effective operation of the initiative measure.

(2) An initiative shall not be effective if the direct or indirect effect of the passage of such initiative measure shall be to repeal or alter an existing law, or portion thereof, which is not subject to referendum or subject only to limited referendum pursuant to section 18-2528.

(3) The power of initiative shall extend to a measure to provide for the condemnation of an investor-owned natural gas system by a municipal subdivision when the condemnation would, if initiated by the governing body of the municipal subdivision, be governed by the provisions of the Municipal Natural Gas System Condemnation Act.

(4) An initiative measure to provide for the condemnation of an investor-owned natural gas system by a municipal subdivision shall be a measure to require the municipal subdivision to initiate and pursue condemnation proceedings subject to the provisions of the Municipal Natural Gas System Condemnation Act.

Sec. 28. Section 18-2528, Revised Statutes Supplement, 2000, is amended to read:

18-2528. (1) The following measures shall not be subject to referendum or limited referendum:

(a) Measures necessary to carry out contractual obligations, including, but not limited to, those relating to the issuance of or provided for in bonds, notes, warrants, or other evidences of indebtedness, for projects previously approved by a measure which was, or is, subject to referendum or limited referendum or previously approved by a measure adopted prior to July 17, 1982;

(b) Measures relating to any industrial development projects, subsequent to measures giving initial approval to such projects;

(c) Measures adopting proposed budget statements following compliance with procedures set forth in the Nebraska Budget Act;

(d) Measures relating to the immediate preservation of the public peace, health, or safety which have been designated as urgent measures by unanimous vote of those present and voting of the municipal subdivision's governing body and approved by its executive officer;

(e) Measures relating to projects for which notice has been given as provided for in subsection (4) of this section and for which a sufficient referendum petition was not filed within the time limit stated in such notice or which received voter approval after the filing of such petition;

(f) Resolutions directing the city clerk to cause measures to be submitted to a vote of the people at a special election as provided in sections 18-2524 and 18-2529;

(g) Resolutions ordering an earlier effective date for measures enacted by initiative as provided in section 18-2526;

(h) Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by municipalities and which are necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness;

(i) Measures that amend, supplement, change, modify, or repeal a zoning regulation, restriction, or boundary and are subject to protest as

provided in section 14-405 or 19-905; and

(j) Measures relating to personnel issues, including, but not limited to, establishment, modification, or elimination of any personnel position, policy, salary, or benefit and any hiring, promotion, demotion, or termination of personnel; and

(k) Measures relating to matters subject to the provisions of the Municipal Natural Gas System Condemnation Act.

(2) The following measures shall be subject to limited referendum:

(a) Measures in furtherance of a policy of the municipal subdivision or relating to projects previously approved by a measure which was subject to referendum or which was enacted by initiative or has been approved by the voters at an election, except that such measures shall not be subject to referendum or limited referendum for a period of one year after any such policy or project was approved at a referendum election, enacted by initiative, or approved by the voters at an election;

(b) Measures relating to the acquisition, construction, installation, improvement, or enlargement, including the financing or refinancing of the costs, of public ways, public property, utility systems, and other capital projects and measures giving initial approval for industrial development projects;

(c) Measures setting utility system rates and charges, except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidences of indebtedness, and pay rates and salaries for municipal subdivision employees other than the members of the governing body and the executive officer; and

(d) Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by municipalities except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness.

(3) Measures subject to limited referendum shall ordinarily take effect thirty days after their passage by the governing body, including an override of any veto, if necessary. Referendum petitions directed at measures subject to limited referendum shall be filed for signature verification pursuant to section 18-2518 within thirty days after such measure's passage by the governing body, including an override of any veto, if necessary, or after notice is first published pursuant to subdivision (4)(c) of this section. If the necessary number of signatures as provided in section 18-2529 or 18-2530 has been obtained within the time limitation, the effectiveness of the measure shall be suspended unless approved by the voters.

(4) For any measure relating to the acquisition, construction, installation, improvement, or enlargement of public ways, public property, utility systems, or other capital projects or any measure relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act, a municipality may exempt all subsequent measures relating to the same project from the referendum and limited referendum procedures provided for in sections 18-2501 to 18-2537 by the following procedure:

(a) By holding a public hearing on the project, the time and place of such hearing being published at least once not less than five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction;

(b) By passage of a measure approving the project, including an override of a veto if necessary, at a meeting held on any date subsequent to the date of hearing; and

(c) After passage of such measure, including an override of a veto if necessary, by giving notice as follows: (i) For those projects for which applicable statutes require an ordinance or resolution of necessity, creating a district or otherwise establishing the project, notice shall be given for such project by including either as part of such ordinance or resolution or as part of any publicized notice concerning such ordinance or resolution a statement that the project as described in the ordinance or resolution is subject to limited referendum for a period of thirty days after the first publication of such notice and that, after such thirty-day period, the project and measures related to it will not be subject to any further right of referendum; and (ii) for projects for which applicable statutes do not require an ordinance or resolution of necessity, notice shall be given by publication of a notice concerning such projects stating in general terms the nature of the project and the engineer's estimate of costs of such project and stating that the project described in the notice is subject to limited referendum for a period of thirty days after the first publication of such notice and that, after such thirty-day period, the project and measures related to it will not be subject to any further right of referendum. The notice required by subdivision (c)(ii) of this subsection shall be published in at least one

newspaper of general circulation within the municipal subdivision and shall be published not later than fifteen days after passage by the governing body, including an override of a veto, if necessary, of a measure approving the project.

The right of a municipal subdivision to hold such a hearing prior to passage of the measure by the governing body and give such notice after passage of such measure by the governing body to obtain exemption for any particular project in a manner described in this subsection is optional, and no municipal subdivision shall be required to hold such a hearing or give such notice for any particular project.

(5) Nothing in subsections (2) and (4) of this section shall be construed as subjecting to limited referendum any measure related to matters subject to the provisions of the Municipal Natural Gas System Condemnation Act.

(6) All measures, except as provided in subsections (1), (2), and (4) of this section, shall be subject to the referendum procedure at any time after such measure has been passed by the governing body, including an override of a veto, if necessary, or enacted by the voters by initiative.

Sec. 29. Section 19-701, Reissue Revised Statutes of Nebraska, is amended to read:

19-701. Whenever the qualified electors of any city of the primary class, city of the first class, city of the second class, or village shall vote at any general or special election to acquire and appropriate, by an exercise of the power of eminent domain, any waterworks, waterworks system, ~~gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipe lines,~~ electric light plant, electric light and power plant, heating plant, street railway, or street railway system, located or operating within or partly within and partly without such city or village, together with real and personal property needed or useful in connection therewith, if the main part of such works, plant, or system be within any such city or village and even though a franchise for the construction and operating of any such works, plant, or system may or may not have expired, then any such city or village shall possess and have the power and authority, by an exercise of the power of eminent domain to appropriate and acquire, for the public use of any such city or village, any such works, plant, railway, pipelines, or system. ~~If + PROVIDED, that where~~ any public utility properties supplying different kinds of service to such a city or village are operated as one unit and under one management, the right to acquire and appropriate, as provided in sections 19-701 to 19-707, shall cover and extend to the entire property and not to any divided or segregated part thereof, and the duly constituted authorities of any such city or village shall have the power to submit such question or proposition, in the usual manner, to the qualified electors of any such city or village at any general city or village election or at any special city or village election and may submit the proposition in connection with any city or village special election called for any other purpose, and the votes cast thereon shall be canvassed and the result found and declared as in any other city or village election. ~~Such + AND PROVIDED FURTHER, such~~ city or village authorities shall submit such question at any such election whenever a petition asking for such submission, signed by the legal voters of such a city or village equaling in number fifteen percent of the votes cast at the last general city or village election, and filed in the city or village clerk's office at least sixty days before the election at which the submission is asked, but if the question of acquiring any particular plant or system has been submitted once, the same question shall not again be submitted to the voters of such a city or village until two years shall have elapsed from and after the date of the findings by the board of appraisers regarding the value of the property and the city's or village's rejection of the same.

Sec. 30. Section 19-709, Reissue Revised Statutes of Nebraska, is amended to read:

19-709. The mayor and city council of any city of the first or second class or the ~~chairman~~ chairperson and members of the board of trustees of any village shall have power to purchase or appropriate private property or school lands for the use of the city or village for streets, alleys, avenues, parks, parkways, boulevards, sanitary sewers, storm water sewers, public squares, public auditoriums, public fire stations, training facilities for ~~firemen~~ firefighters, market places, public heating plants, power plants, gas works, electric light plants, wells, or waterworks, including mains, pipelines, and settling basins therefor, and to acquire outlets and the use of streams for sewage disposal. When necessary for the proper construction of any of the works above provided, the right of appropriation shall extend such distance as may be necessary from the corporate limits of the city or village,

except that no city of the first or second class or village may acquire through the exercise of the power of eminent domain or otherwise any real estate within the zoning jurisdiction of any other city of the first or second class or village for any of the works enumerated in this section if the use for which the real estate is to be acquired would be contrary to or would not be a use permitted by the existing zoning ordinances and regulations of such other city or village, but such real estate may be acquired within the zoning jurisdiction of another city of the first or second class or village for such contrary or nonpermitted use if the governing body of such other city or village shall approve such acquisition and use. Such power shall also include the right to appropriate for any of the above purposes any plant or works already constructed, or any part thereof, whether the same lies wholly within the city or village or part within and part without the city or village or beyond the corporate limits of such city or village, including all real estate, buildings, machinery, pipes, mains, hydrants, basins, reservoirs, and all appurtenances reasonably necessary thereto and a part thereof, or connected with such works or plants, and all franchises to own and operate the same, if any. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is ~~are~~ applicable.

Sec. 31. Section 76-703, Reissue Revised Statutes of Nebraska, is amended to read:

76-703. Damages to be paid by the condemner for any property including parts of or easements across rights-of-way of a public utility or a railroad taken through the exercise of the power of eminent domain shall be ascertained and determined as provided in sections 76-704 to 76-724, except ~~+~~ PROVIDED, that where if it is sought to condemn the property, or such part thereof as will result in a decrease in the territory or volume of service, of a public utility engaged in the rendition of existing service, such damages shall be ascertained and determined as provided in sections 19-701 to 19-707 and 70-650 or the Municipal Natural Gas System Condemnation Act, when applicable.

Sec. 32. Sections 18 to 22 of this act become operative on July 1, 2003. The other sections of this act become operative on their effective date.

Sec. 33. Original sections 16-645, 16-674, 17-559, 18-2520, 18-2523, 19-701, 19-709, and 76-703, Reissue Revised Statutes of Nebraska, and section 18-2528, Revised Statutes Supplement, 2000, are repealed.