

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 159**

Final Reading

Introduced by Urban Affairs Committee: McGill, 26, Chairperson;  
Ashford, 20; Coash, 27; Cook, 13; Krist, 10;  
Schumacher, 22.

Read first time January 07, 2011

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to cities, villages, and counties; to amend  
2 sections 13-1101, 13-1102, 13-1104, 13-1105, and 13-1109,  
3 Reissue Revised Statutes of Nebraska; to provide for  
4 bonds for nonprofit enterprises; to repeal the original  
5 sections; and to declare an emergency.

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

1           Section 1. Section 13-1101, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           13-1101 As used in sections 13-1101 to 13-1110, unless  
4 the context otherwise requires:

5           (1) Municipality ~~shall mean~~ means any incorporated city  
6 or village in the state, including cities operating under home rule  
7 charters and entities created by interlocal agreements among cities,  
8 villages, and counties;

9           (2) Nonprofit enterprise means any activity, venture,  
10 undertaking, trade, or business conducted or to be conducted by a  
11 nonprofit organization incorporated or authorized to do business in  
12 this state as permitted under its governing documents and the  
13 applicable laws of its jurisdiction of organization;

14           ~~(2)-(3)~~ Project shall mean means (a) any land, building,  
15 or equipment or other improvement, and all real and personal  
16 properties deemed necessary in connection therewith, ~~whether or not~~  
17 ~~now in existence,~~ which shall be suitable for use for manufacturing  
18 or industrial enterprises, ~~or~~ (b) any land, building, or equipment or  
19 other improvement, and all real and personal properties deemed  
20 necessary in connection therewith, which shall be suitable for use as  
21 a nonprofit enterprise or the refinancing of outstanding debt of a  
22 nonprofit enterprise incurred to finance such land, building,  
23 equipment, improvement, or other properties, except that a project  
24 under this subdivision shall not include any portion of such land,  
25 building, equipment, improvement, or other properties or the

1 refinancing thereof to the extent used for sectarian instruction or  
2 study or devotional activities or religious worship, or (c) any land,  
3 building, or improvements located in a blighted area located within a  
4 ~~municipality~~city of the metropolitan, primary, first, or second  
5 class, and all real and personal properties deemed necessary in  
6 connection therewith, ~~whether or not now in existence,~~ which shall be  
7 suitable for any enterprise, including, but not limited to, profit or  
8 nonprofit commercial, business, governmental, or multifamily housing  
9 enterprises;

10 ~~(3)~~(4) Governing body ~~shall mean~~means the board or body  
11 in which the general legislative powers of the municipality or county  
12 are vested;

13 ~~(4)~~(5) Mortgage ~~shall mean~~means a mortgage or a  
14 mortgage and deed of trust, or other security device; and

15 ~~(5)~~(6) Blighted area ~~shall mean~~means an area within a  
16 ~~city or village~~municipality (a) which by reason of the presence of a  
17 substantial number of deteriorated or deteriorating structures,  
18 existence of defective or inadequate street layout, faulty lot layout  
19 in relation to size, adequacy, accessibility, or usefulness,  
20 insanitary or unsafe conditions, deterioration of site or other  
21 improvements, diversity of ownership, tax or special assessment  
22 delinquency exceeding the fair value of the land, defective or  
23 unusual conditions of title, improper subdivision or obsolete  
24 platting, or the existence of conditions which endanger life or  
25 property by fire and other causes, or any combination of such

1 factors, substantially impairs or arrests the sound growth of the  
2 community, retards the provision of housing accommodations, or  
3 constitutes an economic or social liability and is detrimental to the  
4 public health, safety, morals, or welfare in its present condition  
5 and use, and (b) in which there is at least one of the following  
6 conditions: (i) Unemployment in the designated area is at least one  
7 hundred twenty percent of the state or national average; (ii) the  
8 average age of the residential or commercial units in the area is at  
9 least forty years; (iii) more than half of the plotted and subdivided  
10 property in an area is unimproved land that has been within the  
11 municipality for forty years and has remained unimproved during that  
12 time; (iv) the per capita income of the area is lower than the  
13 average per capita income of the municipality in which the area is  
14 designated; or (v) ~~that~~ the area has had either stable or decreasing  
15 population based on the last two decennial censuses. In no event  
16 shall a city of the metropolitan, primary, or first class designate  
17 more than thirty-five percent of the city as blighted, a city of the  
18 second class shall not designate an area larger than fifty percent of  
19 the city as blighted, and a village shall not designate an area  
20 larger than one hundred percent of the village as blighted.

21           Sec. 2. Section 13-1102, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           13-1102 (1) In addition to any other powers which it may  
24 ~~now~~ have, each municipality and each county shall have without any  
25 other authority the following powers:

1           ~~(1)~~-(a) To acquire, whether by construction, purchase,  
2     devise, gift, or lease, or any one or more of such methods, one or  
3     more projects, which shall be located within this state, and may be  
4     located within, without, partially within, or partially without the  
5     municipality or county;

6           ~~(2)~~-(b) To lease to others any or all of its projects for  
7     such rentals and upon such terms and conditions as the governing body  
8     may deem advisable and as shall not conflict with ~~the provisions of~~  
9     sections 13-1101 to 13-1110;

10          ~~(3)~~-(c) To finance the acquisition, construction,  
11     rehabilitation, or purchase of projects in blighted areas. The power  
12     to finance such projects in blighted areas ~~shall mean and include~~  
13     means and includes the power to enter into any type of agreement,  
14     including a loan agreement, when the other party to the agreement  
15     agrees ~~(a)~~-(i) to use the proceeds of money provided under the  
16     agreement to pay the costs of such acquisition, construction,  
17     rehabilitation, or purchase and any costs incident to the issuance of  
18     the related bonds and the funding of any reserve funds, ~~(b)~~-(ii) to  
19     be bound by the terms of the Age Discrimination in Employment Act,  
20     the Nebraska Fair Employment Practice Act, and sections 48-1219 to  
21     48-1227, regardless of the number of employees, and ~~(e)~~-(iii) to make  
22     payments to the municipality or county sufficient to enable it to pay  
23     on a timely basis all principal, redemption premiums, and interest on  
24     the related revenue bonds issued to provide such financing, and any  
25     amounts necessary to repay such municipality or county for any and

1 all costs incurred by it that are incidental to such financing. Title  
2 to any such project in a blighted area need not be in the name of the  
3 municipality or county, but may be in the name of a private party;

4 (d) To acquire, own, develop, lease, or finance or  
5 refinance the acquisition, construction, rehabilitation, or purchase  
6 of one or more projects for use as a nonprofit enterprise, regardless  
7 of whether such project or projects are within a blighted area. Such  
8 projects shall be located within this state and may be located  
9 within, without, partially within, or partially without the  
10 municipality or county; provided, for any project located without the  
11 municipality or county, such municipality or county shall find that a  
12 reasonable relationship exists between such municipality or county  
13 and the project, borrower, or other party or parties to the financing  
14 agreement, as applicable. The power to finance such projects means  
15 and includes the power to enter into any type of agreement, including  
16 a loan agreement, when the other party to the agreement agrees (i) to  
17 use the proceeds of money provided under the agreement to pay the  
18 costs of such acquisition, construction, rehabilitation, or purchase  
19 and any costs incident to the issuance of the related bonds and the  
20 funding of any reserve funds and (ii) to make payments to the  
21 municipality or county sufficient to enable it to pay on a timely  
22 basis all principal, redemption premiums, and interest on the related  
23 revenue bonds issued to provide such financing and any amounts  
24 necessary to repay such municipality or county for any and all costs  
25 incurred by it that are incidental to such financing. Title to any

1 such project need not be in the name of the municipality or county  
2 but may be in the name of a private party;

3 ~~(4)~~ (e) To issue revenue bonds for the purpose of  
4 defraying the cost of acquiring, improving, or financing any project  
5 or projects, including the cost of any real estate previously  
6 purchased and used for such project or projects, or the cost of any  
7 option in connection with acquiring such property, and to secure the  
8 payment of such bonds as provided in sections 13-1101 to 13-1110,  
9 which revenue bonds may be issued in two or more series or issues  
10 where deemed advisable, and each such series or issue may contain  
11 different maturity dates, interest rates, priorities on revenue  
12 available for payment of such bonds and priorities on securities  
13 available for guaranteeing payment thereof, and such other differing  
14 terms and conditions as are deemed necessary and are not in conflict  
15 with ~~the provisions of~~ sections 13-1101 to 13-1110; and

16 ~~(5)~~ (f) To sell and convey any real or personal property  
17 acquired as provided by subdivision ~~(1)~~ (1)(a) of this section, and  
18 make such order respecting the same as may be deemed conducive to the  
19 best interest of the municipality or county, except that such sale or  
20 conveyance shall be subject to the terms of any lease but shall be  
21 free and clear of any other encumbrance.

22 (2) No municipality or county shall have the power to (a)  
23 operate any project, referred to in this section, as a business or in  
24 any manner except as the lessor thereof, (b) lease any project  
25 acquired under powers conferred by this section for use principally

1 for commercial feeding of livestock, (c) issue bonds under this  
2 section principally for the purpose of financing the construction or  
3 acquisition of commercial feeding facilities for livestock, or (d)  
4 acquire any project or any part thereof by condemnation.

5 Sec. 3. Section 13-1104, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 13-1104 (1) The principal of and interest on any bonds  
8 issued under the authority of sections 13-1101 to 13-1110 (a) shall  
9 be secured by a pledge of the revenue out of which such bonds shall  
10 be made payable, (b) may be secured by a mortgage covering all or any  
11 part of the project, ~~and~~(c) may be secured by a pledge of the lease  
12 of such project or by any related financing agreement, or (d) may be  
13 secured by such other security device as may be deemed most  
14 advantageous by the issuing authority and other parties to the  
15 transaction.

16 (2) The proceedings, under which the bonds are authorized  
17 to be issued under ~~the provisions of~~ sections 13-1101 to 13-1110, and  
18 any mortgage given to secure the same may contain any agreements and  
19 provisions customarily contained in instruments securing bonds,  
20 including, without limiting the generality of the foregoing,  
21 provisions respecting (a) the fixing and collection of rents for any  
22 project covered by such proceedings or mortgage, (b) the terms to be  
23 incorporated in the lease or financing of such project, (c) the  
24 maintenance and insurance of such project, (d) the creation and  
25 maintenance of special funds from the revenue of such project, and



1 (e) the rights and remedies available in the event of a default to  
2 the bondholders or to the trustee under a mortgage, all as the  
3 governing body shall deem advisable and as shall not be in conflict  
4 with ~~the provisions of sections 13-1101 to 13-1110.~~ In ~~Provided,~~  
5 ~~that in~~ making any such agreements or provisions, a municipality or  
6 county shall not have the power to obligate itself, except with  
7 respect to the project and the application of the revenue therefrom,  
8 and shall not have the power to incur a pecuniary liability or a  
9 charge upon its general credit or against its taxing powers.

10 (3) The proceedings authorizing any bonds under ~~the~~  
11 ~~provisions of sections 13-1101 to 13-1110~~ and any mortgage securing  
12 such bonds may provide that, in the event of a default in the payment  
13 of the principal of or the interest on such bonds or in the  
14 performance of any agreement contained in such proceedings or  
15 mortgage, such payment and performance may be enforced by mandamus or  
16 by the appointment of a receiver in equity with power to charge and  
17 collect rents and to apply the revenue from the project in accordance  
18 with such proceedings or the provisions of such mortgage.

19 (4) Any mortgage, made under ~~the provisions of sections~~  
20 13-1101 to 13-1110, to secure bonds issued thereunder, may also  
21 provide that, in the event of a default in the payment thereof or the  
22 violation of any agreement contained in the mortgage, the mortgage  
23 may be foreclosed and sold under proceedings in equity or in any  
24 other manner now or hereafter permitted by law. Such mortgage may  
25 also provide that any trustee under such mortgage or the holder of

1 any of the bonds secured thereby may become the purchaser at any  
2 foreclosure sale if it is the highest bidder therefor. No breach of  
3 any such agreement shall impose any pecuniary liability upon a  
4 municipality or county or any charge upon their general credit or  
5 against their taxing powers.

6 Sec. 4. Section 13-1105, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 13-1105 (1) Prior to the leasing or financing of any  
9 project, the governing body must determine and find the following:  
10 The amount necessary to pay the principal of and the interest on the  
11 bonds proposed to be issued to finance such project; the amount  
12 necessary to be paid into any reserve funds which the governing body  
13 may deem it advisable to establish in connection with the retirement  
14 of the proposed bonds and the maintenance of the project including  
15 taxes; and, with respect to leases, unless the terms under which the  
16 project is to be leased provide that the lessee shall maintain the  
17 project and carry all proper insurance with respect thereto, the  
18 estimated cost of maintaining the project in good repair and keeping  
19 it properly insured.

20 (2) The determinations and findings of the governing  
21 body, required to be made by subsection (1) of this section, shall be  
22 set forth in the proceedings under which the proposed bonds are to be  
23 issued. Prior to the issuance of the bonds authorized by sections  
24 13-1101 to 13-1110, the municipality or county shall (a) lease the  
25 project to a lessee or lessees under an agreement conditioned upon

1 completion of the project and providing for payment to the  
2 municipality or county of such rentals as, upon the basis of such  
3 determinations and findings, will be sufficient (i) to pay the  
4 principal of and interest on the bonds issued to finance the project,  
5 (ii) to pay the taxes on the project, (iii) to build up and maintain  
6 any reserves deemed by the governing body to be advisable in  
7 connection therewith, and (iv) unless the agreement of lease  
8 obligates the lessees to pay for the maintenance and insurance of the  
9 project, to pay the costs of maintaining the project in good repair  
10 and keeping it properly insured or (b) enter into a financing  
11 agreement pursuant to subdivision ~~(3)~~(1)(c) or (d) of section  
12 13-1102. Subject to the limitations of sections 13-1101 to 13-1110,  
13 the lease or financing agreement or extensions or modifications  
14 thereof may contain such other terms and conditions as may be  
15 mutually acceptable to the parties. Notwithstanding, ~~and~~  
16 ~~notwithstanding~~ any other provisions of law relating to the sale of  
17 property owned by municipalities and counties, any such lease may  
18 contain an option for the lessees to purchase the project on such  
19 terms and conditions as may be mutually acceptable to the parties.

20 (3) At a public hearing or at the adjournment of such  
21 hearing, the governing body of the city in which the proposed project  
22 is located shall determine whether the location of the proposed  
23 project is within a blighted area and whether the proposed project is  
24 within the development plan or plans for the area. Notice of the time  
25 and place of the hearing shall be published at least two times not

1 less than seven days prior to the hearing in a legal newspaper having  
2 a general circulation within the boundaries of the city. Upon a  
3 favorable resolution by the governing body of the city where the  
4 proposed project is located, the governing body of the city or county  
5 may proceed to issue bonds.

6 (4) The requirements for notice and public hearing as set  
7 forth in subsection (3) of this section shall not apply to projects  
8 for manufacturing or industrial enterprises or for nonprofit  
9 enterprises as described in subdivision (3)(a) or (b) of section  
10 13-1101 or refunding bonds authorized under section 13-1106.

11 Sec. 5. Section 13-1109, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 ~~13-1109 Neither sections~~ (1) Sections 13-1101 to 13-1110  
14 ~~nor anything herein contained shall not be construed as a restriction~~  
15 or limitation upon any powers which a municipality or county might  
16 otherwise have under any laws of this state, but shall be construed  
17 as cumulative.

18 (2) Sections 13-1101 to 13-1110 shall be full authority  
19 for the exercise of the powers described in such sections by a  
20 municipality or county, and no action, proceeding, or election shall  
21 be required prior to the exercise of such powers under such sections  
22 or to authorize the exercise of any of the powers granted in such  
23 sections, except as specifically provided in such sections, any  
24 provision of law applicable to a municipality or county to the  
25 contrary notwithstanding. No proceedings for the issuance of bonds of

1 a municipality or county shall be required other than those required  
2 by sections 13-1101 to 13-1110, and the provisions of all other laws  
3 and charters of any municipality or county, if any, relative to the  
4 terms and conditions for the acquisition, leasing, financing  
5 construction, rehabilitation, or purchase of projects as provided in  
6 such sections and the issuance, payment, redemption, registration,  
7 sale, or delivery of bonds by a municipality or county shall not be  
8 applicable to bonds issued by a municipality or county pursuant to  
9 such sections. No municipality, county, or governing body or officer  
10 thereof shall be subject to the Securities Act of Nebraska with  
11 respect to any revenue bonds issued under sections 13-1101 to  
12 13-1110. Insofar as sections 13-1101 to 13-1110 are inconsistent with  
13 the provisions of any other law or of any law otherwise applicable to  
14 a municipality or county, if any, sections 13-1101 to 13-1110 shall  
15 be controlling.

16 (3) In any suit, action, or proceeding involving the  
17 validity or enforceability of any bond of a municipality or county or  
18 the security therefor brought after the lapse of thirty days after  
19 the issuance of such bonds has been authorized, any such bond  
20 reciting in substance that it has been authorized by the municipality  
21 or county to aid in financing a project shall be conclusively deemed  
22 to have been authorized for such purpose and such project shall be  
23 conclusively deemed to have been planned, located, and carried out in  
24 accordance with sections 13-1101 to 13-1110.

25 (4) In any suit, action, or proceeding involving the

1 validity or enforceability of any agreement of a municipality or  
2 county brought after the lapse of thirty days after the agreement has  
3 been formally entered into, any such agreement reciting in substance  
4 that it has been entered into by the municipality or county to  
5 provide financing for a project shall be conclusively deemed to have  
6 been entered into for such purpose and such project shall be  
7 conclusively deemed to have been planned, located, and carried out in  
8 accordance with sections 13-1101 to 13-1110.

9           Sec. 6. Original sections 13-1101, 13-1102, 13-1104,  
10 13-1105, and 13-1109, Reissue Revised Statutes of Nebraska, are  
11 repealed.

12           Sec. 7. Since an emergency exists, this act takes effect  
13 when passed and approved according to law.