

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 159**

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; and to repeal the  
5 original sections.  
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;

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

12           ~~(2)-(3) Project shall mean~~ means (a) any land, building,  
13 or equipment or other improvement, and all real and personal  
14 properties deemed necessary in connection therewith, ~~whether or not~~  
15 ~~now in existence,~~ which shall be suitable for use for manufacturing  
16 or industrial enterprises, ~~or~~ (b) any land, building, or equipment or  
17 other improvement, and all real and personal properties deemed  
18 necessary in connection therewith, which shall be suitable for use as  
19 a nonprofit enterprise or the refinancing of outstanding debt of a  
20 nonprofit enterprise incurred to finance such land, building,  
21 equipment, improvement, or other properties, provided that a project  
22 under this subdivision shall not include any portion of such land,  
23 building, equipment, improvement, or other properties or the  
24 refinancing thereof to the extent used for sectarian instruction or  
25 study or devotional activities or religious worship, or (c) any land,

1 building, or improvements located in a blighted area located within a  
2 ~~municipality~~ city of the metropolitan, primary, first, or second  
3 class, and all real and personal properties deemed necessary in  
4 connection therewith, ~~whether or not now in existence~~, which shall be  
5 suitable for any enterprise, including, but not limited to, profit or  
6 nonprofit commercial, business, governmental, or multifamily housing  
7 enterprises;

8           ~~(3)~~ (4) ~~Governing body shall mean~~ means the board or body  
9 in which the general legislative powers of the municipality or county  
10 are vested;

11           ~~(4)~~ (5) ~~Mortgage shall mean~~ means a mortgage or a  
12 mortgage and deed of trust, or other security device; and

13           ~~(5)~~ (6) ~~Blighted area shall mean~~ means an area within a  
14 ~~city or village~~ municipality (a) which by reason of the presence of a  
15 substantial number of deteriorated or deteriorating structures,  
16 existence of defective or inadequate street layout, faulty lot layout  
17 in relation to size, adequacy, accessibility, or usefulness,  
18 insanitary or unsafe conditions, deterioration of site or other  
19 improvements, diversity of ownership, tax, or special assessment  
20 delinquency exceeding the fair value of the land, defective or  
21 unusual conditions of title, improper subdivision or obsolete  
22 platting, or the existence of conditions which endanger life or  
23 property by fire and other causes, or any combination of such  
24 factors, substantially impairs or arrests the sound growth of the  
25 community, retards the provision of housing accommodations, or

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

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

21           13-1102 (1) In addition to any other powers which it may  
22 ~~now~~ have, each municipality and each county shall have without any  
23 other authority the following powers:

24           ~~(1)~~ (a) To acquire, whether by construction, purchase,  
25 devise, gift, or lease, or any one or more of such methods, one or

1 more projects, which shall be located within this state, and may be  
2 located within, without, partially within, or partially without the  
3 municipality or county;

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

8 ~~(3)-(c)~~ To finance the acquisition, construction,  
9 rehabilitation, or purchase of projects in blighted areas. The power  
10 to finance such projects in blighted areas ~~shall mean and include~~  
11 means and includes the power to enter into any type of agreement,  
12 including a loan agreement, when the other party to the agreement  
13 agrees ~~(a)-(i)~~ to use the proceeds of money provided under the  
14 agreement to pay the costs of such acquisition, construction,  
15 rehabilitation, or purchase and any costs incident to the issuance of  
16 the related bonds and the funding of any reserve funds, ~~(b)-(ii)~~ to  
17 be bound by the terms of the Age Discrimination in Employment Act,  
18 the Nebraska Fair Employment Practice Act, and sections 48-1219 to  
19 48-1227, regardless of the number of employees, and ~~(c)-(iii)~~ to make  
20 payments to the municipality or county sufficient to enable it to pay  
21 on a timely basis all principal, redemption premiums, and interest on  
22 the related revenue bonds issued to provide such financing, and any  
23 amounts necessary to repay such municipality or county for any and  
24 all costs incurred by it that are incidental to such financing. Title  
25 to any such project in a blighted area need not be in the name of the

1 municipality or county, but may be in the name of a private party;

2 (d) To acquire, own, develop, lease, or finance or  
3 refinance the acquisition, construction, rehabilitation, or purchase  
4 of one or more projects for use as a nonprofit enterprise, regardless  
5 of whether such project or projects are within a blighted area. Such  
6 projects shall be located within this state and may be located  
7 within, without, partially within, or partially without the  
8 municipality or county. The power to finance such projects means and  
9 includes the power to enter into any type of agreement, including a  
10 loan agreement, when the other party to the agreement agrees (i) to  
11 use the proceeds of money provided under the agreement to pay the  
12 costs of such acquisition, construction, rehabilitation, or purchase  
13 and any costs incident to the issuance of the related bonds and the  
14 funding of any reserve funds and (ii) to make payments to the  
15 municipality or county sufficient to enable it to pay on a timely  
16 basis all principal, redemption premiums, and interest on the related  
17 revenue bonds issued to provide such financing and any amounts  
18 necessary to repay such municipality or county for any and all costs  
19 incurred by it that are incidental to such financing. Title to any  
20 such project need not be in the name of the municipality or county  
21 but may be in the name of a private party;

22 ~~(4)~~ (e) To issue revenue bonds for the purpose of  
23 defraying the cost of acquiring, improving, or financing any project  
24 or projects, including the cost of any real estate previously  
25 purchased and used for such project or projects, or the cost of any

1 option in connection with acquiring such property, and to secure the  
2 payment of such bonds as provided in sections 13-1101 to 13-1110,  
3 which revenue bonds may be issued in two or more series or issues  
4 where deemed advisable, and each such series or issue may contain  
5 different maturity dates, interest rates, priorities on revenue  
6 available for payment of such bonds and priorities on securities  
7 available for guaranteeing payment thereof, and such other differing  
8 terms and conditions as are deemed necessary and are not in conflict  
9 with ~~the provisions of~~ sections 13-1101 to 13-1110; and

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

16 (2) No municipality or county shall have the power to (a)  
17 operate any project, referred to in this section, as a business or in  
18 any manner except as the lessor thereof, (b) lease any project  
19 acquired under powers conferred by this section for use principally  
20 for commercial feeding of livestock, (c) issue bonds under this  
21 section principally for the purpose of financing the construction or  
22 acquisition of commercial feeding facilities for livestock, or (d)  
23 acquire any project or any part thereof by condemnation.

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

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

10                   (2) The proceedings, under which the bonds are authorized  
11 to be issued under ~~the provisions of~~ sections 13-1101 to 13-1110, and  
12 any mortgage given to secure the same may contain any agreements and  
13 provisions customarily contained in instruments securing bonds,  
14 including, without limiting the generality of the foregoing,  
15 provisions respecting (a) the fixing and collection of rents for any  
16 project covered by such proceedings or mortgage, (b) the terms to be  
17 incorporated in the lease or financing of such project, (c) the  
18 maintenance and insurance of such project, (d) the creation and  
19 maintenance of special funds from the revenue of such project, and  
20 (e) the rights and remedies available in the event of a default to  
21 the bondholders or to the trustee under a mortgage, all as the  
22 governing body shall deem advisable and as shall not be in conflict  
23 with ~~the provisions of~~ sections 13-1101 to 13-1110. In ; ~~Provided,~~  
24 ~~that in~~ making any such agreements or provisions, a municipality or  
25 county shall not have the power to obligate itself, except with



1 respect to the project and the application of the revenue therefrom,  
2 and shall not have the power to incur a pecuniary liability or a  
3 charge upon its general credit or against its taxing powers.

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

13 (4) Any mortgage~~,~~ made under ~~the provisions of~~ sections  
14 13-1101 to 13-1110~~,~~ to secure bonds issued thereunder~~,~~ may also  
15 provide that, in the event of a default in the payment thereof or the  
16 violation of any agreement contained in the mortgage, the mortgage  
17 may be foreclosed and sold under proceedings in equity or in any  
18 other manner now or hereafter permitted by law. Such mortgage may  
19 also provide that any trustee under such mortgage or the holder of  
20 any of the bonds secured thereby may become the purchaser at any  
21 foreclosure sale if it is the highest bidder therefor. No breach of  
22 any such agreement shall impose any pecuniary liability upon a  
23 municipality or county or any charge upon their general credit or  
24 against their taxing powers.

25 Sec. 4. Section 13-1105, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           13-1105 (1) Prior to the leasing or financing of any  
3 project, the governing body must determine and find the following:  
4 The amount necessary to pay the principal of and the interest on the  
5 bonds proposed to be issued to finance such project; the amount  
6 necessary to be paid into any reserve funds which the governing body  
7 may deem it advisable to establish in connection with the retirement  
8 of the proposed bonds and the maintenance of the project including  
9 taxes; and, with respect to leases, unless the terms under which the  
10 project is to be leased provide that the lessee shall maintain the  
11 project and carry all proper insurance with respect thereto, the  
12 estimated cost of maintaining the project in good repair and keeping  
13 it properly insured.

14           (2) The determinations and findings of the governing  
15 body, required to be made by subsection (1) of this section, shall be  
16 set forth in the proceedings under which the proposed bonds are to be  
17 issued. Prior to the issuance of the bonds authorized by sections  
18 13-1101 to 13-1110, the municipality or county shall (a) lease the  
19 project to a lessee or lessees under an agreement conditioned upon  
20 completion of the project and providing for payment to the  
21 municipality or county of such rentals as, upon the basis of such  
22 determinations and findings, will be sufficient (i) to pay the  
23 principal of and interest on the bonds issued to finance the project,  
24 (ii) to pay the taxes on the project, (iii) to build up and maintain  
25 any reserves deemed by the governing body to be advisable in

1 connection therewith, and (iv) unless the agreement of lease  
2 obligates the lessees to pay for the maintenance and insurance of the  
3 project, to pay the costs of maintaining the project in good repair  
4 and keeping it properly insured or (b) enter into a financing  
5 agreement pursuant to subdivision ~~(3)~~(1)(c) or (d) of section  
6 13-1102. Subject to the limitations of sections 13-1101 to 13-1110,  
7 the lease or financing agreement or extensions or modifications  
8 thereof may contain such other terms and conditions as may be  
9 mutually acceptable to the parties. Notwithstanding, ~~and~~  
10 ~~notwithstanding~~ any other provisions of law relating to the sale of  
11 property owned by municipalities and counties, any such lease may  
12 contain an option for the lessees to purchase the project on such  
13 terms and conditions as may be mutually acceptable to the parties.

14 (3) At a public hearing or at the adjournment of such  
15 hearing, the governing body of the city in which the proposed project  
16 is located shall determine whether the location of the proposed  
17 project is within a blighted area and whether the proposed project is  
18 within the development plan or plans for the area. Notice of the time  
19 and place of the hearing shall be published at least two times not  
20 less than seven days prior to the hearing in a legal newspaper having  
21 a general circulation within the boundaries of the city. Upon a  
22 favorable resolution by the governing body of the city where the  
23 proposed project is located, the governing body of the city or county  
24 may proceed to issue bonds.

25 (4) The requirements for notice and public hearing as set

1 forth in subsection (3) of this section shall not apply to projects  
2 for manufacturing or industrial enterprises or for nonprofit  
3 enterprises as described in subdivision (3)(a) or (b) of section  
4 13-1101 or refunding bonds authorized under section 13-1106.

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

7           ~~13-1109 Neither sections~~ (1) Sections 13-1101 to 13-1110  
8 ~~nor anything herein contained shall not~~ be construed as a restriction  
9 or limitation upon any powers which a municipality or county might  
10 otherwise have under any laws of this state, but shall be construed  
11 as cumulative.

12           (2) Sections 13-1101 to 13-1110 shall be full authority  
13 for the exercise of the powers described in such sections by a  
14 municipality or county, and no action, proceeding, or election shall  
15 be required prior to the exercise of such powers under such sections  
16 or to authorize the exercise of any of the powers granted in such  
17 sections, except as specifically provided in such sections, any  
18 provision of law applicable to a municipality or county to the  
19 contrary notwithstanding. No proceedings for the issuance of bonds of  
20 a municipality or county shall be required other than those required  
21 by sections 13-1101 to 13-1110, and the provisions of all other laws  
22 and charters of any municipality or county, if any, relative to the  
23 terms and conditions for the acquisition, leasing, financing  
24 construction, rehabilitation, or purchase of projects as provided in  
25 such sections and the issuance, payment, redemption, registration,

1 sale, or delivery of bonds by a municipality or county shall not be  
2 applicable to bonds issued by a municipality or county pursuant to  
3 such sections. Insofar as sections 13-1101 to 13-1110 are  
4 inconsistent with the provisions of any other law or of any law  
5 otherwise applicable to a municipality or county, if any, sections  
6 13-1101 to 13-1110 shall be controlling.

7           (3) In any suit, action, or proceeding involving the  
8 validity or enforceability of any bond of a municipality or county or  
9 the security therefor brought after the lapse of thirty days after  
10 the issuance of such bonds has been authorized, any such bond  
11 reciting in substance that it has been authorized by the municipality  
12 or county to aid in financing a project shall be conclusively deemed  
13 to have been authorized for such purpose and such project shall be  
14 conclusively deemed to have been planned, located, and carried out in  
15 accordance with sections 13-1101 to 13-1110.

16           (4) In any suit, action, or proceeding involving the  
17 validity or enforceability of any agreement of a municipality or  
18 county brought after the lapse of thirty days after the agreement has  
19 been formally entered into, any such agreement reciting in substance  
20 that it has been entered into by the municipality or county to  
21 provide financing for a project shall be conclusively deemed to have  
22 been entered into 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           Sec. 6. Original sections 13-1101, 13-1102, 13-1104,

1 13-1105, and 13-1109, Reissue Revised Statutes of Nebraska, are  
2 repealed.