

LEGISLATIVE BILL 764

Approved by the Governor February 19, 1992

Introduced by Schellpeper, 18

AN ACT relating to sanitary and improvement districts; to amend sections 31-735 and 31-769, Reissue Revised Statutes of Nebraska, 1943, and section 31-727.03, Revised Statutes Supplement, 1991; to change the contents of a statement which is required to be filed; to change election procedures; to authorize detachment of certain property; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 31-727.03, Revised Statutes Supplement, 1991, be amended to read as follows:

31-727.03. On or before December 31 of each year, the clerk of each sanitary and improvement district shall file with the register of deeds or, if none, the county clerk of the county or counties in which the sanitary and improvement district is located a statement updated each December 31 containing the following information:

(1) The names of the members of the current board of trustees of the district;

(2) ~~the~~ The names of the current attorney, accountant, and fiscal agent of the district;

(3) ~~the~~ The warrant and the bond principal indebtedness of the district as of the preceding ~~September~~ June 30. Such statement shall contain an acknowledgment that the warrant and indebtedness are reflective of such date; and

(4) ~~the~~ The current tax levy of the district as of December 31.

For any late filing of the statement, the sanitary and improvement district shall be assessed a late fee of ten dollars per day, not to exceed a total of three hundred dollars for each late filing.

The real estate broker or salesperson or, if none, the owner shall distribute the most recent statement filed in accordance with this section to any prospective purchaser of any real estate located within a sanitary and improvement district. The statement

shall be distributed on or before the date on which the purchaser becomes obligated to purchase such real estate. The exclusive remedy for failure to provide such statements shall be an action for damages, and any such failure shall not affect title to the real estate or the validity of the conveyance.

Sec. 2. That section 31-735, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-735. (1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. The name of such candidate shall appear on only one ballot. The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. Such trustees shall be owners of real estate located in the district. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the board of trustees election commissioner or county clerk, which date shall be not more than sixty-five seventy-five days prior to the election.

(2) For any sanitary and improvement district,

persons whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote upon establishing their right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, except that if more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees, and at the election held six years after the first election of trustees, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district, the five members shall be elected by the legal property owners of all property within such

district as provided in this section. Any corporation, whether public, private, or municipal, owning any land or lot in the district may vote at such election the same as an individual. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before ~~June 30~~ July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the ~~board of trustees election commissioner or county clerk, which date shall not be more than seventy-five days prior to the election.~~ The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned to the election commissioner or county clerk no later than 10 a.m. of the first Thursday following the election.

Sec. 3. That section 31-769, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-769. (1) Whenever a majority of the board of trustees or the administrator of any sanitary and improvement district organized under the provisions of Chapter 31, article 7, ~~shall desire~~ desires that any property within the district ~~shall~~ be detached from the district, the trustees or the administrator shall first propose a resolution declaring the advisability of such detachment and setting out verbatim the terms and conditions thereof, and also setting out the time and place when the board of trustees or the administrator ~~shall~~ will meet to consider the adoption of such resolution. Notice of the time and place when such resolution ~~shall be~~ is set for consideration shall be published the same day each week for two consecutive weeks in a newspaper of general circulation published in the county where the district was organized, which publication shall contain the entire wording of the proposed resolution. If any part of the district lies within the area of the zoning jurisdiction of any municipality, then the trustees or the administrator shall mail a copy of such proposed resolution to such municipality within five days after the date of first publication of such resolution. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing on objections to the passage of the resolution, at which hearing the owners of property within the district, or any municipality if any part of such district lies within the area of its zoning jurisdiction, may appear and make objections to the proposed resolution. If the owners representing a majority of the area of real estate within the district fail to sign and present to the board of trustees or the administrator, on or prior to the hearing date, a written petition opposing the resolution, then a majority of the board of trustees or the administrator may pass the resolution and thereby adopt the proposed detachment, except ~~PROVIDED~~, that no such resolution shall be adopted if the district is then indebted on any outstanding bonds or warrants of the district unless the holders of such bonds and warrants ~~shall~~ all sign written consents to the detachment prior to the adoption of the resolution of detachment. If the petition opposing such resolution is signed by property owners representing a majority of the area of real estate within the district and presented to the board of trustees or to the administrator on or prior to the

hearing date, then the board of trustees or the administrator shall not adopt such resolution. After the board of trustees or the administrator has adopted such resolution of detachment, the clerk of the district shall prepare and file a certified copy of such resolution of detachment in the office of the county clerk where the original articles of association were filed and in the office of the Secretary of State, and thereupon the area detached shall become excluded and detached from the boundaries of the district.

(2) The owner of a discrete tract of land which is part of a sanitary and improvement district but which is not connected to the main area of the district may petition the board of trustees or the administrator of the district to have the property detached from the district. Following receipt of the petition, the board of trustees or the administrator shall propose a resolution declaring the advisability of such detachment and setting out verbatim the terms and conditions thereof and also setting out the time and place when the board of trustees or the administrator will meet to consider the adoption of such resolution. Notice of the time and place for such consideration shall be published as provided in subsection (1) of this section. If any part of the district lies in whole or in part within the area of the zoning jurisdiction of any municipality, then the board of trustees or the administrator shall mail a copy of such proposed resolution to such municipality within five days after the date of first publication of such resolution. At the hearing for consideration of such resolution, the board of trustees or the administrator shall determine if the tract of land proposed for detachment:

(a) Has an area of twenty-five acres or more;

(b) Is wholly detached from the main area of the sanitary and improvement district and separated from such district by a distance of at least one thousand feet at the nearest points;

(c) Is undeveloped and predominantly devoted to agricultural uses; and

(d) Has no improvements placed upon it by the sanitary and improvement district and receives no current services from the district.

If the administrator or the board of trustees by majority vote determines that the tract in question meets all of the conditions provided in subdivisions (a) through (d) of this subsection, the resolution shall be adopted, except that no such resolution shall be adopted if the district is then indebted on any outstanding

bonds or warrants of the district unless the holders of such bonds and warrants all sign written consents to the detachment. After the board of trustees or the administrator has adopted such resolution of detachment, the clerk of the district shall prepare and file a certified copy of such resolution of detachment in the office of the county clerk where the original articles of association were filed and in the office of the Secretary of State, and thereupon the area detached shall become excluded and detached from the boundaries of the district.

Sec. 4. That original sections 31-735 and 31-769, Reissue Revised Statutes of Nebraska, 1943, and section 31-727.03, Revised Statutes Supplement, 1991, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.