

LEGISLATIVE BILL 822

Approved by the Governor May 24, 1999

Introduced by Natural Resources Committee: Schrock, 38, Chairperson;
 Bohlke, 33; Bromm, 23; Hudkins, 21; Jones, 43; Preister, 5;
 Stuhr, 24; and Tyson, 19

AN ACT relating to land use; to amend sections 23-114.03, 23-114.05, 54-2401, and 54-2404, Reissue Revised Statutes of Nebraska, and section 23-114, Revised Statutes Supplement, 1998; to provide for temporary zoning regulations as prescribed; to prohibit livestock waste control facilities in certain watersheds; to provide exceptions; to provide powers and duties; to state intent; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. In a county which, prior to January 1, 2000, has appointed a planning commission and is preparing or has adopted a comprehensive development plan that has not been implemented, a county board may adopt temporary zoning regulations by resolution after appropriate notice and hearing. Notice of the hearing shall be given in a newspaper of general circulation in the county at least one time at least ten days prior to the hearing. A copy of the proposed temporary zoning regulations, including any resolution, map, or regulations, shall be available for inspection during regular business hours at the office of the county clerk at least ten days prior to the hearing.

Sec. 2. Temporary zoning regulations adopted pursuant to section 1 of this act:

(1) Shall consist of zoning regulations which have been adopted by or are in use in another county from no more than five of the geographically closest zoned counties. The county board may adopt an entire set of zoning regulations from one county or may adopt portions of the zoning regulations from each county;

(2) May not implement a moratorium on livestock waste control facilities;

(3) May not impact any land use existing and lawful at the time temporary zoning is adopted;

(4) May implement setbacks for livestock operations or livestock facilities of no more than one-half mile from the nearest occupied residence, other than that occupied by the owner or operator, or with the consent of the residence owner; and

(5) May prohibit livestock operations or livestock facilities to be located within one mile of an incorporated city or village or a concentration of ten or more residences within one-quarter square mile.

Sec. 3. Any temporary zoning regulations adopted pursuant to section 1 of this act shall expire July 1, 2001.

Sec. 4. Section 23-114, Revised Statutes Supplement, 1998, is amended to read:

23-114. (1) The county board shall have power: (a) To provide for temporary zoning as provided in sections 1 to 3 of this act; (b) to create a planning commission with the powers and duties set forth in sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376; ~~(c)~~ (c) to make, adopt, amend, extend, and implement a county comprehensive development plan; and ~~(d)~~ (d) to adopt a zoning resolution, which shall have the force and effect of law.

(2) The zoning resolution may regulate and restrict: (a) The location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, house trailers, and automobile trailers; (b) the percentage of lot areas which may be occupied; (c) building setback lines; (d) sizes of yards, courts, and other open spaces; (e) the density of population; (f) the uses of buildings; and (g) the uses of land for agriculture, forestry, recreation, residence, industry, and trade, after considering factors relating to soil conservation, water supply conservation, surface water drainage and removal, or other uses in the unincorporated area of the county.

(3)(a) The county board shall not adopt or enforce any zoning resolution or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the

Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The county board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The county board may also require that manufactured homes meet the following standards:

(i) The home shall have no less than nine hundred square feet of floor area;

(ii) The home shall have no less than an eighteen-foot exterior width;

(iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;

(iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;

(v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and

(vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The county board may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(4) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

(5) Special districts or zones may be established in those areas subject to seasonal or periodic flooding, and such regulations may be applied as will minimize danger to life and property.

(6) The powers conferred by this section shall not be exercised within the limits of any incorporated city or village nor within the area over which a city or village has been granted zoning jurisdiction and is exercising such jurisdiction. At such time as a city or village exercises control over an unincorporated area by the adoption or amendment of a zoning ordinance, the ordinance or amendment shall supersede any resolution or regulation of the county.

Sec. 5. Section 23-114.03, Reissue Revised Statutes of Nebraska, is amended to read:

23-114.03. Zoning regulations shall be adopted or amended by the county board only after the adoption of the county comprehensive development plan by the county board and the receipt of the planning commission's specific recommendations or by adopting temporary zoning as provided in sections 1 to 3 of this act. Such zoning regulations shall be consistent with ~~the~~ an adopted comprehensive development plan and designed for the purpose of promoting the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Nebraska, including, among others, such specific purposes as:

(1) Developing both urban and nonurban areas;

(2) Lessening congestion in the streets or roads;

(3) Reducing the waste of excessive amounts of roads;

(4) Securing safety from fire and other dangers;

(5) Lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters;

(6) Providing adequate light and air;

(7) Preventing excessive concentration of population and excessive and wasteful scattering of population or settlement;

(8) Promoting such distribution of population, such classification of land uses, and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply, and other public requirements;

(9) Protecting the tax base;

- (10) Protecting property against blight and depreciation;
- (11) Securing economy in governmental expenditures;
- (12) Fostering the state's agriculture, recreation, and other industries;
- (13) Encouraging the most appropriate use of land in the county; and
- (14) Preserving, protecting, and enhancing historic buildings, places, and districts.

Within the area of jurisdiction and powers established by section 23-114, the county board may divide the county into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of nonfarm buildings or structures and the use, conditions of use, or occupancy of land. All such regulations shall be uniform for each class or kind of land or buildings throughout each district, but the regulations in one district may differ from those in other districts. An official map or maps indicating the districts and regulations shall be adopted, and within fifteen days after adoption of such regulations or maps, they shall be published in book or pamphlet form or once in a legal newspaper published in and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. Such regulations shall also be spread in the minutes of the proceedings of the county board and such map or maps filed with the county clerk. Nonfarm buildings are all buildings except those buildings utilized for agricultural purposes on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year.

Sec. 6. Section 23-114.05, Reissue Revised Statutes of Nebraska, is amended to read:

23-114.05. The erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile trailer, or land in violation of sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 and sections 1 to 3 of this act or of any regulation made by the county board under such sections shall be a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating such sections or any regulation of the county board or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit shall be guilty of a Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the county board or the proper local authorities of the county, as well as any owner or owners of real estate within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections.

Sec. 7. Section 54-2401, Reissue Revised Statutes of Nebraska, is amended to read:

54-2401. Sections 54-2401 to 54-2414 and sections 9 and 10 of this act shall be known and may be cited as the Livestock Waste Management Act.

Sec. 8. Section 54-2404, Reissue Revised Statutes of Nebraska, is amended to read:

54-2404. (1) When there is a potential for discharge into waters of the state, as determined by the department:

(a) No person shall construct a livestock waste control facility without first obtaining a construction permit from the department; and

(b) No person shall operate a livestock waste control facility without an operating permit or interim use authorization from the department.

(2) Livestock waste control facilities shall be classified according to the maximum number of animal units for which the livestock waste control facility is designed. The council, in adopting rules and regulations under section 54-2413, shall set out the requirements for any livestock waste control facility which is reclassified after permit issuance. Classifications shall be as follows:

(a) A class I livestock waste control facility is designed for one thousand or less animal units;

(b) A class II livestock waste control facility is designed for more than one thousand and five thousand or less animal units;

(c) A class III livestock waste control facility is designed for more than five thousand animal units and twenty thousand or less animal units;

and

(d) A class IV livestock waste control facility is designed for more than twenty thousand animal units.

(3)(a) No new class II, class III, or class IV livestock waste control facility shall be permitted in any part of a watershed that feeds directly or indirectly into a cold water class A stream, as designated under section 9 of this act, except for:

(i) Existing livestock waste control facilities. If an existing livestock operation does not currently have a waste control facility and upon inspection by the department a determination is made that one is necessary, the owner or operator will be required to construct such a facility in accordance with the Livestock Waste Management Act;

(ii) New and expansions to existing livestock waste control facilities for which an application has been received and deemed complete by the department prior to January 1, 1999; and

(iii) Livestock operations that are exempt from permit requirements as set forth in rules and regulations adopted under the act.

(b) The owner or operator of any existing facility shall request the department to inspect the existing facilities and make a determination as to whether the existing facilities meet the requirements for any expansion or whether additional facilities would be needed to accommodate the proposed expansion according to rules and regulations adopted and promulgated by the council.

(c) The department may deny or restrict an application for a permit regarding a transfer or modification of an existing permit based upon the potential degradation of a cold water class A stream.

Sec. 9. A map delineating segments and watershed boundaries for cold water class A streams, as designated prior to the effective date of this act and prepared by the department and the Nebraska Natural Resources Commission, shall be maintained by the department and used by the department for determinations made concerning cold water class A streams under the Livestock Waste Management Act unless changed by the Environmental Quality Council. Beginning on the effective date of this act, the council may designate and may redesignate previously designated waters of this state as cold water class A streams for purposes of the act based on the determination by the council that the waters provide or could provide habitat of sufficient water volume or flow, water quality, substrate composition, and water temperature capable of maintaining year-round populations of cold water biota, including reproduction of a salmonoid (trout) population. The council shall not designate or redesignate a stream as a cold water class A stream unless the stream has supported the reproduction of a salmonoid (trout) population within the previous five years. The department shall revise and maintain the cold water class A stream map to incorporate all designations and redesignations of the council.

Sec. 10. Nothing in section 54-2404 shall be construed to change the zoning authority of a county that existed prior to the effective date of this act.

Sec. 11. Original sections 23-114.03, 23-114.05, 54-2401, and 54-2404, Reissue Revised Statutes of Nebraska, and section 23-114, Revised Statutes Supplement, 1998, are repealed.

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