

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1375**

Introduced by Lowe, 37; at the request of the Governor.

Read first time January 17, 2024

Committee:

1 A BILL FOR AN ACT relating to county government; to amend section  
2 23-114.01, Reissue Revised Statutes of Nebraska; to change powers  
3 and duties of a county planning commission; to change provisions  
4 relating to granting, denying, or applying for a conditional use  
5 permit or special exception as prescribed; to harmonize provisions;  
6 and to repeal the original section.

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

1 Section 1. Section 23-114.01, Reissue Revised Statutes of Nebraska,  
2 is amended to read:

3 23-114.01 (1) In order to avail itself of the powers conferred by  
4 section 23-114, the county board shall appoint a ~~planning commission to~~  
5 ~~be known as the~~ county planning commission. The members of the commission  
6 shall be residents of the county to be planned and shall be appointed  
7 with due consideration to geographical and population factors. Since the  
8 primary focus of concern and control in county planning and land-use  
9 regulatory programs is the unincorporated area, a majority of the members  
10 of the commission shall be residents of unincorporated areas, except that  
11 this requirement shall not apply to joint planning commissions. Members  
12 of the commission shall hold no county or municipal office, except that a  
13 member may also be a member of a city, village, or other type of planning  
14 commission. The term of each member shall be three years, except that  
15 approximately one-third of the members of the first commission shall  
16 serve for terms of one year, one-third for terms of two years, and one-  
17 third for terms of three years. All members shall hold office until their  
18 successors are appointed. Members of the commission may be removed by a  
19 majority vote of the county board for inefficiency, neglect of duty, or  
20 malfeasance in office or other good and sufficient cause upon written  
21 charges being filed with the county board and after a public hearing has  
22 been held regarding such charges. Vacancies occurring otherwise than  
23 through the expiration of terms shall be filled for the unexpired terms  
24 by individuals appointed by the county board. Members of the commission  
25 shall be compensated for their actual and necessary expenses incurred in  
26 connection with their duties in an amount to be fixed by the county  
27 board. Reimbursement for mileage shall be made at the rate provided in  
28 section 81-1176. Each county board may provide a per diem payment for  
29 members of the commission of not to exceed fifteen dollars for each day  
30 that each such member attends meetings of the commission or is engaged in  
31 matters concerning the commission, but no member shall receive more than

1 one thousand dollars in any one year. Such per diem payments shall be in  
2 addition to and separate from compensation for expenses.

3 (2) The commission: (a) ~~shall~~ shall prepare and adopt as its policy  
4 statement a comprehensive development plan and such implemental means as  
5 a capital improvement program, subdivision regulations, building codes,  
6 and a zoning resolution, ~~;~~ (b) shall consult with and advise public  
7 officials and agencies, public utilities, civic organizations,  
8 educational institutions, and citizens relating to the promulgation of  
9 implemental programs, ~~;~~ (c) may delegate authority to any of the groups  
10 named in subdivision (b) of this subsection to conduct studies and make  
11 surveys for the commission, ~~;~~ and (d) shall make preliminary reports on  
12 its findings and accept written public comment ~~hold public hearings~~  
13 before submitting its final reports. The county board shall not hold its  
14 public meetings or take action on matters relating to the comprehensive  
15 development plan, capital improvements, building codes, subdivision  
16 development, or zoning until it has received the recommendations of the  
17 commission.

18 (3)(a) ~~(3)~~ The commission may, with the consent of the governing  
19 body, in its own name (i) make ~~;~~ ~~Make~~ and enter into contracts with  
20 public or private bodies, (ii) ~~;~~ receive contributions, bequests, gifts,  
21 or grants of funds from public or private sources, (iii) ~~;~~ expend the  
22 funds appropriated to it by the county board, (iv) ~~;~~ employ agents and  
23 employees, ~~;~~ and (v) acquire, hold, and dispose of property.

24 (b) The commission may, on its own authority (i) make ~~;~~ ~~Make~~  
25 arrangements consistent with its program, (ii) ~~;~~ conduct or sponsor  
26 special studies or planning work for any public body or appropriate  
27 agency, and (iii) ~~;~~ receive grants, remuneration, or reimbursement for  
28 such studies or work; ~~and at its public hearings, summon witnesses,~~  
29 ~~administer oaths, and compel the giving of testimony.~~

30 (4)(a) ~~The (4) In all counties in the state, the county planning~~  
31 commission may grant conditional uses or special exceptions to property

1 owners for the use of their property if the county board ~~of commissioners~~  
2 ~~or supervisors~~ has officially and generally authorized the commission to  
3 exercise such powers and has approved the standards and procedures the  
4 commission adopted for equitably and judiciously granting such  
5 conditional uses or special exceptions. The granting of a conditional use  
6 permit or special exception shall only allow property owners to put their  
7 property to a special use if it is among those uses specifically  
8 identified in the county zoning regulations as classifications of uses  
9 which may require special conditions or requirements to be met by the  
10 owners before a use permit or building permit is authorized.

11 (b) The applicant for a conditional use permit or special exception  
12 for a livestock operation specifically identified in the county zoning  
13 regulations as a classification of use which may require special  
14 conditions or requirements to be met within an area of a county zoned for  
15 agricultural use may request a determination of the special conditions or  
16 requirements to be imposed by the ~~county planning~~ commission or by the  
17 county board ~~of commissioners or supervisors~~ if the board has not  
18 authorized the commission to exercise such authority. Upon request the  
19 commission or county board shall issue such determination of the special  
20 conditions or requirements to be imposed in a timely manner. Such special  
21 conditions or requirements to be imposed may include, but are not limited  
22 to, the submission of information that may be separately provided to  
23 state or federal agencies in applying to obtain the applicable state and  
24 federal permits, except that the granting of a conditional use permit or  
25 special exception by the commission or county board shall be based solely  
26 on county zoning regulations and not on rules and regulations of such  
27 state and federal agencies, including, but not limited to, rules and  
28 regulations governing water quality. Nothing in this subdivision shall be  
29 construed to relieve the applicant from complying with applicable rules  
30 and regulations of any state or federal agency or with any applicable  
31 state or federal permit requirements.

1           (c) The commission or the county board may request and review, prior  
2 to making a determination of the special conditions or requirements to be  
3 imposed, reasonable information relevant to the conditional use or  
4 special exception. If a determination of the special conditions or  
5 requirements to be imposed has been made, final permit approval may be  
6 withheld subject only to a final review by the commission or county board  
7 to determine whether there is a substantial change in the applicant's  
8 proposed use of the property upon which the determination was based and  
9 that the applicant has met, or will meet, the special conditions or  
10 requirements imposed in the determination. If the commission or county  
11 board determines that the applicant has met or will meet such special  
12 conditions or requirements, the application shall be approved and the  
13 conditional use permit or special exception shall be granted.

14           (d) For purposes of this subsection section, substantial change  
15 shall include any significant alteration in the original application  
16 including a significant change in the design or location of buildings or  
17 facilities, in waste disposal methods or facilities, or in capacity.

18           (5) The power to grant conditional uses or special exceptions as set  
19 forth in subsection (4) of this section shall be the exclusive authority  
20 of the commission, except that the county board ~~of commissioners or~~  
21 ~~supervisors~~ may choose to retain for itself the power to grant  
22 conditional uses or special exceptions for those classifications of uses  
23 specified in the county zoning regulations. The county board ~~of~~  
24 ~~commissioners or supervisors~~ may exercise such power if it has formally  
25 adopted standards and procedures for granting such conditional uses or  
26 special exceptions in a manner that is equitable and which will promote  
27 the public interest. In any county other than a county in which is  
28 located a city of the primary class, an appeal of a decision by the  
29 ~~county planning~~ commission or county board ~~of commissioners or~~  
30 ~~supervisors~~ regarding a conditional use or special exception shall be  
31 made to the district court. In any county in which is located a city of

1 the primary class, an appeal of a decision by the ~~county planning~~  
2 commission regarding a conditional use or special exception shall be made  
3 to the county board ~~of commissioners or supervisors~~, and an appeal of a  
4 decision by the county board ~~of commissioners or supervisors~~ regarding a  
5 conditional use or special exception shall be made to the district court.

6 (6) Whenever a ~~county planning~~ commission or county board is  
7 authorized to grant conditional uses or special exceptions pursuant to  
8 subsection (4) or (5) of this section, the ~~planning~~ commission or county  
9 board shall, with its decision to grant or deny a conditional use permit  
10 or special exception, issue a statement of factual findings arising from  
11 the record of proceedings that support the granting or denial of the  
12 conditional use permit or special exception. If a ~~county planning~~  
13 commission's role is advisory to the county board, the ~~county planning~~  
14 commission shall submit such statement with its recommendation to the  
15 county board as to whether to approve or deny a conditional use permit or  
16 special exception. Not later than ninety days after receiving a complete  
17 application, the commission or county board shall decide to grant or deny  
18 a conditional use permit or special exception. If no such decision is  
19 made within such timeframe, the application shall be deemed approved and  
20 the commission or county board shall grant the conditional use permit or  
21 special exception.

22 (7) A commission or county board shall not require an applicant for  
23 a conditional use permit or special exception to apply for or obtain any  
24 other permit from a federal, state, or local agency as a condition for  
25 granting such conditional use permit or special exception. The granting  
26 of a conditional use permit or special exception by a commission or  
27 county board shall not relieve the applicant of any requirement to obtain  
28 other necessary permits from any federal, state, or local agency.

29 Sec. 2. Original section 23-114.01, Reissue Revised Statutes of  
30 Nebraska, is repealed.